



Hacking Criminal Sanctions According to the ITE Law and Islamic Criminal Law **JLCA**

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A B S T R A C T

Now we are entering an all-digital era where digital problems and crimes are increasing. This research examines the Law on Information and Electronic Transactions with Islamic Criminal Law according to the Regulations which regulates these actions is Law Number 11 of 2008 regarding Information and Electronic Transactions in Article 31 paragraph (1) to paragraph (2) with penalty criminal Which loaded in Chapter 47 Constitution Number 11 2008 concerning Information and Electronic Transactions, this research was conducted descriptively with the aim of making a better study related to the views of Islamic Criminal Law.

INTRODUCTION

Events that occur in one country can be recognized from other countries hundreds of thousands of kilometers away within minutes of the incident. Data and communication innovation apart from providing financial benefits for web clients who need data, will be a double-edged sword, because in order to realize a positive commitment to improve welfare and advance human civilization, it is also a feasible means to commit acts against the law. It can be proven that the development of computers and the internet has become a modern tool or arena for the world of crime. Because computers and the web as human manifestations have characteristics that are easily misused by anyone who has expertise in that field.

Training on the web cannot be separated from human calculus and its legitimate results also meet with people in society who are in the physical world, then there are considerations about the need for legal rules to direct training on the internet. Because these characteristics are very distinctive, there are assumptions for and against whether customary law can direct activities in cyberspace or not. This will cause a dispute in the settings. In general, experts and cons question whether a customary legal framework can guide training on the internet, to be more specific;

1. Characteristics of activities on the internet as part of information technology is cross-border or world relations to be borderless so it's not anymore subject to territorial boundaries and cause economic changes, social, technology And culture significantly.
2. The conventional legal system which actually relies on territoriality, is considered not enough to suffice to answer the legal issues that new arise And raised by activity activity man in in world virtual space.

The next problem is the problem of security and operations through electronic means, even creating a new dimension of crime. Telecommunication crime is the dark side of technological progress which has a broad impact in all areas of today's modern life. Several forms of telephone crime in this area include;

- a. Use card credit person other,
- b. Transaction banking,
- c. Utilization of someone else's secret code (PIN) for withdrawing cash at ATM,
- d. Engagement or contract electronic,
- e. Use domain owned by person other Which breaking right on riches intellectual,
- f. Make, provide, send or delete data computer Which resulted the disturbance function system,
- g. Make, provide, send or delete data computer Which causing economic loss to others, accessing computer networks with Meaning steal data (hacking). Wrong One case Which happen on year 2018 three suspect a student Which join in community Surabaya Black Hat (SBH) has hack around 3,000 system technology information And system web from 44 country.

A crime committed by entering/infiltrating an illegal computer network system that is entered by the owner of the computer network without permission or knowledge. Usually the perpetrators of these crimes are called hacks or (hackers). Hacking as a form of business has existed and developed along with the development of computer and internet technology. In addition, it turns out that the hacking culture among geeks (a term for tech enthusiasts) is profitable, because by hacking one can find out the weaknesses of a system or product. software or hardware product. So it's no surprise that big IT companies started looking for people with hacking skills to hire. Hiring hackers is not without a purpose or purpose, but to test systems, improve product quality, and more.

From the explanation above it can be concluded that hackers can be individuals or organized communities. Gradually, with the development of computer and internet technology and the ease of learning information technology, it has resulted in the emergence of new hackers that cannot be underestimated. them, even if most hackers are self-taught. In essence, criminal offenses in general are regulated in Article 30 of the Electronic Information and Transaction Law No. 11 of 2008, as follows;

- (1) Every person intentionally and unlawfully or unlawfully accesses another person's computer and/or electronic system in any way.
- (2) Everyone intentionally and unlawfully or unlawfully accesses another person's computer and/or electronic system in any way for the purpose of obtaining electronic information and/or electronic material.
- (3) Everyone intentionally and unlawfully or illegally gains access to another person's computer and/or electronic system in any way by violating, tricking, bypassing or violating the security system.

Furthermore, when circumstances and conditions change, Islamic law must respond to a number of new problems in today's modern world. Many different problems can be solved, but what about hacking as a modern crime . Based on background behind problem in on, so tree problem study This is as How Penalty Perpetrator follow Criminal Hacking in accordance the law Invite ITE.

