

# A Criminological Outlook of Cyber Crimes in Sexual Violence Against Children in Indonesian Laws

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**Abstract:** The purpose of this study is to analyze the cybercrimes in sexual violence against children in Indonesian laws. Act Number 11 of 2008 concerning Information and Electronic Transactions, concerning cybercrime specifically regulated in Indonesia. Of the various types of cybercrime that occur in Indonesia, it is interesting to study the vacuum norms governing cyber pornography carried out on children in Act Number 11 of 2008 concerning Information and Electronic Transactions. The crime can be said as violence against children whose punishment can be aggravated as stipulated in the Child Protection Act. This research is a normative legal study by examining the absence of norms in the ITE Law regarding sanctions imposed on perpetrators of child abuse in cyberspace. The study was conducted by using normative research methods so that utilizing primary legal materials such as the Criminal Code, Child Protection Act, Pornography Law, and Electronic Information and Transaction Law. Based on the collection and analysis of the legal material, the results showed that there is a need for criminal penalties for cyber pornography against children. This is done by considering the impact of the crime on the development of children and aims that the perpetrators deter and prevent similar crimes. The results practically contribute that the government is expected to play an active role in continuing to provide protection and assistance for psychological recovery from victims.

**Keywords:** Criminology, sexual violence, child protection, cyber crimes, Indonesia.

## 1. INTRODUCTION

Technology is the key to changing the order of people's lives toward digital, one of which is a change in communication patterns. Technological developments have had a major impact on human life which brought many changes. Much different from the pattern of communication carried out today by using the internet as its base. Communication can be done via electronic mail, chat applications, and various social media that offer various features to facilitate communication. Various good effects of the development of internet technology as a communication base turned out to be misused by a group of people to commit a crime called cybercrime (Kromer, 2018; Hiller, 2013).

The ease in various matters is a positive effect of technological sophistication, but the convenience is a gap for the emergence of new crimes. Crimes committed by utilizing this technology are often referred to as cybercrime or cybercrime. Cybercrime can be referred to as an extension of criminal acts in general, only using different modes by utilizing technology as a means of committing crimes. Indonesia itself has been aware of the existence of cybercrime since the beginning of 1991 with bank burglary by teenagers by utilizing computer facilities. Cybercrime is a term used to designate cybercrime. The term cybercrime is also

synonymous with computer crime as used by the U.S. Department of Justice, which defines it as an illegal act requiring knowledge of computer technology for its perpetration, investigation, or persecutions (Fuady, 2005; Kim *et al.*, 2012). Cybercrimes are carried out without recognizing space boundaries so that they can transnational boundaries. Therefore, cybercrime is included in international types of crime based on the United Nations Convention Against Transnational Organized Crime (Palermo Convention) (Clark, 2004) and based on the ASEAN Declaration of 20 December 1997 in Manila (Emmers, 2002; Elliott, 2007; Suhariyanto, 2012).

Various types of cybercrime occur throughout the world, but, cybercrime is a change in the modus operandi of conventional criminal acts using internet media, including hate speech, hoaxes, cyberporn, carding, and so on. One type of cybercrime that occurs in Indonesia and is a concern is cyberporn. This is because it is easy for the public (especially minors) to access the contents of contents that violate decency. Cyberporn is now not only limited to pornographic content but also entered into the form of online prostitution. It is even more alarming when prostitution is linked to children as victims (Paasonen, 2011).

The rise of cases of child sexual violence online is also supported by data from the Indonesian Child Protection Commission (KPAI) which shows that in 2016 there were 78 cases of children as victims of online sexual crimes and 62 cases of children as victims of online prostitution. A similar opinion was

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conveyed by Siti Sapura in a discussion organized by LBH of the Indonesian Women's Association for Justice (APIK), where there was a recent development in sexual violence against children online. The perpetrators will look for victims using social media and use the initial mode to ask children to show their nude photos on social media. At first, the perpetrator will only seduce, but after a long time, the perpetrator will force and threaten the victim if his request is not fulfilled. In that depressed condition, the victim will obey the victim's request. Although many cases of sexual violence against children online occur, not all can be revealed. Besides, all this time the perpetrators have only been charged under Article 27 paragraph (1) of the ITE Law concerning the distribution of immoral content. This is felt to still lack legal protection for victims who are children. Though the effects caused by psychological trauma on these children are very alarming. So that the problem of crime which should be imposed on child predators is the next problem and subject of the study in this paper.

