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JURIDICAL ANALYSIS OF JUDGE'S DECISIONS IN THE CRIME OF THREATENING AND FRIGHTENING ADDRESSED PERSONALLY

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ABSTRACT

In addition to having a positive impact, technology also has a negative impact on society, including the emergence of more and more new crimes, namely computer crimes, such as internet fraud, hacking of ATM PIN, burglary of banking accounts, the rise of fake social media, pornographic media, and defamation through the internet. This study aims to legally analyze the judge's decision in the criminal act of threats and intimidation directed personally related to Law Number 11 of 2008. This study uses a descriptive analysis method with a normative juridical approach. The reference for the panel of judges in deciding cases is the prosecutor's indictment, not the indictment by taking into account the evidence. The judge's considerations are deemed appropriate to be able to sentence the defendant. Regulations and sanctions for all forms of social media use must be in line with the ideals in which Law Number 11 of 2008 was made to protect and maintain the comfort of social media users. So that in the future social media users can use it wisely to build a modern and law-abiding society. In this case law enforcers must see that the use of social media is increasingly being used at this time, this causes the use of social media to become uncontrollable, causing losses to the parties.

1. INTRODUCTION

The positive impact of today's technological developments is that it makes it easier for us to get information from the internet. Apart from that, it is easy for people to interact with each other using various kinds of social media available on the internet. In addition to having a positive impact, technology also has a negative impact on society, including the emergence of more and more new crimes, namely computer crime, seperti penipuan internet, pembobolan PIN Anjungan Tunai Mandiri, pembobolan rekening bank, maraknya akun jejaring sosial palsu, media pornografi, dan pencemaran nama baik melalui internet.

In line with that, Law No. 36 of 1999 was born which regulates telecommunications. The law mentioned above was abolished because many crimes have emerged in cyberspace in Indonesia which are very detrimental to individuals and the wider community. As a substitute, in 2008 Law No. 11 of 2008 concerning Information and Electronic Transactions (ITE) was passed. Then in 2016 it was enlarged with Law Number 19 of 2016 concerning Information and Electronic Transactions (ITE). It is hoped that the birth of the ITE Law will become a legal umbrella for all users and various activities in cyberspace.

Crime through internet-based media in fact still exists. As was the case with Mulawarman, in September 2015. Mulawarman received a short message via the WhatsApp social media application (later abbreviated / called WA) from Syarif Ibrahim alias Abo. The contents of the WA message contain and suggest threats and scare Mulawarman.

Receiving a message containing the threat, Mulawaman then reported the incident to the Bandung Polrestabes in September 2015. After undergoing a long legal process, it was only on May 2, 2017 that the Bandung District Court Judge handed down a guilty verdict to Syarif Ibrahim alias Abo for committing a crime Article 45 paragraph 3 Jo Article 29 Law Number 11 of 2008 concerning Information and Electronic Transactions. The sentence sentenced Syarif Ibrahim alias Abo.

Seeing the results of the decision, it is very far from the threat of imprisonment as stipulated in Article 45 paragraph 3 of Law Number 11 of 2008 concerning Information and Electronic Transactions which states "Any person who fulfills the elements referred to in Article 29 shall be punished with a maximum imprisonment of 12 twelve) years and/or a maximum fine of IDR 2,000,000,000 (two billion rupiah)".

In addition, the prison sentence for Syarif Ibrahim alias Abo, it turns out that after the reading of the decision against the defendant Syarif Ibrahim alias Abo, the execution of the prison sentence against Syarif Ibrahim alias Abo has been carried out immediately. In the excerpt of the decision Number: 1323/Pid.B/2016/PN.Bdg it was not explained that there was an order for the defense to immediately serve the sentence.

On this basis, the authors are interested in raising the issue of threats and intimidation through the short message medium of the WhatsApp application which are addressed personally as stipulated in article 45 paragraph 3 Juncto article 29 of Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE). Therefore, this study aims to analyze the juridical nature of the judge's decision in the criminal act of threatening and intimidating which is aimed at privately connected with Law Number 11 of 2008 (Decision of the Bandung District Court Number: 1323/Pid.b/2016/PN. Bdg). The research questions to guide the analysis are described as follows: first, the judge's considerations in making a decision on the crime of threatening and scaring. Second, sanctions for the criminal act of threatening and frightening through social media are based on the Information and Electronic Transactions Law.

2. METHOD

The approach method used is normative juridical with secondary data types which consist of primary legal materials, secondary legal materials and tertiary legal materials. The data obtained was analyzed using a qualitative juridical analysis. This research is a normative legal research that is carried out through a study of written legal regulations or existing legal materials. The research conducted a review of this secondary data including official legal documents, results of previous research, and other library materials in that stage. With regard to official legal documents, the researcher conducted a study of primary legal materials which are binding and closely related to the issues under study. This research is descriptive-analytical in nature, namely by explaining in full and systematically about the legal situation that applies in a certain place, at a certain time and at a certain legal event, with the aim of obtaining a complete description.

