

## Transaction Fraud Buy and Sell Online Through Restitution As Criminal Addition In the Electronic Information and Transaction Law

Vicki Dwi Purnomo<sup>1\*</sup>, Hartanto<sup>2</sup>, Rohidin<sup>3</sup>

Master of Law, Widya Mataram University, Yogyakarta <sup>1,2,3</sup>

**Corresponding Author:** Vicki Dwi Purnomo [Vickydepe@gmail.com](mailto:Vickydepe@gmail.com)

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### ABSTRACT

The ITE Law as a legal framework for law enforcement for every crime arising from electronic information and transactions does not cover victim protection in the form of compensation (refund). This research was conducted normatively. The legal issues discussed in this study are: First, what kind of legal protection do victims of online buying and selling scams have? The aims of this study are: First, to analyze forms relating to the protection of fraud victims in online transactions. Amendments to the ITE Law are needed to include restitution as an additional offense so that restitution is not only an option proposed but an obligation that must be fulfilled.

## **INTRODUCTION**

Science, technology and art ushered humans into the digital era, which gave birth to the internet as a network and also a symbol of exclusivity. The internet is described as a collection of computer networks consisting of a number of smaller networks that have different network systems. Telecommunication technology has brought humans to a new civilization with a social structure and its values. That is, society is developing towards a new society with a global structure where national barriers are starting to fade. The system of values in a society changes, from being local-particular to global-universal. This ultimately has an impact on shifting values, norms, and decency.

In its development, with the discovery of the computer as a product of science and technology, there was a convergence between telecommunication, media and computer technology. Convergence between communication technology, media and computers produces a new facility called the internet. The Internet has given something completely new to humanity. In subsequent developments, the presence of advanced computer technology with an internet network has brought great benefits to humans. Its utilization is not only in government, and the private/company world, but has reached the life sector including all household (personal) needs. The internet has been able to open new horizons in human life both in the context of promising means of communication and information across national borders as well as the dissemination and exchange of knowledge and ideas among scientists around the world. However, advances in information technology (internet) and all forms of benefits in it have had their negative consequences where it has become easier for criminals to carry out their actions which have increasingly worried society. Online business for now and in the future has quite high prospects because almost everyone wants practicality and convenience in terms of meeting their needs, while practicality is one of the characteristics of online business where business transactions can be carried out without face-to-face or even not meeting each other. knew each other before, but put their trust in each other. With trusted capital, the provider can fulfill all market demands. On the other hand, with the capital of the trust, consumers can also get the goods they need according to what they want.

The progress of the internet plays a very important role in online business because its characteristic is the practicality offered by the internet itself. Face-to-face business can be run and it is undeniable that the prospects for the future will be quite high because of the various advantages offered by online businesses, wherever and whenever the sales process can run, therefore many use this online business to carry out their business activities because they see The internet is a necessity for all levels of society, especially people in urban areas. However, the internet has a negative impact, especially on society, not all online businesses run as they should, because only with trust, people often do not waste this opportunity to reap huge profits by committing crimes, namely fraudulent online buying and selling transactions.

The existence of crimes that occur in online business processes seems to be a new thing that must receive serious attention from the government. As a form of the government's seriousness in dealing with fraudulent cases of online buying and selling transactions, a law was formed which is regulated in Law Number 19 of 2016 on Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. This law means that electronic information is one or a set of electronic data, but not limited to writing, audio, images, maps, photo designs, electronic data interchange (EDI), electronic mail, telegrams, telex, telecopy or the like. processed letters, signs, numbers, access codes, symbols or perforations that have meaning or can be understood by people who can understand them. Electronic transactions are legal actions carried out using computers, computer networks, and/or other electronic media.

Indonesia has passed a law relating to cybercrime, especially electronic transactions, namely Law Number 19 of 2016 on Amendments to Law Number 11 of 2008 Concerning Information and Electronic Transactions Article 28 paragraph (1) which reads: "Everyone intentionally and without rights spreads false and misleading news that results in consumer losses in Electronic Transactions. With a criminal threat in Article 45A paragraph (1) which reads: "Anyone who deliberately and without rights spreads false and misleading news that results in consumer losses in Electronic Transactions as referred to in Article 28 paragraph (1) shall be punished with imprisonment for a maximum of 6 (six) years/ or a fine of up to Rp. 1000,000,000 (one billion rupiah)"

Law Number 19 of 2016 becomes the legal umbrella for the community, especially in online buying and selling transactions. Article 28 paragraph (1) explains how elements are included in online fraud crimes. Online fraud is actually the same as ordinary fraud, the only difference is the medium of buying and selling, namely using electronics. Online fraud is in principle the same as conventional fraud, but the only difference is the means of action, namely the use of electronic systems such as computers, the internet, and telecommunication devices. So legally, online fraud can be treated as conventional offenses regulated in the Criminal Code (KUHP). The legal basis used to identify perpetrators of fraud today is article 378 regarding fraud as follows: "Whoever with the intention of wanting to benefit himself and others by violating rights, either by using a false name, either by trickery or by making up lies, persuades people to give something, makes debts or writes off debts, is punished for fraud. , with a maximum imprisonment of four years"

