




Alternative Dispute Resolution In Cyber Dispute Resolution With Mediation Techniques

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Abstract

Introduction: Law enforcement and protection for cyber cases is focused on the protection of cyber victims consisting of physical or psychological violence, retaliation, humiliation, and mistreatment of people who commit cyber crimes, the sophistication of the media makes people often involved with cyber crimes. Where the focus of this paper discusses alternative cyber dispute resolution.

Purposes of the Research: The purpose of this study is to explain the concept of cyber dispute resolution by using mediation as an option.

Methods of the Research: The research method used is normative legal research with a statute legal approach and a conceptual approach.

Results of the Research: Cyber dispute resolution, cyber crimes that can be done anywhere, even with the sophistication of technology today is possible for a criminal to use equipment that allows difficult or even untraceable places about where the crime was committed so that the first step in alternative dispute resolution is using persuasive ways with mediation mechanisms and then further, improving the quality of law enforcement in, make the law as the basis in every action in order to create equality before the law and the rule of law.

1. INTRODUCTION

The existence of the information society is characterized by the use of the internet which tends to be increasingly widespread in various activities of human life. This has placed information as a very important and profitable economic commodity. Information technology has a great influence on people's lives.¹ One aspect of economic activity that uses information technology is in it transact using the internet media known as e-commerce. E-commerce is a trade transaction between the seller and the buyer by using the internet media.² The development of e-commerce is inseparable from the growth rate of the internet, because e-commerce runs through the internet network.³ The growth of internet usage has made the internet become one of the effective media for companies and individuals to introduce and sell goods or services to consumers from all over the world. E-

¹ Syamsiah Amali, "Pemanfaatan Internet pada Pelajar di Kota Gorontalo", *Jurnal Penelitian Komunikasi dan Opini Publik*, Manado: Balai Pengkajian dan Pengembangan Informasi Wilayah VIII, 17

² I Gede Krisna Ginara, I Made Minggu Widyantara, Ni Komang Arini Styawati, Kriminialisasi Terhadap Kejahatan Carding Sebagai Bentuk Cyber Crime Dalam Hukum Pidana Indonesia, *Jurnal Preferensi Hukum*, Vol.3, No.1, 2022, p. 140

³ *Buletin Hukum Perbankan dan Kebanksentralan*, Volume 4 Nomor 2, 32-34.

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commerce is a modern business model that eliminates transactions as in conventional business that requires the presence of the parties and the papers as documents to be completed. This business Model is more non face and non sign.⁴

The implementation of civil material law, especially in the event that there is a violation in the conduct of a legal relationship, it requires a series of other legal regulations in addition to the law governing the legal relationship (material civil law). This legal regulation is what is called formal law or civil Procedural Law, where the settlement is made through the judiciary. However, in its implementation, the judiciary actually received criticism, even condemnation from various parties due to various complex problems that entangle the judicial world in Indonesia, including the dispute resolution process is slow, the cost of proceedings in court is expensive, the court is considered less responsive in resolving cases, so decisions are often unable to resolve problems, as well as the accumulation of cases at the Supreme Court level that are not resolved.⁵

The existence of the information society is characterized by the use of the internet which tends to be increasingly widespread in various activities of human life. This has placed information as a very important and profitable economic commodity. Information technology has a great influence on people's lives. The principle of the judicial system is simple, fast and low cost is just a jargon in civil justice. This is because in practice the implementation of the principle of simple, fast and low cost can not be implemented, even though there is a circular from the Supreme Court of SEMA No. 6 year 1992 yanmenekankan that the trial process in Level I and II completed within 6 (six) months.

Slow and complicated dispute resolution harms justice seekers in all aspects, especially when it comes to the business world, it will result in a high cost economy, and can drain the company's potential and resources. In turn, this affects the harmonious interweaving of relationships with fellow business colleagues. While in the business world is needed fast dispute resolution, low cost, and informal procedures. Given the emergence of e-commerce is intended to eliminate the difficulties in conventional business transactions, the model of dispute resolution through the judiciary is certainly not expected to be done, because it will only waste time and cost. This then prompted the establishment of a faster business dispute resolution arrangement and then in 1999 law no. 30 of 1999 on arbitration and Alternative Dispute Resolution on August 12, 1999 which opened wide opportunities to settle business cases out of court. Based on the above, the author is interested to discuss how the application of alternative dispute resolution in cyber dispute resolution and the factors causing the difficulty of cyber dispute resolution.

