



Prospect of Cyberstalking Regulation in the Future in Indonesia

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Abstract

The present research aimed to investigate cyberstalking regulation contained in the laws and regulation in Indonesia, that it has not yet been explicitly regulated in Indonesian positive law. The method used was normative with prescriptive analytical type of research and conceptual approach, statutory approach, and comparative approach with theoretical approach techniques. The results of the prospect of cyberstalking regulation in the future are the inclusion of preparatory criminal acts in the Draft Criminal Code, so that the consequences of cyberstalking are *mutatis mutandis* becoming *strafbaarfeit* or delict.

Keywords: *Cyberstalking; Prospect Regulation; Preparatory Criminal*

A. Introduction

Cyberspace crime has been scaling up in the modern era. The development of worldwide technology has become a double-edged sword, which can be a versatile tool or device and *modus operandi* for any criminals doing violations. Cybercrime is a crime committed through cyberspace that was initially developed due to the emergence of computer and internet that massively evolving into today's virtual world. Not only information technology becomes a medium of communication, but also creates communication activities and interactions between humans.

Technology is substantially known as two-faced invention; providing great benefits, yet globally contributing crime convenience and expansion. Regulation of technology and prevention of misusing information are required to avoid people doing any violation that causing any criminal acts, even though crime is part of life and daily basis of communities. Behaviors that violate norms can lead to any law issues. Behaviors that violate norms or deviation to agreed norms is a matter of fact causing disruption of organized things within communities' welfare. (Waluyo:2014.,10).

The development of crime in all aspects of life, including cyberspace, possess distinct characteristics from conventional crimes that exclude the use of any tools or intermediaries to commit crimes. The author assumes that the development of crime through cyberspace will have a systematic

impact on the motives and victims of crime. This has resulted in a very massive and widespread victimization impact.

The abuse or negative impact of advances in information technology through computerized systems and internet networks is known as "cybercrime". In the perspective of criminology, technology can be said as a criminogenic factor –it is to elicit people's desire to commit or facilitate crimes. Cybercrime is one of the dark sides of technological advances which have a very broad negative impact on all areas of modern life today. (Arief :2006.,1-2).

Utilization of the internet is used to facilitate human life such as: e-banking (banking activities via the internet), e-commerce (trade transaction activities through the internet, e-government (government service activities via the internet), and e-learning (learning activities via the internet). (Natalia and Atmadja, 2013, 2). The modus operandi carried out by the offender of cybercrime frequently associated with threatening or stalking, which is named cyberstalking. Thus, cyberstalking is the first initiative or the groundwork before doing a cybercrime crime.

The definition of stalking itself can be varying depending on the legal system or law. However, stalking is generally a form of criminal act that intentionally and individually undertaken, in various ways, including persistently following someone to harass her/him, where the act is accompanied by threats of violence or death to menace or to hurt someone.

The act of Cyber Stalking, a matter of fact has not yet become a criminal act due to the nature of only "monitors". If it develops into a form of cybercrime, namely cyber bullying (cyber bullying) or even hacking, it is quite distinctive. The act of modern stalking (stalking)in adults do not have to shadow the victim, only collecting any data from the cyber world like social media, so the offender can terrorize victims through cyberspace without directly shadowing the victim (Stalking) or being used to carry out criminal act in the real world (Azhari, 2019, 154). Cyberstalking is the act of threatening, harassing, or violating someone through various e-mail messages, such as through the internet, intentionally putting the recipient in fear of illegal acts or actions that may cause injury to the recipient or his family members (Gardner, 2019, 434).

