

## **Fraud Crime through Electronic System Based on Indonesian Positive Law (Decision Study No: 1356/PID/B/2016/PN.BDG)**

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### **Abstract**

Today's criminal acts of fraud continue to develop following the development of existing technology, existing legal regulations function to overcome this, but existing regulations cannot reduce these crimes but increase them. This study aims to find out how existing law enforcement is against criminal acts of fraud through electronic systems, knowing various kinds of inhibiting factors in enforcing criminal law against a crime of fraud. This research was carried out using normative juridical methods through library research by examining secondary data including regulations legislation, research results, scientific journals and references. The results of the study provide an illustration, where criminal acts of fraud through electronic systems are in principle the same as fraud in conventional ways, but the difference lies in the evidence or means of action, namely using electronic systems (computers, internet, telecommunication devices), because that is law enforcement. Fraud crimes can still be overcome by Article 378 of the Criminal Code concerning fraud and Article 28 Paragraph (1) of the ITE Law concerning Information and Electronic Transactions Furthermore, obstacles in law enforcement against criminal acts of fraud based on electronic transactions are still influenced by five factors, namely legal factors, law enforcement factors, factors of facilities or facilities that support law enforcement, social factors and cultural factors.

**Keywords:** Law Enforcement, Fraud, Electronic Transactions



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### **INTRODUCTION**

Advances in information and communication technology are currently making it easier for people to provide and receive information. Communities can easily communicate without any boundaries of distance, space and time. Along with these technological developments, people are also required to be able to follow any developments that are happening. Current technological developments are not just for the sake of communicating and socializing, but also lead to a world business network without boundaries. The business network in question is on-line trading activities via the internet. At this time it cannot be denied that buying and selling online or through an electronic system can streamline time so that one can make buying and selling transactions with everyone anywhere and anytime. Moreover, the transaction is carried out without face-to-face contact between the parties and they base the sale and purchase transaction on mutual trust so that buying and selling that occurs between the parties is also carried out electronically (on-line) via the internet network.

Improvements in various kinds of information facilities occur quite quickly in the present. This makes it easier for the public to provide information, both personal and public information. In making transactions, of course humans will look for easier ways, where humans have been able to create electronic or internet systems because humans have a mindset that continues to develop in dealing with everyday life. Kamlesh and Devani say that a number of advantages can be obtained from this internet or electronic media, including: First, time savings because we can see that business transactions between countries which usually take several days in conventional business can be shortened to just a few minutes by using services. internet or

electronics. Second, there will be no more delays as a result of transportation constraints as we know that if we want to go somewhere, there are lots of transportation constraints so the presence of an electronic system does not require us to be present at a meeting to discuss a matter. Third, reducing the possibility of making mistakes in typing and so on because a standard model has been prepared that does not need to be retyped. Fourth, because business time can be used efficiently, it is possible to obtain more information about the business so as to support the effectiveness and efficiency of a company or business”.

Online transactions are a payment method that allows online transactions to buy products or services, invest, or use banking services. Online transactions are facilitated by payment service providers or also known as payment gateways. In Indonesia, many electronic media shops have sprung up, ranging from large companies to home sellers. The clarity of shops in electronic media is questionable both in terms of the quality and legitimacy of these shops, because opportunities for committing crimes in the form of fraud are very likely to occur. Many people experience cases of fraud through electronic media. The ease and positive impact of making transactions through electronic systems has made many people use transactions through electronic systems, especially the internet. The 2020 survey results from the Indonesian Internet Network User Association (APJII) show that internet users in Indonesia reach 196 million people or 73.7 percent. This figure has increased by 8.9 percent compared to before the pandemic in 2018, when only around 64.8 percent were internet users in Indonesia. Then again experienced an increase in 2021 of 77.02 percent. This proves that today's society cannot be separated from electronic systems or the internet because every community activity always involves electronic systems or the internet.

