



## Law enforcement of information and electronic transaction law from an Indonesian criminal law perspective

Muhadir, Mohd Din, Yanis Rinaldi

Faculty of Law, Syiah Kuala University, Indonesia

### Abstract

Legal problems that are often faced are when related to the delivery of information, communication, and/or transactions electronically, especially in terms of evidence and matters related to legal actions carried out through the electronic system. The analysis method is carried out based on normative juridical using a statutory approach. The results show that the Enforcing legal norms in Indonesia, especially the Information and Electronic Transactions Law, is also inseparable from what we are familiar with with the involvement of socio-cultural roles. In the context of enforcing the Law on Information and Electronic Transactions in Indonesia, there are several approaches that the government can then take, including preventive and repressive measures. Preventively what is meant here is how the public is educated regarding this Electronic Information and Transaction Law so that they are not ensnared by the sharpness of this Electronic Information and Transaction Law and the second repressively is to implement the Electronic Information and Transaction Law, for example, related to defamation, pornographic content, and fake news. Before repressive enforcement efforts, it is indeed requested that Law Enforcement Officials or the Government be more active in socializing the Electronic Information and Transaction Law to the public so that they are not easily entangled with the criminal law of the Electronic Information and Transactions Law.

**Keywords:** law enforcement, government, information and electronic transactions

### Introduction

Currently, a new legal regime has been born, known as cyber law or telematics law. Cyberlaw or cyber law is internationally used for legal terms related to the use of information and communication technology. Likewise, the law of telematics which is the embodiment of the convergence of telecommunications law, media law, and informatics law. Other terms that are also used are the law of information technology (law of information technology), the law of cyberspace (virtual world law), and the law of cyberspace<sup>[1]</sup>.

Legal problems that are often faced are when related to the delivery of information, communication, and/or transactions electronically, especially in terms of evidence and matters related to legal actions carried out through the electronic system. For that we need a set of laws that can overcome this problem, as now this one legal instrument has been successfully ratified through a criminal law policy, namely Law Number 11 of 2008 concerning Information and Electronic Transactions is the first law in Indonesia. Indonesia which specifically regulates cyber crimes.

The ITE Law, which has been in effect since April 2008, is indeed a breakthrough for the legal world in Indonesia, because for the first time cyberspace in Indonesia has a device. Because of its nature which contains the rules of the game in cyberspace, the Electronic Transaction Information Law is also known as Cyber Law. Like Cyber Law in other countries, the Electronic Transaction Information Law is also extraterritorial in nature, so it not only regulates the actions of people who are domiciled in Indonesia but also applies to everyone who is in a jurisdiction outside Indonesia, whose actions have consequences. law in Indonesia or outside the territory of Indonesia and harm the interests of Indonesia<sup>[2]</sup>.

In its development, the ITE Law underwent changes to several articles and additions which were later promulgated into Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Transaction Information. hackers, prohibition of displaying content containing pornographic elements, violations of decency, defamation, insults and so on.

The ITE Law was originally born to protect the Indonesian people from digital crimes and data theft on the internet. Unfortunately, the implementation of this law has undergone many functional shifts. The ITE Law has now become a frightening specter, especially with regard to freedom of democracy or opinion on the internet or even criticizing anything.

The implementation of the ITE Law turns out to have a negative impact on democracy in Indonesia<sup>[3]</sup>. Since the enactment of the ITE Law until now, there have been 5,064 cases related to defamation/defamation during the 2017-2020 period.

This is what makes the public feel uneasy, one of the causes of the low Indonesian Democracy Index because of the many cases of silencing freedom of opinion, revealed by the criminal law reform symposium, stating as follows: The problem of criminalizing and decriminalizing an act must be in accordance with the criminal politics adopted by the Indonesian people, namely the extent to which the act is contrary to the fundamental values prevailing in society and is deemed appropriate or inappropriate by the community to be punished in the context of providing public welfare.

The need for criminal law reform (penal reform) is part of the policy/politics of criminal law, the meaning and nature of criminal law reform is closely related to the background and urgency of holding criminal law reform itself which after the criminal law reform against the ITE Law should

make The law is getting better but what is happening now is just the opposite.

