Criminal Politics Criminal Actions of Information and Electronic Transactions (Within the Framework of Criminal Law Reform)

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Abstract. Information and electronic transactions crimes have a comprehensive impact on individuals, society and the state. Law Number 11 of 2008 as amended by Law Number 19 of 2016 has not been able to prevent and overcome criminal acts of information and electronic transactions, and cannot be used as a deterrent factor and shock therapy. The subject of criminal acts that do not reach corporations, and the pattern of criminal sanctions that do not create a deterrent and shock therapy as well as the absence of sentencing guidelines are factors in the problems in the a quo Law. Based on the results of the conceptual study, that criminal politics through the renewal of criminal guidelines and criminal sanctions must be based on the values of divinity, humanity, unity, democracy and justice. Corporations administering information systems and electronic transactions are subject to criminal acts, the need for guidelines for punishment and imprisonment, fines and compensation as well as the revocation of certain rights as a renewal of the a quo Law in the framework of reforming the Criminal Law towards a justice criminal politics.

Keywords: criminal politics · ITE crime · and criminal law reform

1 Introduction

During the decade of the 20th century, the development of information science and electronic transactions increased rapidly and continuously, which has an impact on human civilization. Traditional civilizations have become modern, communal civilizations have turned into individual civilizations, and tolerance civilizations have become ego-centric civilizations, so that human beings today and in the future can be said to be technocratic human beings or cyber humans. This means that human beings who behave and behave based on or depend on the power of information and electronic transactions.

Manuel Castells stated that the information revolution resulted in an information society as a network society, and in which information technology played an important role in the rise of networks as a new form of regulating human activity in business, politics, media and non-governmental organizations [1]. In addition, Fritjof Capra said

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that the common characteristic of various aspects of globalization is a global information and communication network based on revolutionary new technology [1].

Communication and information in Indonesia is obtained and disseminated through information and electronic transactions which are protected by the Indonesian constitution, as formulated in the 1945 Constitution of the Republic of Indonesia Article 28 F, which states "everyone has the right to communicate and obtain information for personal development and social environment, and has the right to seek, obtain, possess, store, process, and convey information using all available channels."

The era of cyber or information and electronic transactions in the 20th century affects the character and behavior of humans to become human "robots", which are controlled by information and electronic transactions, so that divine and human values are neglected in aspects of human life, which can have an impact on conflict social. Social media as an expression of the development of science, and information and electronic transactions are used as media for negative socialization, intolerance, provocation, and criminal acts, in the name of freedom of expression as a human right. People without boundaries have used social media in a destructive way, which has damaged the ideology, morals, culture and character of the nation. Fritj of Capra said that global capitalism has increased poverty and social injustice, not only by changing the relationship between capital and labor, but also through the process of "social exclusion" [1]. This is contrary to Article 28 C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states "everyone has the right to develop himself through fulfilling his basic needs, has the right to receive education and benefit from science and information and electronic transactions, arts and crafts." and "culture, in order to improve the quality of life and for the welfare of mankind."

Social agreements in society need to be carried out in order to eliminate or minimize these social conflicts, so that a legitimate, orderly and just social order or social institutions will be realized. One of the social orders or institutions that is used as the basis for eliminating or minimizing social conflicts is the legal order.

Indonesia respects the rule of law, that the interaction of social, national and state life is based on the law that has been agreed upon as a formal juridical system (legality), as formulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which defines the state of Indonesia as a state law.

Hans Kelsen said that the law is an order of human actions. "Order" is a system of rules. Law is a set of rules that contains a kind of unity that we understand through a system. A certain social order that has a legal character is a legal order [2].

The laws and regulations governing electronic information and transactions have not been able to control the development, implementation and misuse of electronic information and transactions in people's lives that lead to unlawful acts, even though in consideration of Law No. 11 Year 2008 on Electronic Information and Transactions, as amended by Law No. 19 Year 2016 on Amending Law No. 11 Year 2008 on Electronic Information and Electronic Transactions, stating that legal arrangements are used to prevent misuse of information and electronic transactions by taking into account the religious and social values of the community, as well as in Article 4 of the Electronic Information and Transactions Act No.11 of 2008 explains that legal regulations provide

a sense of security, fairness and legal certainty to users and organizers information organization and electronic information transactions.

