



FORM OF CRIMINAL LIABILITY FOR PERSONS OF MAYANTARA CRIMINAL ACTIONS

Imam Makhali.¹

Faculty of Law, Universitas Islam Kediri..
Jalan Sersan Suharmaji Nomor 38, Kota Kediri, Indonesia
E-mail: mahali_imam30@yahoo.co.id

ABSTRACT

Indonesia is a country involved in the use and utilization of information technology, which is proven by a large number of internet users, along with advances in information technology in communication media that have changed people's behavior in global civilization. This technology causes world relations to become closer without borders and boundaries. Along with the development of technology, the form and mode of crime also developed. In Indonesian Criminal Law, for perpetrators of cyber crimes or usually called "mayantara" crimes, they are burdened with criminal responsibility like criminal acts regulated in the Criminal Code. accountability criminal for criminals. The form of criminal responsibility for perpetrators in criminal law, especially cybercrime which has been adopted by Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions is regulated in 9 articles, from article 27 to is doctrine of identification. This can be proven by the acceptance of forms of criminal liability including corporations (corporate criminal liability) as cyber crime preparators.

Keywords: *Criminal. Liability. Mayantara.*

1. Introduction

Indonesia is currently one of the countries involved in the use and utilization of information technology, as evidenced by a large number of internet users, in a positive sense besides a large number of abuse of the internet itself, in fact the regulations governing the use of information technology, especially in the scope of information and transactions electronically ², then it can be said that world progress is marked by the existence of a new civilization with the phenomenon of information technology and globalization which continues to advance in almost all sectors

¹ **Submission:** 26 January 2023 | **Review-1:** 26 January 2023 | **Publish :** 28 January 2023

² Ministry of Communications and Informatics of the Republic of Indonesia, Academic Paper of the Draft Law on Electronic Information and Transactions, Draft Law of the Republic of Indonesia Number...Year... concerning Electronic Information and Transactions h. 1

of people's lives, technological developments and globalization occur in developed countries, because information technology plays an important role in the growth and the development of trade, economy, social, culture, politics. Along with the advancement of information technology in communication media, it has changed people's behavior in global civilization. This technology causes world relations to become close without borders and boundaries (*borderless*), can cause significant changes in the economic, social, cultural system to take place so quickly. and civilization of society, as well as being an effective means of unlawful acts for every human being. At present a new legal regime known as cyber law or telematics law has also been born, namely crimes based on telematics technology³.

Information technology is believed to bring great benefits to countries in the world⁴, indeed there are at least two advantages that can bring this information technology civilization. The first is where this information technology is able to encourage growth and development as well as competition for the technology product itself, while the second is that with the existence of this information technology it can facilitate the occurrence of transactions in business, especially in finance, this second advantage which clarifies a change in pattern transactions and patterns of community socialization, from conventional methods to more effective and efficient electronic methods. Advances in information technology in addition to facilitating and accelerating electronic communication within a country and even between countries, even if problems and events that occur in parts of the world can be known quickly and easily in just a matter of minutes through the internet network, no less important for financial circulation, money transfers between banks using cash from within the country to abroad can be done more quickly. Along with the development of criminal law especially Indonesian Criminal Law, for perpetrators of criminal acts mayantara burdened with

³Al Wisnubroto, *Telematics Crime Control Strategy* , Atma Jaya, Yogyakarta 2010, p. 1

⁴ Budi Suhariyanto, *Information Technology Crime (Cybercrime) the urgency of regulation and the law*, Raja Grafindo Persada, Depok 2013, h. 1

criminal responsibility in accordance with criminal acts regulated in the Criminal Code.

In fact, this can be sobering to society needs the rule of law regulate activities that really require and also involve information technology as a communication tool carried out by perpetrators of criminal acts.