With the emergence of Law Number 19 of 2016 on Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, it provides two important things, namely, firstly recognition of electronic transactions and electronic documents within the legal framework of engagement and law of evidence, so that legal certainty for electronic transactions can be guaranteed, and the second is classified as actions that qualify as legal violations related to misuse of IT (Information Technology) accompanied by criminal sanctions. However, sometimes consumers are still in a weak position. The main factor that becomes a consumer weakness is often due to the

low level of legal knowledge and consumer awareness of their rights, this condition is used by business actors to reap the maximum profit by not heeding the obligations that should have been attached to business actors. In the case of online fraud, the victim often demands material compensation from the perpetrator in order to get his rights returned because of the loss that the victim himself gets and the form of accountability of the perpetrator of online fraud. However, this has not been fully realized because no one has legally regulated how to compensate victims of online fraud itself. The importance of compensation for victims of online transaction fraud is a manifestation of achieving the victims' rights, which is a form of justice. In the ITE Law, it can be seen that there is only one main criminal article and criminal threats given to the perpetrators but it has not explained how to protect the victim, what kind of protection can the victim get after the case is over with material and immaterial losses suffered by the victim.

Compensation for victims who have been harmed is a legal protection for victims where victims can get certainty where victims are not only protected by legal witnesses but how to achieve the victims' rights afterwards. Compensation itself only exists in civil cases, if the victim feels the need to get compensation, he can make a lawsuit through the civil channel, but this seems very detrimental to the victim because it can be seen that the victim has been harmed by material losses and complaints through criminal channels for fraud, especially if it is reimbursed for a claim for compensation it will cause more losses to the victim, so that it is very detrimental to the victim if you look at it from the victim's side.

## **IMPLEMENTATION AND METHODS**

In this study the authors provide several definitions that focus on the cases raised:

1. Online transaction fraud is a crime that harms consumers in the online transaction process through electronic digital media, the category discussed in this study is online transactions that occur in the online buying and selling process
2. Legal protection is protection provided by law regarding the rights and obligations possessed by humans as legal subjects. As a legal subject, humans have rights and obligations to take legal action.
3. Compensation is compensation for losses arising from non-fulfillment of the rights of victims who were harmed by one of the parties.

### **A. Theoretical Framework**

#### **Political Theory of Criminal Law**

Law is seen as the dependent variable and politics as the dependent variable. With this assumption, Mahfud formulates legal politics as: "Legal policies that have been implemented nationally by the government; also includes an understanding of how legal politics is by looking at the configuration of forces behind the making and enforcement of the law. Here law cannot only be seen as imperative articles or requirements but must be seen as a subsystem which in reality is not impossible to be determined by politics, both in the formulation of the material of the articles as well as in their implementation and enforcement".

According to Solly Lubis Legal politics is a political policy that determines what legal regulations should apply governing various social matters and state life. The politics of criminal law (in the micro order) which is part of the legal politics (in the macro order), then in the formation of laws one must know the prevailing system in society that relates to that situation in the way proposed with the goals to be achieved so that these things can be counted and can be respected. Thus, according to Sudarto, in the field of criminal law, it means an effort to realize criminal laws and regulations that are in accordance with the circumstances and situation at a time and for the future. Furthermore, Sudarto wrote as follows:

Formation of law must be a social process and a political process that has broad influence, because it will shape and regulate or control society. This law is used by the authorities to achieve and realize certain goals. Thus it can be interpreted that the law has a function, namely:

- 1)Function to express values; And
- 2)Instrumental functions

Starting from these two functions, criminal law politics should be carried out without denying other functions, because of the nature or symbolic influence of certain laws.

In tackling crime, it is necessary to adopt an integral policy approach, in the sense

- a. there is integration (integrity) between criminal politics and social politics;
- b. there is integration (integrality between crime prevention with "penal" and "non-penalty".

Prevention of crime by penal means of course carried out with a series of criminal law policies (penal policy). Thus efforts and policies to create good and efficient criminal law or criminal law politics (penal policy) are part of criminal politics (criminal policy) as has been described at length above. Thus, the penal policy is an effort to tackle crime, as an integral part of efforts to protect society (social defense). In other words, criminal law policy or criminal politics is part of social policy.

### **Legal Protection Theory**

Sudikmo Mertokusumo, expressed his opinion not only about the purpose of the law but also about the function of the law itself. Its function is to protect human interests by having goals and objectives to be achieved. Such as the main purpose of law, namely creating an orderly social order, creating order and balance. To achieve order in a society, it is hoped that all human interests will be protected. If the objectives of the law can be realized, then the law is tasked with dividing the rights and obligations of each individual in society, dividing authority and ways of resolving legal issues and maintaining legal certainty. Fair legal protection is understood that everyone is treated the same as other human beings. This includes two things, namely, the equality of everyone in the law which underlies the principle and principle of "equality before the law" (equality before the law) in law enforcement, namely whether law enforcers have made it

happen, as well as equality in law/equality in law, as a guideline for analyzing whether the contents of statutory provisions have regulated equality before the law.

