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The Implementation Law of Concerning Electronic Information and Transactions in Indonesia as a Political Crime Committed by the State

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Abstract

In the practice of the Indonesia republic has evolved from an authoritarian system into a democratic system, whether with the current democratic system political crime is no longer perpetrated by governments. The purpose of this research is to identify whether information laws and electronic transactions are a crime committed by the state through a byline. The method of research used in this study was normative-juridical, while the approach taken was legislation and conceptual. Research shows that it is true that a crime is committed by the state to people whose politics differs from that of a ruler or a government. It was therefore necessary to abolish the rubber chapters in the its constitution in order to create and bring justice to the people.

Keywords: *The Implementation Law; Concerning Electronic Information and Transactions; Indonesia; Political Crime*

Introduction

In the history of the republic of Indonesia, there have been many legal policies made by governments to strengthen or strengthen the republic to enable a country to survive. We know that the policies made when the republic was free were established as the basis for the constitution of 1945, only in the process of the establishment of the republic in the days of the old order, Indonesia, Sukarno and much hatta, often took on political changes from the restoration of the constitution of 1945 to the constitution while 1950 then returned to the 1945 basic law through President soekarno's decree in 1959.

The new order in which Suharto became the President for a long time, with which the Indonesian state of Maknai was then an authoritarian state. How could it not be, in the numerous references or opinions of the activists of the day, that all policies were made only for the ruler's interest in keeping the wheels of government a very long one.

Freedom of speech, freedom of the press, even the right to vote and elect are all in silence. As for the happiness that people get is just a false sense of happiness as if they were forced to feel happy by the

government at the time. It's a very long political crime committed by the new order government. It seemed necessary to reform many experts who gave their opinions out through the looser journals. One of the journals on political reform law established by artidjo alcohol czar states that in political reform political laws should be remembered that political crimes are not limited to individuals or organizations against governments, especially those that try to change the political systems that governments use against people and violate humanity.[1] From this opinion surely Mr. Artidjo would like to provide an understanding that sometimes by changing the political system by making legal regulations in favor of the ruler and eventually having the rights of every human in Indonesia taken away.

In short, political crimes according to the new order are crimes committed by people who disagree with governments or rulers. So with the legacy of the products of colonial law and democracy being guided, plus the legal product made in new order that limits freedom, those who disagreed with the establishment have been made political criminals. Do rulers not commit political crimes? Given the criminal laws of colonial heritage and democracy being guided, rulers have committed no political crime. In the event of a lapse in the constitution of 1945, there is no legal sanction for a ruler. But if political crime is taken from a human rights perspective, then a great deal of evil is committed by rulers towards people. We can consider the case of book suppression, press suppression, and arbitrary arrest. We can begin with the events of January 15, 1974, 1978 student movement, 1984 cape priok, the bloody talangsari of 1989 (Lampung), the August 5, 1989 in ITB, dili 12 November 1991, the shootings of haur koneng 1993 (Majalengka), the shootings at nipah 1993 (Madura), and the shootings in timika 1995 (Irian Jaya.[2]

If in the time of the new order an authoritarian political configuration is displayed then what about now. Has Indonesia been practicing democratic political configuration or reforms in 1998 until now? Certainly in practice the principles of democracy have been brought to the forefront by our government, how the divisions of power we have established or what we are familiar with the triage theory of politicos where there are executive, legislative and judicial powers.These three powers possess their own jurisdiction, bonding over each other and possessing a property of checks and balances in an manner that weeds out of control over one of the three. While the practice of the indoensia republic has evolved from authoritarian systems into democracy, is it with the current democratic system that political crime is no longer perpetrated by governments?

The fact is that there is often a political crime committed by the state as one example of an application of the 2008 no. 19 law on information and electronic transactions made by law enforcement officials that is judged to be partial to rulers or governments. It was as if this law was a weapon for rulers or governments to shoot people at political angles with the government.

Formulation of the Problem

From the background description that has been set out in the upper part and the title on the political evils included in the regulatory rules, the author takes a problem in this journal as follows

1) what is a political crime?

2) are the laws of information and electronic transactions in indoensia tools to commit political crimes by the state?

