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## THE APPLICATION OF CRIMINAL LAW AND FORMS OF E-COMMERCE BUSINESS CRIME IN INDONESIA

**Indra Gunawan Purba, S.H, M.H,**

*Students doctoral (S3) course of law science, University of North Sumatera, Indonesia*

*Email: indrapurba07081978@gmail.com*

### **Abstract**

*Based on a reality that e-commerce transactions that utilize internet media which is not only limited to local or national scope but walking without limits, thus leading to the choice of law, choice of forum and jurisdiction, then do some research to find out what is e-commerce crime, how the application of the law of e-commerce in the crime and how the forms – forms of e-commerce business crime. E-commerce is the use of computer networks (interconnected computers) as a means of creation of the business relation. E-commerce crime which is a new and sophisticated crime, then in law enforcement it's good thinking cyberlaw opened and looked upon seriously, there are at least 16 forms of e-commerce crime if seen from its activity, whereas if seen from e-commerce crime motive can be for 2 (two).*

**Keywords:** e-commerce, e-commerce crime, e-commerce law and e-commerce crime.



## **A. Introduction**

Beginning in the 1970 's, the technology of the PC (Personal Computer) were introduced as an alternative replacement mini computer. The development of computer technology, telecommunication and information have been growing very rapidly in this present era. With increasing public knowledge and curiosity that is huge on this field, as well as increasing the existing facilities so that people can easily learn computer technology. Through the internet, trade transactions can be carried out quickly and efficiently. Trade or transactions via the internet, better known as e-commerce. The Internet in addition to benefit also raises the negative effects.

The usefulness of computers in companies not only to improve the efficiency, but further to support the occurrence of a work process more effective. Unlike the case in the era of computerization which computers just to be "private property" divisions of the EDP (Electronic Data Processing) enterprises, in this second era of each individual in your organization can take advantage of computer sophistication, such as to process database, spreadsheet, and data processing (end-user computing).

There is no denying that the customer satisfaction lies in the quality of service. Basically, a customer in selecting the products or services they need, will be looking for companies that sell such products or services: cheaper (less expensive), better (much better), and faster (faster). This is where the role of the information system as a key component in providing a competitive advantage of the company. Therefore, the key to the company's performance was in the process of happening both within the company (back office) as well as those directly affecting customers (front office). By focusing on the creation of processes (business process) that is efficient, effective, and controllable with let a company will have a reliable performance. No wonder that in the years 1980-1990 year by early 80s looks an awful lot of companies that are doing the BPR (Business Process Reengineering),

The progress of computer technology, information technology, and communications technology raises a new criminal act which has different



characteristics with conventional crime. Computer abuse as one third of the development impact of its typical so bring a rather complicated new problems to be solved, with regard to the issue. Computer crime related to the code of ethics of the profession because it is still in the context of a profession that is in this case in the field of IT. Which was later increased to crimes in cyberspace or known as cybercrime. This obviously also interfere with the operations of the business world in cyberspace where many users are very harmed.

No one can resist its speed of development of information technology. Its existence has removed the boundary lines between countries in terms of the flow of information. No country is able to prevent information from flowing out or out of other countries, because of the limits between the countries is not known in the virtual world of computer. The application of technologies such as LAN, WAN, GlobalNet, Intranet, Internet, Extranet, the day the more evenly and is widespread in the community. Proven to be very difficult to determine the appropriate legal device and proven effective to ward off everything that is associated with the creation and flow of information. The companies had not tied to physical restrictions again. Through the virtual world of computer, one can search for customers in all walks of life of the world connected to the internet network. Hard to quantify the magnitude of money or investments that flow freely through the internet network. Trade transactions can be easily done in cyberspace through electronic transaction using electronic money. Not rarely the company finally had to redefine its business vision and mission, especially those struggling in the field of granting of services. Amenity offered sophisticated information technology devices have changed the mindset of management companies so it is not rare that company banting stir to cultivate other areas. For third world countries or the emerging dilemma regarding the utilization of information technology is sorely felt. On the one side of many companies are not ready because of the structure of the culture or the HR, while on the other major investments must be issued for the purchase of information technology devices. Does not have information technology,



meant the company could not compete with other multi-national, aka should roll the mat.

