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Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Justice-Oriented Legal Politics in Overcoming Cybercrime

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Abstract. *The internet and other new media brought forth by the advancement of information and communication technology have transformed global interactions and brought about profound social, economic, and cultural shifts. Today's human life is heavily reliant on technology. Technology, including email, e-commerce, cyberbanking, online business, internet banking, and so forth, can have a lot of positive effects. On the other hand, with the rise of cybercrime, it also has an adverse effect. In addition to their good effects, the dynamics of information and communication technology advancements in today's society also have negative effects because of improper use, which gives rise to a crime known as cybercrime. A normative juridical approach is the methodology employed. manner of normative juridical approach. This research discusses the provisions found in the relevant laws and regulations, connects them to the realities on the ground, and then evaluates them by contrasting the legal and regulatory requirements for ideal values with the actual conditions on the ground. In addition, empirical research supports normative juridical research. The study's findings are as follows: Based on how this article is presented, it can be inferred that legal politics is crucial to the process of legal change in order to stay up with the fast-moving times. The 1945 Constitution's fourth paragraph and other articles are reflected in legal reform, which is an attempt to carry out their mandate. The law is intended to be a guide in managing society and can be a solution to complicated difficulties that occur in social life when behavioral patterns alter in response to social change. That there is no distinction made between groups of individuals by the law when it comes to enforcement is a positive thing. This reflects the Pancasila vision of justice and how it is interpreted in order to fulfill the mandate of the 1945 Constitution, which states that Indonesia is a country of laws and that laws should be based on the principles that were taken into consideration during the original formation of the TE Law as well as revisions to the ITE Law and the ITE Law was created to comply with political developments and the wishes of the government, its interpretation and contents limit the rights of the Indonesian people and favor the government, law enforcement also*

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pays attention to the application of the principles of justice, equality, and legal certainty.

Keyword: *Crime; Cyber; Justice; Legal; Politics.*

1. Introduction

The advances of today are becoming more and more sophisticated, aided by the expansion of telecommunications technology, which removes the barrier of geography and has made previously unimaginable things like virtual worlds. But behind all of this development, sophisticated crimes like cybercrime have also emerged, causing further turmoil.

Developments in information technology have transformed almost all facets of life. In one side of the computer technology has the advantage of an opportunity to get information, work, participate in politics and democratic life and other advantages, but on the other hand, information technology will "bite" real life which we have long struggled with all existing heritage. Netizens can see this as a problem to be solved before it moves further down the road and alleys of cyberspace.

Every time technology advances, a new problem arises, which is the use of information technology to commit hate crimes, or what is commonly referred to as cybercrime or cyberwarfare. What's more concerning is that when cybercrime damages public infrastructure owned by the government, the impact becomes national security and the general populace. Cybercrime is a contemporary form of traditional crime. Due to the fact that public law encompasses jurisdiction, online activity standards, consumer protection, anti-monopoly, health-related persaing, perpajakan, regulatory bodies, data protection, and cybercrimes, while private law (HAKI, E- commerce, Cyber Contract, Privacy, Domain name, Insurance) serves as the nation's cornerstone for addressing the aforementioned health issues.

The emergence of ITE law (Cyberlaw) in our country is due to legal aspex cases that are handled by legal subjects who utilize the internet from "online" times to entering the Mayan world. Next came information law, information law, and information law telematics.

The development of communication and information technology has led to the emergence of new media, such as the internet, which has made international connections borderless and significantly altered social, economic, and religious spheres. Human life in the modern world is heavily reliant on technology. In one sense, technology can bring about a lot of positive effects,

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such as the use of email, e-commerce, cyberbanking, online business, internet banking, and so forth. However, there are also negative effects in other areas due to the rise in cybercrime. The impact of information and communication technology on society today is not only positive but also negative due to user dissatisfaction that leads to the emergence of a health condition known as "siber" disease.

Cybercrime has existed in Indonesia since 1983, primarily in the banking sector.⁴ In the years leading up to the present, there have been several cases of cybercrime in Indonesia, including computer software abuse, cracking, the fraudulent use of credit cards by other parties, bank computer-related health risks in Indonesia, such as the use of pornographic websites for illicit purposes (cyber smuggling), pagejacking (also known as mouse-trapping), spam (also known as junk mail), interception, cybersquatting, and typosquatting. On the other hand, malicious attacks on computer systems or networks include, but are not limited to, defacement, cracking, distributed denial of service attacks (DDoS), worm infestation, and logic bombing.