Regulation or law is a system of rules that is so complex, which includes heterogeneous social realities, has many fields, aspects, dimensions and periods. Like objects he is like a diamond diamond, which gives a different impression to people who see it. Bernard Arief Sidharta said that law originates and is formed in the communication process, there are relationships from various dimensions of society (poleksobud) and technology, as well as religion, which are formed and participate in shaping the order of people's lives. and determine the character or characteristics of the community <sup>[4]</sup>.

So, legal cases are so complex, that's why the methodology can be from inter-disciplinary sciences, both religion, philosophy, history, sociology, anthropology, psychology, politics and so on. When talking about law, it cannot be ignored from the philosophical aspect, the history of legal methodology through these inter-disciplines has given rise to so many legal disciplines.

Padmo Wahjono said that Legal Politics is a basic policy that determines the direction, form, and content of the law to be formed <sup>[5]</sup>. In his other writings, Padmo also clarifies this definition by saying that legal politics is the policy of state administrators regarding what criteria are used to punish something which includes the formation, application, and enforcement of the law. So, indeed, what we will discuss about legal politics is indeed very closely related to how the process of forming the law is and how the law is enforced.

Law is a political product which causes the law to always be colored by political interference and chaos in it. Because it is considered a political product, it can be concluded that the law is born from political actions which cannot be denied by the involvement/intervention of individuals/groups in it. In theory, politics must be subject to the law, but in reality, the law has been intervened by politics too much.

### Research methods

In this study, the author uses a normative juridical research method using the statute approach, namely by examining all laws and regulations that are related to the legal issues raised, and the comparative approach, which is to compare the law. a country with the laws of other countries and also compare a court decision with other court decisions for the same matter. With data sourced from primary legal material data and secondary legal material data, then the data is analyzed based on qualitative methods.

### Results and Discussion

#### 1. History of the Enforcement of the Electronic Information and Transaction Law in Indonesia

Cybercrime or cybercrime has occurred in Indonesia since 1983 until now by misusing computers. A computer is an electronic, magnetic, optical data processing device or system that performs logical, arithmetic, and storage functions <sup>[6]</sup>.

According to Barda Nawawi Arief, crimes related to computers are the same as cyber crimes. Terminologically, crimes based on information technology using computer media as currently occur can be referred to by several terms, namely computer misuse, computer abuse, computer fraud, computer related-crime, computer-assisted crime, or computer crime <sup>[7]</sup>.

However, every country is not necessarily the same in using the term, even inconsistent <sup>[8]</sup>. Regarding the criminalization of acts that are categorized as cyber crimes, the United Nations determines that the criminal provisions in statutory acts of each country are obliged to formulate criminal provisions clearly (lex certa). Where this is done to provide legal protection for the people of Indonesia, provide clarity, and ensure the certainty of legal provisions so that there is no ambiguity of interpretation.

Based on the basic principles that can be used to draft laws and regulations governing cybercrime as follows: <sup>[9]</sup>

- a. To protect legal interests related to information technology, criminal law is a last resort (ultimum remedium), because the use of administrative law and civil law is more important;
- b. The provisions of criminal law must describe the prohibited acts in a precise, specific manner and avoid vague formulations. These provisions need to be made to balance actions related to a person's privacy with the freedom to obtain information;
- c. In criminalization, it is necessary to explain clearly the provisions of criminal law in each country. Therefore, the expansion of the provisions used as a reference that is not clear and difficult to understand must be avoided. If explicit or implicit references are used to apply criminal law, the provisions must also be clear;
- d. The principle of guilt on the maker (principle of culpability) and the purpose of a crime are always made part of the element of criminal responsibility in cybercrime;
- e. Criminalization of actions that can be punished because someone neglects to do something (missions offense), needs to be based on deep considerations;
- f. Violation of personal freedom is a complaint offense.

The ITE Law was drafted in March 2003 by the Ministry of Communication and Information (Kominfo). Initially, the ITE Bill was named the Information Communications and Electronic Transaction Law by the Ministry of Transportation, Ministry of Industry, and Ministry of Trade, and in collaboration with teams from universities in Indonesia, namely Padjadjaran University (Unpad), Bandung Institute of Technology (ITB) and University of Indonesia (UI).

