Criminal Liability of Online Fraud Perpetrators

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Abstract. T The purpose of this study is to determine the criminal responsibility of the perpetrators of online fraud. The research method used in this study uses a normative juridical method. The results of descriptive analysis had found that this fraudulent crime can be charged with Article 378 of the Criminal Code as a criminal act of fraud or Article 28 paragraph (1) of the ITE Law regarding the regulation regarding the spread of false and misleading news and has an impact on the loss of others.

Keywords: Law, Online Fraud, Accountability, Criminal

1 Introduction

New sorts and business open doors where deals are made by the advancement of data innovation right now are progressively being done electronically. Regarding the advancement of data innovation, it is feasible for everybody to effectively complete lawful activities like trading. The advancement of the web is without a doubt quick and affects all parts of life. The web assists us with interfacing, impart, and even exchange with individuals from everywhere the world efficiently, rapidly, and without any problem. Innovative improvements can have both positive and adverse consequences.

One of the negative impacts caused by technological developments is the emergence of the threat of modern crimes. Crime continues to grow along with the development of human civilization, with complex quality and quantity with variations in its modus operandi. Through the web, a few sorts of criminal demonstrations are more straightforward to do, for example, criminal demonstrations of maligning, porn, betting, account break-ins, digital organization annihilation (hacking), assaults through infections (infection assaults, etc.[1]

Cybercrime is a type of wrongdoing that involves the web and PCs as a device or a method for carrying out criminal demonstrations. In this way, cybercrime is a type of offense that involves the web and PCs as an instrument or a method for making a move. In another definition, cybercrime is a term that alludes to crime in which a PC or PC network turns into an apparatus, target, or spot of wrongdoing. Cybercrime or cybercrime by and large alludes to crimes with PCs or PC networks as the principal component, the term is additionally utilized for conventional wrongdoing exercises where PCs or PC networks are utilized to work with or empower the wrongdoing to happen. One kind of internet business wrongdoing is online extortion.[2] Online misrepresentation alluded to in web-based business is online extortion that involves the web for business and exchange purposes so it no longer depends on a truly regular organization base.

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Various modes of fraud through online media also continue to emerge and perpetrators are getting neater in smoothing their actions in fraud, this can be seen from the many fake buying and selling websites that are made in such a way and offer various products at prices below normal prices, to attract the victim's interest in buying, and there is also fraud by sacrificing other people's accounts to be the result of a criminal act of fraud in which the perpetrator has transferred to the seller's account more than the agreed price for various reasons and asks for the excess to be returned to his account, but in reality, the money is the result of the perpetrator's fraud against the victim in another place where the perpetrator pretends to sell a certain item and gives the victim's previous account number. Legitimate issues that are in many cases looked in internet-based misrepresentation violations are connected with the conveyance of data, correspondence, as well as electronic exchanges, to be specific as far as proof and matters connected with lawful activities helped out through the electronic framework.[3]

Online misrepresentation is equivalent to traditional extortion. The thing that matters is just in the method for activity, in particular utilizing Electronic Systems (PCs, web, telecom gadgets). So legally, online fraud can be treated the same as conventional offenses regulated in the Criminal Code (KUHP).[4] In addition to fraud via the internet, fraud via SMS (Short Message Service) is also regulated in Law Number 11 of 2008 concerning information and electronic transactions. The media used in SMS fraud is a cellphone which is one of the electronic media referred to in the ITE Law. It is following Article 1 number 2 of the ITE Law which reads as follows: “Information Technology is a legal action carried out using computers, computer networks, and/or other electronic media.[2]

In criminal law related to fraud, there is a point of view that needs to be understood carefully, namely understanding according to language and understanding according to juridical. In understanding language, fraud comes from the word "deceit" which is "a dishonest act or word (lie, fake, etc.) with the intent to mislead, outsmart, or seek profit; fool". while fraud is a process, method, deceptive act; cheating (deceit).[5]

Article 378 explains that "Whoever benefits himself or another person against the rights, uses a false name or false nature or uses deceit or false wording, moves other people to surrender an object or enters into a debt agreement. or cancel a debt, because it is wrong to have committed fraud, is punishable by a maximum imprisonment of four years.” For juridical understanding, the definition of fraud is not discussed in the criminal code in the Criminal Code. However, in the formulation, it explains the determination of the elements of the act which consequently can be called fraud, such as "...using deception or the arrangement of lying words..." which can describe the concept of fraud. Based on the foregoing, this article will further address the question of criminal liability for online fraud perpetrators.