There is no denying anymore that Electronic Commerce has become a prima donna in the discourse of pembicaran global business world today. A large number of recorded seminars on this subject has been done by practitioners in business and information technology in Indonesia during the last two years. Each seminar was held on the point is introducing a global phenomenon and outs had "forced" the company inevitably to observe the existence of this technology if it is to remain competitive and to present a wide array of information technology available in the market to help companies update the use of "electronic commerce" the use of herself in a relatively fast. Magazine-agricultural magazines and newspapers-agricultural newspapers smelling economics and business was not lost to the incessant promote about the sophistication of digital technology. But in spite of the wide range of views and responses, there are some fundamental things that are completely untouched in a variety of discourses. This concerns the impact of macro that will occur if it is assumed that the world was later connected digitally, so that any individuals and corporations can freely Transact over the internet.

Now the internet has become a special issue since utilized in trade or business activities. Recognised economically, utilization of the internet has provided added value in speeding up the process of transactions, but legally the issue of utilization of internet is very risky for the parties because its characteristics are very different from business conventional, so it is difficult to reach by the rules of the applicable law.

E-Commerce is one of the most tranksaksi forms of trade affected by the development of information technology. This concept of trade transactions through traditional market (sellers and buyers physically meet) turn into Telemarketing system (remotely using the internet). E-Commerce has changed the way consumers in obtaining the desired product.



The reason for this is based on a reality that e-commerce transactions that utilize the internet to its not only limited to local or national scope but walking without limits, thus leading to the choice of law, choice of forum and problems jurisdiction.

### **Problem Identification**

Formulation of the problem is the legal issues – issues become a problem that needs to be figured out through a study, in such case then in this paper which become problems in this paper are:

1. What is the Crime of e-Commerce?
2. how the application of the law of e-commerce in the crime?
3. how to forms of the e-commerce Business Crime?

### **B. Method**

based on the issues examined, then the method used is the normative legal research methods. normative legal research methods is the way that is done by examining the existing library materials. research conducted are deskripif by describing the symptoms that arise in society against a case. the research was done to appeal to the principle of legal principles-made against positive law written or unwritten, for this crime-related e-commerce.

### **C. Discussion**

Electronic commerce or e-commerce is spreading, purchasing, sales, marketing goods and services through electronic systems such as the internet or television, www, or other computer network. E-commerce can involve electronic funds transfer, electronic data interchange, automatic inventory management systems, and automated data collection systems. And the difference with the first with konfensional is the medium used is electronic and telecommunication systems intensively as a means to transact its business.



### **a. the definition of e-commerce**

E-commerce is a term often used or heard at this time related to the internet, where one does not know the clear understanding of e-commerce. According to experts the understanding of e-commerce are:

- a. electronic commerce or also known as e-commerce, is the use of computer and communication network to implement business processes. The popular view of e-commerce is the use of the internet and a computer with a Web browser to buy and sell products. McLeod Pearson (2008:59).
- b. According to Shely Cashman (2007:83) E-commerce or short for electronic commerce (electronic trading), is a business transaction that occurs in electronic networks such as internet. Anyone who can access the computer, have a connection to the internet, and have a way to pay for goods or services they buy, can participate in e-commerce.
- c. According to Jony Wong (2010:33) the understanding of electronic commerce is the buying, selling and marketing goods and services through electronic systems. Like radio, television and computer networks or the internet.

The definition of "E-Commerce" itself is very varied, depending on the perspective or sunglasses that make use of them. The Association for Electronic Commerce in a simple mendefinisikan E-Commerce as "the mechanisms of business electronically". CommerceNet, a consortium of industry, provides a more complete definition, that "the use of computer networks (interconnected computers) as a means of creation of business relations". Not satisfied with the definition, CommerceNet added that in E-Commerce happened "the process of buying and selling services or products between the two sides over the internet or Exchange and distribution of information between two parties in one companies using the intranet".

