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THE 2ND INTERNATIONAL CONFERENCE AND CALL FOR PAPER



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 Nagoya University



Melissa Crouch
 UNSW Australia



Prof. Henk Adding
 Utrecht University



Assoc. Prof. Dr. Hj. Sri Kusriyah
 Sultan Agung Islamic University

*Democracy In Digital Era : Law,
 Governance, Sosial And Economic
 Perspective In Asia, Australia And
 Dutch*



September 23-24, 2020
 Imam Assafel Buiding, Faculty of Law, Unissula
 Kaligawe Rd KM 4 Semarang, Central Java

THE 2ND INTERNATIONAL CONFERENCE AND CALL FOR PAPER

THEME : DEMOCRACY IN DIGITAL ERA: LAW, GOVERNANCE, SOCIAL AND ECONOMIC PERSPECTIVE IN ASIA, AUSTRALIA AND DUTCH

Keywords: *Digital Media, Political and Governance Institutions, Electoral Processes, People Representation, Digital Disinformation, Democracy, Digital Economic, Social issue*



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Melissa Crouch
UNSW Australia



Prof Henk Adding
Utrecht University



Prof. Henning Glaser
Thammasat University



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2. To discuss the challenges and practical aspect of Democracy and Governance in a Digital Era.

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Phone: +6224 6583584 (8 Saluran) psw. 569

Fax. + 6224 6592735

Email : pdih.fh@unissula.ac.id

www.pdih.unissula.ac.id / www.apic.unissula.ac.id

KATA PENGANTAR

Bismillahirrohmanirrohim

Assalamu'alaikum Wr. Wb.

Puji syukur kehadiran Allah S.W.T, Tuhan Semesta Alam Yang Maha Esa. Alhamdulillah, sebagai ucapan syukur kehadiran Allah Subhanahu Wata'ala kami dapat menyelenggarakan The 6nd Proceeding International Conference And Call Paper dengan tema "*Democracy In Digital Era : Law, Governance, Sosial And Economic Perspective In Asia, Australia And Dutch*" terselenggara dengan baik. Pemilihan tema tersebut dipilih karena pada era searang ini kita dihadapkan dengan era industri 4.0, dimana para kandidat doktor dituntut untuk bisa menyesuaikan dengan perkembangan global dan meningkatkan kompetensi keilmuan serta kemampuan.

Pada seminar ini telah dipresentasikan hasil penelitian dosen dan mahasiswa yang diikuti oleh peneliti-peneliti dari berbagai universitas yang telah membahas berbagai keilmuan Hukum dan Humaniora.

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Legal Protection For Victims Of Cybercrime In The Digital Era In Strengthening Cyber Democracy In Indonesia Post 2019 General Election

Ida Musofiana

Lecturer of Faculty of Law, Sultan Agung Islamic University, Central Java, Indonesia
ida.musofiana@unissula.ac.id

Abstract

The 21st century has progressed further. As in Indonesia, currently, the development of technology is increasingly rapid. This certainly affects aspects of social life in society and its security. Today's threats are not only enemies in the military, but also non-military. Among them are the threats faced by internet users, the penetration rate shows a high cumulation, opening up opportunities for the emergence of cyber-based crimes. The development of infrastructure is in line with the development of technology. Increasingly sophisticated technology is not only used by the community for positive things. However, not a few are taking advantage of technological sophistication to reap benefits that result in losses for technology users themselves. This study aims to research, examine how legal protection for children from cybercrime. In this case, children become vulnerable to cybercrime in digital era. Why is that? Considering that the control for internet access, as well as legal products in Indonesia, cannot yet fully guarantee protection for victims of cybercrime. The method used in this research is to use the descriptive analysis approach. Assessing and analyzing legal protection for children from cybercrime based on legal theories and applicable laws and regulations. Besides, it also reveals the phenomena of the current situation in the community.

Keywords : *cybercrime; digital era; legal protection.*

I. INTRODUCTION

The Republic of Indonesia as a state law.¹ Adhere to the principles of protection law, protection of human rights for citizens country, and democratic principles, including protection of children, so it is absolute for state and government provide protection law and human rights to children as part of the nation's children who are expected to become continuation of the ideals of the struggle of the Indonesian nation.²

To be precise in 2001, Indonesia stated its commitment to the Declaration of a World Worthy for Children. This is following the provisions The Convention on the Rights of the Child ratified by the government Indonesia through Presidential Decree Number 36 of 1990 and later also poured in Law Number 4 of 1979 concerning Child Welfare. Apart from that, the Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014 concerning Amendments to the Law Number 23 of 2002 concerning Protection Children and Law Number 11 of 2012³ all about the Juvenile Criminal

1. Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia.

2. Sri Endah Wahyuningsih, *The Implementation of Punishment Theories in the Verdict of Narcotics Case by Judge in Indonesia*, TEST Engineering and Management, ISSN 0193-4120, Mach-April 2020, P 2797.