Legal protection is all efforts to fulfill rights and provide assistance to give witnesses and/or victims a sense of security, legal protection for victims of crime as part of community protection, can be realized in various forms, such as through the provision of restitution, compensation, medical services, and legal assistance. Legal protection was given to legal subjects in the form of instruments both preventive and repressive in nature, both verbal and written. In other words, it can be said that legal protection is a separate picture of the function of the law itself, which has the concept that law provides justice, order, certainty, benefits and peace. The definition above invites several experts to express their opinions regarding the notion of legal protection, including: According to Satjipto Raharjo, defining legal protection is providing protection for human rights that are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law.

According to Philipus M. Hadjon, legal protection is a collection of rules or rules that can protect one thing from another. In relation to this problem, legal protection is embodied in a statutory regulation that can protect Notaries as reporting parties in money laundering crimes. According to Philipus M. Hadjon, legal protection is the protection of dignity, as well as recognition of human rights owned by legal subjects based on legal provisions of arbitrariness.

Legal protection is divided into two namely:

- a. Preventive Legal Protection  
Preventive legal protection has the aim of preventing problems or disputes from occurring.
- b. Repressive Legal Protection  
Repressive legal protection has the aim of resolving problems or disputes that arise, carried out by imposing sanctions on perpetrators in order to restore the law to its actual state. This type of legal protection is carried out in court.

### **Legal Certainty Theory**

Certainty is a matter (statement) that is certain, conditions or provisions. The law essentially must be certain and fair. Certainly as a guideline for conduct and fairness because the code of conduct must support an order that is considered reasonable. Only because it is fair and implemented with certainty the law can carry out its function. Legal certainty is a question that can only be answered normatively, not sociologically. Legal certainty normatively is when a regulation is made and promulgated with certainty because it regulates clearly and logically. Clear in the sense of not causing doubts (multiple interpretations) and logical. It is clear in the sense that it becomes a system of norms with other norms so that they do not clash or cause a conflict of norms. Legal certainty refers to the implementation of clear, permanent, consistent and consequential laws whose implementation cannot be influenced by subjective circumstances. Certainty and justice are not just moral demands, but factually characterize the law. A law that is uncertain and does not want to be fair is not just a bad law.

According to Kelsen, law is a system of norms. Norms are statements that emphasize the "should" or *das sollen* aspects, by including some rules about what to do. Norms are deliberative human products and actions. Laws that contain rules of a general nature serve as guidelines for individuals to behave in society, both in relationships with fellow individuals and in relations with society. These rules become limits for society in burdening or taking action against individuals. The existence of these rules and the implementation of these rules give rise to legal certainty. According to Utrecht, legal certainty contains two meanings, namely first, the existence of general rules make individuals know what actions may or may not be carried out, and second, in the form of legal security for individuals from government arbitrariness because with the existence of general rules individuals can know what the State may charge or do to individuals. Norms that promote justice must really function as rules that are obeyed. According to Gustav Radbruch, justice and legal certainty are permanent parts of law. He is of the opinion that justice and legal certainty must be considered, legal certainty must be maintained for the security and order of a country. Finally positive law must always be obeyed. Based on the theory of legal certainty and the values to be achieved are the values of justice and happiness.

### **Research methods**

This section describes the method to be used in this research plan, along with an explanation: As according to Soerjono Soekanto and Sri Mamuji namely, "legal research is carried out by examining library materials or they are secondary data". Or legal research that focuses on a scientific research procedure to find the truth based on legal scientific logic from a normative perspective. 34 Research on normative juridical law, is often conceptualized as what is written in laws (law in books) or law is conceptualized as rules or norms which are benchmarks for human behavior that are considered appropriate. In this study the authors apply this normative juridical study of how the law protects victims of online fraud.

### **Research Approaches**

This research will be conducted using two (2) approaches, namely:

- a. The statutory approach (statute approach), namely by analyzing and reviewing laws and regulations related to the problem under study, or an approach using legislation and regulations.
- b. The conceptual approach (conceptual approach), namely by using several concepts to analyze the legal protection of victims of online fraud.

### **Types of Legal Materials**

The types of legal materials to be used in this study consist of:

#### **Primary Legal Materials**

Primary legal material is legal material that is authoritative, meaning it has authority, consisting of statutes, treatises on making statutory regulations and judges' decisions. The primary legal materials of this research are:

1. The Criminal Code.  
The Criminal Procedure Code.
2. Civil Code.
3. Law Number 19 of 2016 concerning Changes to Law Number 11 of 2008 concerning Information and Electronic Transactions.
4. Law Number 8 of 1999 concerning Consumer Protection.
5. Law Number 26 of 2000 concerning the Human Rights Court.
6. Law Number 31 of 1999 concerning the Eradication of Corruption Crimes.
7. Law Number 15 of 2003 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism.
8. Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims.
9. Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons.
10. Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.
11. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

#### **Secondary Legal Materials**

Secondary legal material, namely a thesis book containing the basic principles of legal science and the views of scholars who have high qualifications. The secondary legal materials in this research are:

- a. Result books
- b. Law Journal
- c. Thesis, Dissertation or other research results
- d. Internet
- e. Draft legislation
- f. Related literature obtained from the central library of the Faculty of Law, Widya Mataram University, Yogyakarta.