## 2. RESEARCH METHOD

This research is a normative legal study by examining the absence of norms in the ITE Law regarding sanctions imposed on perpetrators of child abuse in cyberspace. This is because sexual violence against children through cyberspace is one type of cybercrime that is cyberporn. So that sexual crimes against children can be classified as white-collar crimes where criminal sanctions can be aggravated. This is because the perpetrators use technology, in a planned and systematic manner in developing strategies to find victims. Besides that, the number of victims was not small and could be done trans-nationally, so it was felt that criminal sanctions were needed to formulate that could provide legal certainty and legal protection for victims. The legal materials used to support the discussion of problems in this study are legal materials obtained through library research in the form of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials that will be used are the Criminal Law Act, Law Number 23 of 2002 concerning Child Protection, Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, Law Number 11 of 2008 concerning Information and Electronic Transactions, Law Number 19 of 2016 concerning Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions.

Legal materials related to the problems examined in this study will then be collected through a literature

study by identifying the sources of legal material literature, then proceed with identifying the legal materials that are needed, and finally to inventory the required legal materials. Furthermore, the legal material will be recorded on a small sheet and included in a list of cards that are arranged systematically according to the focus of the problem under study. The legal material that has been collected through the card register system is qualitative data, which is then analyzed descriptively based on the problem under study. Thus this paper is a descriptive analysis.

## 3. ADVANCES IN INFORMATION TECHNOLOGY AND CHANGES IN WORLD CRIMES

Advances in information technology have resulted in a shift in the behavior patterns of human life in all aspects. Information technology was initially used to facilitate everyone in communicating, until now it is used as a primary means of communication and social interaction. Information technology is also used as an effective means of marketing a product so that it becomes a separate market place or what is called an e-commerce business. Companies that start their business through e-commerce are called start-ups, namely Go-Jek, Tokopedia, Bukalapak, and Traveloka which rely on information technology as the key to their success (Santisteban, & Mauricio, 2017; Nugroho et al., 2017). The development of information technology also changes the way transactions with e-money as virtual funds.

The rapid development of information technology with all the conveniences that it provides turns out to also bring negative impacts in the form of crime in cyberspace or referred to as cybercrime. This is a crime that in its mode of utilizing information technology facilities referred to as cybercrime (Liang & Lu, 2010). This criminal act is an extension of criminal acts in general as regulated in the Indonesian Criminal Code but with the use of information technology, these criminal acts occur in a different space (dimension) of cyberspace. Cybercrime occurs virtually in cyberspace, so it is difficult to see the occurrence of a crime and determine the locus delicti of the crime. Therefore in Indonesia, it is called cybercrime.

Cybercrime is a new form of crime that is currently receiving widespread attention, both in national, regional, and international scope. It is called the new form of anti-social behavior. Several other nicknames include cyberspace/virtual space crime, a new dimension of hi-tech crime, a new dimension of

transnational crime, and a new dimension of white-collar crime (Arief, 2006). Wahid and Labib (2005) added that cybercrime is the price of globalization. The presence of cybercrime is a justification that the era of globalization requires vigilance. Globalization presents a world without limits marked by the presence of imaginary and virtual space, which makes it possible for everyone to carry out activities that can be carried out in everyday social life artificially. By some people, this is misused by utilizing the imaginary space as a locus delicti to commit criminal acts.

Crime is closely related to the development of society. The more advanced the life of the people, the crime that occurs is also more advanced. So that, crime is the result of culture itself. This means that the higher the level of culture and the more modern a nation, the more modern crime in the form of nature, and how to implement it (Wahid, 2002). Hamzah (1996) stated that the community will always change from time to time. The greater the influence of the environment, the greater the changes in the community itself, both positive and negative changes.

Cybercrime or what is referred to as computer crime in the US is an illegal act that utilizes computer facilities that can harm others. Meanwhile, according to Gema (2000), cybercrime not only uses the sophistication of computer technology but also involves telecommunications technology in its operation. Safitri (1999) expressed a similar view by stating that cybercrime is a type of crime related to the use of unlimited information technology and has strong characteristics with technological engineering that relies on a high level of security and credibility of the information delivered and accessed by the internet customers. Edmon Makarim (2007) stated that crime on the internet or cybercrime is a crime related to cyberspace, both those that attack public facilities in cyberspace or private ownership.

The development of crime follows the dynamics of society and technological development. So that the crime mode also shifts along with changes in technology. One of them can be exemplified by the mode of theft before the introduction of technology, then theft will be carried out with physical contact by moving goods. Unlike the case today where theft has found another method that is by utilizing the rapid development of information and communication technology. In committing a cybercrime, of course, it must be accompanied by special expertise possessed by the perpetrators and by utilizing internet technology.