3. RESULTS AND DISCUSSION

A. The judge's considerations in passing a decision on a criminal act of threatening and frightening

The judge's considerations in making decisions can be divided into two categories, namely:

a. Juridical considerations

Juridical considerations are judges' considerations based on juridical facts revealed in court and by law stipulated as matters that must be included in a decision. The matters referred to include: 1) The public prosecutor's indictment which forms the basis of criminal procedural law because it is based on that that the examination at trial is conducted; 2) The statement of the accused is also an answer to the questions of the judge, public prosecutor or legal adviser; 3) Witness statements are the main consideration and are always considered by judges in their decisions; 4) Evidence, namely all objects that can be subject to confiscation and submitted by the public prosecutor in front of a court session; 5) Articles in the criminal law regulations that are connected with the actions of the accused. In this case, the public prosecutor and the judge try to prove and examine through means of evidence whether the defendant's actions have or have not met the elements formulated in the article of criminal law regulations.

b. Non-juridical considerations, among others: 1) The background of the accused, namely any circumstances that cause the desire and strong encouragement of the defendant to commit a crime; 2) As a result of the defendant's actions, what the defendant did was certain to bring victims or losses and have a negative effect on other parties; 3) The condition of the defendant himself, namely the physical and psychological state of the defendant before committing the crime, including the social status attached to the defendant.

Many criminals do not consider punishment. Sometimes it's because they are mentally ill or "weak in mind" — or are acting under great emotional stress. Sometimes the threat of punishment makes it seem as if they are persuaded. Many opponents expressed their mental reactions during the process of violating the law. All of this reveals that in fact few have considered statutory punishments.

The basis for sentencing is the goal of the law. In special prevention, the purpose of punishment is aimed at the person of the criminal so that he will no longer repeat the actions he has committed. The crime must contain an element of fear in order to prevent criminals who have the opportunity to commit bad intentions. The criminal must have an element of improving the convict. Criminal has an element of destroying criminals that is impossible to repair. The sole purpose of punishment is to maintain law and order.

The purpose of sentencing policy is to establish a sentence which is inseparable from the goals of criminal politics. In its overall meaning, namely the protection of the community to achieve prosperity. Therefore, in order to answer and know the purpose and function of punishment, it cannot be separated from the existing theories about punishment.

In the case of threats and intimidation through the WhatsApp short message medium addressed personally by Syarif Ibrahim alias Abo to Mulawarman, the judge considered the main evidence and evidence, namely the contents of the message sent by Syarif Ibrahim alias Abo to Mulawarman through the WhatApps short message application (WA).

The function of the evidence itself is to prove that it is true that the defendant committed the crime and for this the defendant must be held accountable for his actions. If based on Law No. 8 of 1981 concerning Criminal Procedure Code, then what is considered as evidence and which is justified as having "force of proof" is only limited to the evidence listed in Article 184 paragraph (1) of Law No. 8 of 1981 concerning Criminal Procedural Law. In other words, the nature of the evidence according to Law No. 8 of 1981 concerning Criminal Procedure Code is limitative or limited to what is determined. The order in Article 184 of Law No. 8 of 1981

concerning Criminal Procedure Code is not an order of strength of proof. The strength of proof is regulated in Article 183 of Law No. 8 of 1981 concerning Criminal Procedure Law with the principle of unus testis nullus testis. Provisions of Article 183 of the Law No. 8 of 1981 concerning Criminal Procedure Law is "A judge cannot sentence a person to a crime unless, with at least two valid pieces of evidence, he obtains confidence that a crime has actually occurred and that it is the guilty person who is guilty of committing it".

The evidence and evidence are tested to go through the evidence. Proof is a process to determine the nature of the existence of facts that are obtained through appropriate measurements with a logical mind on past facts that are not clear to light which are related to the existence of a crime. Proof in criminal proceedings is very important because later it will be revealed what actually happened based on the various types of evidence available at the trial. With this provision, the judge may not impose a sentence on someone, if with at least two valid pieces of evidence and with that the judge obtains confidence that the crime actually occurred and the defendant is really proven to have done what was charged or the charge. did not really happen (Article 183 of Law No. 8 of 1981 concerning Criminal Procedure Law).

The proof must be based on Law No. 8 of 1981 concerning Criminal Procedure Code, namely valid evidence contained in Article 184 of Law No. 8 of 1981 concerning Criminal Procedure Code. The meaning of proof from the point of view of criminal procedural law is a provision that limits court proceedings in an effort to seek and defend the truth. Judges, prosecutors, and defendants or legal advisors are all bound by the provisions regarding the procedure and assessment of evidence that has been determined. Because in accordance with the rules, all procedures for proceeding in criminal procedures are regulated entirely in Law No. 8 of 1981 concerning Criminal Procedure Law, and you cannot deviate from it. The elucidation in Article 183 of Law No. 8 of 1981 concerning Criminal Procedural Law says that this provision is to ensure the upholding of truth, justice and legal certainty for a person. Every evidence whether by the police, prosecutors and judges must pay attention to the principle of a harmonious balance between protection of human dignity and dignity, and protection of public interests and order and must not be oriented solely to power because it will make the evidence carried out not objective as what is reflected in Law No. 8 of 1981 concerning Criminal Procedural Law.