### **Legal Material Collection Techniques**

The method of collecting research materials is carried out through documentation research, namely studies that examine various documents, both those related to laws and regulations as well as existing documents. Researchers also conducted a literature study at the central library of Brawijaya University and the Center for Legal Documentation and Information (PDIH) Faculty of Law, University of Brawijaya to take references from books, journals, and sources from print and internet media. The analysis of legal material in this study was carried out by means of qualitative analysis, namely analyzing problems related to online fraud legal protection through compensation and an analysis that provides descriptions in words of findings and therefore prioritizes data quality. and not quantity. This is done by classifying and analyzing the collected legal material using an analytical tool in the form of grammatical interpretation (grammar) whose job it is to describe and explain the meaning of laws and regulations in accordance with the object of research. Then use a systematic interpretation, namely laws and regulations as part of the entire system of laws and regulations with other laws.

## **RESULTS AND DISCUSSION**

### **A. Definition of Victim**

Victimology examines topics about victims, such as the role of the victim in the occurrence of a crime, the relationship between the perpetrator and the victim, the vulnerability of the victim's position and the role of the victim in the criminal justice system. The goals of victimology are:

1. Analyze various aspects related to victims;
2. Trying to provide an explanation for the causes of victimization; And
3. Develop a system of actions to reduce human suffering.

### **B. Definition of Online Transaction Fraud**

As formulated in Article 378 of the Criminal Code, juridically, fraud means an act with the intent to unlawfully benefit oneself or another person by using a false name, false dignity, deception or lies that can cause other people to easily hand over their goods, money or wealth . The word fraud itself has 2 (two) meanings, namely:

- 1) Fraud in a broad sense, namely all crimes that are formulated in chapter XXV of the Criminal Code.
- 2) Fraud in a narrow sense, namely a form of fraud formulated in Article 378 (main form) and Article 379 (special form), or commonly known as *oplichting*.

As for all provisions of criminal acts in Chapter XXV, this is called fraud, because in all criminal acts here there are acts that are deceptive or deceive other people. Provisions in article 378 also formulates the meaning of fraud (*oplichting*) itself. This formula is the main form, and there is deception in the narrow sense in the special mitigating form. Due to the presence of a special mitigating element that is punishable by a crime as a minor fraud, namely in Article 379. Meanwhile, fraud in a narrow sense does not exist in an aggravated form. The formulation of the fraud consists of objective elements which include the act (moving), which is moved (person), the act is directed at another person (handing over objects, giving debts, and writing off receivables), and how to carry out acts of moving using fake names, using gimmicks, wearing false prestige, and wearing strings of lies. Next are subjective elements which include intentions to benefit oneself or others and intentions against the law.

Online fraud is in the same principle as conventional fraud. The difference is only in the means of action, namely using electronic systems (computers, internet, telecommunications equipment). So legally, online fraud can be treated the same as conventional offenses regulated in the Criminal Code ("KUHP"). The legal basis used to ensnare perpetrators of fraud today is Article 378 of the Criminal Code, which reads as follows: "Whoever with the intent to benefit himself or others unlawfully, by using a false name or false prestige, by trickery or by a series of lies moves another person to hand over something to him, or to give a debt or write off a debt, is threatened because fraud with a maximum imprisonment of 4 years."

Meanwhile, if charged with using Law Number 19 of 2016 Concerning Electronic Information and Transactions ("UU ITE"), then the article imposed is Article 28 paragraph (1), which reads as follows: "Every person intentionally and without right disseminates fake and misleading news that results in consumer losses in Electronic Transactions." The penalty for this article is imprisonment for a maximum of 6 (six) years and/or a fine of up to IDR 1 billion (Article 45 paragraph [2] of the ITE Law). Furthermore, see the article Article To Trap Fraudsters in Buying and Selling Online. For proof, APH can use electronic evidence and/or printouts as an extension of evidence as stated in Article 5 paragraph (2) of the ITE Law, in addition to other conventional evidence in accordance with the Criminal Procedure Code (KUHP). Article 5 paragraphs (1) and (2) of the ITE Law read: "(1) Electronic Information and/or Electronic Documents and/or printouts are valid legal evidence. (2) Electronic Information and/or Electronic Documents and/or printouts as referred to in paragraph (1) are an extension of valid evidence in accordance with the applicable Law of Procedure in Indonesia."

### C. Compensation Against Victims

As an embodiment of responsibility because of his mistakes towards other people, the perpetrators of criminal acts are burdened with the obligation to compensate victims or their heirs. In the concept of legal protection for victims of crime, there are also several legal principles that require attention. This is due to the fact that in the context of criminal law, legal principles must be new, both material criminal law, formal criminal law and criminal law enforcement.

The principles in question are:

a) The principle of benefits

This means that victim protection is not only aimed at achieving benefits (both material and spiritual) for victims of crime, but also benefits for society at large, especially in efforts to reduce the number of criminal acts and create public orders.

b) The principle of justice

This means that the application of justice in an effort to protect victims of the principle of crime is not absolute because this is also limited by the sense of justice that must also be given to the perpetrators of crimes;

c) The principle of balance

That is, because the purpose of law besides providing certainty and protection of human interests, is also to restore the balance of the social order that has been disrupted to its original state, the principle of balance, has an important place in efforts to restore victims' rights;

d) The principle of legal certainty

This principle can provide a strong foundation for law enforcement officials when carrying out their duties in an effort to provide legal protection to victims of crime.

