

INTENTIONAL CRIMINAL ACT AND SENDING ELECTRONIC INFORMATION CONTAINING EXTORTION (Analysis of Padang Sidempuan District Court Decision Number 112/Pid.Sus/2023/PN PSP)

Teguh Wasito¹, Dani Sintara²

^{1,2}Fakultas Hukum Universitas Muslim Nusantara Al Washliyah Medan

Email : teguhwasito380@gmail.com¹, dani.sintara@umnaw.ac.id²

ARTICLE INFO

History of the article:
Received: 09/10/2024
Corrected: 14/10/2024
Accepted : 30/10/2024
Published: 30/10/2024

Keywords:
Criminal Acts, Electronic Information, Extortion.

ABSTRACT

Electronic documents that contain threatening content as a criminal act, then the perpetrator who is proven legally and convincingly guilty of committing a crime intentionally and without the right to transmit electronic documents containing extortion, so that he is sentenced to imprisonment for 3 (three) years and 6 (six) months. The results of the study, namely the application of the law to perpetrators of extortion through electronic media in the decision of the Padang Sidempuan District Court Number 112 / Pid.Sus / 2023 / PN PSP, that the judge in deciding the case applied the provisions contained in Law Number 19 of 2016 concerning Information and Electronic Transactions with the consideration that the perpetrator of the crime of unauthorized transmission of electronic documents has fulfilled the elements of Article 45 Paragraph (4) Jo Article 27 Paragraph (4) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. The suggestion put forward is that the type of criminal penalty threatened in the ITE Law is cumulative (imprisonment and fines), so in fact this penalty is more appropriately aimed at individuals, it is impossible for legal entities to be sentenced to imprisonment. If legal entities can also be held accountable, there should also be a specific type of sanction in the form of actions including revocation of business licenses, compensation and so on. The existence of sanctions for these actions such as administrative sanctions, but these sanctions are not integrated into the criminal responsibility system or the criminalization system in the ITE Law.

1. Introduction

The rapid advancement of information and communication technology has impacted every aspect of human life. Without realizing it, technological products have become everyday necessities. The use of television, telephone, fax, cellular (handphone) and the internet is no longer unusual or new, especially in large cities.





Information that can be accessed quickly and effectively via landline telephones, mobile phones, television, computers, internet networks, and various electronic media has shifted the way people work, learn, manage companies, govern, shop, and conduct commerce. This reality is often referred to as the era of globalization or the information revolution, to describe the ease with which various types of information can be accessed, searched, collected, and transmitted without regard to geographical boundaries.

Such developments in information technology have ushered the world into a new era of communication. Thus, this information technology has transformed the behavior of global society. Furthermore, the development of information technology has made the world borderless and has led to significant social change occurring at a rapid pace.

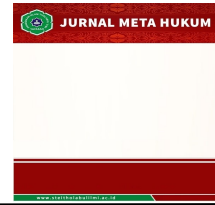
The development of information technology has given birth to a new era known as telematics law. Telematics law can also be called cyber law. This is based on the argument that cybercrime encompasses activities that utilize computers as a medium, supported by telecommunications systems, whether dial-up systems, telephone lines, or wireless systems using special wireless antennas.

Along with these developments, it turns out that the development of information technology within the internet has also given rise to crimes within the internet itself. The legal issues we frequently encounter relate to the electronic delivery of information, communication, and/or transactions, particularly regarding evidence and matters related to legal actions carried out through electronic systems.

Technology is neutral, meaning it is free and cannot be attributed to good or evil. However, as it develops, its presence tempts those with malicious intent or who want to misuse it. Thus, technology is often said to be a criminogenic factor, that is, a factor that triggers the desire to commit crimes or facilitates the commission of crimes, including crimes committed via SMS (Short Message Service).

The development of information technology has entered a new era of communication. Thus, information technology has transformed the behavior of global society. Furthermore, the development of information technology has made the world borderless and caused significant social change to occur at a rapid pace. Information technology has become a double-edged sword, contributing to increased human welfare, progress, and civilization, while also serving as an effective means for the commission of unlawful acts. With the emergence of these unlawful acts, the scope of the law must be expanded to encompass them.