Article 19 of the Declaration of Human Rights, states:

Everyone has the right to freedom of speech and opinion. This right includes the freedom to express opinions freely and to seek, receive and impart information and ideas in any media, regardless of national borders.

Article 28 E paragraph (3) of the 1945 Constitution of the Republic of Indonesia provides that "Everyone has the right to freedom of association, assembly and expression." as also implemented in Article 25 of Law Number 39 of 2000 concerning Human Rights.

However, there are limitations that must be taken into account, including those set forth in Article 30 of the Universal Declaration of Human Rights. Something is acting with the intent to violate the rights and freedoms set forth in this statement. As well as in Article 28 J paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states:

In exercising their rights and freedoms, everyone is required to comply with restrictions set forth by law for the sole purpose of ensuring recognition and respect for the rights and freedoms of others and to meet the legitimate request according to considerations of morals, religious values, security, and public order in a democratic society.

Restrictions on rights are also regulated in laws and regulations, namely Article 25 of Law Number 39 of 2000 concerning Human Rights, and Article 1 number 1 of Law Number 9 of 1998 concerning Freedom to Express Opinions in Public which states "… Freely and responsibly in accordance with the provisions of the applicable laws and regulations."

On the other hand, it is realized that the character of Indonesian regulation continues to be guided via way of means of the person of colonial regulation, so that the philosophy of colonial law always accompanies the enforcement of Indonesian law, such as Indonesian criminal law which is still guided by the philosophy of Wetboek van Strafrecht voor Nederlandsch-Indie (S.1915 No.732) with the theory of retribution (retributive theory), although in various formations or reforms of Indonesian criminal law it has stated that it is guided by the philosophy of Pancasila, but in reality it cannot be denied that legislators in Indonesia use the philosophy, principles or basic principles of colonial law.

Barda Nawawi Arief said the new law outside the Criminal Code is a national product, still under the auspices of the general rules of the Criminal Code (WvS) as a colonial-made "system/tree/master building", or in other words, "principles and criminal law and colonial criminal law still persist with the blanket and face of Indonesia". Although in the Special Law there are those who make special rules that deviate from the main rules of the Criminal Code, in its development, the Special Law grows like "wild (small) plants/buildings" that have no system (no pattern), are inconsistent, have juridical problems, and even "eat away/tore apart" the main system/building [3].

Illegal acts in the form of information crimes and electronic transactions are hot topics, such as falsification of information devices and electronic transactions, falsification of programs or use of programs without permission, destruction and or retrieval of program data, even conventional crimes have used information and transaction devices. Electronics such as pornography, hacking election data, fake news, news of fighting sheep,

blasphemous and slanderous information that ignores the values of divinity, humanity, solidarity, justice, and tolerance.

The National Cyber and Passwords Agency (BSSN) said a total of 714,170,967 cyberattacks occurred in Indonesia in 2022. The dominant cyberattack was ransomware or malware with a ransom requesting mode [4].

The Directory of Decisions of the Supreme Court of the Republic of Indonesia regarding the transformation of electronic information shows that in 2019 there were 58 decisions with details of 55 first-degree decisions, 3 decisions at the appeals level, in 2020 there were 93 decisions with details of 83 decisions at the first level, 7 decisions at the appeal level, 3 decisions at the cassation level., and in 2021 there were 83 decisions with details of 79 decisions at the first level, 3 decisions at the appeal level and 1 decision at the Cassation level [5].

In the age of globalization, the age of information and electronic commerce, the age of light, it is inevitable that electronic devices, which complement each other and are rapidly influencing Indonesian civilization and human character, are inescapable. The adoption and or harmonization of international law cannot be separated from the part of national law reform, especially in the context of criminal politics of information crimes and electronic transactions.

Legal reforms to Law Number 11 of 2008 concerning Information and Electronic Transactions have been carried out and contained in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, with the following considerations:

To ensure recognition and respect for the rights and freedoms of others, and to respect fair claims that do not violate security and public order and morals in a democratic society, It is necessary to amend the Law on Electronic Information and Transactions No. 11 of 2008 to achieve justice and public order, and legal certainty.

Substantively, the above reform includes the addition of electronic system operators as legal subjects, relating to the addition of criminal acts, as well as criminal sanctions.