On September 5, 2005, President Susilo Bambang Yudhoyono officially submitted the ITE Bill to the DPR through letter No.R/70/Pes/9/2005. And appointed Dr. Sofyan A Djalil (Minister of Communication and Informatics) and Mohammad Andi Mattalata (Minister of Law and Human Rights) as government representatives in joint discussions with the Indonesian House of Representatives.

The House of Representatives (DPR) responded to the President's letter No. R/70/Pes/9/2005. And formed a Special Committee (Pansus) for the ITE Bill consisting of 50 people from 10 (ten) factions in the DPR RI. To compile the Problem Inventory List (DIM) of the draft ITE Bill submitted by the Government, the Special Committee on the ITE Bill held 13 public hearings (RDPU) with various parties, including banks, the National Crypto Agency, telecommunications operators, law enforcement officers, and other parties. academics. Finally, in December 2006 the Special Committee of the DPR RI established a Problem Inventory List (DIM) of as many as 287 DIM of the ITE

Bill originating from 10 factions who were members of the Special Committee for the ITE Bill of the DPR RI.

In its development, the ITE Law underwent revisions in 2016 to several articles and additions which were later promulgated into Law No. 19 of 2016 concerning electronic transaction information, changes to Law No. 11 of 2008, the ITE Law continues to change, including protection from hacker attacks, banning the viewing of content containing pornographic elements, violations of decency, defamation, insults and so on.

## 2. The Impact of the Enforcement of the IT Law on Indonesian Society

Politics is a manifestation of the power of human thought to realize what is the goal of human life, all power and efforts are crystallized in politics to create what is the goal through what we call politics. Politics is the art in achieving what is the vision and hope in life, with the book of Jesus politics makes a very peaceful and prosperous life and vice versa can destroy a civilization<sup>[10]</sup>.

There is a very close correlation and the interrelationship between politics and law, where the law is expected to be able to make the exercise of power and politics more humane, while power politics is expected to be able to converge human behavior to become more orderly and also hope that justice can be realized. So it can be said that the law plays a role in how to humanize the use of the law.

Legal norms can be declared politically valid if their enforcement is supported by real political power factors or rule *machtsfactoren*. Although a norm is supported by all levels of society, by the philosophical ideals of the state, and has a clear juridical basis, but lacks support from *parmen*, the norm cannot apply as law. In other words, this political role is related to the theory of power (power theory) providing legitimacy to the validity of a legal norm only from the point of view of power. If a legal norm has received the support of power, then the legal norm can apply, regardless of its form.

According to Bagir Manan, there are 3 (three) foundations for drafting legislation, namely: the juridical basis, the sociological basis and the sociological basis. In addition, according to Jimly Asshiddiqie, there are 5 (five) foundations for the formation of laws and regulations, namely<sup>[11]</sup>:

- a. Philosophical foundation. Laws always contain legal norms that are idealized by a society towards which the noble ideals of state life are to be directed;
- b. Sociological Foundation. Every legal norm outlined in the law must reflect the demands of the community's own needs for legal norms that are by the reality of public legal awareness;
- c. Political Foundation. The consideration must also illustrate the existence of a constitutional reference system according to the ideals and basic norms contained in the 1945 Constitution as a source of basic policies or sources of legal politics that underlies the formation of the relevant law;
- d. Juridical Foundation. In the formulation of each law, the juridical basis must be placed in consideration or remembering;
- e. Administrative Foundation. This basis is facultative according to needs, contained in the preamble with the word *pay attention*. This foundation contains the inclusion of references in the event of an order to regulate administratively.

Politics and law are two different things but need each other because a law exists in appearance and reality while politics is a way to achieve goals including law is a goal that must also be achieved through the political process.<sup>[12]</sup>

As well as politics then requires the law to legalize what is its goal so that what is done politically is accepted by the community as something that is legally legal even though it is not true, the law can play its role in covering issues so that it appears to be completely legal legally. constitution. So that it can be said that law and politics cannot be separated in life or a country, both will complement and need each other.

## 3. Law Enforcement Against the ITE Law from the Political Perspective of Indonesian Criminal Law

The number of interactions through online media or social media modes of course requires rules that can ensure the security and order of the community in carrying out their daily activities in cyberspace, moreover, we know for example that now space and time are not limited or borderless so that the ITE Law is at least can restrain the criminal rate in cyberspace, but not a few individuals use this social media for their personal or group interests to the detriment of other parties.