2. Research Method

This paper employs normative juridical legal research, referring to legal norms, specifically through library or secondary sources. This research is descriptive and analytical, revealing laws and regulations related to the legal theories that are the object of the research.

Data collection employed library research methods. Data were obtained through various sources, including scholarly books, laws and regulations, and other documentation such as magazines, the internet, journals, and other theoretical sources related to information crimes and electronic transactions.

The collected data will be thoroughly analyzed using qualitative analysis or described in sentences. Qualitative analysis is based on the paradigm of the dynamic relationship between theories, concepts, and data, which constitutes feedback or constant modification of theories and concepts based on the collected data.

3. Results And Discussion

Results

Technological development is one factor that can give rise to crime, while crime itself has existed and emerged since the beginning of time, up to the present and into the future. The forms of crime are increasingly diverse. It is noteworthy that crime as a social phenomenon has not yet been considered and recognized as a tradition or culture, even though, compared to various existing cultures, crime is certainly older.

The close influence of technological development on crime sometimes leaves the law stunned by the rapid pace of development. Consequently, the law is sometimes slow to keep pace with technological developments. In the case of information technology crimes, the law seems to have lagged behind the rapid advancement of the internet. As explained at the beginning of Chapter I, the internet or cyberspace will become a no-man's-land if left unchecked without specific laws. Because even though it is a virtual world, there is still a life within it that has previously lacked any established rules.

Regarding the formulation of crimes with multiple elements, experts have differing approaches. Most argue for a basic division of crime elements, while others argue for a more detailed division, including subjective and objective elements.

The objective element in the formulation of crimes involving information technology crimes represents several breakthroughs from the general characteristics of the Criminal Code. This is because activities in cyberspace,





despite their virtual nature, are categorized as concrete legal acts and actions. Legally, in cyberspace, there is no longer a place for categorizing something with conventional standards and qualifications to constitute an object or action, as this approach would be too difficult and would result in things escaping the law. The legal world has long expanded its interpretation of principles and norms when addressing issues of intangible objects, such as electricity theft, which is considered a criminal act. In reality, cyber activities are no longer simple because they are no longer limited by national boundaries and are easily accessible at any time and from anywhere. Losses can occur both to the perpetrator of the transaction and to others who have never made the transaction, for example, credit card theft through online shopping.

The criminal provisions in the ITE Law largely adopt the criminal provisions of the Convention on Cybercrime. This section explains the prohibited acts and criminal elements in each article. To the extent that the provisions of the ITE Law relate to the Convention on Cybercrime, the relevant section will also discuss the relationship between the articles in the ITE Law and the provisions of the Convention on Cybercrime.

Information technology crimes can be conceptually viewed narrowly or broadly. In the narrow sense, information technology crimes are acts categorized as crimes directed against the integrity, availability, and confidentiality of data, including systems. In the broad sense, these crimes are crimes committed using or through computer systems or networks, including conventional crimes using computers or electronic systems.

4. Discussion

The crime of unauthorized transmission of electronic documents containing threatening content is regulated in Article 27 paragraph (4) of the ITE Law. Article 27 paragraph (4) of the ITE Law states: Any person who intentionally and without authority distributes and/or transmits and/or makes accessible electronic information and/or electronic documents containing blackmail and/or threatening content.

The provisions of Article 27 of the ITE Law regulate criminal offenses regulated in the Criminal Code, namely crimes against morality (Articles 282 and 283 of the Criminal Code), gambling (Article 303 of the Criminal Code), insults or defamation (Articles 310 and 311 of the Criminal Code), and extortion or threats (Articles 368 and 369 of the Criminal Code). The formulation of the offenses in Article 27 of the ITE Law is essentially a reformulation of the criminal offenses contained in these articles of the Criminal Code.