Protection of victims, especially the right of victims to obtain compensation, is an integral part of human rights in the field of welfare and social security. Humans as social beings have an important role in improving social interaction among the social life of the state. So when he is with other people, he must give good appreciation to other people. Because of this, the existence of human beings who have their respective rights and obligations cannot be seen as an absolutely sovereign individual, but must be seen as a personal social person, namely a social person who has control power from the State over what he does. In the contest for the protection of victims of crime, there are preventive and repressive efforts made, both by the public and the government through law enforcement. Such as providing protection to the public through security oversight, to a fair judicial examination process and protecting human rights as the most important part of a rule of law.

If the concept of human rights is seen as a legal right, then it has two normative consequences, namely:

- a. The obligation for the person in charge (the party burdened with the obligation) to respect/not violate the rights or fulfill the claims arising from the rights; And
- b. Reparations if the obligation is violated/not fulfilled.

#### **D. Online Buying and Selling Transactions Viewed From the Perspective of Law Number 19 of 2016 Concerning Information and Electronic Transactions.**

Development of Law Number 19 of 2016 concerning Information and Electronic Transactions. Indonesia is a country based on law ( *reschtaat* ), not based on power ( *maschtaat* ). As a legal state, Indonesia views the need for regulations governing *cyber law* . As a realization, in 2008 Indonesia issued Law Number 11 of 2008 concerning Information and Electronic Transactions or commonly referred to as the ITE Law (UU ITE 2008). The 2008 ITE Law was proclaimed based on *the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce and Electronic Signature and Convention on Cybercrime* . In addition, the ITE Law can be said to be the only regulation that regulates cyber law in Indonesia. In fact, several criminal provisions in Indonesia, both general criminal provisions (KUHP) and special criminal provisions, can be used to accommodate some of these crimes. However, specifically the ITE Law is indeed prepared to anticipate cyber crimes.

On year 2016 in middle hustle bustle year born Constitution Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 Concerning Information and Electronic Transactions (UU ITE 2016) This law is an amendment from the law ITE 2008 And born as a solution constitution of the country to regulate ethics for media users in exercising their freedom on social media. Revision on UU ITE 2008 No can released from user Internet Which growing rapidly every year. The need for the internet has also increased so that it has become one of the benchmarks from the government for the need for a revision of the 2008 ITE Law.

There are 7 main material contents of the 2008 ITE Law Revision which are expected to be able to answer these dynamics. The details of the 7 material loads are:

1. Adding a number of explanations to avoid multiple interpretations of the insult/defamation provisions in article 27 paragraph 3.
2. Reducing the threat of criminal defamation, from a maximum of 6 years to 4 years, and a fine of IDR 1 billion to IDR 750 million.
3. Apart from that, it also reduced the threat of criminal violence article 29, previously the longest was 12 years, changed to 4 years and a fine of IDR 2 billion to IDR 750 million.
4. Implement the Constitutional Court's decision on Article 31 paragraph 4 which mandates the regulation of interception into the law, and add an explanation to the provisions of Article 5 paragraphs 1 and 2 regarding information and electronic transactions as legal evidence.
5. Synchronization of search, confiscation, arrest and detention procedural law with the procedural law of the Criminal Code (KUHP).
6. Strengthen the role of civil servant investigators (PPNS) UU ITE to decide access related to ICT crimes.
7. Add right to b forgotten , namely the obligation to delete content irrelevant for electronic system operators. It is carried out upon request person concerned based on determination court.

8. Strengthen the government's role in preventing the spread of negative content on the internet, by inserting additional authority in the provisions of article 40.

After the revision of the 2008 ITE Law to the 2016 ITE Law provides a new legal regime that is still very warm in society to accommodate all inner form of evil the scope of the internet, but there are some vacancies even though revisions have been made to the 2008 ITE Law. In this case the 2016 ITE Law has not fully updated the crimes in the ITE Law, such as not updating the Articles of Electronic Transactions. This can be seen in the absence of a specific definition regarding sales through an electronic system in the law, there is only "electronic transaction" which has a very broad definition, namely a legal action that done with use computer, network computer, and/or other electronic media. Apart from that, the trend towards reforming the criminal law is not Again offenders oriented No seen in UU ITE 2016 because though action occurs criminal Which raises loss for victim, Act ITE 2016 does not regulate compensation that should be obtained by victims of criminal acts, in this case victims of cyber/ cybercrime crimes .

### **Status Victim in Indonesia**

Actually, compensation in the form of material (goods or money) is one of the oldest forms of punishment system ever known in human civilization. Every community group in the world recognizes compensation in the form of material, and Indonesia is no exception. Technically, in the regulation of criminal law against victims of crime, there are two models of approach, namely the procedural rights model and the service model. In the form of the procedural rights model, the focus is given to enabling victims of crime to play an active role in the course of the criminal justice process. In this case, victims of crime are given the right to hold criminal charges or to assist prosecutors, and also the right to be presented and have their statements heard at every trial, where the interests of the victim are involved. This also includes the right to enter into peace or civil courts. This model of procedural rights places the victim of a crime as a subject who is given broad juridical rights to fight for and demand his interests.