2 Research Methods

The research was conducted in a normative juridical way with a statutory approach and a conceptual approach.[6] Primary and secondary legal materials are discussed and researched using an interpretation method to clarify the existing legal materials related to the problems encountered.[7].

3 Results and Discussion

The period of globalization is inseparable from propels in innovation and data that are growing quickly and quickly. This peculiarity happens in all areas of the planet whether or not a nation is created or creating. Improvement in the financial field can't be isolated from the connection among people and people in a world that was encountering speed increase and change. As a world local area, a nation is exceptionally expected to stay aware of the advancement of innovation and data, to contend in the undeniably viable, proficient, and current worldwide rivalry.

As a result of globalization, the world's people and countries have become one, fundamental changes have occurred so rapidly (evolved), followed by the existence of relations between nations and countries that experience openness, without limits on power, markets, use of technology and human knowledge. Changes in one region can determine changes in other regions globally. The development of economic globalization has the potential for criminal acts/crimes in the economic field carried out by business actors in the form of corporations that can cause losses and victims, supported by the birth and development of knowledge in the field of information technology. Transformation of information that spreads very quickly among people can no longer be hidden, full of openness in an information field (citizen journalism) so that people can inform new news to their relatives without having to buy newspapers, watch the news on television, and others.

People in Indonesia generally are still very unfamiliar with various types of new instruments in the investment world. Even some people seem not to want to know how to make a good and proper investment. Often people are oriented to how much results they will get, so the first thing they are always asked when there is a type of investment that has just been offered is how much profit. Some people are dazzled by the lure of large profits regardless of the risks involved. Therefore, the phenomenon of investment fraud or fraudulent investment emerged. It is as if an institution manages public funds and invests in various types of investments, but in reality, it is only a money game. Problems that often occur in online fraud crimes are related to evidence and are related to legal actions carried out through electronic systems. The provisions governing fraud in the Criminal Code (hereinafter referred to as the Criminal Code) still cannot accommodate acts committed through electronic systems, because in general, fraud perpetrators through online media also use e-mail to communicate with their victims.

As indicated by the arrangements of Article 1 number 2 of Law Number 11 of 2008 jo. Regulation Number 19 of 2016 concerning Electronic Information and Transactions (hereinafter alluded to as the ITE Law), expresses those electronic exchanges are legitimate demonstrations done utilizing PCs or other electronic media. From this portrayal, it tends to be reasoned that Indonesia has not explicitly controlled web-based speculation and lawful assurance for survivors of online-based venture extortion.

In general, the crime of fraud is a crime against property, as regulated in Article 378 of the Criminal Code, namely: Article 378 as a series of lies inciting another person to hand over something to him, or to give a debt or write off a receivable, is threatened with fraud with a maximum sentence of 4 years in prison.

Based on the elements of the criminal act of fraud contained in the formulation of the article, then R. Sugandhi in the explanation of the Criminal Code put forward the meaning of fraud that 8 (eight) no rights. A series of lies is an arrangement of false sentences arranged in such a way that it is a story of something that seems to be true ".[8]

From the definition of fraud, it can be seen clearly that what is meant by fraud is a ruse or a series of lies that cause someone to feel deceived because of what seems to be true. Although

the elements in Article 378 of the Criminal Code are fully fulfilled, there are elements of online fraud that are not fulfilled in the provisions of Article 378 of the Criminal Code, namely the non-fulfillment of the main media elements used in committing online fraud, namely electronic media that are not yet known in the Criminal Code. In the Criminal Code and the Criminal Procedure Code, there are different ways of fraud between conventional fraud and online fraud, and there are also limitations in the Criminal Code, namely not being able to impose criminal liability on legal subjects in the form of legal entities (corporations) that commit online fraud.