3. Ridwan Mansur's opinion is quoted in Nevey Varida Ariani, *Implementation of Law Number 11 of 2012 concerning the System Juvenile Justice to Protect Children's Interests*, Media Hukum Journal, Volume 21, Number 1, 2014, page 108-109.

Justice System both put forward the principles general protection of children, namely non-discrimination, best interests of children, survival, and growth and respect for participation child.

Entering the 21st century, any country has its challenges. The threats faced are not only in the military field but also non-military. Several threats to national security and defense are carried out by non-state actors such as insurgency, terrorism, human trafficking, cybercrime, narcotics, piracy at sea, including violations of human rights. In a conflict asymmetric warfare, carried out by non-state actors as weak parties against the government.

The use of information technology, media, and communication in society, especially young students, has changed both the behavior of society and human civilization globally. The development of information and communication technology has also caused world relations to become borderless and caused significant social, economic, and cultural changes to take place so rapidly. Information technology is currently a double-edged sword because, in addition to contributing to the improvement of welfare, human progress, and civilization, it is also an effective means of acting against the law.⁴

The use of the internet has changed human outlook in business, industry, and transportation activities. The activity which was originally carried out physically has now shifted to e-commerce. The use of the internet has changed human outlook in business, industry and transportation activities.⁵

The more sophisticated the technology is not a few who use it for positive activities, also not a few who use it for negative activities. In this research technology in terms of the use of cyberspace. Along with the development of the times, the use of technology cannot be separated from people's lives. This makes technology vulnerable to crime. Children at the age categorized as children following Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, namely under the age of 18 (eighteen) years. The internet is currently attached to the lives of today's children, even toddlers (babies under five years) can use gadgets to watch YouTube.

According to their age, children fall into the category of groups vulnerable to cybercrime. Children can easily access the internet anywhere and anytime. Things like this open the opportunity to become victims of cybercrime more easily. It was 2001 when the crime of a pornographic website in Texas was exposed. The two perpetrators who became the perpetrators were Indonesians. In 2006 the Polda Metro Jaya arrested Peter W. Smith (an Australian citizen) who molested 50 (fifty) children from Indonesia, India, and Vietnam.⁶

The benefits of the virtual world so far provide social changes in people's lives, especially for children. Children are like a white paper, what we write down, that's where it will be drawn or formed because children have imitation qualities. Deviant behavior can occur in children. Data from the Indonesian Child Protection Commission shows that in 2016 there were 496 cases of pornography and cybercrime.⁷

Specifics regarding legal protection towards children, the state pays attention bypassing the Law Number 35 of 2014 which is the change of Law Number 23 of 2002 regarding Child protection. These changes are to emphasize the importance of weighting criminal sanctions and also fines for criminals against children to provide a deterrent effect, as well to encourage concrete steps for recover physically, psychologically, and also social children as victims and/or children as criminals as an anticipatory step so

4. Ivan Fauzi Raharja, Wise to Use Social Media Among Students According to Law Number 19 of 2016 Concerning Electronic Information and Transactions, *Journal Selat*, Volume 6, Number 2, May 2019, page 236

5. Anis Mashdurohaturun & Nilna Kamaliya, Legal Protection Of Consumer Reviews In Social Media Based On Local Wisdom Values, *International Journal of Advanced Science and Technology* Vol. 29, No. 6, (2020), pp.1511

6. Data sourced from the Indonesian Child Protection Commission in 2011 - 2016

7. Hardianto Djangih, The conception of Legal Protection for Children as Victims of Cyber Crimes Through Penal and Non Penal Approaches, *Mimbar Hukum Journal*, Volume 30 Number 2, June 2018, page 318

children as victims or not as perpetrators be the perpetrator of the same crime later day.

Currently, a new legal regime has been born, known as cyberlaw or telematics law. Cyberlaw is internationally used for legal terms related to the use of information and communication technology. Likewise, telematics law is the embodiment of the convergence of telecommunications law, media law, and informatics law. Other terms that are also used are the law of information technology, virtual world law, and cyberspace law. These terms were born considering activities carried out through computer systems networks and communication systems both locally and globally (internet) by utilizing computer system-based information technology which is an electronic system can be seen virtually.⁸

The emergence of this virtual version of social networks affects the relationship between people, generally teenagers. The community site above was created to fulfill the desire of individuals to communicate without any time and space restrictions. Not infrequently social networks often have the potential to influence a person's thinking patterns and shape individual personalities. A large number of social media users among junior and senior high school students at this time did not escape its spread to all corners of the country. However, these social media users have very little information about the existence of Law Number 19 of 2016 concerning Electronic Information and Transactions, which is a legal product that limits the freedom of social media users to be wiser in its use, especially among teenagers.⁹

