

The E-Commerce Crime Prevention in Criminology Perspective

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Abstract.

The effectiveness of crime prevention strategies needs to consider the factors that cause crime. These problems are formulated, among others: First, how to overcome the crime of e-commerce according to the national criminal law; Second, how to tackle the crime of e-commerce in a criminological perspective. This study uses a normative juridical research method with analytical descriptive specifications. The results of the study found that Act No. 11 of 2008 in conjunction with Act No. 19 of 2016 concerning information and electronic transactions. The ITE Law has become an urgent need for the community to face free markets and even free trade in the international sphere. With the ITE Law, it can guarantee legal certainty and legal protection for victims of e-commerce crimes. Criminology plays an important role in helping the smooth running of the judicial process against e-commerce crimes, namely by knowing the causes and motives of the perpetrators to commit e-commerce crimes.

Keywords: Crime; Criminology; E-Commerce.

1. Introduction

Criminology is a social science discipline that studies crime from a social perspective. When talking about crime, it can be interpreted that when someone violates the law that affects other people and can be subject to punishment. The phenomenon of crime is an eternal problem in human life,¹Crime is an act that from the beginning was felt as an injustice because it was contrary to the rules in society before it was determined by law as a criminal act.²Criminal law is the central point in enforcing strict rules that can ensure balance in society, and create a society that is lawful. The sanctions given also have a preventive effect on the occurrence of violations and crimes.

Indonesia as a state of law is clearly stated in the provisions of Article 1 paragraph 3 of the 1945 Constitution, which reads, "The State of Indonesia is a state of law". According to Frans Magnis Suseno, there are four pillars to become a state of law, namely: the principle of legality, the existence of freedom and independence of judicial power, the guarantee of protection of human rights, the existence of a government based on a constitutional system or basic law.³The implementation of the pillars of the rule of law is sometimes not carried out properly. Many events that occur in society are still paradoxical. Because in its application it does not reflect as a state of law. There are still inequalities which are then contradictory in several

¹Erlina, (2014), *Analisa Kriminologi Terhadap Kekerasan dalam Kejahatan*, Jurnal Al Daulah. p. 218.

²Beire and James Messerschmidt in Eddy O.S. Hiariej, (2014), *Prinsip-prinsip Hukum Pidana*, Yogyakarta: Cahaya Atma Pustaka, p. 102.

³Frans Magnis Suseno, (1988), *Etika Politik*, Jakarta: Gramedia, p. 295.

parties regarding the existence of the rule of law in Indonesia, both in the process of investigation, investigation, prosecution, examination in court and in the execution of executions. If one of the pillars of the rule of law is not fulfilled, it can be ascertained that there will be violent practices committed by the state against the community, abuse of power or abuse of power. The judiciary is less responsive in accommodating the demands of justice and legal certainty in society. And to make matters worse, the rise of the legal mafia,

The phenomena of crime that often occur in Indonesia have broken the goals of the Indonesian state. The phenomenon of this crime has caused a lot of unrest in the community, so efforts are needed to minimize or even destroy all forms of crime that occur in society. According to G. Peter Hoefnagels, efforts to tackle crime can be pursued through influencing the view of society on crime and punishment (mass media), Prevention without punishment, and criminal law, meaning that crime prevention can be pursued in several ways, namely:⁴

- Application of criminal law (criminal law application)
- Prevention without punishment (prevention without punishment)
- Influencing public views on crime and punishment through mass media (influencing views of society on crime and punishment/mass media)

Efforts to overcome crime through the means of punishment.⁵ It can be said as a rational effort in tackling crime through the means of criminal law. Criminal law is a regulation that regulates crime, both regulations that prohibit the commission of a crime, up to the provision of criminal sanctions for those who violate the prohibition.

With the development of the times and technological advances have an influence on socio-cultural changes. Electronic transactions have changed the business paradigm from a classic to a business in the form of virtual interactions between business actors and buyers. Transactions like this are new discoveries in trading that are considered to have a higher selling value than transactions in general. The use of the internet in electronic transactions has a positive impact, namely the ease and speed of interacting without limitations of place and time. The use of e-commerce has become a new economic driver in the technology field.