Empirically, the substantive reform is not strong enough to affect criminal acts related to electronic information and transactionsas reported by the National Cyber and Cryptocurrency Authority and the Supreme Court annual report above.

From the gap (das sollen-das sein, normative-empirical) above, it shows that criminal policy for information and electronic transactions offenses must be studied to find the best way to develop a targeted solution that can be used as a factor deterrence to prevent perpetrators from committing acts another crime, and a shock therapy factor for other people not to commit the same crime as the perpetrator. Criminal politics against criminal acts of information and electronic transactions can be carried out from the aspect of legal substance, legal structure and legal culture.

Criminal policy research on information and electronic transactions criminal activity is limited to questions of legal substance, particularly those related to crimes and sentencing as an attempt to prevent and overcome these crimes, We will briefly address them in the discussion Legal structure and legal culture. The Pancasila paradigm as a measuring tool in conceptually reviewing criminal and sentencing, so that the study is not oriented to an empirical (factual) study of what has been indicted or demanded by the Public Prosecutor and court decisions. Conceptual studies are studies at the level of

ideas or ideas or thoughts that are subjective, and hypothesis testing is still needed in stating the truth of the study of these ideas or ideas.

2 Research Method

Criminal Politics Review Criminal Politics Criminal Actions Of Information And Electronic Transactions (Within The Framework Of Criminal Law Reform) is a study using a normative juridical approach, with a descriptive type of research, which is an approach that describes using secondary data in the form of studies of principles, principles and legal foundations on criminal policy, namely Law No. 11 of 2008 together with Law No. 19 of 2016 on information and electronic transactions.

3 Findings and Discussion

a. Criminal Politics and Pancasila

Criminal politics or criminal policy is a community effort in preventing and tackling criminal acts, both penal and non-penal. Sudarto provides 3 (three) definitions of criminal policy, namely [3]:

a. in a narrow sense, is the whole of the principles and methods that form the basis of reactions to violations of the law in the form of crimes
b. in a broad sense, is the overall function of the law enforcement apparatus, including the workings of the courts and the police
c. in the broadest sense (taken from Jorgen Jepsen) is the overall policy, carried out through legislation and official bodies, which aims to enforce the central norms of society.
d. In short, Sudarto said that criminal politics is a rational effort from the community in tackling criminal acts.

G Peter Hoefnagels gives an understanding of criminal politics [3]:

a. criminal policy is the science of responses
b. criminal policy is the science of crime prevention
c. criminal policy is a policy of designing human behavior as crime
d. criminal policy is a rational total of the responses to crime

Criminal politics cannot be separated from legal politics and social politics as part of national development, so that if legal politics and social politics are disrupted, criminal politics will be disrupted. Legal politics and social politics can become criminogenic factors, if the development of national law is not based on the values of Pancasila and the 1945 Constitution of the Republic of Indonesia, and will also have an impact on criminogenic criminal politics.

Criminal politics is part of legal politics, which aims to prevent and overcome criminal acts. So that talking about criminal politics cannot be separated from legal policies

in the development of national law as an integral part of national development, as formulated in the Vision and Mission of National Development for 2005–2025, Chapter III of Law Number 17 of 2007 concerning Long-Term Development Plans. National Year 2005–2025, in which the national development vision is pursued, among others, through the following national development missions:

a. Realizing a noble, moral, ethical, cultured and civilized society based on the Pancasila philosophy is to strengthen the identity and character of the nation through education that aims to form people who are devoted to God Almighty, obey the rule of law, maintain internal and inter-religious harmony, carry out intercultural interactions, develop social capital, apply the noble values of the nation's culture, and have pride as the Indonesian nation in order to strengthen the spiritual, moral, and ethical foundation of national development.
b. Realizing a democratic society based on law is to ensure media development and media freedom in communicating the interests of the community; and reforming the legal structure and enhancing the legal culture and enforcing the law in a fair, consistent, non-discriminatory, and pro-poor manner.
c. Realizing a safe, peaceful, and united Indonesia is to strengthen the capabilities and improve the professionalism of the National Police so that they are able to protect and protect the community; prevent crime, and solve crime.

Sudjito said that the law and the rule of law should be designed in such a way according to the cosmology of the nation, so it is impossible for the Indonesian legal state to be designed according to rechtstaat in accordance with European cosmology. The design of the Indonesian state of law is called the state of Pancasila law [4].