LITERATURE REVIEWS

Constitution ITE

On basically Which meant with Information And Transaction Electronic in general it is regulated in article 1 of Law Number 11 of 2008 concerning Information And Transaction Electronic Which beeps as following;

- (1) Electronic Information is One or electronic data set, including but not limited to writing, sound, images, maps, designs, photographs, electronic data interchange (EDI), letter electronic (electronic mail), telegram, telex, telecopy or the like, letters, signs, numbers, Access Codes, symbols, or perforations which has processed which has meaning or can understood by people Which capable understand it.
- (2) Transaction Electronic is deed law Which done with use computer, network computer, and/or media electronic other.
- (3) Information Technology is a technique for collecting, prepare, store, process, publish, analyze, and/or disseminate information.

Hacking

Hacking can be interpreted as an action from a hacker which is looking for weaknesses in a computer system. Where the result can form a small program that can be used to enter into a computer system or utilize the system for a particular purpose without having to have a user account. A hacker which is good, if they find things like that will notify the system administrator, that the computer system entered has these weaknesses that may be harmful to the computer system. If the results from hacking are used by a person which is not good, so the action is classified as a cybercrime.

Although initially hacking has a noble purpose, namely to improve system security which has built and strengthened it. But in hacking development is used for other purposes that are harmful. This cannot be separated from the increasingly widespread internet users' abuse of ability. Hacking also follows the breadth of internet utilization.

Multiple hacking stages which will then be used as a step to determine the stages of hacking which can be categorized as a crime. Stages of hacking like which are meant are;

- a. Gather and study information about the operating system, computer or network computer which is in use on the target.
- b. Infiltrate or access the network computer target.
- c. Exploring the system computer and look for that access more fully.
Make backdoors and remove footprints.

METHODOLOGY

Type study

This research is library research (*library research*), which is a study which is done by reading books, literature that has a relationship with the issues discussed. In this case the author reads books that relate to *hacking* to establish and understand the research results of various types of books.

a. Characteristic Study

This research is descriptive by analyzing the data studied with exposed data, so that a conclusion is obtained. In this research will describe the application of Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE) and legal views of Islam regarding *hacking*.

b. Source Data

Sources of data are materials obtained based on the data: legal data, primary, secondary, and tertiary.

RESEARCH RESULTS

Hacking in Constitution Information And Transaction Electronic (ITE)

Hacking in Law Number 11 of 2008 Regarding Information And Electronic Transactions. The juridical premise can basically be interpreted as a halal premise. This lawful or juridical premise is the premise for specialists to form control of laws to be legislated and executed. This legitimate premise will contribute specialists to officials or organizations or institutions to form statutory directives. The legal premise that gives the authority to enact statutory control is very important and especially important to note given that without being directed

explicitly towards legislation, officials or organizations are not authorized to issue controls. Moreover, if this were to happen, consequently, the directives issued would be legally imperfect controls.

In other words, it can be said that in the event that an item is legally issued by an official who is not authorized to do so, then any valid item issued becomes invalid and null and void (*van reshtwegenieting*) or is considered to have never existed and all the consequences arising from Halal goods become null and void by law. Based on this explanation, based on *contrario contrario* it can be concluded that every type of statutory control must be carried out by an institution or official authorized to form statutory oversight. The second thing that is important to note in this juridical basis is relating to suitability and content or conformity between the type and material of the cargo Which conceived inside it. In formulate A regulation legislation invitation to the obligation to conformity between forms or types of products legal product with material or substance or content regulated in the product law the.

Points important furthermore related with base juridical This is related with ways (procedures) on mechanism Which must done in process making regulation legislation. With In other words, an establishment of legislation must be carried out with ways Which Already set.

On the contrary, if system method the No followed, so asAs a consequence, these legal products do not yet have legal force binding and revocable. The last one is also important to pay attention tothe process of forming statutory regulations in Indonesia that regulations legislation Which formed No can contrary with regulation higher level legislation. In other words, you can too said that regulation legislation Which formed must in accordance with hierarchy regulation current regulation in Indonesia.

Besides a number of matter in on, in make A regulation legislationinvitation or something product law including in inside make provision regulation legislation Which related with action tapping, Also must watching things following This:

a. Clarity Objective

In simple terms, the clarity of this goal can be interpreted that every formation Legislation must have clear objectives to be achieved achieved.

b. Can held

Every formation regulation legislation must take into account effectiveness regulation legislation the in the public, Good in a manner philosophical, juridical nor sociological.

c. reliability And usability

Every regulation legislation made Because of course truly needed and useful in managing the life of the nation and societypatriotic.

d. Clarity Formula

Every regulation legislation must fulfil condition technical drafting of laws and regulations, systematics, and choice say or terminology, as well as discuss the punishment clear and easy in understand, so that does not generate various kind of interpretation in implementation.

e. Openness

Process opening regulation legislation start from planning, preparation, preparation, and discussion are transparent and open. With thereby, whole layer public have agreement Which wide- breadth For give input in process making regulation legislation the.