So without mastery of internet technology, a person might not be able to commit cybercrime. Besides, cybercrime cannot also be equated with a blue-collar crime, where the crime is carried out conventionally.

In cyberspace crime generally does not involve physical contact between perpetrators and victims, given that locus delicti is in cyberspace and utilizes the sophistication of information technology. Besides, it often happens that the perpetrators and victims are in different regions of the country, so this will relate to the principle of jurisdiction used in enforcing applicable law. Also, because it crosses national borders, diplomatic issues need to be considered whether there is an agreement on extradition between the two countries. Based on these considerations, cybercrime also has white collar crime characteristics.

#### 4. SEXUAL CRIMES AND CYBERCRIME

Cybercrime is a crime that developed in the modern era as a negative result of the development of information technology. The main mode in this crime is to use computer facilities or other communication devices that have a computerized network. In carrying out these crimes, the perpetrators will use the internet as a link between the perpetrators and their victims. Therefore, in cyberspace crime, there is no direct interaction that occurs between the perpetrator and his victims. Cybercrime has various types as described in the Convention of Cyber Crime prepared by the European Committee on Crime Problems (CDPC) and the Committee of Experts on Crime in Cyber-Space (PC-CY) of the Council of Europe. The convention contains 9 (nine) types of cybercrime, namely Illegal Access, Illegal Interception, Data Interference, System Interference, Misuse of Devices, Computer-related Forgery, Computer-related Fraud, and Content-related Offenses, which are divided into related offenses to child pornography and offenses related to infringements of copyright and related rights (Arief, 2007).

The restorative justice theory is known as the basis for punishment. It is a theory that emphasizes the recovery of harm caused by the occurrence of an unlawful. Recovery of this loss will be achieved through cooperative processes that include all interested parties (Yunus, 2013; Hasan, 2013; Iman, 2018). This opinion is similar to the statement formulated by Prison Fellowship International where Restorative Justice is formulated as a theory of justice that seeks to correct the chaos caused by criminal acts. This method is the

best resolution effort when the parties themselves act cooperatively to decide how to resolve it (Yunus, 2013).

Based on the theories about the punishment, the punishment of perpetrators of sexual crimes against children in cyberspace should not only be a fair retaliation to the perpetrators but also useful to cause a deterrent effect and prevent the recurrence of similar crimes. Also, based on restorative justice, the government is responsible for rehabilitating psychological conditions of victims of child sexual violence, including if necessary protecting the Witness and Victim Protection Agency (LPSK). So that in the ITE Law it is necessary to have additional articles and/or paragraphs regulating the weighting of perpetrators of sexual violence against children in cyberspace. The criminal offense is carried out by adding 1/3 (one third) of the maximum sentence threatened in the ITE Law regarding the dissemination of immoral content of cyber pornography. Furthermore, the addition of articles and/or paragraphs is also needed to regulate the obligations and responsibilities of the state in restoring the condition of children as victims of sexual violence in cyberspace.

## 5. CONCLUSION

The study purposed to analyse cyberspace and its negative utilization as a tool for cybercrime as a consequence of digital technology development has an enormous impact on social life patterns. In the context of cybercrime of sexual violence against children, cyberspace also affects the criminal pattern by utilizing technology as a criminal basis. The main findings presented that sexual violence that is carried out on children in cyberspace can have a psychological impact on the child that is a sense of trauma and feelings of helplessness from the child so that the child's growth and development in the future. Besides, children will also feel betrayed and lose trust in the surrounding environment, including their immediate family. The feeling of betrayal can also be caused by the stigma in the community that gives labels to children as victims of child sexual violence. This impact can be more widespread on sexual violence in cyberspace given the ease of accessing and distributing it even on a wider scale of society.

In the ITE Law in Indonesia, there is no specific regulation regarding crimes that are threatened for perpetrators of child sexual violence in cyberspace but only mentions cyber pornography in general. Therefore, in criminal cases, some cases of child

sexual violence in cyberspace, only use the provisions governing the dissemination of immoral content. So that the ruling on the law is the same as adult victims. Theoretically, the study contributes to strengthening existing laws and regulations regarding cybercrime in Indonesia by theoretically considering the impact of the crime on the development of children and aims that the perpetrators deter and prevent similar crimes. The results practically contribute that the government is expected to play an active role in continuing to provide protection and assistance for psychological recovery from victims.