Gaining an advantage over competitors in the legal and intellectual domains, both domestically and internationally, has become essential for business practitioners, vendors, customers, and end users. In many cases, internet security begins with exploiting host-host and computer network vulnerabilities. As a result, both users and intruders start to connect to networks, especially those that use the TCP/IP protocol often.

Cyberlaw encompasses several aspects, including: Copy Right (hak cipta), Trademark (hak merk), Defamation (pencemaran nama baik), Hate Speech (penistaan, penghinaan, fitnah), Hacking, Viruses, Illegal Access (penyerangan terhadap komputer lain), Privacy (kenyamanan pribadi), Duty Care (kehati-hatian), Criminal Liability (kejahatan menggunakan IT), Procedural Issues (jurisdiksi, pembuktian, penyelidikan, dll.), Pornography, Robbery (pencurian lewat internet), Consumer Protection (perlindungan konsumen), and E-Commerce, E-Government (pemanfaatan internet dalam keseharian).

As an illustration, during the PBB ke X conference in Vienna, Austria in 2000, cybercrime was also referred to as computer-related crimes due to its relatively easy access. In a theoretical sense, Menthe presents three theoretical examples of certain characteristics found in the realm of cyberspace, namely:

1. The Theory of the Uploader and the Downloader.

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According to this theory, a country can be isolated within its own territory by activities like as uploading and downloading, which are thought to interfere with national interests. For example, a country can allow any citizen to post criminal activity or other company activity within its borders, and it can also allow any citizen within its borders to download the aforementioned criminal activity. Minnesota is the first state in the United States to use this jurisdiction.⁷

2. The Theory of Law of The Server

This procedure creates a server where webpages are physically located, i.e., where they are stored as electronic data. According to this theory, a webpage located on a Stanford University server in Californian law. However, this theory won't be very useful if the uploader is inside an asing jurisdiction. Sensitivity to the server's kenyataan format.

3. The Theory of International Spaces

Cyberspaces are referred to as the fourth space. What can be compared is not limited to physical similarities, but rather to international qualities, such as sovereignless quality.⁸ The borders between nations affect the laws pertaining to the arrest of offenders.

Cyberlaw is a field of study that we should be aware of, even if it is limited to the provisions of Republic of Indonesia Law No. 19 of 2016 regarding amendments to Law No. 11 of 2008 regarding Electronic Transactions and Information and Health Protection, which can be verified as having a rigorous legal application in our country. For this reason, the statement made by the author states that the law is a guide for those involved in legal matters regarding whether the law should be applied to the territorial territory of a nation or whether it should be based on Indonesian legal precedent or international law.

Based on the foregoing, the issue that has to be addressed in this journal article is How to Apply Humanitarian Law to Cybercrime Prevention Based on Pancasila?

2. Research Methods

The method that's used is called the normative juridism deflection method *yuridis normative*. This research discusses the shortcomings of the existing regulations on labor-related matters and is related to the statements made in the labor market. It is then analyzed by comparing the ideal wages specified in the labor-related regulations with the statements made in the labor market. In contrast, normative juridism research is also complemented by empirical research.



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3. Results and Discussion

According to Soerjono Soekanto's thesis titled "Hukum dan politik," there is a timbal-balik relationship between law and politics. When law was at its most vulnerable relative to politics. This leads to positive law upholding all standards that result in the community's ability to complete a constitutional process.⁹ Soerjono Soekanto also asserts that in enforcing the law, the people must respect themselves and their rights so as not to be affected by political interference. Conversely, political players can benefit from otonomy and legal institutions if such players demonstrate that the laws that need to be followed are based on the practices that they have also followed for a long time. Another argument states that law is heavily influenced by politics since law itself is a kind of political arguments made by advocates.

Law operates within a certain political context defined by the link between law and legal politics; in other words, it is an expression of evolving values, and these evolving values are the values of justice. Hence, it is ideal for laws to be formed after taking into account interests that can uphold justice's ideals. When laws function as rules that contain directives and restrictions, requiring compliance and penalties, then justice and order are established in society.