Related with arrangement action tapping in form the law law, in Indonesian positive law, regardless of all the problems that arise arises, there are various laws that can be used as a juridical basis or basic law for wiretapping. This is because basically Indonesian people are familiar with the act of wiretapping and regarding the action wiretapping has indeed been strictly regulated in several laws Which characteristic special though No arrange it in a manner clear, Certain And detailed.

Law Criminal Islam

1. Understanding *Jinayah*

Jinayah is form *verbal noun* (masdar) from say *jana* . kindly etymology *jan* means to sin or wrong, while *jinayah* means action sin or wrongdoing. ²¹ According to Abd al-Qadir Awdah *jinayah* is something actions that are prohibited by *syara'* because they can poses a danger to the soul, treasure, descendants, and sense. Discussion jurisprudence *jinayah* in a manner line big is law *syara'* Which regarding criminal and legal matters. In other words, that problem discussed in fiqh *jinayah* and also criminal law in general is an act criminal and punishment.

2. *Finger*

Finger originate originate from say *جرم* Which means business whereas according to the term Imam Al Mawardi put forward: ²² *Jarimah* is a prohibited act by *syara'* , punishable by *had* or *ta'zir*. So an act new considered as *finger* if deed That forbidden by *syara'* And threatened with punishment. With thereby if deed That No There is the ban in *syara'* then deeds that's the law changed.

3. Type *finger*

According to heavy lightness punishment *finger* divided become 3 that is:

a. *Finger hudud*

Finger hudud is *finger* Which threatened with punishment *limit* . *Had* is the punishment that has been determined by *syara'* and become rights God). In *finger hudud* Alone there are 7 *finger* Which has set that is;

- 1) *Finger adultery*
- 2) *Finger qazdaf*
- 3) *Finger syurbul khamr*
- 4) *Finger theft*
- 5) *Finger hirabah*
- 6) *Finger riddah*
- 7) *Jarimah al Bagyu*
- 8) *Jarimah qishash* And he t
- 9) *Finger qishash* And he t

Jarimah qishash and *diat* is a crime against the soul (eliminate life) and limbs that are threatened with *qishash punishment* (similar = for example) and *diat* (compensation from the perpetrator or his expert to the victim or his guardian). There is even *finger qishash he t* This divided become 5 that is;

- 1) Murder on purpose
- 2) Murder resemble on purpose
- 3) Murder by mistake
- 4) Persecution on purpose
- 5) Persecution No on purpose

b. *Finger ta'zir*

Finger ta'zir is *finger* Which threatened with *punishment ta'zir* . So punishment *ta'zir* This is punishment Which Not yet determined by *syara'* , melaikan is left to *ulil amri* , both its determination and its implementation. In determining the punishment, the ruler only determines the global punishment. It means making Constitution No set punishment For each each *finger ta'zir* , but only determines a set of punishments, from Which lightly until Which as heavy as- the weight.

4. *Uqubah*

Uqubah in the sense of language is a punishment, whereas according to the term is a form of recompense for someone whose actions violate the provisions of *syara'* established by Allah and His Messenger for the benefit of mankind. ²⁵ Purpose of punishment in the Shari'ah Islam is realization of goals Islamic law That Alone, namely as retaliation for deeds evil, deterrence general and prevention specifically and protection to rights si victim.

5. Type '*Uquba*

Punishment reviewed in terms of interrelationships one penalty with punishment Which others, in Islamic criminal can shared become 4 part that is;

- a. Punishment tree ('*Uquba Ashliyah*), punishment Which set For *finger* that concerned as punishment original.
- b. Punishment substitute ('*Uqubah Badaliyah*), punishment Which replace punishment tree, if punishment tree No can held Because that reason legitimate, like punishment *he t* as replacement *qishash* punishment .
- c. Additional punishment ('*Uqubah Taba'iyah*), punishment that follows punishment principal without requiring a separate decision, such as a prohibition to accept inheritance person Which kill person Which will he inherited.
- d. Complementary punishment ('*Uqubah Takmiliyah*), Punishment that follows the punishment subject to the condition that there must be a separate decision from the judge and this condition Which distinguish it with punishment addition.

Qiyas

Qiyas is one of the four sources of Islamic law agreed upon by the scholars (*muttafaq 'alaih*) after the Qur'an, *AsSunnah* and *al-Ijma'*.²⁶ The rest is arguments which still disputed its use (*mukhtalaf 'alaih*), such as *istihsan*, *maslahah mursalah*, *istishab*, *urf*, and so on. Almost no the book of *Ushul Fiqh* which skips the discussion of *Qiyas* in the chapter on the propositions *Shari'a* argument. *Qiyas* has been synonymous with *ushul fiqh*, because of the discussion of *ushul fiqh*. No complete without *qiyas*. This show *qiyas* have position which important in discussion sources law Islam.