In the Criminal Code (KUHP) or what is called *Wetboek van Strafrecht* (WvS) which is still valid until now it's by concept accountability criminal for criminals. That is, is that for special criminal law in outside which is called *bijzonder strafrecht* has set for perpetrator follow criminal Which Violating criminal provisions outside the criminal law will be subject to a form of criminal responsibility , *especially* cybercrime .

By because of that, related to a number of statutory regulations In the case of mayantara crime, there will be criminal liability both adhered to by provisions law criminal positive nor provision criminal law in the future in framework anticipate crime _ mayantara crime (*cybercrime*), namely Law no. 11 year 2008 about Information And Transaction Electronic (as *Ius Constitutum*) as amended by Law No. 19 of 2016 and Draft Criminal Code as mother of all provisions of Indonesian criminal law in the future. This description , then we will discuss in writing This among others Forms of Criminal Accountability for the perpetrators of the crime of the perpetrator of the Mayantara crime

2. Reseach Method

The type of research used is Normative, i.e., research that examines a document, namely by using a variety of secondary data such as laws and regulations, court decisions, legal theory, and it can be in the form of the opinion of the scholars. This research used qualitative analysis, i.e. by explaining data with the words, not the statement by the numbers. The approach used in this research was statue approach. In normative research, research used literature materials which could be in the form of documents, books, reports, archives and literature related to research. Legal sources was used in this research include primary, secondary, and tertiary legal sources.

3. Results and Discussion

Forms of Criminal Accountability for the perpetrators of the crime of the perpetrator of the Mayantara crime.

The globalization of information technology along with the use of information and communication technology facilities has changed the pattern of life for the people, and with the development of this new order of life can encourage social, cultural, defense and security, economic, political, and legal changes. So the rapid and advanced information technology has made a very interesting new phenomenon of life, especially for people who use information technology in communicating because the distance is not limited by place, time (*borderless*). To anyone and anywhere, anytime, the community for users of technology devices can establish communication, and be able to obtain information, and disseminate information to others in a short and fast manner. The globalization of technology places the Indonesian people as part of the global community of users of information and communication technology.⁵

Electronic Information Technology as a means of communication that leads to the facilitation of human activities and activities, humans as creators and at the same time developers of information technology users, one of which is being able to see the development of communication media via the internet. The internet is an electronic communication medium that is widely used for various activities, which include browsing , *surfing* , sophistication of information technology capable of finding forms of visual imagery.

Along with the development and use of information technology as a communication tool, a crime will arise called the Mayantara Crime. This form of crime knows no boundaries (*borderless*) , space, place and time of occurrence because victims and perpetrators are often in different countries. Barda Nawawi Arief stated that *Cyber Crime* is a new form or dimension of today's crime that has received the attention of the wider community in the

⁵ Ahmad M Ramli, *Cyber Law and IPR in the Indonesian Legal System* , (Bandung: Refika Aditama, 2004), p. 1

international world, as well as one of the dark sides of technological progress which has a very broad negative impact on all modern life today.⁶

With the rise of criminal acts mayantara causing the community to be harmed materially or immaterially, so with the mayantara crime it is a must for the community to be legally protected so that the community is free from fear, to get comfort. This mayantara crime which is regulated in the Information and Electronic Transactions (ITE) Law is classified as a law that is still new in Indonesia. The crime is regulated in Law no. 11 of 2008 amended by Law Number 19 of 2016 concerning information and electronic ITE transactions, but because the discussion questions the form of criminal responsibility for mayantara crimes, the author tries to explain criminal responsibility for perpetrators of mayantara crimes.

Information Law and Electronic Transactions before legalized become Act No. 11 Year 2008 about Information And Transaction Electronic on date 21 April 2008, legislation This on at first Still shaped design Constitution (bill) with NameDraft Law about utilization Technology Information (abbreviated become bill P-TI). Governmentmake Constitution This with hope can reduce impact abuse Internet (as Wrong One media in field mayantara) Which naturally very harm public.