2. METHOD

This study uses the type of normative legal research (doctrinal research). Doctrinal legal studies analyzes authoritative texts (with binding legal force) and readers whose power is persuasive (reinforcement). Texts that have binding legal force are the main legal material that includes laws and regulations relevant to the research problem. in this regard, considering that this normative legal research analyzes the rule of law, the object under study is in the form of regulatory documents and library materials. in this case, the object of this study is in the form of cyber settlement rules contained in the ITE Law, it is done based

⁴ Eliza Oktaliana Sari, "Tinjauan Yuridis Tindak Pidana Cybercrime Dalam Perspektif Hukum Pidana," *Cakrawala Hukum*, Vol. 13, No. 2, 2017, 13-27

⁵ Anang Sugeng Cahyono, "Pengaruh Media Sosial Terhadap Perubahan Sosial Masyarakat Di Indonesia," *Jurnal Publiciana* Vol. 9, No. 1, 2016, 140-157

on legal principles obtained in the view of legal scholars or other legal doctrines by not deviating from existing regulations this approach is necessary because there are no rules governing it. the application of the conceptual approach is to seek the best definition of mediation and resolution in cybercrime.

3. RESULTS AND DISCUSSION

3.1 Alternative Dispute Resolution In Cyber Dispute Resolution

Dispute is a condition in which there is a party who feels aggrieved by the other party, which subsequently the party conveys this dissatisfaction to the second party. When the condition shows a difference of opinion, then there is what is called a dispute. In the context of law, especially contract law, what is meant by dispute. In the context of law, especially contract law, what is meant by dispute is a dispute that occurs as outlined in a contract, either in part or in whole. In other words there has been a default by the parties or one party.⁶ A dispute is a problem that occurs between one party and another party in an agreement due to an act of breaking a promise or interpretation. The same is also conveyed Destiny Rahmadi, which means that the conflict or dispute merupakan aasituation and condition udaimana aorang-orang mutually experience disputes that are or disputes that exist in their perception only.⁷

In resolving disputes, what is done through the courts is called litigation. Where litigation is an attempt to resolve various legal cases through the courts. So both parties to the dispute must follow the trial, which is attended by the prosecutor, judge, minutes, as well as the Registrar. A judge has the right and authority to decide what happens. Because the procedure in court has a formal nature and has the technique to decide a case by producing an appropriate agreement and both parties accept each other's decisions that have been determined by the judge.⁸ There are various opinions about the efforts to solve cyber crime cases that are currently very rampant. Allan R.Coffey gave an opinion on strategies for tackling crime, including computer crime. There are four commonly used approaches, namely: a). Development of behavior modification programs; b). Improvement of institutional services for violators; c). Creation of new services for both violators and potential violators; d). Development of programs to neutralize influences that move children, as well as adults, from shifting into lawlessness.

Cyber dispute resolution efforts in Indonesia, has been regulated in law No.11 of 2008 on information and electronic transactions, specifically Article 38 and Article 39. In Article 38 paragraph 1 states that any person may file a lawsuit against the party that organizes the Electronic System and/or use information technology that cause harm chernobian. Furthermore, Article 38 paragraph 2 states that, the public can file a representative lawsuit against parties that organize electronic systems and/or use information technology that has the effect of harming the public, in accordance with the provisions of the legislation.⁹

⁶ Nurnamingsih Amriani, *Menyelesaikan Masalah Perdata Melalui Pengadilan Dengan Cara Mediasi Alternatif*, (Raja Grafindo Persada, 2012), 12.

⁷ Takdir Rahmadi, *Mediasi Penyelesaian Sengketa melalui Pendekatan Mufakat*, (Rajawali Pers, 2011), 1.

