

Implementation Of The Law On Information And Electronic Transactions And Pancasila Law Enforcement Related To Cybercrimes In Indonesia

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Abstract.

Information technology has a very important role, both now and in the future. In reality, although there are a number of laws and regulations that prohibit hate speech in public spaces, there are still few people who realize that this act is a violation of the law, not only the perpetrators but also the victims and even the officers. This journal aims to find out the implementation of Law No.19 of 2016 concerning Information and Electronic Transactions in the development of criminal crimes that occur in Indonesia, especially in cybercrimes. The author intends to directly describe social phenomena based on indicators whether or not the phenomenon under study regarding the implementation of the Law on Information and Electronic Transactions and Pancasila regarding law enforcement related to cybercrime in Indonesia is currently happening. Therefore, it is the joint responsibility of the government, law enforcement officers/Polri and TNI as well as all elements of society to combat the turmoil of cyber crime, SARA, etc., based on relevant legal materials, namely primary legal materials, secondary legal materials and tertiary legal materials. The basis for law enforcement that can answer the demands of society must be responsive law, otherwise the law will lose its spirit. Morals and justice are the spirit of the law. Legal reform must look back at the solidity of morality that lives, grows and develops in society. Against this note, the author views that the choice of revision of the Law on Information Electronic and Transactions does not have to come from the DPR. The President as one of the law-forming institutions, based on the provisions of Article 5 paragraph (1) of the 1945 Constitution of the Republic of Indonesia is also authorized to propose revisions to the Law Information and Electronic Transactions which urgently needs to be carried out.

Keywords: Information, Electronic Transactions, Pancasila, Cybercrime, Law Enforcement

I. INTRODUCTION

This era of digitalization has led to increasingly sophisticated information and communication technologies. Information technology has a vital role, both now and in the future. Information technology is believed to bring significant benefits and interests to countries worldwide. Initially, information technology was expected to create convenience and prosperity for society in general, as we know that the technology developing rapidly in modern times is the internet. The birth of the internet has changed the mindset of human communication in socializing, doing business, and others. The internet changes to distance and time rapidly so that it seems as if the world is small and infinite. Everyone can connect, talk, and do business with other people far from where he is just by pressing the computer keyboard and mouse in front of him. Thus, various phenomena related to technology can be accessed by all human beings in this world. The presence of the internet with the media of cellphones and gadgets in

human life, encourages social change followed by the mindset or behavior of citizens to become internet citizens (nitizens).[1] We can observe that in the environment around us many things have changed, ranging from the way we communicate, seek information, to seek entertainment. Social media networks such as Facebook, Instagram, Twitter, YouTube, Line, Whatapps, etc., have a very good position. It is very important that it can be a mechanism for gathering actions, protests, and social movements for the community or the public can participate directly and share information with trusted parties such as friends and family. The internet provides many conveniences to its users [2]. Various access to information and entertainment from various parts of the world can be seen through the internet. Time and space are not an excuse not to be accessed by any user, anytime, and anywhere. Indirectly the internet has created a new culture in modern society, namely mass culture and interactive digital culture [3]. As a result of the infinity of the internet in the all-digital era, it is able to clarify, obscure the identity of the user itself, duplicate, or create a new identity.[4]

The constitutional system in Indonesia adheres to the notion of democracy by giving freedom to the public to express opinions and opinions and the freedom to live and continue life. The freedom in question is the freedom to hold opinions without causing interference to anyone, and this freedom remains within limits set by law. Thus, the system of government of the State of Indonesia provides a broad enough scope for Indonesian citizens to express opinions, convey ideas, create expressions, and express attitudes. This is an embodiment of the democratic system so that democracy becomes a place that has been regulated in the 1945 Constitution of the Republic of Indonesia Article 28E paragraph 3. Public opinion must be based on the principle of balance between rights and obligations, deliberation to reach consensus, legal certainty, and fairness in a balanced manner which is very beneficial. However, in essence, freedom of opinion and expression will be reduced when someone has joined the community ecosystem. Because everyone who has become a society, then freedom will have limitations. Do not let our freedom of expression then violate the human rights of others. Therefore, in democratic life, it must be balanced with monarchy or the rule of law.