As we know, teenagers are the largest community in Indonesian society who use social media regularly. The initial reason they are very active in using social media is to seek attention, ask for opinions, and foster an image, but over time they become dependent. Although social media has a positive impact on adolescents, when it is difficult for them to escape from activities related to social media, it will have a less positive impact. Several studies show that due to the excessive use of social media, adolescents are found to experience incongruence in their self-concept.¹⁰

Indonesian Internet User Services Association revealed the results of its released survey 2016 on children of internet users. The result of a survey showed 76.4% were not safe on the internet for the child.¹¹ This is because of the internet or information technology is an instrument potential criminal instrument, and the second indicates the need for immediate Fixing the legal sector in the field of child protection as victims of cybercrime in Indonesia.

II. PROBLEMS

Based on the aforementioned background, the researcher in this case formulates several problem formulations including: How is legal protection as victims from cybercrime? Then, Providing Legal Protection for Victims from Cybercrime?

III. RESEARCH METHOD

Legal research is closely related to the concept of law used that according to Soetondyo Wigiyosoebroto of the five legal concepts, these legal concepts are as follows:

- a. Law is the principle of truth and justice that applies naturally and applies universally;

8. Ivan Fauzi, Op Cit, Journal Selat, page 237

9. Ibid., page 238

10. Pamela Felita and Friends, Use of Social Media and Self Concept in Teens, Psikologi MANASA Journal, Volume 5 Number 1, March 2016, page 31

11. Ministry of Communication and Information of the Republic of Indonesia, Indonesian Internet User Penetration and Behavior, <https://aptika.kominfo.go.id/index.php/berita/274-rilis-hasil-survei-penetrasi-dan-perilaku-pengguna-internet-indonesia-tahun-2018>, accessed on 22 September 2020, 09.55 o'clock

- b. Law is positive norms in the statutory system;
- c. Law is what is decided by the judge (in concreto) and is systemized as a judge-made law;
- d. Laws are institutionalized social behavior patterns that exist as empirical social variables; and
- e. Law is a manifestation of symbolic meanings of social behavior as seen in their interactions.¹²

This study uses a descriptive-analytical literature method. Analytical descriptive research can be done without using a basic supposition or proposition, but it has begun with an outline of the thoughts and problems to be studied.¹³ The literature method is one of the data collection methods used in social research methodology to trace event record data ”.¹⁴ The literature used in this research is sourced from journals, books, and other online literature contains the concept of legal protection for child victims of social media crimes in general as data in this paper.

IV. DISCUSSION

a. The Concept of Protection as Victims of Cyber Crime

According to Phillips in his book *A First Book English Law*, as quoted by Andi Hamzah, which is seen as a goal the current punishment is a variation from deterrent forms, good addressed to violations of the law itself as well as those who have potential become criminals, protection to society from evil deeds, improvement (reform) to criminals. The latter is the most modern and popular today, not only for purposes improve imprisonment conditions but also looking for other alternatives that are not criminal in fostering lawbreakers.¹⁵

Frequently asked questions criminal law experts in various seminars are the question of how to criminal law should or should at this time and future. This question is related to the field of criminal law politics (penal policy), namely how better criminal law should be it is created, structured, and used to organize or controlling human behavior in Public. especially to cope with crimes committed by members society as well as by the authorities.¹⁶

Crime is a deviant behavior that will always exist and cling to every form of society. Crime is the oldest social problem therefore must be overcome. Judging from the consequences of crime can disturb or destroy and hinder the achievement of national goals and also prevent optimal use of national sources Sudarto stated that the use of means penal in tackling crime cannot be released from its connection with legal policy criminal or political criminal law (criminal law policy). In this connection, then Soedarto argued that implementing criminal law politics meant making an

12. Setiono, *Understanding of Legal Research Methodology Postgraduate Law studies of Sebelas Maret University*, 2010, page 20

13. Anis Mashdurohaturun, Ferry Susanto Limbong, *Legal Protection of Trademarks Based on the Justice Value*, *International Journal of Innovation, Creativity and Change*. Volume 12, Issue 12, 2020, pp.1213.

14. Anis Mashdurohaturun, Hayyan Ul Haq, Sony Zulhuda, *Social Function Reconstruction Of Intellectual Property Rights(Ipr) Based On Justice Values*, *International Journal of Law Reconstruction*, Volume I, Issue 1, September 2017, pp.143

15. Andi Hamzah, *Indonesian Criminal and Criminal System from Retribution to Reform*, Printed for 2, Pardnya Paramita, Jakarta, page 16

16. Faizin Sulitio, etc, *Alternative Model of Crime of Cyber Pornography Crime*, *Arena Hukum Journal*, Volume 9, number 3, 2016, page 359

assessment and elections to achieve statutory results criminal at best, in a sense meet the requirements of justice and efficiency.

