

## Criminal Law Enforcement Policies In Prevention Efforts Of Information Technology Crime

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**Abstract.** The problem of this research is the criminal law enforcement policies in prevention efforts of information technology crime in the positive law and criminal law enforcement policy in combating criminal acts in the positive law of information technology that will come. The method used is normative juridical approach and specification in this study were included descriptive analysis. And sources and types of data in this research is secondary data obtained from the study of literature relating to the theory of Enforcement and Compliance Laws. Based on the results of the research that the Indonesian government policy with the promulgation of Act No. 11 of 2008 on Information and Electronic Transactions (ITE Act.) is the first legal framework that governs the world of cyber (Cyber Law) because the charge and broad scope in discussing arrangements in cyberspace, such as the expansion of electronic evidence together with the evidence that has been known so far, the recognition of electronic signatures as a means of verification, and authentication of legitimate an electronic document, as well as setting deeds done in cyberspace as a criminal offense. Policy formulation of the crime of information technology should pay attention to the internal harmonization with the criminal justice system or the general sentencing rules that apply today. It can not be said to harmonization / synchronization when the formulation policies are outside the system. Therefore the policy formulation of criminal law the crime of information technology in the future should be in the criminal justice system currently applies.

**Keywords:** Policy, Law Enforcement; Criminal; Information Technology.

### 1. Introduction

The role of information and communication technology in the era of globalization has put in a very strategic position because it represents a world without borders, distance, space, and time. Usage influence of globalization by means of information and communication technologies have changed the lifestyle of the people, and thrive in the new order of life and promote a change in the social, cultural, economic, defense, safety, and law enforcement.<sup>3</sup>

Developments in information technology should be so rapidly anticipated with the laws that govern them. The negative impact should be anticipated and addressed by law relating to the utilization of information and communication technology. By international law relating to use of information technology crime law term Cyber law. Other terms are also used information technology law (law of information technology), the law of cyberspace (virtual world law) and the Cyber Law.<sup>4</sup>

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<sup>4</sup> Explanation of Act No. 11 of 2008 on Information and Electronic Transactions, enacted on 28 April 2008, State Book No. 58.

Along with the development needs of the people in the world, information technology play an important role, both in the present and in the future. Information technology is believed to bring great benefit and interest for the countries in the world. At least there are two things that make the technology of drawing this information was considered so important spur world economic growth. First, information technology is driving the demand for information technology products itself, such as a computer, a modem, a means to build the networks, and so on. Second, is to facilitate business transactions especially the financial business in addition to other businesses.<sup>5</sup>

Unlawful act in the virtual world is a phenomenon that is very worrying, given the action carding, hacking, fraud, terrorism, and the spread of destructive information has become a part of criminal activities in cyberspace. The reality that, as a stark contrast to the lack of regulations governing the use of information and communication technologies in various sectors. Therefore, to ensure legal certainty, the government is obliged to carry out the regulation of the activities associated with the utilization of the information and communication technology.<sup>6</sup>

Similarly, the rapid development and advancement of information and communication technology is one of the causes of changes in human activities in various fields which directly affect birth of the forms of new legal acts. The utilization of information and communication technologies must be developed to establish, maintain, and strengthen unity and Indonesian unity. The government needs to development of information technology through the legal and regulatory infrastructure, to prevent its misuse.

Viewed from the perspective of criminal law cybercrime prevention efforts can be seen from various aspects, among other aspects of the policy, criminalization (formulation of criminal offenses), aspects of criminal liability or criminal prosecution (including aspects of evidence / proof), and aspects of the jurisdiction.<sup>7</sup>

Rule of Law ITE has been issued by the government under Act No. 11 of 2008 on Information and Electronic Transactions (ITE Law). ITE Law is the first law that specifically regulate against cyberspace (cyber law) in Indonesia. Act ITE is a product of the law governing the issues in cyberspace or Internet. Within the law criminalizing arranged on several previous criminal act is not a criminal offense through some breakthroughs and expansion in terms of the principles as well as criminal sanctions. In addition to the rules of substantive criminal, in this law also regulates the procedure and evidence undergone expansion, namely the inclusion of new evidence relating to the electronic media.<sup>8</sup>

Based on the background of the problem, then the problem in this research are as follows: How criminal law enforcement policy in the fight against criminal acts in the positive law of information technology? How criminal law enforcement policy in combating criminal acts in the positive law of information technology that will come?

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<sup>5</sup>Budi Suhariyanto, *Tindak Pidana Teknologi Informasi (Cyber Crime) Urgensi Pengaturan dan Celah Hukumnya*, PT. RajaGrafindo Persada, Jakarta, 2013, p. 1-2.