We can see that social media is very popular with the public. The emergence of parties that disrupt public peace is a side effect of the internet, especially the virtual world of Facebook, Instagram, Whatapps, and etc as a forum for gossip and other social media as dirty political communication tools. For example, to gain political support, various hoax campaigns with the nuances of Tribe, Religion, Race, Inter-Group began to appear on social media. This is because social media users are increasingly being deceived, provoked, and even conflicts on social media such as slander, hate speech, defamation, and various social media problems that destroy the democratic order [5]. The importance of law enforcement against the misuse of social media to spread hatred and slander is a necessity. The main reason is that this crime is

considered serious when viewed from the perspective of law, socio-culture, politics, economic development, human rights, and cyber security.[6]

It is evident that there are many negative impacts of technological developments and not all the information obtained has a positive effect on every reader. In the Information and Electronic Transactions Law, Article 28 paragraph (2) and Jo Article 45 are provisions that have begun to be used in cases of spreading SARA-based hatred. Although there are criminal provisions in the Criminal Code and Law Number 40 of 2008 concerning the Elimination of Race and Ethnic Discrimination (Racial Discrimination Law), the articles in the ITE Law are much easier to use regarding the spread of SARA-based hatred in cyberspace[7]. In reality, although there are a number of laws and regulations that prohibit hate speech in public spaces, there are still few people who realize that this act is a violation of the law, not only the perpetrators but also the victims and even the officers. Cases of hate speech are ignored, there is no reporting or firm action in their enforcement.[8] Based on the description of the background above, it turns out that the rapid development of science and technology as well as information is always followed and accompanied by the development of increasingly sophisticated and advanced crimes or acts in society. This is marked by the rapid development of ways to commit crimes (*modus operandi*) and the tools they use. Therefore, it is necessary to know more about the crime of spreading false news (hoax), how to regulate the crime of spreading false news (hoax)[5] and its application in the Electronic Transaction Information Law itself.

II. METHODS

This research uses a qualitative descriptive method, namely research that aims to explore, clarify, and describe the state of the object or subject of a person's research, origin, use or society in a systematic, factual and institutional manner accurately about a phenomenon or social reality, facts and between phenomena that investigated by describing a number of variables related to the research problem. Meanwhile, in qualitative research, theory is defined as a paradigm.

The author intends to directly describe social phenomena based on indicators whether or not the phenomenon under study regarding the implementation of the ITE Law and Pancasila regarding law enforcement related to cybercrime in Indonesia is currently happening. Therefore, it is the joint responsibility of the government, law enforcement officers/Polri and TNI as well as all elements of society to combat the turmoil of cybercrime, SARA, etc., based on relevant legal materials, namely primary legal materials, secondary legal materials and tertiary legal materials. with open and closed questionnaires, using interview techniques based on initial data that the authors obtained previously.

III. RESULT AND DISCUSSION

A. Indonesia as a legal and sovereign state which in its implementation of law enforcement is in the 5th precept, namely "Social justice for all Indonesian people"

Indonesia is a unique country, because the characteristics of Indonesia are 'family and mutual cooperation'. This 'family and mutual cooperation' value is very different from the Western liberal-individualistic model. Western-style thinking which is rational, linear, compartmentalized, and discriminatory, has begun to be replaced by Eastern intuitive, holistic, and non-linear thoughts. A culture is indeed what hones a country. The dominance of Western-style thought has passed, because the West suffers from a 'culture of soul/feel fooling'. The noble values of a nation must be maintained. Indonesia may follow the flow of world change, but Indonesia should not be totally immersed in these changes.[9]Pancasila as the ideological basis of the state, if it is appropriate for a multi-racial, multi-cultural, multi-ethnic, multi-religious Indonesian legal state. To achieve goals and achieve goals with these foundations and guidelines, the national legal system that must be built is the Pancasila legal system. The Pancasila legal system is a legal system that grows with interests, social values, and the concept of justice into a prismatic legal bond by taking its good elements.