[1] Artidjo Alkotsar, 1999, *Reformasi Hukum Pidana Politik*, Jurnal Hukum NO 11 VOL, 6. https://Journal.uii.ac.id. di akses tanggal 10 Mei 2022.
[2] Hendardi Hendardi, 1997, *Kejahatan Politik Di Indonesia*, Jurnal Hukum & Pembangunan Home > Vol 27, No 1 (1997), di akses pada 10 mei 2022.

Research Methods

This study USES normative legal study that is part of typology's doctrinal research. The research approach to use is conceptual and legislation. The sources of data used are secondary or indirect data obtained through literature studies. The secondary data is subdivided into parts of the secondary law, secondary and tertiary material. The primary ingredient of law is data that has a force of laws like legislation, as for secondary and tertiary materials, such as secondary and tertiary materials are primary law-supporting data such as previous research which has publications and related books. This acquired legal material is then analyzed using a descriptive-qualitative analysis to arrive at logical and scientific conclusions.[3]

Discussion

1. Political Crime

To some legal experts, state protection in the context of criminal law is also often referred to as a political crime or a political crime. At first, political crime was merely a crime opposing a legitimate government that happened to be in power and was seen as a crime against state security and state order. At the international conference on the sixth criminal law in Copenhagen in 1935, this political crime was described as a crime aimed at the organization or function of the state or at the rights of citizens derived from it. However, international law scholars generally agree that the birth of a political criminal conception had its beginning in the French Revolution that toppled the absolute monarchy under Kings Louis XVI and XVII. Earlier, the term political crime was hardly known either in theory or in international law practice.[4]

In the beginning such political manifestations and characteristics and evils as these representations appear simple and easily indistinguishable from ordinary crimes, but in its progression, in accordance with the changes and development of society, these political crimes are increasingly complex and complex. The content and scope of it are broader, often even a crime is very vague whether it is political or not. A crime may contain elements of political or common evil that are difficult to find in a dividing line, often intertwined (complex and associated) with a number of other common delics.[5]

In later development there are more tangible criteria to replace formative criteria of political crime. What determines a crime as a political crime can be seen from the underlying motivation behind the person's actions. Moving away from here in principle all ordinary delics based on political conviction can also be classified as political delik. The motivation for political ideologies is the only criterion to be used to separate the political delics from the general delics.[6]

But it was difficult to formulate clear plans for political crime because its boundaries were so blurred. The result is an effort that can be made only by classifying or detailing any crime that is a political crime. But it has not been able to satisfy all parties to this day and there is not a union of opinions in scholars and practices in the state concerning political crime and not a common formula for political crime that all countries can accept.[7] But in the international context there is an understanding of

[3] Tampubolon, Wahyu S .2016. *Upaya Perlindungan Hukum Bagi Konsumen Ditinjau Dari Undang Undang Perlindungan Konsumen*. Jurnal Ilmiah Advokasi, Vol.4,(No.1),p.12.DOI:10.36987/jiad.v4i 1.356

[4] Supriyadi Widodo Eddyono , Wahyudi Djafar ,Fajrimei A. Gofar, 2013, *Kejahatan Ideologi Dalam R KUHP*,Institute for Criminal Justice Reform (ICJR), Jakarta, hlm.2.

[5] Jan Remmelink,2003, *Hukum Pidana: Komentar atas Pasal-Pasal Terpenting dari KUHP Belanda dan Padanannya dalam KUHP Indonesia*, Gramedia, Jakarta, Hlm.72.

[6] *Ibid*. Hlm. 75.

[7] I Wayan Parthiana,2004, *Hukum Pidana Internasional dan Ekstradisi*, Yrama Widya, Bandung. hlm. 167.

political crime as follows; International conventions, treaties, and judicial decisions have gone far toward formally defining war crimes, genocide, terrorism, violation of human rights, and environmental depredations, such international standards may be invoked as criteria for labelling not only individual but also agencies and regimes as political criminal guilty of state crimes. (Barak, 1991; Ross 1995). Even when formal legal criteria have not been articulated, evidence of harmful consequences of governmental policies and corporate practices may be used to define as political crimes acts of commission and omission that result in grave social harms (International conventions, treaties, and judicial decisions have gone far in the direction that formally define war crimes, genocide, terrorism, violations of human rights, and environmental degradation, such international standards can be used as criteria for labeling not only individuals but also institutions and regimes as politics. Criminal guilty of state crimes. (Barak, 1991; Ross: 1995. Even when formal legal criteria have not been articulated, evidence of harmful consequences from government policies and corporate practices can be used to define as political crime commission action and negligence resulting in severe social harm.)