In the formulation of provisions criminal contained in Law on Information and Electronic Transactions Law Number 19 of 2016 contained in Article 45 of the Law on Information and Electronic Transactions up to Chapter 52 Law on Information and Electronic Transactions. Based on formula Articles has regulated the provisions of criminal sanctions in the Electronic Information and Transaction Law Law Number 19 of 2016. In the legal subject of the identified mayantara crime as perpetrators of mayantara crimes or referred to as legal subjects can requested responsible the answer for the perpetrators of mayantara crimes has been stated that every person, the meaning of each person is a person who commits a crime, or an individual

⁶ Barda Nawawi Arief, *Mayantara's Crime, Development of Cyber Crime Studies in Indonesia*, (Jakarta: Raja Grafindo Persada, 2006), page 26

including Also corporation as the legal subject of the perpetrators of mayantara crimes.

As in the elucidation of the Law on Information and Electronic Transactions Law Number 19 of 2016 contained in Chapter I in the explanation of the Terms General article 1 this electronic information and transaction law , explained that Which meant with person is person individual, both people as citizens country Indonesia, or people as citizens country foreign, including legal entity, while the intended with 'body business' is companyindividual or company fellowship, whether incorporated or not No body law.

Thus from explanation the, can is known that Information Law and Electronic Transactions Law Number 19 of 2016 has determines that the corporation is one of the legal subjects of the offender civil law. Thus it is very possible that corporation when doing crime, the corporation can also be prosecuted accountability criminal because as a subject of criminal law. If the corporation can be held liable answer crime when a crime has been committed, then the corporation as a legal subject must governed by the conditions of liability answer criminal law, among others, is about the condition of a crimecorporation said has dofollow criminal, then about parties Which should asked accountability in matter corporation That Alone Which do criminal act whether the perpetrator of the crime is the manager, or administrator And corporation, or precisely the corporation itself is liable accountability. Besides it is also necessary to regulate the form of sentencing guidelines to corporation so that No happen disparity punishment.

Based on the formulation of the Electronic Information and Transaction Law, Law Number 19 of 2016 has arrange regarding accountability requirements criminal for corporation, that is in matter corporation do deed as where meant in Chapter 27 untilwith Article 37 of the Law on Information and Electronic Transactions, Law Number 19 of 2016 . Matter Which Also has arranged by Information Law and Electronic Transactions Law Number 19 of 2016 concerns accountability criminal for corporate perpetrators of criminal

acts, such things are about parties Which can asked per criminal liability in the event that it occurs crime corporation (*corporate crime*) as described in the explanation Article 52 paragraph (4) of the Law on Information and Electronic Transactions Law Number 19 of 2016 which stipulates that criminal threats as formulated in Chapter 52 paragraph (4) UU-ITE intended Forpunish every deed oppose law Which fulfil element as referred to in Article 27 UU-ITE up to you Chapter 37 UU-ITE Which done by corporation(*corporate crime*) and/or by management and/or staff own capacity to represent the corporation, to be able to make a decision, a person who can represent to carry out supervision and to do so in order to gain profit.⁷

Because it can be said that the Information and Electronic Transactions legislation, Law Number 11 of 2016, has adhered to the doctrine of identification or what is known as the *doctrine of identification*). Such is this can proven with acceptance of accountability _ criminal corporation (*corporate criminal liability*) in corporate matters or corporate management as perpetrators criminal act(*corporate crime*). S ehow known to exist adage law or maxim Which has has long been universally embraced in legislation criminal, Which it reads as follows '*actus non facit reum, nisi mens sitrea*'⁸.