For example, how do we see provocations carried out through social media that spread quickly, theft of personal data through social media, ATM scamming of bank customers, and the spread of viruses to damage computer networks, and nowadays many of us with the ITE Law are widely used to silence them - those who In contrast to the owner of the power, for example, one example is the Aksi Cepat Tanggap (ACT) Case which was disclosed by the Tempo media which had abused public funds. Of course, with all of this, it is hoped that the enforcement of legal norms in the ITE Law can provide legal certainty and benefits to the community, so the key is that it must be carried out professionally.

According to Soerjono Soekanto's opinion, there are 5 (five) factors that influence the mechanism of law enforcement, namely: first, the legal factor (substance) is statutory regulation. Second, the factor of law enforcement officers, namely the parties involved in the process of forming and applying the law, which is related to mentality issues. Third, the factor of facilities or facilities that support the law enforcement process. Fourth, community factors, namely the social environment in which the law applies or is applied. Fifth, the cultural factor, namely the work, the creation of taste based on the human initiative in social life<sup>[13]</sup>.

According to Moh. Mahfud MD in his book, the fact is that legal products are always formed as a reflection of the political configuration that lies behind them. In other words, the sentences contained in the law are nothing but the crystallization of competing wills<sup>[14]</sup>.

Satjipto Rahardjo stated that in the relationship between the legal subsystem and the legal political subsystem, politics turns out to have a greater concentration of energy so the law is always in a weak position<sup>[15]</sup>. Such conditions make it clear that the political journey in Indonesia is like a train journey off the rails, meaning that many political practices substantively contradict the rules of law.

In enforcing the ITE Law, the community and law enforcement are in a dilemma. If enforced, it is very risky, especially in terms of freedom of opinion which is part of

human rights. And/or expressing opinions through social media, there is a communication blockage between the people and the state. It could be, "criticism" is a solution to improve the work of the government which has been considered not in line with the will of the people. On the other hand, social media that is not properly regulated can be used as a means to bring down opponents, irresponsible opinions, hate speech, insults, and insults that lead to SARA attacks which often cause tension.

In enforcing legal norms in Indonesia, especially the Information and Electronic Transactions Law, this is also inseparable from what we are familiar with with the involvement of socio-cultural roles. Humans as we know are social beings who cannot be separated from their daily lives. Together and interacting with fellow humans, from there, direct or indirect conversations arise. From this fact, we know that humans are naturally creatures that cannot be separated from living with other people. This usually takes place also on social media which also has an impact on law enforcement of the ITE Law, the socio-cultural referred to here is also related to how people know the existing regulations so that then they are not blind in their actions because everything we do on social media has consequences.

In the context of enforcing the Law on Information and Electronic Transactions in Indonesia, there are several approaches that the government can then take, including preventive and repressive measures. Preventively what is meant here is how the public is educated about this Electronic Information and Transaction Law so that they are not ensnared by the sharpness of this Electronic Information and Transaction Law and the second is repressively by implementing the Electronic Information and Transaction Law, for example, related to defamation, pornographic content and fake news. Before repressive enforcement efforts, law enforcement officials or the government were asked to be more active in socializing the Electronic Information and Transaction Law to the public so that they are not easily entangled with the criminal law of the Electronic Information and Transactions Law.

### Conclusion

Based on the description that has been discussed above, the authors conclude that the actual purpose of the establishment of Law Number 19 of 2016 concerning Electronic Transaction Information is to make the Indonesian people safe from all forms of cybercrime, but nowadays the ITE law is used as a tool to overthrow his opponent, by using articles that are considered rubber if exposed to these articles it will be difficult to get rid of them, then freedom of expression in Indonesia is guaranteed by the 1945 Constitution.

In enforcing the ITE Law, the community and law enforcement are in a dilemma. If enforced, it is very risky, especially in terms of freedom of opinion which is part of human rights. And/or expressing opinions through social media, there is a communication blockage between the people and the state. It could be, "criticism" is a solution to improve the work of the government which has been considered not in line with the will of the people. In the enforcement of the ITE Law, of course, there are many obstacles because there are indeed many interests here, so sometimes we also see how the law is sometimes powerless in front of politics.

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