⁸ Ahmad Saudi, *Kejahatan Siber Transnasional dan Strategi Pertahanan Siber Indonesia*, *Jurnal Demorasi dan Otonomi Daerah*, Vol. 16 No. 3, 2018, 178. Lihat juga Nyoman Amie Sandrawati, *Antisipasi Cyber Crime dan Kesenjangan Digital Dalam Penerapan TIK DI KPU*, *Electrocal Governace Tata Kelola Pemilu Indonesia*, Vol.3 No. 2 .2022, 235

⁹ Leo T. Panjaitan, "Analisis Penanganan Carding dan Perlindungan Nasabah dalam Kaitannya dengan Undang-Undang Informasi dan Transaksi Elektronik no.11 Tahun 2008", *Jurnal Telekomunikasi dan Komputer*, vol.3, no.1, 2012, 13 lihat juga Miftakhur rokhman Habibi, Isnatul Liviani, *Kejahatan Teknologi Informasi*

Regarding the settlement of the problem of cyber crime, in Article 39 paragraphs 1 and 2 have set about the settlement. Dispute resolution can be done by filing a civil lawsuit, but it can also be done through arbitration or other alternative dispute resolution institutions. Dispute resolution regarding cyber crimes other than using civil and arbitration methods or other alternative dispute resolution, can also be carried out in accordance with the existing criminal law in Indonesia. By law No.11 of 2008 on information and transactions Electronic, described in Article 45 to Article 52.

All efforts to resolve cyber cases have been adapted to the Criminal Code and Law No.11 of 2008 on information and Electronic Transactions. In addition, persuasive efforts between the parties were also used, persuasive efforts were intended to bring peace to both parties. Legal ineffectiveness of some of them can be caused due to the structure, substance and legal culture, which exist, efforts to resolve also need to look at these things: a). structure, in terms of structure, law enforcement officers in this case the police as enforcement the first law processes crimes, improves the existing legal structure, that is, maximizes the system of work of law enforcement officers. In addition, law enforcement officers not only take action against crimes that have occurred but also take actions that can prevent crime, in this case cybercrime crime, through socialization to junior and senior high schools, as one of the environments that most affect the character of a person/child; b). substance, in terms of substance, Surakarta city police in carrying out its duties and functions it is based on the principle of equality before the law so that the rule of law can be achieved. Thus, not distinguishing who the perpetrator is and still walking in the right legal corridor and obeying it, it is hoped that the crime will also decrease by itself.

Forms of dispute resolution peacefully before entering litigation one of them is mediation, while the form of adversarial settlement is through a court or arbitration institution. Dispute resolution in accordance with the philosophy of the birth of e-commerce is through negotiation, mediation, conciliation and arbitration and mediation is one of the first steps in cyber dispute resolution where the principle of mediation is a way of resolving disputes outside the court through negotiations involving third parties who are neutral (non-intervention) and impartial (impartial) and accepted by the parties to the dispute. The third party is called a mediator or mediator whose job is to assist the parties to the dispute in resolving the problem, but does not have the authority to make decisions.¹⁰ With mediation, it is hoped that a common ground will be reached in resolving the problems faced by the parties, which will then be poured out as a mutual agreement. Decision-making is not in the hands of the mediator, but in the hands of the parties to the dispute. With regard to the place of mediation, the parties can determine for themselves and choose where they want to hold this mediation. Mediation can be held anywhere in the world.¹¹ Another reason for the difficulty of resolving cybercrime cases is because of the many cases that occur, both reported and not reported to the authorities. This is due to the easy access to study the crime, either directly learning from the internet, or learning from colleagues or others. Society also affects the number of actions.

(Cyber Crime) dan Penagguangannya Dalam Sistem Hukum Indonesia, *Al-Qanun: Jurnal Pemikiran dan Pembharuan Hukum Islam*, Vol.23, No. 2, 2020, 415.

¹⁰ Sutarman, *Cybercrime Modus Operandinya dan Penanggulangannya*, Jogjakarta, Laks Bang PRESSindo, 2007, 102-103. lihat juga Massulthan Rafi Wijaya, Ridwan Arifin, *Cyber Crime In International : How Indonesia and International Deal With This Crime?*, *International Journal Of Criminal Law Studies*, Vol. 5 No.1 ,2020,p.64

¹¹ Bambang Sutiyoso, *Hukum Arbitrase dan Alternatif Penyelesaian Sengketa* , Yogyakarta: Gama Media, 2008, 58.

