

CONTROVERSY OF THE ELECTRONIC INFORMATION TECHNOLOGY LAW

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Abstract

Laws or legislation are laws that have been passed by the legislature or other elements of resistance. Before being enacted, the law is referred to as a draft law. Laws serve to be used as authority, to regulate, to recommend, to provide funds, to punish, to grant, to declare, or to restrict something. A law is usually proposed by members of the legislature, for example members of the DPR, the executive, for example the president, and then discussed among members of the legislature. Laws are often amended before they are passed or may also be rejected. Law is seen as one of the three main functions of government which derives from the doctrine of separation of powers. The group that has the formal power to make legislation is known as legislators who make laws, while the judiciary of the government has the formal power to interpret legislation, and the executive branch of government can only act within the limits of the powers set by statutory law.

Keywords: Laws, Functions, Powers.

Abstrak

Undang-undang atau legislasi adalah hukum yang telah disahkan oleh badan legislatif atau unsur ketahanan yang lainnya. Sebelum disahkan, undang-undang disebut sebagai rancangan Undang-Undang. Undang-undang berfungsi untuk digunakan sebagai otoritas, untuk mengatur, untuk menganjurkan, untuk menyediakan dana, untuk menghukum, untuk memberikan, untuk mendeklarasikan, atau untuk membatasi sesuatu. Suatu undang-undang biasanya diusulkan oleh anggota badan legislatif misalnya anggota DPR, eksekutif misalnya presiden, dan selanjutnya dibahas di antara anggota legislatif. Undang-undang sering kali diamendemen sebelum akhirnya disahkan atau mungkin juga ditolak. Undang-undang dipandang sebagai salah satu dari tiga fungsi utama pemerintahan yang berasal dari doktrin pemisahan kekuasaan. Kelompok yang memiliki kekuasaan formal untuk membuat legislasi disebut sebagai legislator pembuat undang-undang, sedangkan badan yudikatif pemerintah memiliki kekuasaan formal untuk menafsirkan legislasi, dan badan eksekutif pemerintahan hanya dapat bertindak dalam batas-batas kekuasaan yang telah ditetapkan oleh hukum perundang-undangan.

Kata Kunci: Undang-Undang, Fungsi, Kekuasaan.

PRELIMINARY

The State of Indonesia is a democratic legal state (democratische rechtstaat) and at the same time is a democratic state based on law (constitutional democracy). It's all written in the Constitution where basically every law made by lawmakers is a legal answer to society's problems at the time a law is formed. The development of law goes hand-in-hand with the development of society, so that when society changes or develops, the law must also change

to organize all developments that occur in an orderly manner amidst the growth of modern society¹.

Along with the development of society in the world, Information Technology is one that plays an important role either in the present or in the future. Information technology by itself also changes people's behavior causing the world to become borderless and causing very rapid social change. Information Technology in addition to contributing to increasing welfare is also an effective means of acting against the law.

Acts against the law itself have been written in Law Number 11 of 2008 concerning Information and Electronic Transactions or known as the ITE Law, one of which is Cyber Crime is a type of crime related to the use of a borderless information and communication technology, and has a characteristic that strong with a technological engineering that relies on a high level of security of information conveyed and accessed by all Internet users.

In Article 27 paragraph 3 of Law No. 11 of 2008 concerning ITE reaps controversy for some circles of society. According to them, law enforcement officials can easily use this article to detain someone who is considered to have insulted another person's personal self in cyberspace. The article reads that "everyone intentionally and without right distributes and/or transmits and/or makes Electronic Information and/or Electronic Documents accessible that contain insults and/or defamation."²

The issuance of this law should be a barrier for anyone who wants to take actions in cyberspace, especially those that are insulting and defamatory. The ITE Law itself has been amended four times, but in fact the revised ITE Law still contains criticisms relating to insult and/or defamation articles, still limiting freedom of opinion or expression for citizens. This article is often seen as people choosing to remain silent or self-censorship.

People are afraid to speak out about the injustices around them and shout out against the violations committed by the authorities for fear of being considered an insult or defamation. This article also contradicts the nature of freedom of opinion in article 28e Paragraph 3 of the 1945 Constitution. From the background above it is stated that not all the public agree with the existence of the ITE Law³.

Even so, some parties still consider that the existence of this law is important considering the large number of Internet users in Indonesia to ensure the comfort and safety of every Internet user. It is of course very interesting to know more deeply about the ITE Law with the title "Act on Information and Electronic Transactions." Through the background above, we can conclude that some of the problem formulations are How does the ITE Law work in Indonesia? and Why do the Pros / Cons arise in society towards the ITE Law?

RESEARCH METHODS

The research method in this study is through a normative juridical method which is carried out by analyzing problems based on laws and regulations and literature which includes books, papers and articles related to the subject matter under discussion, namely regarding the

¹ Yulies Tiena Masriani, *Pengantar Hukum Indonesia* (Jakarta: Sinar Grafika, 2017).

² Pemerintah Republik Indonesia, *Undang-Undang Nomor 19 Tahun 2016 Tentang Perubahan Atas Undang-Undang RI Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik* (Indonesia: Lembaran Negara Republik Indonesia, 2016).