E-Commerce as "a kind of business electronically mechanism that focuses on individual-based business transactions using the internet as a medium of exchange of goods or services between two institutions as well as between institutions and consumer direct".



The development of information technology, particularly the internet, is the driving factor for the development of e-commerce. The Internet is a global network that unites the worldwide computer network, thus allowing the establishment of communication and interaction between each other all over the world. The exchange of information in E-Commerce is done in digital format so that the need for sending data in printed form can be removed. By using computer system connected via telecommunication networks, business transactions can be performed automatically and in a short time. As a result the information needed for the purposes of a business transaction is available at the time required. By doing business electronically, companies are able to suppress the costs that must be incurred for the purpose of sending information. Process transactions that take place quickly also resulted in increased firm productivity.

With the use of information technology, E-Commerce can serve as a solution to help companies in developing the company and faced the pressure of business. The high pressure business that appear due to the high level of competition requires companies to be able to give a response. The use of E-Commerce can enhance the cost efficiency and productivity of the company, so as to enhance the capabilities of the company in competing.

There are a few E-commerce as seen from its characteristics are:

1. Business-to-Business (B2B), Business to Business characteristics:
  - a. Trading partners who already know each other and between them have already builds a relationship that lasts long enough. Information is only exchanged with partners.
  - b. data exchange is done repeatedly and regularly with the format of the data that have been mutually agreed.
  - c. one of the perpetrators do not have to wait for their other colleagues for sending data.
  - d. common Model is peer to peer, where processing intelligence can be distributed in both businesses.



2. Business to Consumer (B2C), Business-to-Consumer characteristics:
  - a. Open to the public, where information is disseminated in public anyway and freely accessible.
  - b. the services being used are common, so it can be used by many people. For example, because the system is already in common use then the web service provided with web-based.
  - c. Services used on request.
  - d. frequently performed a system approach to client-server.
  
3. the Cosumer to Consumer (C2C) C2C In a consumer can sell goods directly to consumers more, or could be called also people who sell products and services to each other.  
An example is when there are individuals who make sales at classified ads (for example, [www. Classified2000. com](http://www.Classified2000.com)) and sold the property to residential homes, cars, and so on.

#### **b. Application of the law In E-Commerce Crimes**

Rights and obligations is meaningless if it is not protected by law that can crack down on those who deny. A document to be presented to the future Court should follow three main rules:

1. The rule of authentication;
2. the Hearsay rule; and
3. The Best Evidence rule.

Modern courts have been able to adapt these three types of rules in E-commerce systems. The problem of authentication credentials for example have been able to be solved by incorporating elements of origin and accuracy of email storage if want to become as evidence (email system has been audited to prove that it was technically only a specific person can have an email with a particular address, and no one else can change the contents of the email or send it in addition in question).

Including to process digital documents have authentication credentials can be implemented with the concept of a digital signature. Aspects of the hearsay statements that question is? the out of court statement may be submitted as evidence. In cyberspace, things like email,





chat, and teleconference can be a source of potential entities that can be used as evidence.

But of course the courts must make sure that a variety of such evidence can really accounted for righteousness. Factors of best evidence hold on the hierarchy of the types of evidence that can be used in court to convince the parties about a related things, ranging from a written document, recorded talks, videos, photos, and more. Things like the above in addition to easily have can gets digitized by the computer, can also be manipulated without difficulty; in connection with this, the courts usually hold on to the principle of originality (looking for evidence of the original).

In conducting e-commerce, certainly have a legal umbrella, especially in Indonesia. Law number 11 Year 2008 Regarding the Internet and Electronic Transaction, although not yet in its entirety or overarching goals include deeds or activities in a virtual world, but had enough to be able to be a reference or benchmark in the conduct the cyber activities.

Several pasals in the law of the Internet and Electronic Transaction involved in e-commerce is as follows:

1. Pasal 2

This law applies to any Person who commits the Act law as set forth in this law, either in the law of Indonesia and outside Indonesia, jurisdictions which have legal consequences in the area of the law of Indonesia and 250 outside Indonesia law and harming the interests of Indonesia.