3.2 Difficulty of Cyber Dispute Resolution

Cyber crime in a narrow sense is a crime against computer systems, while cyber crime in a broad sense includes crimes against computer systems or networks and crimes that use computer means. All crimes related to cyber crime have been regulated in Law No.11 of 2008 on information and Electronic Transactions. Some of the acts that belong to the criminal acts related to computers or cyber crimes can be explained: a). The spread of computer viruses to computers and computer networks; b). Misuse of computer software; c). Falsification of computer data (Fabrication); d). Fraud through the computer; e). Pornography over the internet; f). Piracy of Intellectual Property Rights; g). Theft over the internet; h). Conventional criminal acts that use computers.

In Article 33 of Law No.11 of 2008 concerning electronic information and transactions, which states that any person intentionally and without rights or unlawfully performs any action that results in disruption of the Electronic System and/or results in the electronic system not working properly. Misuse of software is regulated in Article 30 paragraph 3 of Law No.11 of 2008 concerning information and electronic transactions stating that any person intentionally and without rights or unlawfully accesses computers and/or electronic systems in any way by violating, breaking through, exceeding, or breaking the security system. Regarding the falsification of computer data, regulated in Article 35 of Law No.11 of 2008 concerning electronic information and transactions, which states that any person intentionally and without rights or unlawfully manipulates, creates, changes, removes, destroys Electronic Information and/or Electronic Documents with the aim that the electronic information and/or electronic documents are considered as if they were authentic.

The types of actions included in the act of computer fraud are; Phishing, Pagejacking/ Moustrapping, Typosquatting, Carding, Phreaking. Fraudulent actions through computer media / computer networks are regulated in Article 28 paragraph 1 of the ITE Law which states that everyone intentionally and without the right to spread false and misleading news that results in consumer losses in electronic transactions.¹² In law No.11 of 2008 concerning electronic information and transactions also regulates computer media, namely in Article 27 paragraph 1 which states that everyone deliberately and without the right to distribute and/or transmit and/or make accessible electronic information and electronic documents that have contents that violate decency.¹³

Law No.11 of 2008 concerning electronic information and transactions is regulated in Article 32 paragraph 2 which states that any person intentionally and without rights or against the law in any way transfers or transfers Electronic Information and/ or electronic documents to electronic systems of other persons who are not entitled. Theft via the internet, provided for in the ITE Law.¹⁴ Goods referred to in the ITE Law are goods in the form of electronic information and/or electronic documents to electronic systems. Article 32 paragraph 2 of the ITE Law states that any person intentionally and without rights or against the law in any way transfers or transfers electronic information and/ or electronic documents to the electronic system of other persons who are not entitled and various acts

¹² Petrus Reinhard Golose, *Perkembangan Cyber Crime dan Upaya Penanggulangannya di Indonesia* Oleh Polri, Jakarta: *Buliten Hukum Perbankan dan Kebanksentralan*, Vol. 4 Nomor 2, 2006, 4

¹³ Bayu Anggara, I Nyoman Darmadha, *Penegakan Hukum Kejahatan Dunia Maya (Cyber Crime) Yang Dilakukan Anak Dibawah Umur*, *Kerta Wicara*, Vol. 5, No.5, 2016, 3

¹⁴ Melani Melani, Hari Sutra Disemadi, and Nyoman Serikat Putra Jaya, "Kebijakan Hukum Pidana Dibidang Transaksi Elektronik Sebagai Tindak Pidana Non-Konvensional," *Pandecta Research Law Journal* Vol. 15, No. 1 2020, 111-120.

including conventional criminal use of computers, namely; corruption, money laundering, terrorism, gambling.¹⁵

The difficulty of resolving cybercrime cases is most often due to the lack of evidence and determining the locus delicti or determination of the crime committed. Determination of the place is very difficult to determine because cyber / crime is a cyber crime that can be done anywhere, even with today's technological sophistication it is possible for a criminal to use equipment that allows difficult or even untraceable places to where the crime is committed.¹⁶ This also supports the difficulty of finding evidence for cybercrime cases. Cybercrime, there are still many people who do not really understand the rules or laws concerning cybercrime, so sometimes there are still people who assess cybercrime is not a problem that is too serious to be discussed.¹⁷ In an effort to counter cyber or cybercrime by police officers there some obstacles that hinder efforts countermeasures cyber or cybercrime, author then display it based on the results interview with the head of the Recrim unit that obstacles faced by the police in tackling cyber crime is internal constraints and external constraints.