However, on the other hand, the negative impact of online transactions is also felt because sellers and buyers do not meet face to face or interact directly, so it is possible that the goods/services received are not as desired or the amount of money received by the seller is also not appropriate or even not received at all. desired payment. based on data from the Ministry of Communication and Informatics, there have been 16,678 reports that have entered his site. "Data as of today, September 11 2018," Head of the Public Relations Bureau of the Ministry of Communication and Informatics Ferdinandus Setu, when contacted by Kompas.com. Of all the reports that came in, nearly 14,000 of them were crimes in the form of online transaction fraud. Meanwhile, the rest are cases of investment fraud, extortion, online prostitution, and other crimes such as fake lottery, bribery, and corruption.

In terms of the ease of use of electronic systems or the internet, of course, it does not only provide positive things but also negative things, for example online fraud. Recently, it has continued to increase so that regulations that regulate this matter are made, namely Article 378 of the Criminal Code and Article 28 Paragraph (1) of the ITE Law which provide legal sanctions against perpetrators of this criminal act of fraud. The easy use of electronic systems makes social media users especially often have complete personal identities that are easy to fake, fabricate or even easy to steal, so that the discussion on "Criminal Fraud through the Electronic System Based on Indonesian Positive Law" is of course very interesting to discuss and useful for electronic system users to know how it works and the consequences of using electronic systems which of course can provide positive and negative things for users, this is being one of the objectives of discussing this theme can provide a warning to users of electronic systems, especially for personal gain because there have been many cases regarding this matter.

Coinciding with the increase in technology, now crime is starting to get out of control, one of which is happening in the community, namely fraud through the electronic system, this has an adverse impact because it causes losses to victims, for example, one of the victims of the Nurliza Shop online gathering scam managed by SN (20), a resident of Jalan Ariodillah, 20 Ilir

D-I Village, Ilir Timur I District, Palembang, South Sumatra. The total loss suffered by all victims reached IDR 961 million. One of the victims, HD (23) admitted that he had attended the gathering for 3.5 years. Initially, this resident of the Kenten area, Palembang, joined this online gathering without any complaints. However, in early March 2019 something went wrong. When HD wanted to ask for money, it was his turn to get money in March, SN kept delaying and said he couldn't give the money. HD along with other victims visited SN's residence to question their unpaid money. However, a week ago when he went to the perpetrator's house, the house was no longer inhabited. Another victim, DI (23) admitted that he lost Rp. 13 million because this online arisan dealer disappeared without paying his rights. He admits that he has attended this gathering for 2 years. The perpetrators of course have violated Article 378 of the Criminal Code and Article 28 paragraph 1 of the ITE Law. (STUDY OF DECISION NO: 1356/PID/B/2016/PN.BDG).

The formulation of the problem in this study is how is the regulation of criminal acts of fraud through electronic systems based on Indonesian positive law? And what are the responsibilities of perpetrators of fraud through electronic systems based on Indonesian positive law?

## **RESEARCH METHODS**

The research method used by the author is a qualitative research that focuses on normative juridical research, according to Sunggono this research method can be used to find legal regulations in describing statutory regulations and even this research can also function to find legal regulations that are formulated both in terms of written or unwritten. (Sunggono, 2003) In this type of normative juridical approach, it will be used to examine decisions related to Fraud Crimes through Electronic Systems Based on Indonesian Positive Law by taking legal sources from primary and secondary law, namely Article 378 of the Criminal Code concerning fraud and article 28 paragraph 1 ITE Law on Information and Electronic Transactions as well as other laws and regulations with this research, Decision Study DECISION NUMBER: 1356/PID/B/2016/PN.BDG then other documents related to this research for example books, legal journals, and others.

## **RESEARCH RESULTS AND DISCUSSION**

### **Electronic Information**

The definition of Electronic Information is a collection of data that is electronic in nature which has no limit to a writing, plan, access code letters and many others that have been processed in a good way so that it has a meaning that is easily understood by people who read or hear. In this research, electronic information is a benchmark for human capabilities. various kinds of information technology or commonly called Electronic Information.

### **Fake News**

False or lying news is information that is engineered to cover up real information. In other words, the meaning of hoax can also be defined as an attempt to distort facts using information that seems convincing but cannot be verified as true or what we usually know is giving wrong information and having personal intentions to do so.