If all Indonesian citizens hold fast to Pancasila as the philosophy of the nation's view of life, it should be reflected in the principles of values and norms of life in the nation, state and culture. Pancasila as the basis of the state is the state philosophy of the Indonesian nation which is the main basis for all systems of administering the Indonesian state. Law as a product of the state cannot be separated from the philosophy of the state. In this view, Indonesian legal philosophy cannot be separated from the basis of the Indonesian state, namely Pancasila. The revitalization of Pancasila and law enforcement as well as Cybercrime in the life of society, nation and state must be implemented immediately with commitment and consistency. Educational institutions and government institutions must apply the values of Pancasila so that they can become lights and guides in achieving the goals of the Indonesian nation. The state hopes that there will be fundamental changes so that our society, nation and state will return to their identity as a great nation with a basic ideology that is a picture of Indonesian culture and solid understanding (moral knowing), steady appreciation (moral feeling) and consistent implementation (moral action) the noble values of Pancasila in everyday life.

In the context of amendments to the 1945 Constitution of the Republic of Indonesia, then in the Fourth Amendment in 2002, the conception of the State of Law or "Rechtsstaat" which was previously only contained in the Elucidation of the 1945 Constitution, is clearly formulated in Article 1 paragraph (3) which states, "Indonesia is a State of Law." In the concept of the rule of law, it is idealized that what should be the commander in the dynamics of state life is law, not politics or economics. Therefore, the jargon commonly used in English to refer to the principle of the rule of

law is 'the rule of law, not of man'. What is called government is basically law as a system, not individuals who only act as 'puppets' of the system scenario that governs it. The fifth precept of Pancasila is "social justice for all Indonesian people". Justice is an ideal condition and truth both morally, both concerning things and people. Justice is also a matter related to attitudes and actions in human relations which contains demands to get treatment that is in accordance with the rights and obligations of human life. With justice, it will certainly create a better and prosperous atmosphere because basically justice is needed in all fields, be it economics, rights and obligations, and especially legal justice.

Justice in a law is certainly something that is absolutely real, the most important because basically justice in applying the law is definitely defending the right and giving sanctions to those who make violations. Likewise with the application of law in the Indonesian state which of course must be fair and not defend certain persons because they have special relationships, or because they have been bribed or threatened, and so on. Because based on Pancasila, especially the fifth principle, namely "Social justice for all Indonesian people," the fifth principle emphasizes that justice is an important and most important point in law enforcement. If justice defends those who are wrong because they have a special relationship or have a certain network, then it is not justice but a mistake that violates the law of justice which will have a negative impact. Because in principle regulations are made to regulate people's lives so that there is no conflict that harms other people and maintain social conditions or relations between communities and religious communities so that they do not cause conflicts that harm the state or certain parties. In law enforcement must pay attention to justice and must see how serious the violation is and after knowing the violation committed, a punishment is decided according to the violation of the legal case. In this case, of course, the violators of these rules will get sanctions that are in accordance with the violations committed and of course it will feel fair.[3] However, it often happens that in enforcing the law, law enforcement officers do not look at the applicable legal procedures, but rather see advantages that benefit a particular person or person and bring down the weak. Cases like this often occur among people who wear sandals or the poor.

If we look back at Pancasila, namely the fifth precept that justice must be enforced through the law or through actions or through behavior in society, it is everyone's obligation to help each other and benefit each other and also cooperate in life together among the wider community. Justice in a law has become the core or has become the most basic thing because the law itself defends what is right and provides justice for everyone and provides freedom for everyone which has been regulated in the laws and regulations. This is what must be considered for law enforcement that must be fair and uphold justice in order to create a harmonious and peaceful atmosphere in order to avoid prolonged conflict and harm everyone.[10] In this regard, law enforcement in the Indonesian state must be fair and impartial in the sense that it

does not regard the status of a person who has a problem, be it an official or an ordinary person, the law must be enforced as straight as possible in order to create truly fair justice. And do not take sides with certain people who may be able to guarantee personal gain. Like black is still black and white is still white, it means that people who make mistakes or violations are still wrong and people who are right must be given justice that is truly fair in accordance with applicable rules.