³ Pemerintah Republik Indonesia, *Undang-Undang Nomor 19 Tahun 2016 Atas Perubahan Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik*. (Indonesia: Lembaran Negara Republik Indonesia, 2016).

ITE Law. This research is a library research conducted by collecting legal materials through literature studies guided by primary legal materials and secondary legal materials.⁴

DISCUSSION

HOW THE ELECTRONIC INFORMATION AND TRANSACTION LAW (UU ITE) WORKS IN INDONESIA

The ITE Law, which was enforced since April 2008, is indeed a breakthrough for the legal world in Indonesia, because for the first time cyberspace in Indonesia has legal instruments. Because of its nature which contains the rules of the game in cyberspace, the ITE Law is also known as Cyber Law. Like Cyber Law in other countries, the ITE Law is also extraterritorial in nature, so it does not only regulate the actions of people who are domiciled in Indonesia but also applies to everyone who is in a jurisdiction outside Indonesia, whose actions have legal consequences in Indonesia or outside the territory of Indonesia and detrimental to the interests of Indonesia.⁵

The article in the ITE Law was originally a need for Cyber Law in Indonesia which departed from the many trade transactions that took place through cyberspace. For these transactions, it is only natural for consumers, especially end-users, to be given strong legal protection so they are not harmed, considering that trade transactions conducted in cyberspace are very prone to fraud.

Article 27 paragraph (1) states "Anyone who intentionally and without rights distributes and/or transmits and/or makes Electronic Information and/or Electronic Documents accessible that has content that violates decency." Article 27 paragraph (3) reads "Anyone who intentionally and without right distributes and/or transmits and/or makes Electronic Information and/or Electronic Documents accessible that contains insults and/or defamation. Meanwhile, the formulation of Article 28 paragraph (2) "Every person intentionally and without rights disseminates information aimed at creating feelings of hatred or hostility towards certain individuals and/or community groups based on ethnicity, religion, race, and inter-group (SARA)." For violations of these articles, the ITE Law provides for quite severe sanctions as stipulated in Article 45 paragraphs (1) and (2). Article 45 paragraph (1) "Any person who fulfills the elements referred to in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be punished with imprisonment for a maximum of 6 (six) years and/or or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah). Article 45 paragraph (2) "Anyone who fulfills the elements referred to in Article 28 paragraph (1) or paragraph (2) shall be punished with imprisonment for a maximum of 6 (six) years and/or a fine of up to Rp. 1,000,000,000.00 (one billion rupiah).⁶

The ITE Law applies to anyone who commits an unlawful act as stipulated in this ITE Law, which has legal consequences in the Indonesian jurisdiction and/or outside the Indonesian jurisdiction and harms Indonesia's interests. Thus, legal actions carried out by both Indonesian citizens and foreign nationals outside the territory of Indonesia; or either by Indonesian legal entities or foreign legal entities, as long as they have legal consequences in Indonesia, can be prosecuted in accordance with the ITE Law.

Complementing the existing Criminal Procedure Code (KUHAP), the ITE Law also regulates procedural law related to investigations carried out by law enforcement officials (police and prosecutors) which provide a new paradigm for law enforcement efforts in order

⁴ Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif Dan R&D* (Bandung: Alfabeta, 2009).

⁵ Danrivanto Bhudiyanto, *Hukum Telekomunikasi, Penyiaran & Teknologi Informasi* (Bandung: Refika Aditama, 2010).

⁶ Supriyadi W.E Anggara and Ririn Syafrani, *Kontroversi Undang-Undang I.T.E* (Jakarta: Degraf Publishing, 2010).

to minimize the potential for abuse of power by law enforcement officers. law so that it is very useful in the context of providing guarantees and legal certainty. "Investigations in the field of information technology and electronic transactions are carried out with due regard to protection of privacy, confidentiality, smooth running of public services, data integrity or data integrity, in accordance with statutory provisions (Article 42 paragraph (2)). Meanwhile, searches and/or confiscation of electronic systems related to suspected criminal acts must be carried out with the permission of the head of the local district court and must maintain the interests of public services (Article 42 paragraph (3)).⁷

PROS AND CONS REGARDING THE ELECTRONIC INFORMATION AND TRANSACTION LAW (UU ITE)

The Law on Information and Electronic Transactions / UU ITE is indeed a lot of controversy. Since it was enacted in 2008, (ITE) has ensnared various groups of internet users, especially for alleged violations of Article 27 paragraph (3) regarding defamation.

The first case of violation of the ITE Law that attracted public attention was the case of Prita Mulyasari in 2009. She was arrested and detained on charges of defamation by writing e-mails related to Omni International Hospital services, with a maximum penalty of 6 years in prison and/or a maximum fine of IDR 1 billion.

Eight years passed, the government finally proposed a revision of the ITE Law with various improvements. This was in response to various views on this law before the Constitutional Court because its various provisions were considered too 'rubber' and tended to easily criminalize internet users.