Understanding *qiyas* in a manner terminology there is a number of definition which put forward para cleric *proposal fiqh*, though editorial different but contain understanding which sam

DISCUSSION

Penalty Hacking In Constitution Information And Transaction Electronic (ITE) and Islamic Criminal

The current technological advances in Indonesia are so significant, giving birth to this an unlawful act in the form of wiretapping of electronic information done on year 2009 by Australia to President Susilo Bambang Yudhoyono (SBY) with nine state officials. Hence it is formed various laws that are used as a juridical basis or legal basis for action tapping information electronic. Which where has arranged in a manner firm in several laws that are specific but do not regulate it in a manner clear, certain and detailed.

Has mentioned in Constitution Base 1945 with all the amendment explains that one form of human rights must be maintained and being protected by the state is one's self-protection towards things public from, to, and within a certain computer and/or electronic system person other, good which no cause change whatever nor which cause exists change, disappearance, and/or termination information electronics and/or document electronic which is being transmitted. Hacking (hacking) is something process analyze, modify, break through entered into in computer and network computer, good for profit or motivated by challenge. Hackers designation for a which do this activity seeks to find gaps in a computer or computer network to search for profit certain.

In Constitution ITE a hackers has arranged in the law Law Number 11 of 2008 concerning Information and Electronic Transactions. And formulated in Chapter 30 About Illegal Access And in Chapter 32 About Data Theft. In Article 30 Concerning Illegal Access there are 3 paragraphs that read as following:

" Every person intentionally and without rights or against the law accesses Computer and/or People's Electronic Systems other with method whatever".

Elucidation regarding this paragraph (1) that computers and/or electronic systems is privacy person which protected existence. Formulation *Hacking* as follow criminal in Constitution Number 11 Year 2008 About Information and Electronic Transactions Article 30 Paragraph (1) above is threatened with sanctions criminal provisions contained in the criminal provisions of Article 46 Paragraph (1) namely: "Every person that meets the elements as referred to in Article 30 paragraph (1), sentenced with a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp 600,000,000.00 (six hundred million rupiah)".

“ Every person intentionally and without rights or against the law accesses Computers and/or Electronic Systems belonging to other people in any way the purpose of obtaining Electronic Information and/or Electronic Documents”.

The same as in Paragraph (1) but in Paragraph (2) this is added elements “with the aim of obtaining Electronic Information and/or Documents Electronic”. Formulation Hacking as follow criminal in Constitution Number 11 Year 2008 About Information And Transaction Electronic Chapter 30 Paragraph (2) above is threatened with criminal sanctions contained in the criminal provisions of Article 46 Paragraph (2) namely: “Any person who fulfills the elements referred to in Article 30 paragraph (2), shall be punished with imprisonment for a maximum of 7 (seven) years and/or a maximum fine Lots IDR 700,000,000.00 (seven hundred million rupiah)”.

“Every person intentionally and without rights or against the law accesses Computers and/or Electronic Systems belonging to other people in any way violate, break through, surpass, or break security system”.

In this element means that perpetrator Hacking do his crimes with break through system security or in computer science it is called firewalls. Hackers use various application tools hacking in do his crimes. Where application the useful For break through or hack the security system something system electronic. This can be analogous to entering other people's homes without permission with break hinge door/window Which provision the crime arranged in Chapter 167 paragraph (2) Book Constitution Law Criminal. Element "with violate, penetrate, exceed, or break through the security system” became prominent in paragraph This Because of course ways the often worn by hackers can do his crimes.

Formulation of Hacking as a criminal offense in Law Number 11 Year 2008 Concerning Information and Electronic Transactions Article 30 Paragraph (3) above threatened with penalty criminal Which there is in provision criminal Chapter 46 Paragraph

(2) that is: *“Every Person Which fulfil element as meant in Article 30 paragraph (3), convicted with criminal prison most long 8 (eight) year and/or fine most Lots IDR 800,000,000.00 (eight hundred million rupiah)”.*

Whereas in article 32 regarding data theft is contained in Paragraph (2): which reads as follows: *“Every person intentionally and without rights or unlawfully in any way move or transfer the Information Electronic and/or Electronic Documents to Electronic Systems to People Which No entitled”.*

The crime referred to in paragraph (2) is a formal crime or follow criminal with formulation formal, that is Which considered has fully carried out, by carrying out an act that is prohibited by law. Actions that are prohibited by law are moving or transferring electronic information and/or documents belonging to other people or public property and not need proven consequence from deed Which forbidden the.