B. Cybercrime Increases Sharply from Time to Time and How to Prevent it

In the era of globalization as it is today, transactional and electronic information (ITE) has put the Indonesian people at the disposal of a number of people who have a lot of world information, thus requiring the establishment of regulations regarding the process of information and communication transactions on the national level so that reforms can be carried out optimally, evenly, and evenly. comprehensive to all elements of society, to make things smarter, this transition is sure to have an important influence on the living conditions of people from various fields, other fields of knowledge, financial affairs, social affairs, actions and other fields. Advances in information and electronic technology (ITE) make people's lives seem unable to be free from all the evidence seen today, essentially starting from the needs of the people as part of increasing their level or standard of living and in raising that level or standard of living, humans need news. fast and accurate. There are many various media in this world, one of which is internet media. Cybercrime [11] is any illegal activity used by criminals using computer network information system technology that directly attacks the victim's information system technology. But more broadly, cybercrime can also be interpreted as all illegal acts that are supported by computer technology. The target of the perpetrator is the device or hardware or software or personal data from the victim. The nature of this cybercrime is that both the perpetrator and the victim are invisible or invisible, this is what makes this type of cybercrime has its own complexity.

The potential perpetrators of this type of cybercrime, he can be from geological groups or groups that do business illegally and certain individuals.[11] To answer the demands and challenges of global communication through the internet, the expected law is a legal instrument that is accommodating to developments as well as anticipatory to problems including the negative impact of internet abuse with various motivations that can cause material and non-material losses for internet service users. Currently, Indonesia does not yet have a special law that regulates cybercrime, although the draft law has been in existence since 2000 but was rejected by the DPR. However, there are several positive laws that are generally accepted and can be imposed on cybercriminals, especially for cases where computers are used as a means.[12] For example, the hacker case usually refers to someone who has a great interest in studying computer systems in detail and how to improve their capabilities. As for those who often carry out destructive actions on the internet, they are usually

called crackers. You could say this cracker is actually a hacker who uses his abilities for negative things. Cracking activities on the internet have a very broad scope, ranging from hijacking other people's accounts, website hijacking, probing, spreading viruses, to disabling targets. The latter action is referred to as DoS (Denial Of Service). DoS attack is an attack that aims to paralyze the target (hang, crash) so that it cannot provide services. In this hacking case, usually the mode of a hacker is to deceive or shuffle the data so that the owner cannot access his web. In this case, Article 406 of the Criminal Code can be applied to cases of defacement or hacking that makes a system belonging to another person, such as a website or program, unable to function or can be used properly.

Referring to the example above, law enforcement officers will certainly give punishment by imposing Article 406 of the Criminal Code which reads as follows: Any person who intentionally and unlawfully destroys, damages, renders unusable or removes something wholly or partly belonging to another person, shall be punished by a maximum imprisonment of two years and eight months or a maximum fine of four thousand five hundred rupiahs. In the legal system in Indonesia there are still some shortcomings and have not specifically regulated computer crimes through the internet, some of the regulations in the ITE Law and the Criminal Code as well as outside the Criminal Code can temporarily be applied to several crimes, but there are also crimes that are not can be anticipated by the law currently in force. Apart from the law, law enforcement, in cybercrime problems encountered many obstacles related to the ability of investigators, evidence, and computer forensic facilities. Efforts that can be made to overcome the obstacles found in conducting investigations into cybercrime include improving legal traps, for example by making laws on cybercrime which are made specifically as specialists to facilitate law enforcement against these crimes. Qualifications of actions related to cybercrime must be made clear in order to create legal certainty for the community, especially internet service users. Educate investigators to better understand cybercrime issues, give special powers to investigators in carrying out several actions needed in the context of investigating cybercrime cases, building forensic computer facilities, increasing investigative efforts and international cooperation, as well as carrying out prevention efforts.[13]

C. Revision of applicable laws in Indonesia such as the UU ITE, the Criminal Code (KUHP), as well as other Laws and Pancasila as the National Ideology to Strengthen Law Enforcement in Indonesia