The use of technology has changed both the behavior of society and human civilization globally. Technological developments have made world relations borderless and led to significant social, economic and cultural changes. This technology is sometimes a double-edged sword because in addition to contributing to the improvement of human welfare, progress and civilization, it is also a technology that is prone to accommodating criminal acts and acts against the law committed by business actors who master information technology. The form of criminal acts that occur in information technology is known as cybercrime. Cyber crime occurs due to the deviant behavior of social media actors in the misuse of social media in aspects of people's lives. The use of the internet for business transaction activities is known as Electronic Commerce (e-commerce). The use of the internet as a business transaction has been considered as important, this is indicated by the increasing number of entrepreneurs who use e-commerce in their

⁴Arief, Barda Nawawi, (2008), *Bunga Rampai Kebijakan Hukum Pidana*, Jakarta: Kencana, p.5.

⁵Ibid, p. 46.

companies. In the business world, a website in the form of e-commerce is already a necessity for an advanced business for business development. Along with the development of the business world, e-commerce is a necessity to improve and win business competition and product sales. In the business world, a website in the form of e-commerce is already a necessity for an advanced business for business development. Along with the development of the business world, e-commerce is a necessity to improve and win business competition and product sales. In the business world, a website in the form of e-commerce is already a necessity for an advanced business for business development. Along with the development of the business world, e-commerce is a necessity to improve and win business competition and product sales.

Criminological theories can be used to enforce criminal law because they offer answers to the question of how or why certain people and behaviors are considered evil by society. Through several theories of criminology trying to answer these questions through an understanding of sociological, political, and economic variables that can also affect law, administrative decisions on the implementation of law in the criminal justice system.

The effectiveness of crime prevention strategies needs to consider the factors that cause crime. It can be determined when a certain condition is consistently associated with a crime. Prevention of crime requires the improvement of a certain condition, because many causes of crime itself are not able to be detected by the police. These conditions need communication by the police to the public in order to find out. Therefore, theories are needed to examine the causes of crime and assist in the criminal justice system. Based on the description of the background above, the author is interested in taking the title "Combating E-Commerce Crimes in Criminology Perspectives".

2. Research Methods

This study uses a "juridical normative" research method, namely research that bases its analysis on legislation⁶related to the prevention of criminal acts of E-Commerce in Indonesia. The specification of the research used is descriptive analytical. The legal data used in this study is secondary data consisting of primary legal materials, namely laws and regulations related to research problems (Combating E-Commerce Crimes in Criminology Perspectives), and secondary legal materials, namely literature related to research problems. The legal materials were collected through literature study, then analyzed descriptively analytically.

3. Results and Discussion

3.1. Combating E-Commerce Crimes According to National Criminal Law

The crime of e-commerce cannot be categorized as an ordinary crime, because its activities are not restricted by the territory of a country, access can easily be done from any part of the world. Losses can occur to both internet actors and other people who have never been in touch. The crime was not committed with complicated

⁶Kornelius Benuf, Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer", *Gema Keadilan*, Volume 7, No. 1, 2020, p. 24.

means, but only by using telecommunications equipment and information technology in the form of a computer. Through computers, perpetrators can access millions of data every second and can also be used to destroy information data which results in large losses, and can even pose a danger to state security. There are 3 (three) approaches to maintaining security in cyberspace, namely the technological approach, the socio-cultural-ethical approach, and the legal approach.⁷To overcome security disturbances in the operation of electronic systems, the legal approach is absolute because without legal certainty, the problem of using information technology is not optimal.