<sup>6</sup>Sunarto, Siswanto, Op. Cit, p. 40.

<sup>7</sup>Barda Nawawi Arief, *Tindak Pidana Mayantara: Perkembangan Kajian Cyber Crime di Indonesia*, PT Raja Grafindo Persada, Jakarta, 2007, p. 89.

<sup>8</sup>Ibid, p.6.

## Research Methods

In the normative legal research many separation approach while particular and collective appropriate to the issue or issues discussed. Comparative approach, research on comparative law, both regarding the comparison of legal systems between countries, and the comparison of laws and legal character over time within a country. This research use descriptive specification, which describes criminal law enforcement policy in the fight against the crime of information technology clearly then linked with the theories of criminal justice and law enforcement practices positively linked to the research conducted.

## 2. Research and Results Discussion

### 2.1. Criminal Law Enforcement Policy In Effort Preventive Crime Information Technology

As has been explained previously that, prevention and control of crime is part of a political criminal. Criminal policy and even then may not be separated from the broader policy of it is social policy. And efforts / social policy itself than for the social welfare and social protection.

Regarding policies in combating crime according to Barda Nawawi Arief that, viewed from the perspective of policy approaches, the criminal law reform have meaning:<sup>9</sup>

- As part of a social policy, criminal law reform are actually a part of efforts to address social problems, in order to achieve / support the national objectives (social welfare and so on);
- As part of the criminal policy, criminal law reform are actually a part of efforts to protect the public (especially the crime prevention efforts);
- As part of the policy of law enforcement, criminal law reform are actually a part of the efforts to renew the substance of the law (legal substance) in order to increase the effectiveness of law enforcement.

Criminal law enforcement aims to create peace in the association life, Conceptually enforcement by Soerjono Soekanto is harmonizing relations activities that span the 'hierarchy of values in a steady norms and attitudes manifest and acts as a series of translation of the value of the final stage, to create, maintain and sustain peace of social life.<sup>10</sup> He said that law enforcement is influenced by:

- Factors own law
- Law enforcement apparatus, namely the parties to form and apply the law
- Factor means or facilities to support law enforcement
- Community factors, namely the environment in which they may apply or applied
- Cultural factors, namely as a result of the work, creativity and taste that is based on human initiative in social life.<sup>11</sup>

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<sup>9</sup>Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana (Cetakan Kedua)*, Kencana, Jakarta, 2010, p. 29-30.

<sup>10</sup>Soerjono Soekanto, *Faktor-faktor yang Mempengaruhi Penegakan Hukum*, Raja Grafindo Persada, Jakarta, 2000, p. 3.

<sup>11</sup>Ibid, p. 5.

According to Barda Nawawi Arief, the efforts to address the criminal law essentially a part of law enforcement efforts (especially criminal law enforcement). Therefore, it is often said that politics of law or criminal law policy is part of the policy of law enforcement (law enforcement policy).<sup>12</sup> In the system of criminal law policy formulation aspects of the strategic phase. It is as stated by Barda Nawawi Arief, the legislative process / formulation / manufacture of legislation is essentially a law enforcement process "in abstracto". The legislative process / formulation is a very strategic early stage of the judicial process "in concreto". Hence the error / weakness at this stage of the legislative policy / formulation is a strategic error that can become an obstacle to law enforcement efforts "in concreto"<sup>13</sup>.

## 2.2. Criminal Law Enforcement Policy in Combating Crime Technology Information in Positive Law to Come

Answering the demands and challenges of global communication via the Internet, is expected the Law (*ius constituendum*) is a legal device that is accommodating to development and anticipatory of issues, including the impact of the internet to negative violation with various motivations that can cause the victim as loss of material and non-material.

Countermeasures against criminal acts need to be balanced with repairing information technology and the development of the criminal justice system as a whole, namely include the culture building, structure and substance of the criminal law. In this case the policy criminal law occupy a strategic position in the development of modern criminal law. Barda Nawawi Arief stated that efforts to reform its criminal law in nature including the "penal policy" which is part of and associated with "Law enforcement policy", "Criminal policy" and "Social Policy". This means that the renewal of the criminal law in effect:

- Is part of the policy (rational effort) to renew the substance of the law (legal substance) in order to increase the effectiveness of law enforcement;
- Is part of the policy (rational effort) to eradicate / tackle crime in order to protect the public;
- Is part of the policy (rational effort) to address social problems and humanitarian issues in order to achieve / support the national objectives (ie "Social defence" and "social welfare");
- An effort to review and reappraisal ( "reorientation and re - evaluation") the main points in mind, the basic ideas or socio-philosophic value, socio-political and socio-cultural underlying criminal policy and the policy (enforcement) criminal law over the years. Not a reform (reform) criminal law, where the value orientation of criminal law which aspired to the same as the value orientation of the old criminal law heritage invaders (the old Penal Code or WvS).<sup>14</sup>

The principle of error that is applied in criminal liability ITE Law identify what that as if there is no possible absolute liability (strict liability). While the criminal offense of

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<sup>12</sup>Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana (Second Edition)*, Op. Op. Cit, p. 24

<sup>13</sup>Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana, Op.Cit.*, p. 25.