Legal politics derives its name from the Dutch legal phrase rechtspolitiek, which combines the politics. The Big Indonesian Dictionary (KBBI) defines policy as a set of concepts and guidelines that serve as the foundation for initiatives, plans for completing tasks, and methods for acting rationally. Legal politics, then, is just legal policy. Upon reading Political Law in Indonesia by Prof. Mahfud MD, one can understand that Legal Politics is a legal policy or official policy line concerning the law that will be applied to a new legislation or that there will be a legal replacement for an old law, with the goal being the accomplishment of a State's objectives.

It is impossible to establish a legal form that is neutral toward political influence, as Prof. Mahfud MD made apparent in his work. Law cannot be isolated from political influence when it is formulated; in fact, politics has a more dominating place in it. Then, legal politics plays a part in deciding how best to accomplish a goal within a specific legal or social structure inside a community. This is Satjipto Rahardjo's viewpoint.

According to Prof. Mahfud MD, the legal system in Indonesia is cohesive and consists of interdependent components. It was constructed to accomplish state objectives and is governed by the principles and ideals of national law found in the 1945 Constitution. An alternative interpretation of political law is that it is an instrument or set of procedures that

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the government can employ to establish the ideal national legal framework, which will enable the realization of Indonesian national ideals.

The Declaration of Independence of the Federative Republic of Indonesia, 1945, Pasal 1 ayat (1), states that the Indonesian Republic is a single, sovereign nation. According to Ayat (2), rakyat kedaulatan is situated within the rakyat and is carried out in accordance with the Dasar-Undang. In contrast, Pasal 1 ayat (3) states that Indonesia is a hukum nation. The third paragraph of Article 1 UUD 1945 states that the Republic of Indonesia is a nation-state consisting of a people's assembly, with laws enacted by the people and based on the rule of law (rechtstaat) rather than the will of the people (machtstaat).

In a legal state, the people, the rulers, and even the state itself are all required to abide by the law. All attitudes, behaviors, and acts must conform to the letter or spirit of the law. The sense of law that permeates society is the foundation of law.

Plato defined good state administration as government based on sound legal arrangements. Law-based government administration is a good substitute for good legal arrangements in state administration.

Social capital for all Indonesians is derived from their ancestors' celebration of Pancasila, which is recognized by Indonesians as one of the main pillars of society and governance. There are many warnings and misgivings about the dire circumstances that face the entire Indonesian population in this year of reckoning. What needs to be considered above is language for all Indonesians, not only those who identify as the country's elite. Accordingly, social progress in this place is not based on individual achievement; rather, everyone who possesses an identity as an Indonesian citizen has the capacity and willingness to achieve social progress. Furthermore, it is not necessary to say that the people in question are living in a city, a village, or a pelosok; all of them are free to receive the same information regarding this adil. This year's sila kelima is incomparable to this year's sila keempat because the one difference between the two of them is just incomparable.

The Republic of Indonesia's objective does not follow or make reference to the notion of state goals from Western Continental Europe, which evolved from the goal of achieving power alone to the goal of achieving individual prosperity (liberalism). The historical record of Indonesia demonstrates that following three and a half centuries of colonial misery, the country declared its independence through a battle for independence that started as a regional and

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the Preamble to the 1945 Constitution, are undoubtedly profoundly influenced by the nation's historical heritage. These goals include:

- 1) Preserve the blood of Indonesia and the entire nation.
- 2) Advance well-being in general.
- 3) Teaching the people of the country.
- 4) Take part in establishing a global order founded on social fairness, independence, and perpetual peace.