The ITE Law does not specifically regulate fraud that occurs in online investment activities, but Articles 27 to 35 of the ITE Law regulates prohibited acts, and one of these Articles regulates acts that are prohibited. cause harm to consumers in online or electronic transaction activities. Article 28 paragraph (1) of the ITE Law does not regulate the crime of fraud, however, it is related to the emergence of consumer losses in online transactions. Related to the formulation of Article 390 of the Criminal Code although with a slightly different formulation that uses the phrase "broadcasting false news." According to R. Soesilo that has written in the Criminal Code and the Complete Comments Article by Article, the defendant can only be punished by Article 390 of the Criminal Code, if the news that is broadcast is false news. The fake news referred to here is not just telling a piece of empty report, but telling something untrue about an incident. When viewed from the explanation, then Article 28 paragraph (1) of the ITE Law also applies.

Accountability is one part of a system of rules in morals, religion, and law. The concept of criminal responsibility leads to an understanding of punishment for perpetrators of criminal acts. In terms of a criminal act according to Alf Ross, Roeslan Saleh answered that being responsible for a criminal act means that the person concerned can legally be subject to a crime because of that act. In short, it said that this action is justified by the legal system that is the basic concept.

This responsibility is stated by the existence of a relationship between the facts that are the conditions and the legal consequences required. The Criminal Code does not regulate the notion of the ability to be responsible, but there are rules relating to the ability to be responsible, namely as contained in Article 44 paragraph (1) of the Criminal Code, the official text (Dutch) uses the term “gebrekkige ontwikkeling of ziekelijke storing zijner Verstandelijke vermogens,” which has been translated by the Translation Team of the National Legal Development Agency as Article 44 paragraph (1) No one can be convicted of an act that cannot be accounted for by him because his mind is not perfect or he has changed his mind.

In light of Article 44 passage (1), Moeljatno presumes that for the capacity to be dependable there should be: The capacity to recognize great and horrifying acts, those that are keeping the law and those that are illegal. The capacity to decide his will as per the acknowledgment of the great and awful deeds. [5] This premise is tied in with being considered responsible for what he has done. It implies that an individual is responsible assuming that individual commits an error or commits a demonstration that disregards legal guidelines. This lawfulness standard suggests that there is no precluded act and is undermined with a crook on the off chance that it has not been expressed in a legal rule. The motivation behind this is that an individual must be considered responsible assuming the demonstration has to be sure been controlled, and an individual can't be rebuffed or considered responsible assuming that the guideline shows up after a crook act has been committed. The lawful standards contained in criminal obligation have the utilization of deciding the prerequisites contained in the culprit. At long last, the culprit can be lawfully rebuffed.

The element of a crime in criminal science can be interpreted as an element of the offense (element of the offense). One of the offenses discussed is an element of the offense. In proposing a charge for the offense, all elements of the offense need to be proven to the perpetrator of the crime. So that if there is only one element that does not meet, the result is that the maker of the

offense cannot be blamed for the offense given to him. Then the perpetrator of the act must be freed from all lawsuits (onslaag van rechts alle vervologing). Elements of offenses are generally divided into 2 elements, namely: (1) objective elements, which can be called actus reus, and (2) subjective elements, or what can be called mens rea. Actions that will fill the elements of an objective offense are actions that in doing so contain elements that are against the law.

4 Conclusion

Lawful brokenness can be settled in different ways, including utilizing the legitimate rule or regulation of lex specialis derogat legi generalis. Article 28 passage (1) of the ITE Law has more point-by-point components in regards to exchanges in the internet than Article 378 of the Criminal Code so it tends to be deciphered that Article 28 section (1) of the ITE Law is lex specialis derogat legi generalis from Article 378 of the Criminal Code. As well as having more nitty gritty components in the conversation of discipline for online extortion, Article 28 Paragraph (1) of the ITE Law can meet the standards of the lex specialis derogat legi generalis guideline, in particular: Regulations managed overall legitimate principles actually apply, besides as explicitly directed in the unique legitimate standards. Lex specialis regulation guidelines have a similar level as the lex generalis arrangements. Also, the lex specialis guidelines are expected to administer in a legitimate climate indistinguishable from the lex generalis.

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