2. Pasal 9

Businessmen offering products through the electronic system must provide complete and correct information relating to the terms of the contract, the manufacturer, and the products offered.

3. Pasal 10

1. any businessmen who organized the Electronic Transactions can be certified by Certifying the reliability.
2. Provisions on the formation of Certifying the reliability as mentioned in subsection (1) is set by government regulations.



#### 4. Pasal 18

1. Electronic transactions that are poured into Electronic contracts are binding on the parties.
2. The parties have the authority to choose the applicable law for International Electronic Transactions.
3. If the parties do not do a choice of law in international electronic Transaction, the applicable law is based on the principle of International civil law.
4. The parties have the authority to assign the forum court, arbitration, or other alternative dispute resolution institution authorized to handle disputes that may arise from international Electronic Transactions.
5. If the parties do not do a choice of forum as referred to in paragraph (4), the determination of the powers of the courts, arbitration, or other alternative dispute resolution institution authorized to handle disputes that may arise from transactions These, based on the principle of International civil law

#### 5. Pasal 20

1. Unless specified otherwise by the parties, Electronic Transaction occurs when the sender sent transactions offer has been accepted and approved recipient.
2. Approval of Electronic Transactions offer referred to in subsection (1) must be made with the acceptance of electronically.

#### 6. Pasal 21

1. The sender or recipient can do electronic transactions themselves, through parties delegated by him, or via Electronic Agents.
2. The parties are responsible for any legal consequences in the implementation of electronic transactions as referred to in subsection (1) is set as follows:
  - o If done alone, all the legal consequences in the implementation of an electronic Transaction is the responsibility of the parties to the transaction;



- If done through the granting of a power of Attorney, any legal consequences in the implementation of an electronic Transaction is the responsibility of the giver of power; or
  - If done via Electronic Agents, all the legal consequences in the implementation of an electronic Transaction is the responsibility of the organizers of electronic Agents.
3. If the electronic transaction losses attributable to the operation of the Electronic Agent failed due to the actions of third parties directly to the system electronics, all the legal consequences become the responsibility of the organizers of Electronic Agents.
  4. If the electronic transaction losses attributable to the operation of the Electronic Agent failed due to the negligence of the user, service sides of all legal consequences is the responsibility of users of the services.
  5. The provisions referred to in subsection (2) does not apply in case of occurrence of circumstances can be proven force, errors, and/or omissions user party electronic systems.
7. Pasal 22
1. the specific Electronic Service Agent Organizers must provide features on the operation of the electronic Agent allows users make changes to the information that is still in the process of the transaction.
  2. further Provisions on certain Electronic Agent organizers referred to in subsection (1) is set by government regulations.
8. Pasal 30 of
1. Any person intentionally and without rights or unlawfully accessing computers and/or electronic systems belong to others in any way.
  2. Any person intentionally and without rights or unlawfully accessing computers and/or electronic system by whatever means for the purpose of obtaining electronic information and/or electronic documents.



3. Any Person intentionally and without rights or unlawfully accessing computers and/or electronic systems in any way by breaking, break through, bypassing, or break down the security system.

#### 9. Pasal 46

1. Any person who fulfills the elements referred to in pasal 30 paragraph (1) are convicted with imprisonment of not longer than 6 (six) years and/or a maximum fine of Rp RP 600.000.000 (six hundred million rupiah).
2. Any person who fulfills the elements referred to in pasal 30 paragraph (2) are convicted with imprisonment of not longer than 7 (seven) years and/or a maximum fine of Rp RP 700.000.000 (seven hundred million rupiah).
3. Any person who fulfills the elements referred to in pasal 30 paragraph (3) are convicted with imprisonment of not longer than 8 (eight) years and/or a maximum fine of Rp RP 800.000.000 (eight hundred million rupiah).