Because there is disagreement among experts on the subject and even the current legislation do not define cyber law, the translation phrases for cyber law terminology in Indonesia have not yet reached a consensus and established a clear definition. As of right now, a few terms are recognized as being related to cyber law,

such as information system law, information law, and telematic law (Telekomunikasi dan Informatika).¹⁹

In his book *Cyber Law the Law of Internet*, Jonathan Rosenoer states that the scope of cyber law has expanded:

1. Trademark
2. Viruses,
3. Illegal Access,
4. Regulation Internet Resource,
5. Defamation, Hacking, Privacy,
6. Copy Right,
7. Duty Care,

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8. Hate Speech,

9. Criminal Liability,

10. Procedural Issues (Jurisdiction, Investigation, Evidence, etc), Electronic

Contract, Pornography, Robbery,

11. Consumer Protection,

12. E-Commerce,

13. E-Government

The legal framework of cybercrime in Indonesia can be negatively impacted by five factors, specifically :

1. Law;

2. Law enforcement personnel's mindset;

3. Social conduct,

4. 4. Infrastructure, and

5. Culture

Laws are never enforced by themselves; human behavior and human interaction are always involved. Furthermore, without law enforcement, laws cannot be upheld on their own. Law enforcement officials must not only apply the law with professionalism and intelligence, but also deal with individuals and even groups of people who may be involved in criminal activity.

As a result, laws pertaining to cybercrimes came into being. These laws were driven by societal shifts and technological advancements, which encouraged Indonesia to create a cyberlaw because previous legal frameworks were unable to keep up with the rapidly evolving virtual and cyberworlds. The Information and Electronic Transactions Law governs cyber law in Indonesia (UU ITE). Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE 2008) was the name given to the Information and Electronic Transactions Law (UU ITE) when it was passed by the DPR in April of 2008. The thirteen chapters and fifty-four articles that make up Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE 2008)

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describe the specifics of virtual living arrangements as well as possible transactions and discussions.

The Amendment of the Law on Information and Electronic Transactions (UU ITE) was implemented in the year 2016 after some paragraphs in Law No. 11 of 2008 regarding Information and Electronic Transactions were amended. This led to the creation of Law No. 19 of 2016 on November 25, 2016. In accordance with Article 87 of Law No. 12 of 2011 which states that "Laws shall be effective and complied with on Effectiveness Days, unless otherwise provided in other laws governing limited liability agreements," on November 25, 2016, Undang-Undang No. 19 of 2016 (UU ITE of 2016) became operative and every Indonesian citizen was expected to understand it and to comply with it.

According to existing considerations, it would be better if UU ITE tahun 2016 described the appropriate methods for tindak in social situations, aided and abetted the public in sharing information that could benefit other people, hinder tindak pidana, and also highlight the role of Hak Asasi Manusia in promoting mutual understanding and respect for the law. If we examine social change, we find that the reform of Undang-undang Nomor 11 of 2008 regarding Information and Electronic Transactions (UU ITE 2008) became Undang-undang Nomor 19 of 2016 (UU ITE 2016) due to social change in the population, which is a result of the evolution of the perilaku strategy, as previously discussed. This perilaku strategy was then negatively impacted by modernization, which was a byproduct of globalization and increased use of the internet, particularly social media, that indicates the emergence of numerous cases related to information and electronic crimes (cybercrime).

As of right now, the ITE law from 2016 is a hindrance to the penindakan tindak kejahatan that can be found in social media. This is one of the legal requirements that must be met in order to resolve cases that have not yet been resolved in a fair manner. However, in practice, there are some groups that essentially criticize the provisions of Law No. 11 of 2008 concerning Information and Electronic Transactions (UU ITE 2008). This amendment became Law No. 19 of 2016 (UU ITE 2016). This initial change nevertheless raises a number of issues, particularly in Paragraph 40 concerning the amendment of contracts and the authority of the state. This provision makes most golongan memperhitungkan if the government does not want to be criticized by the people, thus there will be a defence from the government by the creation of the 2008 ITE revision. This is a reflection of the general public's perception of the right to a fair trial based on UUD 1945 Pasal 28E ayat (3), which states that if every person has the right to a fair trial by serikat, kumpul, and/or generating a comment, then the right to a fair trial has been violated.