A British Lawyer J.S Mill defines political crime as follows: "Political offence is a crime which was conducted whit the relation on the civil war and other political commotion. So is another definition by judge Stephen that states that political crime is a crime committed in relation or as a riot.[8]

The opinions of almost identical British scholars are clearly falling behind when it comes to current situations and conditions. The second boundary is narrow and very limited in that it links political crime only with disruption of national security and safety, so it is very narrow and very limited. Nevertheless, the opinion of these British law scholars was not consistent with its application of scope or restraint to British courts.[9]

In an interesting Indonesian context to date, the term political crime or political delic has more sociological meaning than juridical. This is because none of the formulas in our laws provide an understanding of political or political crime. Whereas for practical purposes, the boundaries of understanding political crime are important in determining whether the perpetrators.[10]

Although legislation has included, in part, political crime, article 5 of legislation, 1979, on extradition. However, the general rule section, a clarification from article 5 of the extradition law until Indonesia's positive laws does not state its definition and classification clearly. This resulted in a difference in understanding as to what constitutes political crime and contributed to a fuzzlement of norms in the development of Indonesia's penal code. In order to understand the formula of what constitutes a political crime, the real meaning of political crime in Indonesia needs to be known. Subsequently redefined as a judicial certainty effort.

2. The Law of Information and Electronic Transactions as a Tool for Committing Political Crimes by the State

Information technology is believed to bring great benefits to every country in the world.11 Technological advances have also simplified and accelerated communication between regions and even

[8] I Wayan Parthiana, *Op. Cit.*, hlm.168. dikutip dari Ivon Anthony Shearer, *Extradition in International Law*, Manchester University Press, 1970, Oceana Publications Inc., hlm. 167.

[9] *Ibid*., dalam Kasus Castioni antara Inggris dan Swiss (masalah ekstradisi). Castioni adalah seorang warga Negara Swiss yang berasal dari Kanton Ticino, telah menembak mati seorang anggota Parlemen Kanton Ticino, dalam suatu peristiwa huru-hara yang terjadi karena perasaan tidak puas dari sebagian warga Kanton Ticino terhadap pemerintahnya. Sebagai seorang pemimpin huru-hara tersebut, setelah melakukan penembakan tersebut, Castioni kemudian melarikan diri ke Inggris. Swiss kemudian meminta Inggris agar menyerahkannya kepada Swiss.

[10] Readi Supriyadi, *Kejahatan Politik*, dimuat pada hari Rabu, 21 November 2012 di website http://readisupriyadi.blogspot.com/2012/11/ kejahatan-politik-hukum-pidana-khusus.html,diakses pada 23 mei 2020.

[11] Budi Suhariyanto, 2013,*Tindak Pidana Teknologi Informasi (Cybercrime) Urgensi Pengaturan dan Celah Hukumnya* Depok: PT. Rajagrafindo Persada, hlm. 1.

between countries. The availability of information in order to study world events over the Internet with ease, as well as advances in financial technology. It means that technological progress has turned the world into an infinite and has led to rapid social change.12 The resulting social changes can also breed new forms of crime. It is the abuse of technological advances made in cyberspace or the Internet world that goes on to be known by cybercrime.13

Many people value the existence of criminal law in this matter the book of criminal law has not been able to touch the new crime, so the government ruled out the birth of the regulation to eradicate cybercrime as its 19th 2016 rule on the change to the 2008 11 year rule on information and electronic transactions. But in the context of practice, the enforcement of criminal law with the 2016 law on the 2008 act of 11 on information and electronic transactions turns out to create legal problems for those who use information technology tools to express opinions or even criticisms in electronic media. This is because the 2016 convention on the number 19 in 2016 on the change to the 2008 11th bill on information and electronic transactions does not only govern the cybercrime problem as it does at the convention on cybercrime. But it also organizes a traditional criminal offense of using information technology media.