The debate about justice and legal certainty in the practice of law enforcement in Indonesia seems to be ongoing and will continue to revolve in the same vortex. After some time ago, as in the recent case, the public has again been disturbed by their sense of justice by the rejection of the application for judicial review of a woman named Baiq Nuril who became a victim of sexual harassment from her superiors. Nuril, the victim who seeks justice in this country, should instead become a prisoner and be punished through the Electronic Information and Transactions Law (UU ITE) in

the case of spreading information on lewd conversations over complaints from superiors who were the perpetrators of harassment against him. In some of the cases above, it can be seen that the judge's decisions that provide certainty for law enforcement are not in line and at the same time bring a sense of justice to the community. In this decision, law enforcers, especially judges, seem to prioritize only law enforcement based on the applicable positive law (legalistic-positivistic) compared to the enforcement of justice in deciding disputes.[14] Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Information and Electronic Transactions (hereinafter referred to as UU ITE) was born to regulate the development and progress of information technology which is increasingly rapidly. One of the impacts of these technological developments puts people in a communication space that is borderless.

Society then becomes easier to receive and disseminate information electronically at any time and from any place. The existence of this space for freedom of expression then tries to be regulated and controlled through the existence of the ITE Law. The existence of a regulatory mechanism for the community's freedom of expression actually has a strong constitutional basis. This is explicitly stated in the provisions of Article 28J of the 1945 Constitution of the Republic of Indonesia which stipulates several conditions. First, restrictions must be carried out based on law (by law). Second, restrictions are based on legitimate reasons such as public order, public health, public morals, national security, public safety, and the rights of other people's freedom or rights to the reputation of others. Third, restrictions on human rights must be carried out in order to keep democracy running well. The existence of this restriction is actually also in line with the concept of democracy adopted by the Indonesian people, namely constitutional democracy or democracy based on law (democratische rechtstaat). Theoretically, the notion of democracy, which places the highest power on the people, does require guarantees for citizens to take part and determine state policies, one of which is voiced through the delivery of aspirations through any space and media.

However, as a consequence of the rule of law, the granting of freedom to voice opinions is not without limits. This freedom is still limited by certain conditions and criteria determined by the constitution, in particular the provisions of Article 28J of the 1945 Constitution of the Republic of Indonesia. Referring to the ITE Law, there are 7 (seven) restrictions on a person's right to express themselves, namely against electronic information that has material content, first, violating morality (Article 27 paragraph 1), second, having gambling content (Article 27 paragraph 2), third, contains insults and/or defamation (27 paragraph 3), fourth, has extortion and/or threats (27 paragraph 4), fifth, has hate speech based on SARA (28 paragraph 2), sixth, has material that is contains threats of personal violence (29), seventh, has content that is prohibited in accordance with the provisions of the legislation (Article 40 paragraph 2a). It can be seen that the provisions limiting freedom of expression in the ITE Law contain fairly

good content, namely to protect morals, religious values, security, public order and the rights of freedom of others. However, in practice, the provisions for restricting expression can be used to limit freedom of expression itself. One of the problems that arise is that there is a blurring of material content that is considered an insult and what is considered a criticism. Oftentimes, this problematic loophole opens up space for criminalization of persons or entities that are actually intended to express criticism.

Launching safenet data, this practice can be seen from several examples, such as the criminal insult imposed on Yusuf who wrote about the agrarian conflict between the community and PT Multi Sarana Agro Mandiri. In addition, he still remembers the case of Prita Mulyasari who was charged with criticizing the Omni International hospital via email for services that were considered unsatisfactory. The ambiguity of the content in the provisions of the prohibition on the ITE Law can also create an anomaly, between the desire to protect the rights of others or actually destroying the protection. It is still warm to remember, the case that happened to Baiq Nuril, who recorded the harassment that was imposed on him but was deemed to have spread immoral information. On the other hand, the practice of imposing the ITE Law is also increasing. Launching data compiled by Safenet, it was recorded that from 2008 to early 2021 there were 375 cases that ensnared residents related to the ITE Law and the spike in the increase in the use of prohibited articles in the ITE Law occurred from 2014 to 2018 which penetrated 292 decisions. The most widely used articles of the ITE Law relate to information content containing insults and defamation (45%), then those containing hate speech (22%), then those that violate decency (14%). Based on these records, it shows the reality that the provisions in the ITE Law in practice have the potential to be used as a tool to limit freedom of expression. In addition, it should be noted that the vagueness of the prohibition provisions in the ITE Law has been followed by a pattern of increasing the use of prohibited articles in the ITE Law.