On the other hand, according to Bocij, cyberstalking is the utilization of the internet or other electronic means to stalk or harass individuals, groups of individuals, or organizations. Including making false accusations or false statements of fact (as in defamation), surveillance, threats, identity theft, tampering with the target/victim's data or equipment (Bocij,2017, 14). Cyberstalking is an act that is carried out repeatedly using electronic goods or technology connected to the internet that contains elements of hate speech, threats, coercion, or intimidation. This crime creates fear and anxiety over terror and intimidation for its victims. (Hazelwood and Magnin,2013,157)

Criminal law in Indonesia has not fundamentally regulated cyberstalking acts in momentous manner. In positive law in Indonesia cyberstalking acts are regulated in the Criminal Code and Law Number 11 of 2008 and amended Number 19 of 2016 concerning Information and Electronic Transactions. Furthermore, the article in California Cyber Stalking describes some examples of cyberstalking are as follows (California,2017,1);

1. Threatening e-mails indicating harassment which are displeased and intrusive.
2. Instant messages, texts or messages containing sexual attributes (Sex which refers to sending pictures and messages explicitly into hand phone).
3. Pretending to be someone else in the chat room and typing something that irritates the recipient in the chat room.
4. Posting or spreading embarrassing and shameful information against victims.

5. Posting personal information (phone numbers, home addresses, etc.) about other people so as to encourage others to harass that person.
6. Breaking into other people's accounts to empty bank accounts and intentionally damage someone's e-money.

Law enforcement related to cyberstalking in Indonesia has referred to Criminal Code, namely Article 335 regarding unpleasant acts which are as follows;

- (1) Sentenced to a maximum imprisonment of one year or a maximum fine of Rp. 4500,-
 - 1e. Whoever against the right to coerce a person to do, not to do or to allow any materials with violation, by any other act or by an violating threat, by another act threat, or by unpleasant threat, shall do something, either to that person, or to other people.
 - 2e. Whoever coerces a person with either verbal or written blasphemy so that he does, does not do or allows anything.
- (2) In the case described in 2e, the crime is only prosecuted upon the complaint of the victim.

Law Number 11 of 2008 concerning Information and Electronic Transactions Juncto Law Number 19 of 2019 concerning amendments also regulates a such act of cyberstalking, but does not explicitly state that cyberstalking is a criminal act, the norm is regulated in the following Article;

B. Research Methods

This research is a doctrinal or normative legal research that provides a systematic explanation of the laws that stipulate certain legal categories. It aims to investigate how the prospects for regulating cyberstalking crimes that occur in the future in Indonesia. It is normative with prescriptive analytical type, using the conceptual approach and the statutory approach.

C. Result and Discussion

1. Cyberstalking Arrangements in the Future in Indonesia

The criminal justice system is a system in which interrelated or intertwined with other systems. Criminal justice system requires the transparency system since environmental factors can frequently affect the success of achieving its goals (Muladi, 1995, 15). In this case, the author also links the achievement of the criminal justice system to crime prevention, which is the international instrument (Caracas Declaration 1980) containing the association between crime and the requirement of social conditions improvement and development promotion of social policies that can reduce crimes, which are as follows:

- 1) the progress achieved throughout the conditions improving social conditions and enhancing the quality of life;
- 2) Crime prevention and criminal justice should be considered in the context of economic development, political system, social and cultural values and social change, as well as context of the new international economic order;
- 3) Should be based on the social, cultural, political and economic circumstances of each country in the climate of freedom and respect of human rights;

- 4) Those responsible for functioning of the criminal justice system at all levels should be properly qualified for their task and should perform them in a manner which is independent of personal or group interest;
- 5) Should be based on principles that will guarantee the quality of everyone before the law without any discrimination;
- 6) To seek new approaches and development of better techniques for crime prevention and the treatment of offenders;
- 7) The family, school and work have a vital part to play in encouraging the development of social policy and of positive attitudes that will assist in preventing crime.

The development of criminal law or criminal law policy and criminal law politics are strategic steps taken by the government and the House of Representatives in stipulating regulations relating to criminal law, both material and formal criminal law. Barda Nawawi argues that regarding with the criminal law policy, that crime prevention must be integral system with the rational concepts to prevent crime and to achieve integrated unit system (Arief, 1996, 33).