Another case with the service model. Focus attention is placed on the need to create standard standards for fostering victims of crime, which can be used police. For example in form guidelines in framework announcement to victims, also to prosecutors, and the handling of cases from victims. Likewise, by providing compensation as a criminal sanction that is restitutorial and influences the victim's statements before the sentence is imposed by the perpetrator of the crime. This approach views victims of crime as special targets to be served within the scope of the activities of the police and other law enforcement agencies. Whatever the classification business actors in trading activities Electronics in Indonesia are included in the Indonesian government's Economic Policy Package Volume XIV which contains e-commerce tax policies . Where in this regulation divides e-commerce transactions into 4 models of e-commerce transactions . Volume XIV of the Economic Policy Package is regulated through a Circular Letter of the Director General of Taxes Number SE/62/PJ/2013 concerning

Affirmation of Tax Provisions on e-commerce transactions . The transaction model is as follows;

1. Online Marketplace is the activity of providing a place for business activities in the form of an Internet Shop like a Mall but using the Internet as a place for Merchants to offer goods and/or services.
2. Classified Ads adalah kegiatan menyediakan tempat dan/atau waktu untuk memajang content (teks, grafik, video penjelasan, informasi, dan lain-lain) barang dan/atau jasa bagi Pengiklan untuk memasang iklan yang ditujukan kepada Pengguna Iklan melalui situs yang disediakan oleh Penyelenggara Classified Ads.
3. Daily Deals is the activity of providing a place for business activities in the form of the Daily Deals website as a place for Daily Deals Merchants to sell goods and/or services to Buyers by using Vouchers as a means of payment.
4. Online Retail is the activity of selling goods and services or services carried out by Online Retail Organizers to Buyers on Online Retail sites.

Electronic transactions are something that cannot be avoided in today's global trade era. E-commerce ( electronic commerce ) or what is known as trading through electronic systems is an example of the development of information technology which is now eroding conventional transaction patterns. This type of trade does not require a physical presence between the seller and the buyer to enter into an agreement on the process of buying and selling goods. Sellers are represented by an online system that serves buyers via a computer network. Therefore we need a system that is able to guarantee the security the transaction. Indonesia's internet penetration reached 132.7 million in 2016 or around 52% of the total Indonesian population, which has a considerable influence on the development of e-commerce in Indonesia. Data released by The Wall Street Journal magazine in StartUp Bisnis.com in 2014 stated that the development trend of Indonesian e-commerce from year to year would continue experienced an increase. In 2013, the amount e-commerce transactions Indonesia with type Business transactions to Customer (B2C) US\$ 1.79 million and continued to increase in the following years to US\$ 2.60 million in 2014, US\$ 3.56 million in 2015 and in 2016 it is estimated to reach US\$ 4.89 million.

The rapid development of e-commerce in Indonesia can also be seen from the increasing amount business start-up , marketplace , and sales retail online . pg This of course has implications for the existence of conventional stores which are now being replaced by electronic stores better known by their names; Cyberstore, Digital Market 's Online Shop, Electronic Mall and so on. There is the development of e-commerce This Of course give impact positive and negative against Indonesia's current trading system no longer recognizes the territorial boundaries of a country. Based on data from the Ministry of Information, there have been 16,678 reports that have entered the site, data as of September 11 2018 said Acting Head of the Ministry of Public Relations Bureau Kominfo Ferdinand agreed. From whole report the almost, 14,000 of them are crimes in the form of fraudulent online buying and selling transactions. Handling case fraud on line in Indonesia at least can seen from several cases were decided in several District

Courts, such as in the Masamba District Court Decision Number 185/Pid.Sus/2014/PN Msb, with the Defendant Musbah alias Andi Dwi Susanto alias Sarbini Bin Mangkerru, the Defendant who was proven to have committed fraud on line sentenced punishment based on provision in Chapter 28 Paragraph (1) of the ITE Law where the Panel of Judges sentenced the Defendant to 10 (ten) months imprisonment. Such is the case with the Bantul State Decision Number 168/Pid.B/2015/ PN. Btl with Defendant Udika Als. Adit, the Panel of Judges sentenced the Defendant to imprisonment for 1 (one) year and a fine of Rp. 10,000,0000,- (ten million rupiah) with conditions when fine the No paid, will replaced with criminal confinement during 2 (two) months. Furthermore, in the Decision of the Sampang District Court Number 128/Pid.B/2016/PN. Spg with Defendant Fajar Alfah Bin Mohammad Alwi Rais, the Panel of Judges sentenced the Defendant to 1 (one) year and 6 (six) months in prison.