Even though Law No. 11 of 2008 has been amended with the direction of the government's legal and human rights (HAM) political policies considered to be in decline. But for the legislature, the latest ITE Law actually provides leeway for people who have stumbled on defamation cases through cyberspace not to be detained at the investigative levels.

There are several reasons why the ITE Law is still confusing between the pros and cons. For example, if the cons are from the cons, freedom of expression in cyberspace will be limited. If the contents of the writing are deemed to offend someone and that person then feels their good name has been defamed, then the author can be brought to court. You also have to dare to be sued for Rp. 1 billion if caught distributing pornographic content.

This demand is in accordance with Chapter VII concerning Prohibited Actions. To be precise, Article 27 paragraph 1 which reads: "Every person intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have content that violates decency."

Behind the controversy over the ratification of the ITE Law, this law has its own advantages and disadvantages as state law. First, the ITE Law has advantages, one of which is that it can anticipate the possibility of detrimental internet abuse, for example breaking into certain government-owned sites and electronic transactions such as business via the internet can also minimize abuse and fraud. In article 2, the ITE Law applies to people who live in Indonesia and outside Indonesia. This can judge and ensnare people who violate the law outside Indonesia. In addition, the ITE Law (Act on Information and Electronic Transactions) does not only discuss pornographic sites or immoral issues. In total there are 13 Chapters and

⁷ Priliantini Anjang and Damayanti, 'Peran Media Sosial "Facebook" Dalam Membentuk Solidaritas Kelompok Pada Aksi 411 Dan 212', *Jurnal Komunikasi, Media Dan Informatika*, 7.1 (2018).

⁸ Salman, 'Singkronisasi Pengaturan Tindak Pidana Dunia Maya (Cyber Crime) Antara Council Of Europe Cyber Convention Dengan Undang Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik' (Universitas Bung Hatta Padang, 2016).

54 Articles which examine in detail how the rules of life in cyberspace and the transactions that occur in it.

Whereas behind the advantages of the ITE Law it also has drawbacks, one of which is that the ITE Law also severely limits the right to freedom of expression, expression and can hinder people's creativity in playing the internet, especially in Article 27 paragraph (1), Article 27 paragraph (3), Article 28 paragraph (2), and Article 31 paragraph (3) are very contradictory to Article 28 of the 1945 Constitution concerning freedom of opinion.

Article 16 states that electronic system operators must meet the requirements in operating electronic systems, the requirements put forward are still unclear, for example in paragraph 1 (b) regarding protecting confidentiality, then if a user of an electronic system, for example on a web server, has weak security aspects, does that violate Constitution. In article 27 regarding prohibited acts, namely in articles 1 and 2, the content that violates decency and the content of gambling there is not explained how the standards of decency and the definition of gambling can also make it difficult and the public's anxiety to surf the internet is afraid of being considered as violating the law as a result. society becomes somewhat narrowed space for movement and can also inhibit creativity⁹.

Even though it has been passed by the legislature, the ITE Law is still vulnerable to rubber articles, or articles whose interpretation is subjective/individual. Indeed, this law cannot stand alone, it can be said that this law has a reciprocal relationship with the Anti-Pornography Bill.

In general, there are several aspects that are protected in the ITE Law, among others the main ones are:

1. Persons privately from deception, threats, and humiliation.
2. A group of people/groups/society from the negative impacts of decency issues, moral issues such as gambling and SARA humiliation.
3. Corporations (companies) or institutions from losses due to confidential leaks and financial information as well as exploitation of works

CONCLUSION

Based on the description of the discussion in the previous chapter, the following conclusions can be drawn:

The presence of the ITE Law is intended to be able to provide legal certainty regarding the regulation of the ban on online soccer gambling which is growing rapidly in Indonesia. In the formulation of the ITE Law Article 27 paragraph (2), there are three prohibitions that are classified as online gambling actions, namely intentional, then without rights, and acts of distributing and/or transmitting and/or making electronic information or documents that have " gambling load". The crime of online gambling is punishable by Article 45 paragraph (1) with a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

In Indonesian criminal law, police officers can take the first steps in the aspect of proving online gambling, starting with investigations, searches and confiscations, collection of evidence, examination of electronic evidence in the digital forensic laboratory, until the case is handed over to the Public Prosecutor to establish evidence. which can ensnare online soccer gambling

⁹ I Uttata, 'Tindakan Aparatur Penegak Hukum Terhadap Pencemaran Nama Baik Melalui Media Sosial Ditinjau Menurut Undang-Undang Informasi Dan Transaksi Elektronik Nomor 19 Tahun 2016' (Universitas Islam Negeri Ar-Ranirry Darussalam, 2020).

defendants in court. To prove online gambling in court, the judge uses a negative statutory proof system in accordance with Article 183 of the Criminal Procedure Code and is complemented by Article 184 of the Criminal Procedure Code, namely imposing a sentence if the evidence is limited by law and the judge has confidence in the existence of such evidence. Provisions for examination at court hearings in the Criminal Procedure Code are in Chapter XVI, part three regarding ordinary examination procedures and part four concerning evidence and decisions in ordinary examination procedures. The examination includes examination of witnesses, experts, letters, and the accused

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