This element requires that, through violence or the threat of violence, the owner of the goods surrender the goods to the perpetrator. The use of this violence must be based on the intention to get the owner to surrender the goods. The intent to use this violence or the threat of violence is to benefit oneself or another person, which is the proximate purpose of the use of violence.

Article 369 of the Criminal Code states: "Anyone who, with the intent to unlawfully benefit himself or another person, by threatening to reveal a secret, forces someone to give something that belongs wholly or partially to that person or another person, or to incur a debt or cancel a receivable, shall be punished by imprisonment for a maximum of four years."

This crime is called extortion by defamation (*afdreiging* or *chantage*). The difference between Article 368 and Article 369 lies in the means used to coerce. Article 368 uses violence or the threat of violence, while Article 369 uses defamation by writing or revealing a secret. The formulation of the provisions of Article 27 paragraph (4) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, which combines the crimes of extortion and threats in one provision, still raises problems because the two crimes are different types of offenses. The provisions of the crime of extortion as regulated in Article 368 of the Criminal Code are ordinary crimes, while the crime of threats in Article 369 of the Criminal Code is a complaint offense.

The provisions of Article 27 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions require that the act of distributing, transforming, and/or making accessible prohibited content be done intentionally and without rights. Article 29 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions stipulates that any person who intentionally and without authority sends electronic information and/or electronic documents containing threats of violence or intimidation directed at a personal person. "Personally" refers to an individual (human or natural person), thus excluding corporations.

The definition of a person who is not legally entitled to commit such an act is excluded from the provisions of this article and is intended to prevent individuals who are entitled to commit certain acts from being subject to criminal penalties. Regarding the formulation of the act in the provisions of Article 27 paragraph (1), paragraph (2), paragraph (3), and paragraph (4) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, in the provisions of Article 45 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law



Number 11 of 2008 concerning Electronic Information and Transactions, it is stated that these acts are punishable by a maximum of 6 (six) years' imprisonment and/or a maximum fine of IDR 1,000,000,000 (one billion rupiah). The formulation of such criminal sanctions is inappropriate and disproportionate because the criminal sanctions are generalized to acts with different qualifications and qualities of criminal acts.

Coercion here means applying pressure on a person, so that the person does something against their own will. Coercion here also includes if the person under pressure surrenders their own property.

The definition of coercion can be found in Article 89 of the Criminal Code, which states: "What is equated with violence is causing a person to become unconscious or helpless (weak). Violence here refers to the use of physical force, and this physical force is not used insignificantly. Violence in this article includes hitting with hands, kicking, and so on."

Article 27 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions regulates several different criminal offenses, both in terms of the scope of the criminal offense threatened for each crime. Article 45 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions stipulates that the criminal sanctions for these criminal agreements are the same. The criminal sanctions for a crime must not be worse than the crime itself.

The essence of extortion, both in real space and in cyberspace, is the same: distributing and/or transmitting and/or making accessible electronic information and/or electronic documents containing blackmail and/or threatening content. Therefore, the elements of distributing, transmitting, and making accessible in Article 45 Paragraph (4) in conjunction with Article 27 Paragraph (4) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions in conjunction with Article 55 Paragraph (1) of the Criminal Code are actions in the cyber world that can achieve the fulfillment of the element of being in public or publicly known. The actions of distributing, transmitting, and making accessible are carried out in order for electronic information or documents to become publicly known.

The author disagrees with the panel of judges' verdict, which only imposed a prison sentence of 3 (three) years and 6 (six) months. A sentence that is too light will clearly not have a deterrent effect on the perpetrator. The perpetrator should be given a heavier sentence referring to the provisions of Article 45 Paragraph (4) Jo Article 27 Paragraph (4) of Law Number 19 of 2016 concerning



Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions which states: "Any person who intentionally and without the right sends electronic information and/or electronic documents containing threats of violence or intimidation aimed at a person as referred to in Article 29 shall be punished with imprisonment for a maximum of 4 (four) years and/or a maximum fine of IDR 750,000,000.00 (seven hundred and fifty million rupiah)".