Against the adage this law " *actus non facit reum, nisi mens sitrea* " it has been stated that "gone criminal without error", in line with the principle of culpability, then the consequence is: that only "something" Which own mind and heart can burdened responsible answer criminal. And actually only legal subjects who have a heart or heart and have a mind capable of distinguishing between good and bad, right and wrong are human beings, therefore Humans are used as legal subjects Which own reason and conscience _ (*mens rea*), whereas corporation actually is an inanimate object and it is not own mind and conscience , _ so it's a corporation No will burdened form of accountability criminal if he has committed a criminal act, especially a criminal act of mayantara. However, in the development of criminal law,

⁷ Sutan Remy Sjahdeini, *Liabilityanswer Corporate Crime*, GraffitiPers, Jakarta, 2007

⁸ Abdurrahman, *Law Studies, Legal Theory And Knowledge Legislation*, PT. Image Aditya devotion, Bandung, 1995.

criminal law includes criminal law in Indonesia (the Book of Criminal Law) which is codified law based on the theory of corporate identification ((Identification theory) even though it does not have conscience and inanimate matter. still, when committing a crime, especially a criminal act of mayantara, it will be accounted for as a human being as a legal subject.

The doctrine of identification is a teaching that is adhered to by statutory regulations, especially laws that have criminal nuances, both general criminal law (*algement strafrecht* and *bezonder straf recht*) . criminal liability to a corporation, the form of imposition aimed at whoever commits the crime must be legally responsible, then the one who can determine the burden of responsibility is the Public Prosecutor if a corporation has committed a crime.

In the Criminal Code Indonesia's legal principles apply based on principle the concordance has enacted *Wetboek vans Strafrecht* The Criminal Code Code originating from the Dutch East Indies (*Nederland indie*) on year 1818. Criminal Code which is the parent and codification of criminal law various provision criminal Which There is in Indonesia has experience effort renewal since year 1964 until now, the new Criminal Code was ratified by the nation's children. Criminal law experts have produced Law No. 1 of 2023.

Renewal The Criminal Code (KUHP) in this case is of course in order to amend and replace the Criminal Code from (WvS) the Criminal Code is a legacy from the Dutch Colonial which has been in force since 1946 which is known as Law Number 1 of 11946 .

As with opinion Barda Nawawi Arief stated that efforts to reform criminal law must be based on legal foundations which are ongoing and continuous activities that will be able to answer problems that arise in this society.

Against the principle of the form of criminal responsibility based on mistakes (*liability based on fault*) which is emphasized by the concept of criminal responsibility (*strict liability*). In each formulation of the Articles, everyone is always mentioned, as has been formulated in the concept of an

individual for corporations, so that what has been meant by the perpetrators of criminal acts as subjects of criminal acts or perpetrators of criminal acts that can be accounted for in the concept of the Criminal Code are individuals. /or people and corporate legal entities. This has been proven in the provisions of the articles which mention and start with the word everyone, which means referring to a person or corporation/legal entity, both a person's legal entity and a legal entity other than a person. legal entity or non-legal entity.

Regarding corporate responsibility as a subject of criminal law in principle as follows:

- 3.1. Criminal acts committed by corporations if those who commit them are people who act for and on behalf of the corporation or for the benefit of the corporation, based on work relationships or based on other relationships within the scope of the corporation's business, either individually or jointly;
- 3.2. If the crime is committed by a corporation, the form of criminal liability must be imposed on the corporation and or its management;
- 3.3. Corporations that can be held criminally responsible for an act committed for and or on behalf of the corporation if the said action falls within the scope of its business as specified in the Articles of Association and other provisions applicable to the corporation concerned;
- 3.4. Administrative criminal liability Corporations are limited as long as management have position functional in structure organization corporation .
- 3.5. Thus it can be said that in the Criminal Code (KUHP) This besides use “teachings accountability Which strict” (*doctrine of strict liability*) Also use “teachings accountability replacement” (*the doctrine of vicarious liability*) specifically about accountability corporate crime that it regulates. Proven that burden of criminal responsibility specifically If perpetrator follow the crime is

corporation That Alone still charged Good to the corporation nor to the manager Which have a functional position structure organization corporation. As for Which meant with ' administrator Which have a functional position' is administrator Which according to budget base corporation authorized to act for and on Name corporation Which concerned (*intra vires*), both inside and outside court .