<sup>14</sup>Barda Nawawi Arief, *Masalah penegakan Hukum Pidana dalam Penanggulangan Kejahatan*, op.cit., p.28.

information technology tenets liability and vicarious liability is theoretically very possible given not easy to prove the existence of an error on cybercrime offenses, mostly related to errors in the corporate / legal entity.

Thinking in the application of the principle of "strict liability", and "vicarious liability" had been written in the Criminal Code Concept 2004<sup>15</sup> in Book I, which asserted that the "strict liability" and "vicarious liability" possible "for certain crimes or in certain things. Thus, in the policy of criminal responsibility in the prevention of criminal acts upcoming information technology makes it possible to apply a "strict liability" and "vicarious liability". Legislators in formulating the offense often take into account the reality of human action within or through organizations in civil law as well as outside it appears as a single entity, and because of it is recognized and treated as a legal entity / corporation.<sup>16</sup> Thus, the criminal law is now the subject of the law is no longer confined nature of the human person (*natuurlijkepersonen*) but also includes the human being as a legal entity (*rechts-persoonen*).

Law enforcement future law enforcement process is basically an effort to achieve justice and order in the society. Through the criminal justice system and criminal system. Basically the rights of citizens who are disturbed by tort someone will be scaled back. Satjipto Raharjo stated.<sup>17</sup> The law enforcement process to reach also to the making of laws. Formulation mind the legislation (law) as outlined in the rule of law will also determine how law enforcement is executed. Performance legal institutions, by itself under the spotlight of a fairly high from the people, because they who have the duty to interpret legal rules into practice, to resolve disputes and conflicts in society. Its main all criminal justice system (if can be called a system because it appears to be more viscous non-system color), the police agencies, prosecutors, courts and correctional, which is now under the spotlight outstanding. Coupled with this spotlight.

### 3. Closing

#### 3.1. Conclusion

- Criminal law policy against criminal acts nowadays as information technology is prior to the enactment of Act No. 11 of 2008 on Electronic Information and transaction there are several statutory provisions that connected with the use and misuse of information technology stipulated in the Criminal Code and some laws outside the Criminal Code. Policy formulation of the statute of ITE Law before declared a both in terms of criminalization, the type of criminal sanctions, the formulation of criminal sanction, subjects and qualifications of different criminal

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<sup>15</sup>The concept of the Criminal Code in 2004 also gives the possibility in certain cases to apply the principle of "strict liability", the principle of "vicarious liability", and the principle of "pardon / forgiveness by the judges" ( "*rechterlijk pardon*" or "judicial pardon").

<sup>16</sup>Jan Rummelink, *Hukum Pidana: Komentar atas Pasal-Pasal Terpenting dari Kitab Undang-undang Hukum Pidana Belanda dan Padanannya dalam Kitab Undang-undang Hukum Pidana Indonesia*, PT Gramedia Pustaka Umum, Jakarta, 2003, p. 97.

<sup>17</sup>Satjipto Rahardjo, *Masalah Penegakan Hukum, Suatu Tinjauan Sosiologis*, Badan Pembinaan Hukum Nasional Departemen Kehakiman, Jakarta, 1983, p. 54.

acts, especially in terms of its criminal policy not set firmly and clearly against criminal acts Technology Information.

- Criminal Law Enforcement Policy in Combating Crime Technology Information in Positive Law to Come Policy formulation is a criminal offense in information technology should pay attention to the internal harmonization with the criminal justice system or the general sentencing rules that apply today. It can not be said to harmonization / synchronization when the formulation policies are outside the system. Therefore the policy formulation of criminal law the crime of information technology in the future should be in the criminal justice system currently applies.

### 3.2. Suggestion

- The criminalization of policy actions in the virtual world must continue to be harmonized in line with the rise in cyber crime is becoming more sophisticated. This is due to a criminal act that knows no information technologies territorial boundaries and operates virtually therefore demanded that the government must always seek to anticipate new activities are governed by the laws that legal.
- As the response to the crime of information technology should be regulated type of additional penalty such as banning use of the internet during the specified time limit or actions "typical" for corporations, such as revocation of business licenses, closure / liquidation of corporations and restrictions on corporate activities.

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