Based on this, before determining or passing a verdict against the perpetrator of the crime of unauthorized transmission of electronic documents containing extortion content carried out by the defendant, the judge must first consider various things. For example, the facts revealed in court, legal and non-legal considerations, the circumstances and background of the defendant's family, and several other things related to the crime committed by the defendant.

It should be understood that judges are mandated by law to receive, examine, decide, and resolve cases, and are always required to render the most truthful and just decisions. In carrying out their functions, judges are granted freedom and independence. Judges exercise this freedom and independence, particularly when rendering decisions in criminal cases.

In making decisions and imposing criminal sanctions, judges must consider legal considerations, including the Public Prosecutor's indictment, the defendant's testimony, witness testimony, evidence, and articles of criminal law. Non-legal considerations also include the background of the defendant's actions, the consequences of the actions, and the defendant's condition at the time of the offense.

5. Conclusion

The legal provisions for the crime of extortion through electronic media are regulated in Article 45 Paragraph (4) in conjunction with Article 27 Paragraph (4) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, namely without the right to distribute and/or transmit and/or make accessible electronic information and/or electronic documents containing extortion and/or threats containing threats of violence or intimidation directed at a person.

Electronic documents containing threatening content constitute a criminal offense. If the perpetrator is legally and convincingly proven guilty of committing a crime by intentionally and without the right to transmit electronic documents containing extortion, he/she will be sentenced to 3 (three) years and 6 (six) months in prison.





The application of the law against the perpetrator of the crime of extortion through electronic media in the decision of the Padang Sidempuan District Court Number 112/Pid.Sus/2023/PN PSP is that the judge in deciding the case applied the provisions contained in Law Number 19 of 2016 concerning Information and Electronic Transactions with the consideration that the perpetrator of the crime of unauthorized transmission of electronic documents has fulfilled the elements of Article 45 Paragraph (4) in conjunction with Article 27 Paragraph (4) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions

References

- Budi Suhariyanto. 2013. Tindak Pidana Teknologi Informasi (Cybercrime) Urgensi Pengaturan dan Celah Hukumnya. Jakarta: Raja Grafindo Persada.
- Chairul Huda. 2016. Dari Tiada Pidana Tanpa kesalahan Menuju Kepada Tiada pertanggungjawaban Pidana Tanpa Kesalahan, Jakarta: Prenada Media.
- Dikdik M Arief Mansur dan Elisatris Gultom. 2015. Cyber Law Aspek Hukum Teknologi Informasi. Bandung: Repika Aditama.
- Edmon Makarim. 2015. Pengantar Hukum Telematik: Suatu Kompilasi Kajian. Jakarta: Raja Grafindo.
- Frans Maramis. 2012. Hukum Pidana Umum dan Tertulis di Indonesia, Jakarta: PT. Raja Grafindo Persada
- Josua Sitompul. 2012. Cyberspace, Cybercrimes, Cyberlaw: Tinjauan Aspek Hukum Pidana, Jakarta: Tatanusa.
- Mahrus Ali. 2011. Dasar-Dasar Hukum Pidana, Jakarta: Sinar Grafika.
- Akhyaruddin, A., Marzuki, M., & Mukidi, M. (2023). ANALISIS YURIDIS TINDAK PIDANA PENCUCIAN UANG DARI HASIL TINDAK PIDANA NARKOTIKA (Studi Putusan Mahkamah Agung RI Nomor 250 K/Pid.Sus/2018). *Jurnal Meta Hukum*, 2(2), 27-38. <https://doi.org/10.47652/jmh.v2i2.420>
- Akhyar, A., Danialsyah, D., & Bukhari, B. (2023). ANALISIS YURIDIS TINDAK PIDANA PEMBUNUHAN DISERTAI PEMERKOSAAN (Analisis Putusan Nomor 271/Pid.B/2019/PN Mrb). *Jurnal Meta Hukum*, 2(2), 39-50. <https://doi.org/10.47652/jmh.v2i2.421>
- Simalango, D. ., Marzuki, M., & Mukidi, M. (2023). PERTANGGUNGJAWABAN PIDANA OLEH KURATOR ATAS TINDAKANNYA YANG MERUGIKAN BUNDEL PAILIT (Studi Kasus Putusan Pengadilan Negeri Jakarta Pusat