4. Conclusion

The form of corporate responsibility in criminal law, especially not mayantara crime which has been adopted by Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions is regulated in 9 articles, from article 27 to is "teachings identification" (*doctrine of identification*). This can be proven by the acceptance of forms of criminal responsibility for perpetrators of criminal acts, including corporations (*corporate criminal liability*) in matter perpetrator criminal acts As for the form of criminal liability for the law criminal infield mayantara Which embraced by Draft The Criminal Code is the "teaching of accountability answer Which strict" (*doctrine of strict liability*) And use also "teachings surrogate accountability" (*doctrine of vicarious liability*) specifically about accountability criminal offenders including corporations Which he arranged. The shape of the load is also evident accountability criminal specifically If perpetrator follow the crime still be borne both by the perpetrators but for the corporation the burden of responsibility is on its management who have a functional position in the corporate organizational structure. Thus that the basic principle of criminal liability burden in in a deep legislation matter This specifically mayantara crime related with policy law criminal is combination of several existing criminal responsibility teachings/doctrines.

BIBLIOGRAPHY

1. Book

- Aan Efendi, Fredi Poernomo, Ig Ng Indra S Ranuh, *Legal Theory* , Sinar Graphic, Rawamangun, East Jakarta, 2016
- Abdul Halim Barkatulloh. *Electronic Transaction Law as a guide in dealing with the digital era of e-commerce business in Indonesia*. Nusa Media, Ujungberung, Bandung 2017.
- Abdul Kadir Muhammad, *Law and Legal Research* , Citra Aditya Bakti, Bandung, 2004
- Adami Chazawi, and Ardi Ferdian, *Informatics and Electronic Transaction Crimes, Attacks Against Legal Interests Using Information Technology and Transactions* , Media Nusa Creative, Malang 20015
- AgusRussianto, *Critical Review of Criminal Acts through consistency between Principles, Theory and Application* , Prenadamedia Group, Rawamanun, Jakarta, 2016
- Ali Zaidan, *Towards Criminal Law Renewal* , Sinar Graphic, Sawo Raya, Jakarta 2015
- Barda Nawawi Arief, *Anthology of Criminal Law Policies Development of Drafting of the New Criminal Code*. Fajar Interpretama Mandiri Kencana, Rawamangun Jakarta 2017
- Budi Suhariyanto, *Information Technology Crime (Cybercrime) Regulatory Urgency and Legal Gaps* , Raja Grafindo Persada, Depok, 2013
- Danrivanto Budhijanto, *Telecommunication Law, Broadcasting & Regulatory Information Technology & Convergence* , Second Edition, Rafika Aditama, 2013
- Ministry of Communication and Informatics of the Republic of Indonesia, *Academic Draft of the Law on Information and Electronic Transactions* , Jakarta, Depkominfo
- John Kenedi, *Criminal Law Policy (Penal Policy) in the Law Enforcement System in Indonesia* . Student Library, 2017

- Maskun, *Cyber Crime An Introduction* , Kencana Jakarta 2013
- Moeljatno., *Criminal Acts and Accountability in Criminal Law* , Yogyakarta
2002 Bina Aksara
- Muladi and Darda Nawawi Arief. *Criminal Theory and Policy* , Alumni,
Bandung, 2010
- Ramli Ahmad, *Cyber Law and Intellectual Property Rights in the Indonesian
Legal System* , Rafika Aditama, Bandung 2004
- Sitompul Josua, *Cyberspace, Cybercrime, Ciberlaw Purpose of Criminal Law
Aspects* , PT Nusantara, Jakarta 2012
- Ministry of Communication and Informatics of the Republic of Indonesia,
Academic Paper of the Draft Law on Information and Electronic
Transactions