Policies making endeavors to tackle crime with criminal penalties should be collaborated with preventive actions. Barda Nawawi defines it as Non-Penal device, this non-penal effort can reach a broad scope, which includes all social policies or national development. The effort of this non-penal policy is to improve certain social conditions that implicitly have an impact on preventing crime (Arief, 1996, 33). Criminal law policies to overcome cyberstalking acts can use penal facilities or use criminal law, which are the provisions of the legislation governing cyberstalking acts. However, Article Law Number 11 of 2008 concerning Information and Electronic Transactions Junto Number 19 2016 does not explicitly regulate the protection of victims of criminal acts from cyberstalking.

The development of globalization which massively occurs in various parts of the world has indicated the rapid access of technology advances. The development of this globalization has negatively and positively impacted in couples of aspects of life that the advanced technology has promoted humans' activities such as communicating, finishing works, and retrieving the latest information. Nevertheless, its development has also given the negative impacts which lead humans to commit any criminal act, that crime prevention endeavors should be anticipated by counties.

The United State of America, especially California, was the pioneer country which regulated cyberstalking as criminal act.

California Penal Code §646.9

- a) Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison.
- b) Any person who violates subdivision
 - (a) when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior described in subdivision (a) against the same party, shall be punished by imprisonment in the state prison for two, three, or four years.

- (c) (1) Every person who, after having been convicted of a felony under Section 273.5, 273.6, or 422, commits a violation of subdivision (a) shall be punished by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or five years
- (d) In addition to the penalties provided in this section, the sentencing court may order a person convicted of a felony under this section to register as a sex offender pursuant to subparagraph (E) of paragraph (2) of subdivision (a) of Section 290.
- (e) For the purposes of this section, "harasses" means engages in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose.
- (f) For the purposes of this section, "course of conduct" means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."
- (g) For the purposes of this section, "credible threat" means a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family, and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to prove that the defendant had the intent to actually carry out the threat. The present incarceration of a person making the threat shall not be a bar to prosecution under this section. Constitutionally protected activity is not included within the meaning of "credible threat."
- (h) For purposes of this section, the term "electronic communication device" includes, but is not limited to, telephones or picketing.
- (j) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under this section, it shall be a condition of probation that the person participate in counseling, as designated by the court. However, the court, upon a showing of good cause, may find that the counseling requirement shall not be imposed.
- (k) The sentencing court also shall consider issuing an order restraining the defendant from any contact with the victim, that may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family.
- (l) For purposes of this section, "immediate family" means any spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.
- (m) The court shall consider whether the defendant would benefit from treatment pursuant to Section 2684. If it is determined to be appropriate, the court shall recommend that the Department of Corrections make a certification as provided in Section 2684. Upon the certification, the defendant shall be evaluated and transferred to the appropriate hospital for treatment pursuant to Section 2684.

Regulation concerning reformation endeavor of punishment is related to RUUKUHP (draft of criminal code), which is firmly compressed with Chapter regulating about Crime Preparation, the author correlates between cyberstalking and RUUKUHP, pursuant to Article 15 of the RUUKUHP;

Article 15

- (1) Crime Preparation is done provided that the offender attempts to obtain or prepare means or tools, collect information or plan any actions, or attempt to do the action to create situation where an act is directly aimed to overcome the Crime.
- (2) Crime Preparation is done provided that it is stipulated rigidly in the Law

- (3) Time Crime Preparation requires at the most 1/2 (a half) from the maximum main confinement for related Delicts.
- (4) Crime Preparation which is condemned to death or life imprisonment is imprisoned at the most 10 (ten) years.
- (5) Additional punishment for Crime Preparation corresponds with additional punishment for related Delicts.

Article 16

Crime Preparation was not charged provided that the offender deceases or prevents any possibility of conditions as mentioned in Article 15 paragraph (1).

The author views that in the future cyberstalking will be included in the crime preparation, that the victim's aspiration and status of cyberstalking will have been regulated in the latest RUUKUHP.

Conclusion

Cyberstalking regulation in the future in Indonesia should refer to RUUKUHP, since it regulates any delicts related to crime preparation so that cyberstalking offender can be charged with KUHP (criminal code), because beestandel delict which is in the Article off Preparation Crime, *mutatis mutandis*, will be cyberstalking delict.

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