According to the law, the judge has fulfilled the basic legal considerations according to considerations that are both juridical and non-juridical in nature, but for the compatibility of the acquitted verdict it is not in accordance with Article 45 paragraph (3) of Law Number 11 of 2008 concerning Electronic Information and Transactions wherein in that article contains criminal sanctions if proven and fulfills the elements of a maximum of 12 (twelve) years in prison and a maximum fine of Rp. 2,000,000,000 (two billion rupiahs) so that according to the author it is not in accordance with the theory of the purpose of sentencing, namely to achieve the ideals of justice and create an effect deterrent for the perpetrators of ITE crimes, especially in the case the author discloses.

The reference for the panel of judges in deciding a case is the prosecutor's indictment, not a charge letter. The imposition of a criminal sentence against a defendant depends entirely on the judges' assessment and belief in the evidence and facts revealed at trial. In accordance with Article 193 paragraph (1) of the Criminal Procedure Code, if the court is of the opinion that the defendant is guilty of committing a crime, then the court imposes a criminal sentence on him.

Therefore, the author is of the opinion that legally the judge has fulfilled the basic considerations that are both juridical and non-juridical. The panel of judges has the authority to consider evidence and legal facts in the trial so that the panel of judges can make a lower, equal, or even higher decision than the public prosecution.

The decision of the court of law which renders a decision lower, equal to, or exceeding the demands of the prosecutor does not normatively violate the law on criminal procedure. In principle, the panel of judges is free and independent in determining the sentence. However, there are still limitations that must be adhered to. In the verdict that the panel of judges handed down, according to the author, it is in accordance with the evidence and legal facts in the war, so that what becomes the verdict can be legally justified in court.

B. Sanctions for the crime of threatening and frightening through social media are based on the Information and Electronic Transactions Law

Since the stipulation of Law Number 11 of 2008 concerning Information and Electronic Transactions in April 2008, there have been many victims. Suspects or victims of the Electronic Information and Transaction Law are active users of the internet or social media who are accused of insulting or related to threatening content on the internet and social media.

The author is of the opinion that the decision of the panel of judges in imposing a verdict on the case above is not in accordance with the theory of punishment, namely the combined theory (verenigingstheorien) as the author describes in this study where this theory aims to provide a terrible retaliation and legal defense which provides a deterrent effect for perpetrators and provides a protection of the public in general this can be seen what has been mandated in article 29 and article 45 paragraph (3) of Law number 11 of 2008 concerning Electronic Information and Transactions which reads: "Article 29 of Law number 11 of 2008 which reads Any People intentionally and without right send Electronic Information and/or Electronic Documents that contain threats of violence or intimidation that are addressed personally."

"Article 45 paragraph (3) of Law Number 11 of 2008 which reads Every person who fulfills the elements referred to in Article 29 shall be punished with imprisonment for a maximum of 12 (twelve) years and/or a fine of a maximum of Rp. 2,000,000,000. 00 (two billion rupiah)."

So that the authors conclude that the decision is not in accordance with the theory of punishment and the purpose of punishment where the theory and purpose of punishment is to create a deterrent effect for the perpetrator and it is not impossible that the same case will occur in the future.

Because in principle, in this modern era, technology is needed for the progress of the nation and state, therefore, according to the author, there must be legal protection that is able to guarantee the convenience of the public in using social media so that social media is used wisely.

4. CONCLUSION

The reference for the panel of judges in deciding a case is the prosecutor's indictment, not a charge letter. In addition, in the case of threats and intimidation through the WhatsApp application short message media addressed personally by Syarif Ibrahim alias Abo to Mulawarman, the judge considered the evidence and the main evidence, namely the contents of the message sent by Syarif Ibrahim alias Abo to Mulawarman via the WhatApps short messaging application. Therefore, the judge's considerations are considered appropriate to pass a verdict on the defendant. However,

regulation and sanctions for all forms of social media use must be in line with the ideals in which Law Number 11 of 2008 was made to protect and maintain the convenience of social media users. So that in the future social media users can use it wisely to build a modern and law-abiding society. In this case law enforcers should see that the use of social media is increasingly being used nowadays, this causes the use of social media to be uncontrolled so that it causes parties to be harmed, therefore Law Number 11 of 2008 should be the spearhead of the law enforcement agencies. law enforcers to provide a deterrent effect on perpetrators of ITE crimes so that the public will be more understanding and wise in using technology.

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