

IMPLEMENTATION OF THE ELECTRONIC TRANSACTION LAW (UU ITE) REVIEWED BASED ON THE BOOK OF CRIMINAL LAW (KUHP) ON FREEDOM OF COMMUNITY EXPRESSION IN SOCIAL MEDIA

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Keywords

Implementation,
ITE Law,
Freedom of Expression

Abstract. This study aims to determine the implementation of the Electronic Transaction Law (Uu Ite) in terms of the Criminal Code (KUHP) on the Freedom of Expression of the Community on Social Media. Social media is an online medium, with its users being able to easily participate, share, and create content including blogs, social networks, wikis, forums and virtual worlds. Blogs, social networks and wikis are the most common forms of social media used by people around the world. Deliberately and without rights distributing and/or transmitting and/or making accessible Electronic Information and/or Electronic Documents containing insults and/or defamation with decision number 61/Pid.B/2020/PN Mdn. The government has played a role in law enforcement in the field of Information and Electronic Transactions (ITE) with the enactment of Law No. 11 of 2008 concerning ITE. The Government of the Republic of Indonesia through law enforcement officials, especially the National Police, has been actively engaged to act as justice enforcers in criminal offenses in the field of Information and Electronic Transactions, although not yet optimal.

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1. INTRODUCTION

The presence of social media makes freedom of expression even greater. Social media is often considered as self-actualization to work as well as express. However, in this freedom, do not have no rules so that it can harm yourself and others. Freedom of expression is the freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers of understanding.¹ Recent legal cases are related to technology, namely the Internet and Social Media, including cases of defamation through internet social media. It can even be said that almost every day there are actually similar cases, this is due to the increasing freedom of society in expressing their opinions through social media. One of the cases that very often occurs is a case of insult or defamation through internet social media. Before the existence of social media, the regulation on defamation was regulated in the provisions of the articles of the Criminal Code, there was Article 310 of the Criminal Code, which reads: Any person who intentionally damages someone's honor or reputation by accusing him of committing an act with a clear intention to make the accusation public, shall be punished for blasphemy, with a maximum imprisonment of nine months or a maximum fine of Rp. 4.500,-. (2) If this is done by means of writing or pictures that are broadcast, shown to the public or posted, then the person who does this is punished for blasphemy by writing with a maximum imprisonment of one year and four months or a maximum fine of Rp. 4.500,- .

This law is predicted to be a solution to problems arising from electronic transactions and information, including electronic information that contains defamatory content. good other people. Prior to the issuance of the ITE Law, legal rules regarding defamation were regulated in Chapters II, VIII, and XVI of the Second Book of the Criminal Code. In 2016, the ITE Law was amended by adding norms and explanations regarding criminal acts of defamation in Law no. 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, hereinafter referred to as Amendments to the ITE Law.

This law is a preventive and crime prevention effort as well as providing legal certainty for every

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action or transaction in cyberspace. However, over time, the implementation of the law has drawn criticism and controversy because it is considered a shield and an iron fist for the rulers to silence people's freedom of expression, especially in cyberspace or social media. This law is also considered to be contrary to Article 28E paragraph (3) of the 1945 Constitution which reads: "Everyone has the right to freedom of association, assembly and expression", and Article 28F of the 1945 Constitution which reads: "Everyone has the right to communicate and obtain information to develop his personal and social environment, and has the right to seek, obtain, possess, store, process, and convey information using all available channels". From the descriptions above, it encourages the author to know that the ITE Law's policies are reviewed based on criminal acts of the Criminal Code in the community's freedom of expression on social media. Therefore, the writer is interested in bringing up the title of the thesis, namely.

2. METHOD

The type of research carried out is normative legal research, normative legal research according to Ronald Dworkin is also called doctrinal research (doctrinal research), which is a study that analyzes both the law written in the book (law as it is written in the book), as well as the court process that was decided by a judge in court (law as it by judge through judicial process). In addition to normative legal research, this research is also supported by empirical legal research methods, namely a legal research that functions to see the law in a real sense and examines how the law works in the community.

The sources of data in this study are: Secondary data, namely data obtained by studying and reviewing books, laws and regulations and documents related to this research, which are grouped into 3 (three) parts, namely:

1. Primary Legal Material

Primary legal materials are materials sourced from statutory regulations, in this case the main primary legal materials are:

- a. the 1945 Constitution;
- b. the Criminal Code (KUHP);
- c. Article 27 paragraph (3) of the Information and Electronic Transaction Law
- d. Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016, hereinafter referred to as the Law on Information and Electronic Transactions (UU ITE)

2. Secondary Legal Material

Secondary Legal Materials are materials in the form of writings, both in the form of books and articles containing comments and reviews about the impact of the Law on Information and Electronic Transactions (UU ITE) on legal and social changes in society.

3. Tertiary Law Material

Tertiary Legal Materials are legal materials that provide instructions and explanations of primary legal materials and secondary legal materials such as dictionaries, encyclopedias and others.

Library research (library research). Literature research was conducted in order to obtain primary data about the essence of the supervisory function in reviewing issues related to the above problems, sourced from the literature relevant to these problems with primary legal materials, secondary legal materials and tertiary legal materials. To analyze the data, a qualitative approach was used, namely by analyzing the data in depth and then interpreting it. The data in this study were collected namely library research (library research).