In addition to referring to the law number 11 Year 2008 Tentang Internet Electronic Transactions & above, there are few regulations or legislation that is binding and can serve as an umbrella law in e-commerce business activity, such as:

1. The book of the law of criminal law
2. The book of the law of Criminal Procedure Law
3. The book of the law of civil law
4. The book of the law of Civil Law
5. The book of law commercial law
6. Law No. 8 Year 1997 Of corporate documents
7. Act No. 30 of 2000 On trade secrets
8. Act No. 40 Year 2007 Regarding limited liability company
9. Act No. 36 year 1999 About Telecommunications
10. Act No. 5 of year 1999 on the prohibition of the practice of Business Competition and Monopoly is not healthy.



11. Law No. 8 Year 1999 on the protection of consumers.
12. the Government of Indonesia Regulation Number 48 Year 1998 Concerning the establishment of companies by the company in the field of banking.

The formation of legislation on cyber world rises on the desire of the community to get a guarantee of security, justice and legal certainty. As cyber legal norms or cyberlaw will become general measures preventive or deterrent prevensi the public to make would-be criminals who intend to damage the image of the information technology world where Indonesia indonesia Business Association and the business International.

Law enforcement in Indonesia have difficulty in dealing with the outbreak of cybercrime in particular e-commerce crime. Many factors that become an obstacle, therefore law enforcement apparatus should really explore, interpret positive laws that exist now that can be used for trapping the perpetrators of crimes of e-commerce.

Investigation and investigation has always experienced a stalemate and or not completely due to some things, especially human resources limited is owned by law enforcement, for handling these crimes require specific skills from law enforcement.

In the face of developments in the community, which include the tenologi of the CRIMINAL CODE, the Bill also seem aware of this case, it turns out in the provisions of pasal 1 paragraph (3). In draft BILL of the CRIMINAL CODE 1991/1992 pasal 1 paragraph (1) still retains the principle of legality. On paragraph (3) it reads: "the provisions of subsection (1) does not reduce the enactment of a law of life that determines that a person's worth, according to local customs are convicted even though the deeds were not regulated in the legislation".

Of that, then it can be seen that there are crimes that can be dijerat and there is not, then the necessary existence of the bravery of judges to interpret the law, although the judges are always dibayang-gayangi by



pasal 1 of the CRIMINAL CODE, however, judges should not be reject any that have signed onto the Court.

In the law the power of Justice, stated clearly that the judges as law enforcement mandatory dig, abreast of and understand the legal values of life dimasyarakat. From this provision indeed encourage even provides justification for interpretation or interpretation against the provisions of the Act, there is even a threat when refusing may be prosecuted (punished). In the Law, judges fill the void for a while can do the interpretation.

Considering e-commerce crime is one of the new and sophisticated crime, then the reasonable course in law enforcement still encounter some obstacles if not immediately treated, it will provide opportunities for the perpetrators of the crime business that This sophisticated to always develop the "talent" of the crime in virtual worlds in particular e-commerce crime.

### **c. Forms of e-commerce Crime.**

See forms of e-commerce can be seen on the basis of its activity include:

1. Carding;
2. Cracking;
3. Hacking;
4. The trojan horse;
5. The Data leakage;
6. Data diddling;
7. To frustate data communication or mucking around computer data;
8. Software piracy;
9. Cyber Espionage;
10. Infringements of Privacy;
11. Data Forgery;
12. Unauthorized Access to Computer Systems and Service;
13. The Cyber Sabotage and Extortion;
14. the Offense against Intellectual Property;
15. Illegal Contents;



#### **d. Forms of e-commerce crimes based on motif**

Based on the motif of cybercrime terbergi to 2:

- Cybercrime as pure crimes;
- Cybercrime as gray crimes;

In addition to the above two types of cybercrime based on motif is divided into

- Cybercrime that strikes individuals;
- a Cybercrime attack Copyright (property rights);
- Cybercrime who attacked Government;

In recent decades, many once works of forgery (forgery) of letters and documents relating to the business. The works of forgery a letter that has been damaging the business climate in Indonesia. In KUHP has indeed been there is a special BAB i.e. BAB XII which criminalize acts of forgery of a letter, but those provisions of its nature is still very common. At this time the letters and documents that can be forged electronic document sent or stored in the electronic files of the bodies or institutions of Government, company, or individual. Indonesia should have a special criminal provisions relating to forgery of a letter or document with distinguishing the type of letter or document forgery, which is a lex specialist outside KUHP.