- Nomor 2081/Pid.B/2011/PN.Jkt.Pst). Jurnal Meta Hukum, 2(2), 51-62.
<https://doi.org/10.47652/jmh.v2i2.422>
- Sianipar, E. P. U. ., Lubis, M. Y. ., & Akhyar, A. . (2023). ANALISIS YURIDIS PERTANGGUNGJAWABAN PIDANA PERMUFAKATAN JAHAT (SAMENSPANNING) DALAM KEJAHATAN NARKOTIKA YANG DILAKUKAN OLEH ANAK (Studi Putusan Nomor 57/Pid.Sus-Anak/2022/PN Lbp). Jurnal Meta Hukum, 2(2), 63-76.
<https://doi.org/10.47652/jmh.v2i2.423>
- Marzuki, M., Faisal, F., & Akhyar, A. . (2023). PENEGAKAN HUKUM TERHADAP TINDAK PIDANA PEMALSUAN SURAT PERSETUJUAN BERLAYAR (Studi Putusan Nomor 249/Pid.B/2021/PN Ktp). Jurnal Meta Hukum, 2(2), 77-88. <https://doi.org/10.47652/jmh.v2i2.424>
- Mustamam, M., Bachri, H. ., & Mukidi, M. (2023). IMPLEMENTASI UNDANG-UNDANG NOMOR 35 TAHUN 2009 TENTANG NARKOTIKA MELALUI FUNGSI ASESMEN DALAM UPAYA PENYELESAIAN TINDAK PIDANA PENYALAHGUNAAN NARKOTIKA (Studi Di Kepolisian Sektor Aceh Selatan). Jurnal Meta Hukum, 2(2), 89-104.
<https://doi.org/10.47652/jmh.v2i2.425>
- Gulo, I. E. ., Mukidi, M., & Mustamam, M. (2023). ANALISIS YURIDIS PENERAPAN DIVERSI DALAM PERADILAN PIDANA ANAK ATAS TINDAK KEJAHATAN PIDANA PENGANIAYAAN DI INDONESIA (Studi Kasus Pengadilan Negeri Gunung Sitoli). Jurnal Meta Hukum, 2(2), 105-115.
<https://doi.org/10.47652/jmh.v2i2.426>
- Affan, I., Jonizar, J., & Mukidi, M. (2023). ANALISIS YURIDIS TINDAK PIDANA MENGGUNAKAN SURAT PALSU DALAM PELEPASAN HAK PENGUASAAN DENGAN GANTI RUGI DALAM JUAL BELI TANAH (Studi Putusan Nomor 1722/Pid.B/2021/PN Lbp). Jurnal Meta Hukum, 2(2), 116-128. <https://doi.org/10.47652/jmh.v2i2.427>
- Triyunda, R. ., Mustamam, M., & Danialsyah, D. (2023). PERTANGGUNGJAWABAN PIDANA AHLI WARIS YANG MENJADIKAN HARTA WARISAN SEBAGAI JAMINAN KREDIT TANPA PERSETUJUAN AHLI WARIS (Studi Putusan Pengadilan Negeri Metro Nomor 121/Pid.B/2021/PN. Met). Jurnal Meta Hukum, 2(2), 142-154.
<https://doi.org/10.47652/jmh.v2i2.429>
- Montana, V. ., Lubis, M. Y. ., & Affan, I. . (2023). PENEGAKAN HUKUM TERHADAP PRAJURIT TNI YANG MELAKUKAN TINDAK PIDANA PENYALAHGUNAAN NARKOTIKA (Studi Putusan Pengadilan Militer I-02 Nomor 109-K/PM.I-02/AL/XI/2022). Jurnal Meta Hukum, 2(2), 168-181.
<https://doi.org/10.47652/jmh.v2i2.431>