Efforts to find alternatives penalties for deprivation of liberty in the short term were also supported by the Union Nations. In the 2nd UN Congress regarding “The Prevention of Crime and Treatment of Offenders ”in 1960 London recommended that the practice is thorough removal short term imprisonment is not maybe. only realistic solutions can be achieved by reducing the number of uses.¹⁷ That gradual reduction by increasing substitute forms or alternative to conditional punishment, supervision/probation, fines, work outside the agency. and actions others that do not contain deprivation independence.

Sudarto had a very good reason relation to the adult cybercrime phenomenon this one of which resulted in the child being victim, so to overcome it must with the formulation and use of legislation precisely so that the purpose of that law can be achieved. In Indonesia, child protection from harmful effects of cyber exploitation can be found in various laws, namely:

Article 27 of Law Number 19 of 2016 concerning Change Law Number 11 of 2008 concerning Information & Transactions Electronic confirms the prohibition of distribution and/or transmits and/or creates Electronic Information accessible and/or Electronic Documents has a charge that breaks decency and gambling.¹⁸

Regarding cybercrime, it is important to remember back to the nature of this evil itself is anonymity. Cybermedia (Internet) make it easy for criminals cyber because the perpetrator is not easy revealed or detected and traced, and use chat rooms, Facebook, as well as other open discussion forums.

b. Legal Protection for Victims from Cybercrime

The importance of protection against victim of a crime, the victim has their essential rights are protected by the state.¹⁹ Problems that often occur are several laws and regulations contains threats or formulations criminal fines with a special minimum system and in sizeable numbers however regarding detailed procedures or guidelines convictions are not regulated. Things that should be regulated include payment methods, whether in cash or not, when is the limit the end of the payment, as well as the consequences anything that can be dropped if the amount fines paid do not match the amount set or charged. This fine is very suitable to be applied to cybercrime targeting children as a victim.²⁰

Protection efforts for victims a criminal act is an effort to recover losses that have been obtained by the victim. This will be more interpreted if victims are directly involved in the process

17. Ibid.,

18. Article 27 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions

19. Ida Musofiana, The Role of Integrated Service Center Seruni Semarang Java Central in Providing Legal Protection for Children Victims of Violence in Household Based Value of Justice, *Pembaharuan Hukum Journal*, Volume 4 Number 1, April 2017, page 84, <http://jurnal.unissula.ac.id/index.php/PH/article/view/1648/pdf>

20. Sri Endah Wahyuningsih, Risto Samodra, Dwi Wahyono, *The Implementation Of Restorative Justice In The Traffic Crime Investigation Procedures In Central Java Indonesia Based On Justice Value*, Man In India, 97 (24) , Serials Publications, P.98.

settlement of criminal cases. Enforcement law is a development effort which is continuous aiming realizing national life and a safe, orderly, and peaceful state dynamic environment in the world independent.²¹

The protection of crime victims has become the focus of the attention of the world community recently. There are two ways it develops today is the procedural rights model and service models. The first model requires the inclusion of victims in the judicial process both are directly involved in court or at the back the trial took into account the sanctions will be imposed on the perpetrator of a criminal act. While the second model is serving victims of criminal acts, with eliminate or reduce suffering victims.

This second model is usually used redress as a means. From these two ways, it seems that service the model is more appropriate to implement because the procedural rights model will very hamper the smooth running of the judicial process what is desired is fast, fair, and precise low cost. Instead by accepting the service model then must enter compensation sanctions into criminal law. Thus if the sanctions for compensation later it will become part of the Criminal Code, then Indonesian criminal law will be accepted by the international community. Besides, this will show that the Criminal Code is modern because he has paid attention to the actions perpetrator and victim (daad-daderstrafrecht and victims). In imposing a criminal in someone must certainly be considered were are many purposes Criminal known but the Draft concept Criminal Law Act in Article 47 determines the purpose of punishment.

Aim closer to the settlement effort conflict and relieve guilt on the convict. Indeed, compensation sanctions of the history of its existence are addressed to resolve conflicts. There is a change loss then it will be considered that events never happened. With so, it will restore the system the victim's confidence in the face life and relieve the guilt convict who can stress him out as well as harming himself or society. Besides, by receiving compensation the loss by the victim is a meaningful psychological victim can be said to have apologized to the perpetrator of the criminal act. Thus, compensation sanctions loss plays a role as a bridge the peace that spared the perpetrator crimes from severe principal sanctions and prevent the state from spending funds more to tackle crime.

V. CONCLUSION

The conclusion in this article is that it is preferable to use social media following applicable regulations and subject to the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law of the Republic of Indonesia Number 11 of 2008 concerning Electronic Information and Transactions. As well as the need for an active role from the community and parents in supervising children in using social media so that they are not entangled with criminal sanctions and/or compensation.

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