### **Victim**

A victim is someone who has an impact or is suffering physically or not and accepts the results of other people's behavior to meet their needs and does not think about the human rights of other people that should be obtained. Victims will not be able to escape from a problem

because every time there is a problem there must be a victim, where in a problem there are parties who feel disadvantaged. The word victim can be given to an individual or a group as long as it has predetermined criteria. In terms of victims, there are also many types, for example mistakes in the use of power or violence, this has a very negative impact on victims, usually causing trauma or fear to someone who has committed the crime.

### **Perpetrator**

The perpetrator is someone who has carried out an action or deed in an event and has a relationship with the victim, if the victim is not there the perpetrator is not there, if the victim is there then the perpetrator is also there. Where the perpetrator becomes the core of a problem so that it can also be said that the problem with the perpetrator has a relationship, if there is a problem or event there must be a perpetrator because the actor is the maker of the structure of the problem and has a role in carrying out an action that is arising.

### **Fraud**

Fraud is an act in which a person, institution or entity comes illegally or improperly according to set parameters with the aim of obtaining some economic or political advantage. unlawfully benefiting oneself or others by using a false name, false prestige by means of deception, or by a series of lies. The purpose of this ruse is to move other people to hand over something to him or to give debt or write off receivables. From the object and purpose, fraud is broader than embezzlement.

### **Information Technology**

Information Technology is a technique that functions to make it easier for someone to collect data, analyze data, provide information and much more. With the need for technology that has ease of use, it is needed by the technological community, which continues to grow until now, which used to still use ropes and drink cans to communicate long distances, now great information technology has been created, such as laptops, cellphones and many others. This makes information technology very important among the public, it can even be said that it has become part of humans. In the past, we were not dependent on technology, but for now, only leaving information technology for a few minutes has become a big problem for humans now.

### **Arrangements for Fraud Crimes through Electronic Systems Based on Indonesian Positive Law**

In using an electronic system, of course, provides many advantages for its users. This is what makes users feel dependent on electronic systems, thus giving rise to several problems because there are loopholes in the crime, for example fraud, in law it means violation of norms regarding intentional (*dolus*) or unintentional/negligence (*culpa*) disturbances by the perpetrator, where the sentence imprisonment for perpetrators is necessary for the maintenance of law and order and also to ensure the interests of the general public or human actions that are prohibited or violate legal provisions, are punishable by crime, are against the law, are associated with wrongdoing, and are committed by people who are capable of being held responsible. Results of research conducted by the Center for Digital Society at Gadjah Mada University (CfDS UGM). EDD is one of 1,700 people from 34 provinces in Indonesia who are respondents to this study. This research found that 98.3 percent of respondents or 1,671 people had received digital fraud messages, either one or more. The most common modes were fraud under the guise of gifts (91.2 percent), illegal loans (74.8 percent), sending links containing malware or viruses (65.2 percent), fraud under the guise of a family crisis (59.8 percent), and

investment. illegal (56 percent). From these data it has been shown that it is true that cases of fraud through electronic systems are indeed high, the use of electronic systems is actually not dangerous if we know the basis for the occurrence of a technological problem such as this fraud.

Fraud through this electronic system has often occurred and has even become a culture for all countries and is very detrimental to victims, so this matter must be immediately handled by the authorities. Piracy has often occurred around us so we have to be aware of this fraud and we know about it, but the public does not need to worry because there are already regulations governing fraud through the electronic system so that it helps us overcome fraud which is already quite troublesome for users of the electronic system so that Article 378 is created. Criminal Code which states that "Whoever with the intention to benefit himself or others by breaking the law, by using a false name or false dignity, by deception or by a series of lies moves other people to hand over something to him, or to give debt or write off receivables, is punishable by fraud with imprisonment for a maximum of 4 years" and Article 28 Paragraph (1) of the ITE Law which states that "Every person intentionally, and without right spreads false and misleading news that results in consumer losses in electronic transactions " Everyone who fulfills the elements referred to in Article 28 paragraph (1) shall be subject to imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah). This regulation, has explained that fraud through electronic systems is strictly not allowed and is expected to overcome fraud through electronic systems that are currently happening a lot.