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4. Conclusion

According to the article's summary, it is implied that legal politics have a crucial role in the legal system's implementation process in order to curb the acceleration of human progress. Law reform is an attempt to preserve the integrity of the 1945 United Nations Declaration of Independence as well as any other existing tenets that may be present. In addressing the social changes that occurred at the same time as the legal changes, legal experts were called upon to assist in transforming society and to provide solutions for the complex problems that arose in everyday community life. There is good law that is applied, but it does not take into account the specific circumstances of the community as a means of establishing the principles of the judicial system as stated in the Pancasila Declaration of 1945, which states that Indonesia is a legal nation, Law has to conform to the principles of the awal of the ITE as well as its revisions, and enforcement of the law must also take into account the rights of individuals, groups, and the public. This is because, as of right now, the ITE has been designed to participate in the political upheaval and kehendak that are inherent in it, as well as the judicial review process that is more likely to upend the government and diminish the authority of the Indonesian people. Based on a few examples given by the author, it can be concluded that law as a means of resolving disputes must be constructed in such a way that conventional or traditional law cannot continue to be used as a weapon against criminal activity over the world. This highlights for writers' minds and internet users in Indonesia that the virtual health risks associated with accessing content online are a form of liability pertaining to the Information and Transaction Law of the Republic of Indonesia No. 11 of 2008, which has been ratified as the ITE Tahun 2016 and has a negative impact on the future of the local population. Under the applicable law, whether it be KUHP or private law, if it can be enforced, it will nevertheless result in penalties similar to those that have previously occurred in Indonesia, Asia, and beyond.

5. References

Journals:

Andri Winjaya Laksana, Cybercrime Comparison Under Criminal Law in Some Countries, Jurnal Pembaharuan Hukum, Vol V No.2 April – Agustus 2018, hlm. 217-226.

Darmawan Napitupulu, "Kajian Peran Cyber Law Dalam Memperkuat Keamanan Sistem Informasi Nasional," Deviance Jurnal Kriminologi 1, no. 1 (2017): 107

Jawade Hafidz, Kajian Yuridis Dalam Antisipasi Kejahatan Cyber, Jurnal Pembaharuan Hukum Volume I No. 1 Januari – April 2014, hlm. 32.

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Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Lisa Sari Marita, "Cyber Crime Dan Penerapan Cyber Law Dalam Pemberantasan Cyber Law Di Indonesia," Humaniora Universitas Bina Sarana Informatika 15, no. 18 (2015), <https://ejournal.bsi.ac.id/ejurnal/index.php/cakrawala/article/view/4901>.

Mardjono Reksodiputro, "Kejahatan Komputer: Suatu Catatan Sementara Dalam KUHP Nasional yang Akan Datang", Prasaran dalam Lokakarya Tentang Bab-Bab Kodifikasi Hukum Pidana, Diselenggarakan oleh BPHN- Departemen Kehakiman RI, Jakarta, 18-19 Januari 1988, hlm. 2.

Muhammad Khambali, 2005, dalam Jurnal Ilmiah Fakultas Hukum Universitas Cokroaminoto Yogyakarta Lensa Hukum, vol. 1., no. 1, Agustus 2005, Sistem Peradilan Di Indonesia Pasca Amandemen UUD 1945, hlm 46.

Rosenoer, Jonathan, 1997, "Cyberlaw: The Law of Internet", Springger, New York.

Soerjono Soekanto, "Ilmu Politik & Hukum," Jurnal Hukum & Pembangunan 18, no. 3 (2017): 1.

Books:

C.F.G. Sunaryati Hartono, Politik Hukum Menuju Satu Sistem Hukum Nasional (Bandung: Alumni, 1991).

Moh. Mahfud MD, Membangun Politik Hukum Menegakkan Konstitusi (Jakarta: Rajawali Press, 2012).

Rachmat Rafiudin, Internet Forensik, Andi Offset, Yogyakarta, 2009.

Regulation:

Republic of Indonesia Law 1945

1945 Constitution

ITE Law of 2008

ITE Law of 2016

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Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Internet:

Darrel C Menthe, 2004, Jurisdiction in Cyberspace: A Theory of International Scraces, dalam <http://www.mttl.org/volfour/menthe.pdf>, diakses pada Kamis 24 Aprili 2024, pukul 09.30.

<http://fairuzelsaid.wordpress.com/2010/08/23/cyber-law-konsep-cyberlaw/#more-2462>, diakses Kamis, 24 April 2024, pukul 09.17 WIB

Jonathan Rosenoer, "Misappropriation of Information," CyberLaw The Law of the Internet (1997): 249-253, <https://www.springer.com/gp/book/9780387948324>.