Referring to Article 32 paragraph (2), the threat of criminal sanctions is regulated in Constitution, as arranged in Chapter 48 paragraph (2) the law Invite Number 19 of 2016 concerning Information and Electronic Transactions namely: Article 48 paragraph (2) : *“Anyone who fulfills the elements referred to in Article 32 paragraph (2) convicted with prison most long 9 (nine) year and/or with most Lots IDR 3,000,000,000.00 (three billion rupiah)”.*

So it is clear that this hacking crime has been regulated in the law Number 11 of 2008 concerning Information and Electronic Transactions. In article 30 paragraphs (1), (2), and (3) regarding illegal access and in article 32 paragraph 2 concerning theft data. The existence of these rules is a form of responsibility must given by the state, For give protection maximum on all activities using information and communication technology within Indonesia so that protected from potential crimes and misuse of technology. More Furthermore, this law regulates the criminal act of hacking as part of cyber crime, Where there is arrangement about formulation follow criminal hacking and the threat of criminal sanctions for the perpetrators of criminal hacking. Because in its development criminal acts of hacking are used by cyber actors crime as action beginning For do follow criminal cyber crime Which other.

Equality

Hacking in Constitution nor law criminal Islam have equality that is that crime hacking This including into the crime breaking the law And both of them arrange about regarding sanctions for culprit. Besides that, in the ITE Law, hacking already has rules in Constitution ITE About Information Electronic on Chapter 30 About legal Access as well as in Article 32 Concerning Data Theft. Meanwhile in law Islamic criminal law, even though it is not clearly explained, this hacking crime is regulated, but with the qiyas method it can ensnare the perpetrators by qiyaskan Al- The Qur'an in surah An-Nur verse 27 regarding the prohibition of entering other people's homes and in surah Al-Ma'idah verse 38 about theft even though this is in plain view different with follow criminal hacking but on illat his own similarity regarding disturbing the privacy of others and equally taking people's rights other.

In terms of punishment for hacking crimes in the ITE Law as well as criminal law muslims together There are sanctions for the perpetrators. Penalty for perpetrators according to the ITE Law are imprisonment and fines. And from facet law criminal Islam perpetrator follow crime hacking including category punishment takzir.

Difference

Crimes regarding hacking in the ITE Law and criminal law Islam. There is a number of difference that is base law And penalty punishment, difference the is as following :

- a) In the ITE Law, the crime of hacking is regulated in the law Constitution Number 11 Year 2008 About Information And Transaction Electronic (ITE) Article 30 Concerning legal access as well as in Article 32 Concerning data theft. Meanwhile, in Islamic criminal law, although not it is clear that this hacking crime is regulated, but with the Qiyas method it can ensnare the culprit by reciting the Qur'an in surah An-Nur verse 27 regarding the prohibition of entering other people's homes and in surah Al-Ma'idah verse 38 about theft.
- b) The legal sanctions in the ITE Law are imprisonment and fines whereas penalty in law criminal Islam is form penalty Takzir.

CONCLUSIONS AND RECOMMENDATIONS

So that it can be concluded about the crime of hacking according to ITE law and Islamic criminal law, the authors can conclude as follows:

Follow Criminal *Hacking*

- a. In the Information and Electronic Transactions (ITE) Law, the criminal act of hacking is included in the Electronic Information and Transactions Law No. 11 of 2008 in Article 30 Paragraph (1), (2), (3) related to illegal access and Article 32 paragraph (2)) concerning data theft.
- b. According to Islamic criminal law, hacking is a new crime, so basically there are no rules of Islamic law governing hacking, so the perpetrators use qiyas (one of the sources of Islamic law). religion), namely illegal access to Surah An-Nur verse 27 which basically prohibits people from entering other people's homes without the permission of the home owner and Surah Al-Maidah verse 38 for data theft.
- c. Penalties for hackers Under the Information and Electronic Transactions (ITE) Act, hackers can be jailed and fined.

Based on research conducted by the author, the authors recommend;

1. The Government of the Republic of Indonesia can maximize socialization and enforcement of Law Number 11 of 2008 concerning Information and Electronic Transactions while strictly enforcing legal sanctions.
2. Legal experts or activists of Islamic criminal law can understand that hacking is a violation of law in the field of Islamic criminal law.

ADVANCED RESEARCH

Hopefully, further research will be better and more enlightening regarding Islamic crime in the case of wiretapping crimes.

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