Criminal insults or libel reflect a variety of forms, among other things Echoing, Slander, Reporting in slander, And slander.14 In the book of criminal law defamation is regulated through chapters 310-320 of the second book (crime) of the XVI chapter of humiliation. Information laws and electronic transactions set up criminal defamation via media communication information technology found in article 27 verse 3 act no. 19 in 2016 on a change to the 2008 article 11 for information and electronic transactions:15 “Each person intentionally and without the right to distribute and/or transmit and/or make it possible to access electronic information and/or electronic documents that have a charge of contempt and/or libel." With the criminal threat contained in article 45 verse 3 the law of information and electronic transactions.

According to southeast Asian freedom of expression network (SAFEnet), since the law of information and electronic transactions were enacted in 2008 to 2019 there were 271 case reports to police by information law and electronic transactions the participants typically used article 27 verses (1) on content that violates morality; Chapter 27 of verse (3) is linked to libel; Chapter 28 verses (2) related to hate speech; And article 29 relates to the threat of violence. After a revision of the 2008 statute 11, reporting on information laws and electronic transactions went down. It's just that the chapters were reported to have no change. So the law of information and electronic transactions of this revision is believed to contain a charge of the multitafsir chapter and is still used to ensnare freedom of expression and ensnare the right of speech.

Here's the section on the rubber law of information and electronic transactions that SAFEnet needs to amend according to multitafsir and effect:

1) Chapter 26 verse 3 about the removal of information is irrelevant. It has a problem with information sensors.
2) Chapter 27 verse 1 about sexual immorality. It's used to punish gender-based violence victims online.

[12] Abdulla Wahid,2005, *Kejahatan Mayantara Cyber Crime*, Bandung: Refika Aditama, hlm. 9.
[13] Devi Angeliawati, “*Pertanggungjawaban Pidana Terhadap Pelaku Tindak Pidana Pencemaran Nama Baik* (Studi Putusan Nomor: 6/Pid.Sus/2017/Pn Slr),” Celebes Cyber Crime Journal, 1.1 (2019), hlm. 14
[14] Anton Hendrik Samudra,2020, *Pencemaran Nama Baik Dan Penghinaan Melalui Media Teknologi Informasi Komunikasi Di Indonesia Pasca Amandemen UU ITE*, Jurnal Hukum & Pembangunan, 50.1 , hlm. 96.
[15] Pasal 27 ayat (3) Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 *tentang Informasi dan Transaksi Elektronik.*

3) Chapter 27 verse 3 is about defamation. Vulnerable to the legal expression repressions of citizens, activists, journalists /media, and the repression of citizens who criticize the government, the police, and the president.
4) Chapter 28 verse 2 describes hate speech. Exposed to the repression of religious minorities, as well as citizens who criticize presidents, policemen, or governments.
5) Chapter 29 of the threat of violence. It's vulnerable to criminal reporting to police
6) Chapter 36 is about loss. Susceptible to defamation crimes.
7) Chapter 40 verse 2 (a) about the prohibited cargo. Vulnerable is an excuse to turn off the grid or become a ground for internet shutdown on the pretext of breaking hoax information.
8) Chapter 40 verse 2 (b) about cutting off access. The chapter is problematic because it prioritises government role over judicial ruling.
9) Chapter 45 verse 3 about a prison threat acts of defamation. This article is problematic because it allows us to detain on sight.