E-commerce or buying and selling electronically is a transaction that is carried out by buyers and sellers electronically. All buying and selling transactions electronically are carried out without any face-to-face contact between the parties, and they base the sale and purchase on mutual trust. In the provisions of Article 1 number 17 of Act No. 11 of 2008 in conjunction with Act No. 19 of 2016 it is stated that an electronic contract is an agreement between parties made through an Electronic System.⁸

In national law, e-commerce crimes have not been specifically regulated, but there are several laws and regulations that can be a reference in overcoming the problem of e-commerce crimes, including:

- Act No. 7 of 2014 concerning Trade.
In this legislation, according to article 65 paragraph (1) online trading, namely every business actor who trades goods and/or services using an electronic system is required to provide complete and correct data and/or information. Furthermore, Article 65 paragraph (2) explains that every business actor is prohibited from trading goods and/or services using an electronic system that is not in accordance with the data and/or information as referred to in paragraph (1).
Business actors who trade goods and/or services in e-commerce that do not provide complete and correct data or information may be subject to sanctions, in the form of administrative sanctions such as revocation of business licenses or subject to imprisonment for a maximum of 12 years and/or a maximum fine of IDR 12,000,000,000 (twelve billion rupiah). As stipulated in the provisions of article 115 of the trade law.
- Act No. 11 of 2008 in conjunction with Act No. 19 of 2016 concerning Information
The classification of actions prohibited in the ITE Law is regulated from article 27 to article 37. These articles formulate into 20 (twenty) types of ITE criminal acts. The criminal threat is stipulated in Article 45 to Article 52 of Act No. 11 of 2008 in conjunction with Act No. 19 of 2016.
- The Criminal Code, commonly known as the Criminal Code
The crime of e-commerce is a type of crime that is difficult to classify as a crime. Because, the Criminal Code adheres to the principle of legality, where in Article 1 paragraph (1) of the Criminal Code states that "No act can be punished except

⁷Ahmad M. Ramli, (2004), *Cyber Law dan HAKI dalam Sistem Hukum Indonesia*, Bandung: Refika Aditama, p. 1

⁸Provisions of Act No. 19 of 2016 in conjunction with Act No. 11 of 2008.

by the strength of the criminal rules in the legislation that existed before the act was committed." In criminal law, it is known as Latin, "*Nullum delictum, nulla poena, sine pravia lege poenali*". The principle of legality formulates 2 (two) things, namely:

- a criminal act must be formulated or stated in a statutory regulation;
- this law must exist before the occurrence of a crime.

The crime of e-commerce can be categorized into article 378 of the Criminal Code, namely fraud committed by someone to benefit himself.

- Act No. 8 of 1999 concerning Consumer Protection

Sanctions for criminal acts of e-commerce have been regulated in articles 60 to 63. Article 60 paragraph (2) mentions administrative sanctions in the form of determining compensation for a maximum of IDR 200,000,000.00 (two hundred million rupiah). For criminal sanctions against criminal acts of e-commerce, criminal prosecution can be carried out, as stated in article 61.

Article 62 paragraph (1) states, "Business actors who violate the provisions as referred to in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (!) letter a, letter b, letter c, letter e, article 17 paragraph (2), and article 18 shall be sentenced to a maximum imprisonment of 5 (five) years or a maximum fine of IDR 2,000,000,000.00 (two billion rupiah).

- Act No. 11 of 2008 in conjunction with Act No. 19 of 2016 concerning Electronic Information and Transactions.

Substantively, the ITE Law consists of 13 chapters and 54 articles that regulate all matters relating to various limitations, principles and legal rules relating to information and electronic transactions. Article 18 paragraph (1) stipulates that electronic transactions contained in electronic contracts are binding on the parties. The principle of good faith according to the ITE Law, means that the principles used by the parties in conducting electronic transactions do not aim to intentionally and without rights or against the law cause harm to others, without the knowledge of the other party. The principle of freedom of choice of technology means that the principle of the use of information technology is not focused on the use of certain technologies, so that it can follow developments in the future.

The crime of e-commerce is contained in Article 28 paragraph (1), namely "everyone intentionally and without rights spreads false and misleading news that results in consumer losses in electronic transactions." This article can be used as a legal basis to ensnare perpetrators with fraudulent modes using electronic media. The criminal threat is also described in Article 45 paragraph (2), namely "everyone who fulfills the elements as referred to in Article 28 paragraph (1) or paragraph (2) shall be sentenced to a maximum imprisonment of 6 (six) years and/or a maximum fine of IDR . 1,000,000,000 (one billion rupiah).