## REFERENCES

- Arief, B. N. (2006). Tindak pidana mayantara: perkembangan kajian cyber crime di Indonesia. *RajaGrafindo Persada*.
- Arief, B. N. (2007). Masalah penegakan hukum dan kebijakan hukum pidana dalam penanggulangan kejahatan. *Kencana Prenada Media Group*.
- Clark, R. S. (2004). The United Nations Convention Against Transnational Organized Crime. *Wayne L. Rev.*, 50, 161.
- Elliott, L. (2007). Transnational environmental crime in the Asia Pacific: an 'un (der) securitized' security problem?. *The Pacific Review*, 20(4), 499-522.  
<https://doi.org/10.1080/09512740701671995>
- Emmers, R. (2002). The securitization of transnational crime in ASEAN.  
<https://doi.org/10.1080/0951274032000085653>
- Fuady, M. E. (2005). "Cybercrime": Fenomena kejahatan melalui Internet di Indonesia. *Mediator: Jurnal Komunikasi*, 6(2), 255-264.  
<https://doi.org/10.29313/mediator.v6i2.1194>
- Gema, A. J. (2000). Cybercrime: Sebuah Fenomena di Dunia Maya. Accessed on [www.theceli.com](http://www.theceli.com).
- Golubev, V. Cyber-crime and legal problems of Internet usage. *Zaporizhia Law Institute, Ministry of Interior of Ukraine*, 1.
- Hamzah, A. (1996). Hukum acara pidana Indonesia. *Sapta Artha Jaya*.
- Hasan, H. (2013). Penerapan keadilan restoratif dalam sistem peradilan pidana anak di Indonesia. *Jurnal Hukum dan Peradilan*, 2(2), 247-262.  
<https://doi.org/10.25216/JHP.2.2.2013.247-262>
- Hiller, J. S. (2013, June). Legal aspects of a cyber immune system. In 2013 5th International Conference on Cyber Conflict (CYCON 2013) (pp. 1-15). IEEE.
- Iman, C. H. (2018). Kebijakan Hukum Pidana Perlindungan Anak dalam Pembaruan Sistem Peradilan Pidana Anak di Indonesia. *Jurnal Hukum dan Peradilan*, 2(3), 358-378.  
<https://doi.org/10.25216/JHP.2.3.2013.358-378>
- Kim, C., Newberger, B., & Shack, B. (2012). Computer crimes. *Am. Crim. L. Rev.*, 49, 443.
- Kromer, M. (2018). Leveling the Playing Field: Law Enforcement and the Challenges of Mobile Digital Forensics (*Doctoral dissertation, Utica College*).
- Liang, B., & Lu, H. (2010). Internet development, censorship, and cyber crimes in China. *Journal of Contemporary Criminal Justice*, 26(1), 103-120.  
<https://doi.org/10.1177/1043986209350437>
- Makarim, E. (2007). Tindak Pidana terkait dengan Komputer dan Internet: Suatu Kajian Pidana Materil dan Formil. In Seminar Pembuktian dan Penanganan Cyber Crime di Indonesia, *FHUI, Jakarta*.

- Nugroho, A. H., Bakar, A., & Ali, A. (2017). Analysis of technology acceptance model: Case study of Traveloka. *Arthatama: Journal of Business Management and Accounting*, 1(1), 32-37.
- Paasonen, S. (2011). Online pornography: Ubiquitous and effaced. *The handbook of internet studies*, 14, 424.  
<https://doi.org/10.1002/9781444314861.ch20>
- Safitri, I. (1999). Tindak Pidana di Dunia Cyber, Insider, Legal Journal From Indonesian Capital and Investment Market. Accessed on <http://business.fortunecity.com>
- Santisteban, J., & Mauricio, D. (2017). Systematic literature review of critical success factors of information technology startups. *Academy of Entrepreneurship Journal*.
- Suhariyanto, B. (2012). Tindak Pidana Teknologi Informasi (Cybercrime). *Raja Graffindo Persada, Jakarta*.
- Wahid, A., & Irfan, M. (2002). Kriminologi dan kejahatan Kontemporer. *Lembaga Penerbitan Fakultas Hukum Unisma, Malang*.
- Wahid, A., & Labib, M. (2005). Kejahatan Mayantara (cyber crime). *Refika Aditama*.
- Yunus, Y. (2013). Analisis Konsep Restorative Justice Melalui Sistem Diversi Dalam Sistem Peradilan Pidana Anak Di Indonesia. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 2(2), 231-245.  
<https://doi.org/10.33331/rechtsvinding.v2i2.74>

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