3. RESULTS AND DISCUSSION

A. How to Implement the Electronic Transaction Law (UU ITE) in Freedom of Expression (Judgment Number 61/Pid.B/2020/PN Mdn)

Implementation is a general process in the form of administrative actions, which can be

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investigated at the level of a particular program. If the objectives and targets are further defined, the program of activities has been prepared and the funds are ready, then the implementation process will begin. Implementation is also a political and administrative process that contains objectives, programs or activities and funds to carry out policies.

Laws or rules made by humans or an area are strongly influenced by local customs, norms and values that live in the community itself. Therefore, it can be said that the attitude of one's actions towards others is a means of embodiment of communication between one community member and another in one norm of normative life values.

Supposedly, people obey the law not only because people recognize the legal source of the law and also not because people believe in the rationality of the law. If we observe, the development of law in Indonesia essentially demands a change in mental attitude in such a way and requires that the law is no longer only seen as a set of norms but is seen as a means to change society.

B. What is the Impact of Legal Changes on the Information and Electronic Transaction Law (ITE Law)

The Information and Electronic Transactions Act (ITE Law) which has been ratified by the government along with the development of information technology aims to maintain and maintain polite behavior in cyberspace. However, the Indonesian people feel that the existence of the ITE Law actually hinders freedom of expression and opinion. Moreover, there is the misuse of the benefits of the ITE Law, namely the State apparatus to silence people who are criticized for the State.

In the rule of law, it is determined what the rights and obligations of community members in their social life are, namely determining how humans behave in society and the obligation to obey them. If obedience to this law is only left to human free will completely, then the goal of the law will be difficult to achieve. Therefore, it needs to be accompanied by sanctions to influence free will which means forcing members of the community to obey the law. This forced obedience to the law brings us to the problem of power, in the sense of the ability to enforce its coercive power.

In other words, humans need the implementation of an orderly and orderly life in a society in regulating human behavior. Although it must be realized that the law will lead to various limitations and sacrifices in several aspects of human life, this is considered much better than a lawless situation, this means that the law will be possible to run perfectly if all conflicts that arise in society can be resolved. through legal channels that are truly enforced honestly and fairly to achieve benefits in society.

However, the Government of the Republic of Indonesia together with the DPR seems to have anticipated the bad possibilities that the internet could cause. So after going through a process of consideration, on April 21, 2008, Law no. 11 of 2008 concerning Information and Electronic Transactions, better known as the ITE Law. Article 3 of the ITE Law states that the Utilization of Information Technology and Electronic Transactions is carried out based on the principles of legal certainty, benefits, prudence, good faith and freedom to choose technology or technology neutrality.

Article 4 also states that the Utilization of Information and Electronic Technology is carried out with the aim of:

1. To educate the nation's life as part of the world's information society.
2. Develop trade and the national economy in order to improve the welfare of the community.
3. Improving the effectiveness and efficiency of public services.
4. Opening the widest opportunity for everyone to advance their thinking and abilities in the field of using and utilizing Information Technology as optimally as possible and responsibly.
5. To provide a sense of security, justice, and legal certainty for users and providers of Information

Technology. Such are the principles and objectives of the establishment of Law of the Republic of Indonesia Number 11 of 2008 concerning Information and Electronic Transactions or better known as the ITE Law. Hopefully it can be understood together and implemented in good faith.

C. How are the Regulations of the ITE Law and the Criminal Code Regarding the Freedom of Expression of the People on Social Media

In general, the term freedom is usually associated with the absence of barriers, restrictions, bonds,

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coercion, obstacles to the obligation of certain things or to do something. The right to freedom of expression is part of the human rights of every human being. Humans are born with something that should not be disturbed by any party. It is stated in Article 1 of Law No. 39 of 1999 on Human Rights (human rights) are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are gifts that must be respected and respected and protected by the State. law, government, and everyone for the honor and protection of human dignity.

The meaning of the laws and regulations is regulated in Article 1 point 2 of Law no. 12 of 2011 concerning the Establishment of Legislation (Law 12 of 2011) is a written regulation that contains legally binding norms in general and is established or determined by state institutions or authorized officials through the procedures stipulated in the Legislation. Juridically or in a legal perspective, the law can have two meanings.

1. Formal law is any form of legislation created by a competent institution in making laws, namely the House of Representatives and the President as head of government or any written decision as a result of cooperation between the holders of executive and legislative powers that contain rules of conduct that binding in general. One example is Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE).
2. Material law is any legal product that has a regulatory (regulatory) function, which is sourced from all dimensions of human life, economy, politics, socio-culture, health, religion, and other dimensions of life or any written decision issued by an authorized official containing rules. general or binding behavior. The form can be multilevel, starting from the Basic Law to village level regulations. Examples of legal products made by all institutions that have the competence to make laws and regulations, such as Laws, Government Regulations, Presidential Decrees, and Regional Regulations.

4. CONCLUSION

Social media is an online medium, with its users being able to easily participate, share, and create content including blogs, social networks, wikis, forums and virtual worlds. Blogs, social networks and wikis are the most common forms of social media used by people around the world. Deliberately and without rights distributing and/or transmitting and/or making accessible Electronic Information and/or Electronic Documents containing insults and/or defamation with decision number 61/Pid.B/2020/PN Mdn. The government has played a role in law enforcement in the field of Information and Electronic Transactions (ITE) with the enactment of Law Number . 11 of 2008 concerning ITE. The Government of the Republic of Indonesia through law enforcement officials, especially the National Police, has been actively engaged to act as justice enforcers in criminal offenses in the field of Information and Electronic Transactions, although not yet optimal.

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