With this, we can see that the regulation of fraud through the electronic system based on Positive Law in Indonesia means that if a person deceives or takes other people's rights without being noticed, it is a crime that has been clearly regulated in regulations that are already in effect in Indonesia, but only the implementation it is these regulations that are lacking so that there are still many people who hijack social media accounts only to benefit themselves.

### **Responsibilities of Fraud Perpetrators through Electronic Systems Based on Indonesian Positive Law**

Of course, there are many people who have committed fraud through the electronic system with the intention of enriching themselves, there have been many processes of handling fraud perpetrators and many have issued regulations regarding fraud, but there are still those who commit fraud through the electronic system so that the perpetrators must be held responsible for their behavior. , there are not a few people who feel that this fraud generates a lot of profit because the people who commit piracy feel safe in carrying out or are not caught about this action. This is what causes a lot of losses to individuals who only care about themselves without looking at the losses incurred for their actions. We can take this from the case of one of the residents who experienced the Nurliza Shop online gathering scam managed by SN (20), a resident of Jalan Ariodillah, 20 Ilir Village. D-I, Ilir Timur I District, Palembang, South Sumatra, where the victim immediately reported the incident. Of course this can cause harm to victims both directly and indirectly so that the perpetrators must be responsible by following the existing positive law so that the parties concerned must be more able to apply existing regulations appropriately. This will later become a reminder for fraudsters so that they do not commit fraud again.

We can draw the conclusion that the perpetrators of fraud through the Electronic System are people who have committed a criminal act and will be processed according to the applicable law, namely Article 378 of the Criminal Code with a maximum imprisonment of 4 years" and Article 28 Paragraph (1) of the ITE Law shall be subject to imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah). so that people

who commit a criminal act can be held responsible by following the existing regulatory procedures and get sanctions for the actions they have committed even though the regulations do not say that if someone commits a criminal act they must be responsible. Such is the responsibility of the perpetrators of fraud through the Electronic System Based on Indonesian Positive Law

## **CONCLUSION**

Electronic fraud is basically the same as traditional fraud. The difference is the evidence or practice, namely the use of electronic systems (computers, internet, telecommunications equipment). Therefore, criminal charges in connection with this fraud offense are included in Article 378 and to strengthen the legal basis, also in Article 28 paragraph (1) which regulates information and electronic transactions. This is included in the Special Provisions (*Lex Specialis Derogat Lex Generalis*), the ITE Law can at least become a guideline and legal basis for citizens when doing activities in cyberspace. In addition, the ITE Law also contains links to several articles regulated in the Criminal Code, which aim to facilitate the resolution of these problems. Considering the challenges and demands of the development of global communications, the law is expected to be *ius constituendum*, namely legislation that adjusts to developments and anticipates problems, including the negative impacts of developments in information technology, which have broad social implications. In addition, there are five factors that influence the law on police barriers to electronic crime, namely the first is the legal factor itself which still contains rules that do not explicitly explain fraudulent crimes through electronics, second, the legal factor, where the law is enforced. there are still officers who do not understand the existing rules, so that there are still multiple interpretations in their implementation, three factors namely the support of police facilities and infrastructure that can help detect criminal acts, the fourth factor is the community where the community owns. no knowledge of or reports of problems faced and community reluctance to take legal action; and cultural factors, the higher the culture and the more modern a nation is, the more modern the crime is in its form, method and manner of execution.

Suggestion: The government should make a regulation that can be used as a legal guideline that way, there will be no more people who can fight against the regulation, so that perpetrators of fraud through electronic systems, it will be clear what kind of regulation it will be. Law enforcers should provide more knowledge or socialize information law regulations in using social media frequently in the community, so that it is not just a few times, this raises awareness and the importance of the ITE Law regulations which can later prevent this criminal act of piracy. Looking for the perpetrators of social media piracy, providing the law that has been prepared so that the perpetrators know their mistakes, their actions and have no sense of repeating them. Of course, it will reduce the feeling of thinking about hijacking social media, let alone enriching oneself.

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