This condition is certainly a threat and shows that the spirit of limiting expression as regulated in the ITE Law is far from the spirit of democracy which requires sufficient space for people to express themselves. The phenomenon of the problems described above shows the existence of an iceberg phenomenon, which shows that the latent problem of the ITE Law is actually much bigger than just the rampant action of reporting to each other. The source of the problem then emerged, some put the problem into the formulation of a multi-interpreted article. There are also those who put the problem in the realm of law enforcement which is less selective in applying articles. Regarding this issue, the Government through President Jokowi has given instructions, first, to encourage the DPR to revise the ITE Law. Second, ordering the National Police Chief to formulate guidelines for resolving cases related to the ITE Law, one of which contains that it is the victim who must report. [15] Regarding this issue, the author notes that, first, it is necessary to revise the ITE Law which is carried out comprehensively on articles that contain multiple interpretations and have the potential to curb democracy.

The loading of norms into a statutory regulation must be ensured to fulfill several principles, namely the principle of being able to be implemented and the clarity of the formulation. Second, the formation of the National Police Chief's guide to resolving cases related to the ITE Law has not touched the root of the problem. The National Police Chief's guidelines, one of which stipulates that the stipulation that the party must report is the victim, only touches on improvement efforts at the level of enforcement implementation. In fact, due process of law or a legal process that is good, correct, and fair covers a wider order, starting from the stages of formation, process, and law enforcement.[16] Third, the choice of criminal imposition as *primum remidium* needs to be re-evaluated. The ITE Law places criminal sanctions as the main weapon (*primum remidium*) to enforce prohibitions. However, the prohibition character of the ITE Law is not entirely appropriate for criminal prosecution. There are articles concerning the private sphere, such as articles on insults and defamation that should be placed in the civil realm. On the other hand, the option of a criminal settlement outside the judiciary is an attractive option to implement. The imposition of criminal sanctions then becomes the last option imposed (*ultimum remidium*).

This is to avoid the nature of criminal sanctions that tend to pinpoint the perpetrators and have the potential to create space for further conflict between the parties who do not resolve the problem.[17] Pancasila values have a very important role in law enforcement so that they really become a means of development and community renewal that we hope for. Law can act as an object of development in order to realize the ideal law in accordance with the values that live in society. But also the law can be the subject of development when the law has functioned in society as a driver and safeguard of development and its results. This is where the important role of Pancasila is to be able to produce laws that are truly rooted in people's behavior. The basis for law enforcement that can answer the demands of society must be responsive law, otherwise the law will lose its spirit. Morals and justice are the spirit of the law. Legal reform must look back at the solidity of morality that lives, grows and develops in society. Against this note, the author views that the choice of revision of the ITE Law does not have to come from the DPR. The President as one of the law-forming institutions, based on the provisions of Article 5 paragraph (1) of the 1945 Constitution of the Republic of Indonesia is also authorized to propose revisions to the ITE Law which urgently needs to be carried out.

IV. CONCLUSION

The Law on Information and Electronic Transactions was drafted and ratified by the DPR together with the Government on November 25, 2016, as evidence that Indonesia is no longer behind other countries in making legal instruments in the field of cyberspace law. This law is cyberlaw in Indonesia because of its content and broad scope in discussing regulations in cyberspace. Pancasila values have a very important role in law enforcement so that they become a means of development and community

renewal that we hope for. Law can act as an object of action to realize the ideal law by the values in society.

But also, the law can be the subject of development when the law has functioned in society as a driver and safeguard of development and its results. This is where the vital role of Pancasila is to be able to produce laws that are genuinely rooted in people's behavior. Based on these records, it shows that the provisions in the ITE Law in practice have the potential to be used as a tool to limit freedom of expression. In addition, it should be noted that the vagueness of the prohibition provisions in the ITE Law has been followed by a pattern of increasing the use of prohibited articles in the ITE Law. This condition is undoubtedly a threat and shows that limiting expression as regulated in the ITE Law is far from the spirit of democracy which requires sufficient space for people to express themselves.

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