Of the few cases over, the prosecutions that were continuously developed were based on Article 378 of the Criminal Code and Article 28 Passage (1) of the ITE Law<sup>64</sup>. From the detailing of the two, it is vital to know that they direct various things. Article 378 of the Criminal Code directs extortion, whereas Article 28 Passage (1) of the ITE Law directs fake news that causes customer misfortunes in electronic exchanges. Indeed so, the two criminal acts directed within the two articles have one thing in common, which is that they can cause harm to other individuals. In any case, the definition of Article 28 Passage (1) of the ITE Law does not require the component of "profiting oneself or others" as stipulated in Article 378 of the Criminal Code concerning extortion. Within the application of these two articles, caution is certainly required, but what must be underlined is that Article 28 Section (1) of the ITE Law is more particularly not a crime that hurts shoppers and is carried out through online exchanges. Besides, from the decisions over, no choice was found which stipulated that the Respondent had to supply emolument to the casualty of the wrongdoing of online extortion. Usually indistinguishable from the method of recording for stipend which must be recorded independently by the Casualty to the Open Prosecutor through a prepare of consolidating cases no later than some time recently the open prosecutor submits a criminal charge or by utilizing the conventional Gracious Claim component with the Illegal Act claim show where the Casualty must hold up the presence of a court choice that has been chosen on a criminal case committed by a non-criminal culprit (Litigant).

Hence, what is ordered within the UUPK with respect to the rights of casualties, particularly compensation for harm coming about from criminal acts, as it was got to be the beliefs of the UUPK with an inclination not to be realized. Since in a few decisions related to online extortion, the Board of Judges did not touch on the rights that ought to be given to casualties of criminal acts, such as emolument as stipulated in the UUPK. The non-realization of remuneration is indeed in spite of the fact that it has been controlled within the UUPK cannot be isolated from the merger of cases as an alternative to inquire for remuneration as directed within the Criminal Strategy Code. It ought to be more overly famous, other than through a merger of cases, to claim emolument can be carried out

utilizing an ordinary civil claim with the tort claim show. In any case, the shortcoming of this instrument is that casualties of criminal acts must hold up for a court choice that has been chosen on a criminal case committed by the culprit (litigant).

Recompense as Extra Offenders Can Be Decided as an Exertion to Secure Casualties of Online Exchange Extortion Within the study of wrongdoing, there's no wrongdoing that does not cause casualties. Thus, the casualty is the fundamental member, in spite of the fact that on the other hand wrongdoing without casualty is additionally known, it must be deciphered as a wrongdoing that does not cause casualties on the other hand, for the case of sedate manhandle, betting, premature birth, where the casualty joins as the culprit. It is said without a victim it is incomprehensible for a crime to happen. So it is obvious that the victim is the primary member playing a vital part. Indeed after the wrongdoing was committed. In the matter of struggle resolution and assurance of discipline for the culprits, violations may also be committed by the casualty on the off chance that it feels that there's a follow-up that is unjustifiable and inconvenient to the casualty.

The part of the victim of this crime relates to what the casualty did, when something was done, where it was done. The part of the casualty has results and impacts for the casualty and his party, other parties and their environment. Between the casualty and the culprit there's a functional relationship. Indeed in the event of certain wrongdoings the casualty is said to be capable. Casualties can play a cognizant part, directly or indirectly, alone or jointly responsible or not, effectively or slowly, with positive or negative inspirations. Everything depends on the circumstance and conditions at the time the wrongdoing took place. It is essential that the part of the casualty be connected to the set of casualty parts, specifically:

### **A Number of Related, Independent and Complementary Parts.**

The casualty as the most member in the event of crime plays different parts which are restricted by certain circumstances and conditions, in reality it isn't simple to strongly recognize the roles played by the victim. The circumstance and condition of the casualty can fortify the culprit to commit a wrongdoing against the casualty. The casualty himself cannot take an activity, is unwilling or willing to end up a casualty. It is the circumstance and conditions in him that invigorate and energize other parties to commit a wrongdoing, since frequently there's no earlier relationship between the culprits and the casualties. These circumstances and conditions incorporate la. The definition of victims of crime in the Declaration of Basic Principles of Justice for victim of Crime and abuse of power is: "Victim" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or missions that are in violation of criminal laws operative within members states, Including thiose laws proscibing criminal abuse power.

The term victim also includes, family or people who depend on people other Which become victim. With thereby victim meant No only the victim who suffers directly, but the family or people who suffer as a result of the victim's suffering. The need to provide adequate legal protection to victims of crime is not only a national issue, but also an international one. Therefore, this problem needs serious attention. The importance of protecting victims of crime receives serious attention, which can be seen from the formation of the Declaration of Basic Principal of justice for Victims of Crime and abuse of power by the Union Nations, as results from the sevent united nation Congress on the prevention of Crime and treatment of Offenders , Which going on in Milan, Italy, September 1985.

As far as victims of crime are concerned, the UN Declaration has recommended that at least 4 (four) things be considered as follows:

1. Access to justice and fair treatment ( access to justice and fair treatment );
2. Payment of compensation ( restitution ) by the perpetrators of criminal acts to victims, their families or other people whose lives are formulated in the form of criminal sanctions in the applicable laws;
3. If the convict is incapacitated, the state is expected to pay financial compensation to the victim, his family or those who are the victim's dependents;
4. Material, medical, psychological and social assistance to victims, either through the state, volunteers or the community ( assistance ).