The existence of multi-taffy chapters in the information code and electronic transactions has resulted in a number of adverse effects. First, it limits freedom of speech primarily in opinions and criticisms. Some have been arrested by the law of information and electronic transactions. This condition is a shock therapy for society, some respond with caution while others choose not to speak. This certainly impedes the development of democracy. Whereas the developed cyberspace culture needs a more democratic society. Second, yielding divine authority because law enforcement officials in determining that persons who stumble through information laws and electronic transactions are guilty and worthy of action, without selecting and choosing which elements of the chapter are violated. Third, being part of a group of instruments in order to retaliate even becomes a weapon to trap a political opponent. Fourth impact, less guarantee of legal certainty. The ruling on the multitafsir chapters has become varied or even contradictory. At certain cases the perpetrators were framed with information laws and electronic transactions such as the ahmad dhani case, but in other cases the perpetrators were released as in the prita case. The fifth effect, it triggers unrest and contention among citizens that easily report to law enforcement and adds to the source of conflict between rulers and members of society. The sixth effect is an uneffectiveness as several chapters are duplicated by the penal code, such as article 27 verses (3) information laws and electronic transactions relating to contempt and liaching have been established in chapters 310 and 311 of the criminal code.[16]

The above six effects have made it unlikely that the established laws of information and electronic transactions can fully be carried out. As for the purpose of a good law is to provide assurance, civility and justice. Certainty does not materialize because the existence of the passachapter of multitafsir has resulted in a diversity of the judge's ruling. Expediency is certainly not in the hands of people who fear the legal snares of information and electronic transactions so much as to vote against them. Justice, though, is difficult to obtain, as articles of multitafsir are triggering abusive ACTS by the state.

Then the facts presented by narasinewsroom on his instagramatic account that for the recipients of the information act and electronic transactions themselves are rulers, rulers so faithful customers of information law and electronic transactions over 70% of information administrators and electronic transactions are those with power. Even the background of information rating and electronic transactions itself a public official with a prenstase of 35.7% and its corporate leaders, an institution and an organization of 32.1%. This coincides with the data gathered by SAFEnet in 2019, at least 3,100 reported cases of information law and electronic transactions. Whereas, data from the coalition of civil society (ICJR) since 2016-2020, the rubber rate rate has been 96.8% or 744 cases, and even these things have a very high incarceration rate of 88%.

[16] Yosephus Mainake dan Luthvi Febryka Nola,*DAMPAK PASAL-PASAL MULTITAFSIR DALAM UNDANG-UNDANG TENTANG INFORMASI DAN TRANSAKSI ELEKTRONIK,* Vol. XII, No.16/II/Puslit/Agustus/2020. di akses pada 23 mei 2022.

From these facts it is my opinion that this is an instrument for a ruler or a country to commit political crimes in view of the sense of political crime in an international context. Because, basically, with the introduction of information laws and electronic or ordinary transactions at short notice as information laws and electronic transactions, has ruined remarkable social networks in the fabric of Indonesian society. How reluctant people are to keep their opinions to themselves, and then freedom of the press is silence and people Sue one another with these laws when the issue is so trivial. This argument convinced the writer why the law of information and electronic transactions is a tool of political crime committed by the state. It would be better if information laws and electronic transactions were established in accordance with the background of the law made, then in implementation of Indonesia's law enforcement not to be made a tool by rulers to the people, as the purpose of information laws and electronic transactions is to keep Indonesia's digital space clean, healthy, ethical and productive, And in application it must still bring justice to the community. This should therefore be the basis for rulers and law enforcement in acting on information laws and electronic transactions to keep justice in the community.

Conclusion

The conception of political crime began with the French revolution that toppled the absolute monarchy under Kings Louis xvi and xvii. In the past the term political crime was hardly known either in theory or in international law practice, but over time, international convesni defined a broad and clear and often used political evil as a tool for analysis of political crimes. But in the context of scrutiny, it is still unclear what political crimes mean.

From the facts that have been given to the application of information laws and electronic transactions that are often mishandled by rulers or governments, it is my opinion that they are an instrument for a ruler or country to commit political crimes in international context. Because, basically, with the presence of these information laws and electronic transactions, has ruined the social fabric of Indonesian society, how would one be reluctant to bring about freedom of the press and silence of one another, when such matters are trivial and unnecessary to the police? As for this argument, it is convincing why the bill of information and electronic transactions is a tool of political crime committed by the state. Therefore it should be of interest to the Indonesian government that the rubber chapters in the 2008 law on Information 1 in 2008 be implemented or eliminated in order not to create anxiety for people who are in conflict with people in power or government themselves. And this bill of information and electronic transactions continues to be a law that grants justice to all Indonesian citizens.

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