In Indonesia have occurred related to cybercrime cases crime business, the year 2000 some sites or web diacak-acak Indonesia by cracker who called himself Fabianclone and naisenodni. The site is owned, among others, BCA, Jakarta Stock Exchange, and Indosatnet (Agus Raharjo, 2002:37).

Subsequently in September and October 2000, a craker as fabianclone managed to break down the web belongs to Bank Bali. This gives the Bank internet banking services on the customers. Loss and result in the disconnection of the customer service (Agus Raharjo, 2002:38).

Other crimes are categorized as cybercrime in business crime is Cyber Fraud, namely crimes committed by fraud via the internet, one of which is to commit crimes in advance i.e. stealing other people's credit card numbers with a hacked or breaking into the site on the internet.



According to research company conducted Security Clear Commerce, based in Texas, declared Indonesia was in second place after Ukraine (Shintia Dian Arwida. 2002).

Cyber Squalling, defined as gain, trade in, or using a domain name with faith are not good or bad. In Indonesia's case this ever occurred between PT. Mustika Ratu and Tjandra, parties who register domain names (Faith Sjahputra, 2002:151-152).

Another case related to cybercrime in Indonesia, the case terminated in Sleman District Court with the defendant Peter Pangkur aka Bonny Diobok Obok. In such cases, the defendant was allegedly doing Cybercrime. In the award the Tribunal Judge amar believes that Peter Pangkur aka Bonny Diobok Obok has been breaking into credit cards belonging to citizens of the United States, the proceeds of the crime used to buy items such as helmets and AGV brand gloves. Total price of goods bought reached Rp. 4 million,-(the people's Thoughts, August 31, 2002).

However, some examples of cases related to cybercrime in the crime business that rarely gets to the green table, this is because still going debate about regulation with regard to such crimes. What about law No. 11 Year 2008 Regarding the Internet and Electronic Transaction up to this day even though it has been passed on 21 April 2008 not yet issued government regulation the complementary explanations and for as against implementation Such legislation.

Besides the large number of events were not reported by the public to the police so that cybercrime is happening just like the wind, and suffered by the victim.

#### **D. Conclusion**

The definition of "E-Commerce" itself is very varied, depending on the perspective or sunglasses that make use of them. The Association for Electronic Commerce in a simple mendifinisikan E-Commerce as "the mechanisms of business electronically". CommerceNet, a consortium of industry, provides a





more complete definition, that "the use of computer networks (interconnected computers) as a means of creation of business relations". Not satisfied with the definition, CommerceNet added that in E-Commerce happened "the process of buying and selling services or products between the two sides over the internet or Exchange and distribution of information between two parties in one companies using the intranet ", however more details e-commerce related to the virtual world via electronic systems;

In the face of developments in the community, which also includes teknologi, and implies considering e-commerce crime which is a new and sophisticated crime, then the only reasonable in enforcement ruling still experienced some constraint which if not immediately treated, it will provide opportunities for criminals, the sophisticated business to always develop the "talent" of the crime in virtual worlds in particular e-commerce crime. However, the application of cyberlaw is incompatible with the basic principles of the digital economy can be growing not this modern business transaction model. Thinking about cyberlaw is a good idea to start is opened and is viewed seriously. This is particularly necessary given the large number of legal practitioners, management, business, and information technology who wish to hastily compose and create a concept without a complete and adequate understanding of the concept of electronic commerce, or better known as e-commerce. Failing to understand and understand about how the concept of a business in the virtual world occur can make the existence of cyberlaw becomes counterproductive. Cyberlaw implementation which was originally intended to excite business e-commerce is not impossible in fact impacting instead, IE turn off the growth of a business concept which is becoming a trend in various parts of the world. E-commerce is one variant of the e-business



which will only operate effectively if the principles of the digital economy are met;

at least there are 16 forms of e-commerce crime if in view of its activity as has been explained above, whereas if in view of the motive of the crime can be in e-commerce for 2 (two).

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