Of the 4 (four) items above, there are several fundamental rights for victims, namely:

1. Access to justice and fair treatments

Victims should be treated with compassion and respect. They are entitled to access to mechanisms of justice and to redress. Administrative and judicial mechanisms should be established and strengthened where necessary to enable victims to obtain compensation through formal or informal procedures that are fast and efficient, fair, accessible and inexpensive. Victims must be made aware of their rights in seeking compensation through such mechanisms. Ability reaction from processes administrative And matter about court according to the needs of the victim must be facilitated by:

need victim Which related with process court including:

- a. Inform victims of their role and scope, timing and progress of the course of action and the disposition of their cases, particularly those crimes which were seriously involved and they have sought confirmation;
- b. Victim heard his wish For considered:
- c. Help Which appropriate to victims throughout process law
- d. Treat victims well and ensure the safety of victims' families and witnesses from threats and intimidation;
- e. Avoid delay in grant decision victims.

## 2. Restitution

The perpetrators of crimes or third parties are responsible for compensating the victims, their families or dependents of the victims. Such compensation includes the return of property or payment for losses suffered and the restoration of rights. The government needs to review the implementation of laws and regulations to consider compensation in criminal cases. Included in environmental crime cases. Better to do environmental restoration or compensation.

## 3. Compensation

Compensation is given to the victim by the perpetrator. However, when the perpetrator is unable to pay, compensation must be paid by the state. Victim Which can compensation that is:

- a. Victims who suffer physical or psychological injuries as a result of dangerous crimes;
- b. Family victim.

## 4. Assistance / Assistance

Victims need to receive medical, social and psychological assistance. This assistance is channeled through the government sector or the community. The victim must guarantee his health. Related officials must have sufficient knowledge to be able to meet victims. So that the assistance provided is optimal and professional. The assistance provided must be on target. Justice is the main policy in institution social, as truth is in a system of thought. Justice does not allow the sacrifices imposed on a few people to be compounded by the majority of the benefits enjoyed by the many. In this sense, it is perceived that everyone receives rights according to the rights they have. A set of principles is needed for choosing among the various social arrangements that determine the distribution of those benefits and for support equitable sharing agreements. This principle is the principle of social justice: giving way to assign rights and obligations in institutions base public as well as determine distribution advantages and burdens of social cooperation appropriately. The existence of Article 34 of the 1945 Constitution is clearly in favor of programs for upholding social justice with a clear populist dimension which was initially very decisive for the creation of its legal product. The existence of this article also shows the political will of the state in building social justice for all Indonesian people. Now it's just how the message in the constitution is implemented in real life. Without serious efforts, Article 34 may stop at the reporting stage and not materialize in real life.

In the development of criminal law, especially with the emergence of restorative justice, restitution is seen as a punishment/ action to replace the victim for the loss of civil rights which can be valued in money. Restorative justice provides a broad scope for reaching an agreement between the victim and the perpetrator and within the framework of this agreement, one of the components is the payment of compensation to the victim or their family by the perpetrator, the victim's family or their heirs. Compensation is an implication of changes in sentencing patterns; from one that is oriented towards punishment (punitive justice) to one that is oriented towards restoration (restorative justice). Compensation is an effort to meet the interests and needs of victims who have

been neglected in the criminal justice system. Viewed from the perspective of restorative justice, treating crime as a personal conflict, the perpetrator must cause a violation to compensate the victim or also called restitution because the crime is a violation, First of all, violating individual rights and community rights (public interest), the interests state, and at the same time violates the interests of the perpetrators of the crime itself.

## **CONCLUSIONS AND RECOMMENDATIONS**

1. The ITE Law only regulates the main punishment for online buying and selling fraud perpetrators. Of the many cases involving online buying and selling fraud, in general, they do not decide on compensation in the form of compensation that should be given to the victim but only decide on the main punishment for the victim and the perpetrator. This cannot be separated from demands for compensation in the form of compensation only as an option in the current Indonesian criminal law system. We see it at least in articles 98-101 of the Criminal Procedure Code, and article 1365 of the Civil Code. The obligation to pay back is limited to certain offenses, as stipulated in the law on the protection of witnesses and victims. Although victim recovery can be seen as the implementation of restorative justice, it is a concept of justice that was applied during the criminal law reform in Indonesia.

2. Compensation in the form of restitution as an additional punishment is a very reasonable option to realize the rights that victims of crime have been denied for generations, even though they have prosecuted the perpetrators of the crime. Compensation is only one of the options and the position of the victim, who often does not understand compensation, requiring compensation as an additional punishment. From the point of view of restorative justice, a concept that has been used in a number of laws and regulations in Indonesia considers crime as an individual conflict so it is up to the perpetrator to make remedies for the violation. or so-called restitution is something that must be done because the crime is a violation. First, violating individual rights and community rights (public interest), state interests, and also violating the interests of the perpetrators themselves. Amendments to the ITE Law need to include restitution in the form of restitution as an additional punishment so that reimbursement is not just a proposed option but becomes an obligation that must be carried out by every perpetrator causes if the crime he commits harm to the victim. Given the urgency of reimbursement as a necessity in the event that a crime victim suffers a loss, reimbursement is not only limited to certain offenses such as those in Indonesia but also to any crime that is detrimental to the victim.

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