Internal constraints begin with weak Government Oversight and policing. Weak supervision of the use of the internet has the potential to create opportunities for cybercrime crime (cyberspace). Because crime with the use of technology occurs if there is sufficient internet access. Internet facilities in Indonesia can be said to be adequate both in terms of access speed and ease of installation of internet access networks. In terms of supervision, the government and the police must control and supervise the traffic of negative internet content that can be accessed in Indonesia. Like blocking porn sites, SARA, violence and websites that are considered to violate the norms of decency. The next point of internal constraints is the aspect of evidence. Evidence in cyber crime is different from other crime evidence where the target or cybercrime media is data or computer systems / internet that are easily changed, deleted, or hidden by evildoers.

Third, the victim witness in the case of cyber crime plays a very important role where there are rarely witnesses in the case of cyber crime because the victim witness which is outside the region or even abroad which makes it difficult for investigators to conduct witness examinations and file investigation results. The last aspect is jurisdiction. Handling cybercriminals will not be successful if the jurisdictional aspect is ignored. Because the mapping of cybercrime concerns also the relationship between regions, between regions, and between countries. So that a clear establishment of jurisdiction is absolutely necessary.¹⁸ There are five external factors that greatly influence law enforcement among several factors related to each other, therefore it is the essence of law enforcement and is the essence of law enforcement. The five factors in question are legal factors, law enforcement factors, facilities & infrastructure factors, community factors, and cultural factors.

In law enforcement efforts there is a need for harmony between the various different statutory regulations degree. Incompatibility can occur between rules written with no

¹⁵ Nuri Siswi Enggarani, Penanggulangan Kejahatan Internet di Indonesia, *Jurnal Ilmu Hukum*, Voo.15, No. 2, 2012, 150

¹⁶ Tony Yuri Rahmanto, "Penegakan Hukum Terhadap Tindak Pidana Penipuan Berbasis Transaksi Elektronik," *Jurnal Penelitian Hukum De Jure* Vol. 19, No. 1, 2019, 31

¹⁷ <https://www.cloudcomputing.id/berita/3-faktor-penyebab-kejahatan-siber> diakses tanggal 7 November 2022 lihat juga Siburian, Hinsa. (n.d). Pengantar Strategi Keamanan Siber Nasional. Diakses 6 Februari 2023 dari bssn.go.id: <https://bssn.go.id/strategikeamanan-siber-nasional/>

¹⁸ Januari, Dwi Putri Melati, Muhadi, Upaya Kepolisian Dalam Menanggulangi Kejahatan Cyber Terorganisir, *Jurnal Penelitian Hukum*, Vol.1 No. 2, 2020, 97-98

written, among the laws that degree higher with lower regulation, among the specific laws with a general nature, and between law-laws that apply later with the happened earlier. All this can be affect law enforcement issues because the purpose of the establishment of a regulation is to provide legal certainty, expediency and Justice. For that, for the sake of avoid in order not to happen a regulations do not apply effectively in the community it is necessary to note the principle and purpose of the law it self. Inhibiting factors in efforts Cyber Crime Prevention includes Internal and external factors. Internal constraints it starts with poor supervision Government and police, evidence in cyber crime is easily changed, deleted, or hidden by criminals, there are rarely any witnesses in the case cyber crime and the establishment of jurisdiction less obvious. In addition, external constraints includes law enforcement factors, factors facilities, community factors and environment, and cultural factors (culture).

4. CONCLUSION

Cyber dispute resolution, cyber crimes that can be done anywhere, even with the sophistication of technology today is possible for a criminal to use equipment that allows difficult or even untraceable places about where the crime was committed so that the first step in alternative dispute resolution is using persuasive ways with mediation mechanisms and then further, improving the quality of law enforcement in, make the law as the basis in every action in order to create equality before the law and the rule of law. The factors causing the difficulty of resolving cyber/crime disputes are, many people still do not understand the existence of UUIITE in indonesia, while from the subsystem side feel the difficulty of solving cyber crimes because it is difficult to determine the locus delicti or place where the crime was committed, because of the sophistication of technology that allows for untraceable internet access

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