The resolution of e-commerce crimes is often constrained in the evidentiary process because the types of evidence that have been used to ensnare criminals cannot be used to ensnare perpetrators of *cybercrime*.⁹ In relation to criminal law enforcement against criminal acts of e-commerce, it is still based on the existing

⁹Suhariyanto, Budi, (2012), *Tindak Pidana Teknologi Informasi (Cybercrime): Urgensi Pengaturan dan Celah Hukumnya*, Jakarta: Rajawali Press, p. 55.

positive law. So there needs to be a complete overcoming of cybercrime, such as the motives of the perpetrators and other evidence that can criminalize and provide justice for the losses suffered by the victims.

3.2. Combating E-Commerce Crime in Criminology Perspective

Criminology as a broader science than criminal law, where sentinology can be used to clarify the concepts and problems contained in criminal law. In relation to the dogmatics of criminal law, criminology contributes in determining the scope of crime or behavior that can be punished. Thus criminal law is not a syllogism of prevention, but is an answer to the existence of crime. Criminology can provide input to criminal law, especially studying the causes and effects of crime, repairing and preventing crime as a human phenomenon and can collect contributions from various sciences.¹⁰

The relationship between criminal law and criminology is a complementary relationship. In criminology looking for a reason, or a factor that encourages the emergence of a crime that gives birth to legal consequences, while criminal law tries to connect evil acts with the results of evidence. The theory that seeks the cause of crime from cultural sociological factors, the main object of criminal sociology is the relationship between society and its members as long as this relationship can lead to crime. A society can be understood and assessed only through its cultural background, prevailing norms and values.

The motive for the crime of e-commerce usually comes from the existence of a social interaction between the perpetrator and the buyer in the transaction. The absence of a physical form of an online store in buying and selling transactions in cyberspace is one of the obstacles for law enforcement to eradicate cybercrime.¹¹ Cases of e-commerce fraud that have not been resolved because contextually, online buying and selling actors have lost their social control because they have internal and external motives and opportunities from the perpetrators themselves. In the internal environment, economic conditions and needs that must be met encourage and create new norms for perpetrators to commit crimes.

The crime of e-commerce is a dynamic crime, which means that this crime can develop and continue to be carried out. One of the factors is the absence of guilt from the perpetrators of the crime. Usually there is no guilt, because the perpetrator does not know that his act is an act that is prohibited by law. Criminological theories play an important role in understanding the processes of an act becoming a crime. There are 3 (three) theories to find the causes of crime, namely:¹²

- The theory that seeks the cause of crime from a physical aspect.
- Theories that seek the cause of crime from psychological and psychiatric factors
- Theories that seek the causes of crime from socio-cultural factors

¹⁰Soedjono, D. (1979), *Konsepsi Kriminologi dalam usaha penanggulangan kejahatan (Crime prevention)*, Bandung: Alumni. p. 5

¹¹Agus Raharjo, (2002), *Cybercrime: Pemahaman dan Upaya Pencegahan Kejahatan Berteknologi*, Bandung: Citra Aditya Bakti. p. 36

¹²I.S. Susanto, (1995), *Kriminologi*, Semarang: Fakultas Hukum Universitas Diponegoro. p. 30

Most of these e-commerce crimes show that the participation of victims in crimes is in the form of participating victims, where victims are usually less observant and are immediately attracted to the seller's offer to purchase goods. So that it directly pays a sum of money to the perpetrators of the crime. The legal protection provided to the victim can be classified or can be given based on the loss or suffering experienced by the victim, both materially and immaterially.

4. Conclusion

In the national criminal law, the crime of e-commerce has been regulated in Law No. 11 of 2008 in conjunction with Law No. 19 of 2016 concerning electronic information and transactions. The ITE Law has become an urgent need for the community to face free markets and even free trade in the international sphere. With the ITE Law, it can guarantee legal certainty and legal protection for victims of e-commerce crimes. Criminology plays an important role in helping the smooth running of the judicial process against e-commerce crimes, namely by knowing the causes and motives of the perpetrators to commit e-commerce crimes.

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