Legal development is directed at the further realization of a national legal system based on Pancasila and the 1945 Constitution of the Republic of Indonesia, which includes the development of legal materials, legal structures including legal apparatus, legal facilities and infrastructure; the realization of a society that has high awareness and legal culture in the context of realizing a rule of law; and the creation of a just and democratic society.

Legal development is accomplished through legal reform that takes into account the diversity of the applicable legal order and the effects of globalization with the aim of increasing legal certainty and protection, regulation enforcement and human rights, criminal awareness, order and welfare in the context of an increasingly orderly and orderly state administration for the better and smoother development of the country.

The development of legal substance (legal material) is directed at not only continuing the renewal of legal products to replace the colonial legacy legislation, but also harmonizing existing laws and regulations with Pancasila and the 1945 Constitution of the Republic of Indonesia, as well as international law. Pancasila is not only the ideology of the Indonesian nation, but also as the source of all sources of state law (vide Article 2 of Law Number 12 of 2011, as amended by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011. 2011 concerning the Establishment of Legislation.

The elaboration of the values of Pancasila in the Body of the 1945 Constitution of the Republic of Indonesia can be stated as follows [5]:

The values of the One Supreme God, are described, among others, in:

1. Article 29 paragraph (1) The state is based on the One Godhead, meaning that the State recognizes the basis of the One Godhead, because only humans believe in God, not the state because the State cannot believe in God. The consequence is that there should be no action or laws and regulations or social norms that blaspheme God's name or are anti-God, on the contrary, through laws and regulations, the government develops religious life and believes in God;
2. Fair and Civilized Humanitarian Values are described, among others, in:
   a. Article 28A states that everyone has the right to live and has the right to defend his life and life;
   b. Article 28 D paragraph (1) states that everyone has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law;
3. The values of Indonesian Unity are described in:
   Article 28 J paragraph (1) states that everyone is obliged to respect the human rights of others in the orderly life of society, nation and state. Paragraph (2) emphasizes that in exercising their rights and freedoms, everyone is obliged to comply with the restrictions established by law for the sole purpose of guaranteeing the recognition and respect for the rights and freedoms of others and to fulfill fair demands in accordance with considerations of morals, values, and values. -religious values, security and public order in a democratic society;
4. People's Values Led by the Wisdom of Wisdom in Representative Deliberations are described in articles:
   a. Article 28 states that freedom of association and assembly, expressing thoughts verbally and in writing and so on is stipulated by law;
   b. Article 28 E paragraph (3) affirms that everyone has the right to freedom of association, assembly and expression;
   c. Article 28 F affirms that everyone has the right to communicate and obtain information to develop their personal and social environment, and has the right to seek, obtain, possess, store, process, and convey information using all available channels.
5. The values of social justice for all Indonesian people are described in:
   a. Article 28 G paragraph (2) emphasizes that everyone has the right to be free from torture or treatment that degrades human dignity and has the right to obtain political asylum from another country.
   b. Article 28 H paragraph (2) emphasizes that everyone is entitled to special facilities and treatment to obtain the same opportunities and benefits in order to achieve equality and justice;
   c. Article 28 I paragraph (1) affirms that the right to life, the right not to be tortured, the right to freedom of thought and conscience, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of retroactive law. is a human right that cannot be diminished under

any circumstances. Paragraph (2) states that everyone has the right to be free from discriminatory treatment on any basis and is entitled to protection against such discriminatory treatment.

Taking into account that criminal politics is part of legal politics, the direction of Indonesian criminal politics is linear with Indonesian legal politics, by basing on the values of Pancasila and the 1945 Constitution of the Republic of Indonesia, namely the prevention and control of criminal acts that are divine, humane, and have legal certainty, democracy and justice.

A divinity criminal policy implies that in preventing and overcoming criminal acts, upholding divine values, such as no insult or blasphemy against the perpetrator's religion, respect and respect for the perpetrator as a creature of God. According to Arief Hidayat, belief in God is in the sense that the life of the Indonesian nation and state is based on belief in the One Godhead, thus opening up a freedom for citizens to embrace religion and belief according to their respective beliefs [8].

Humane criminal politics implies that in the prevention and control of criminal acts, torture and retaliation should not occur in giving punishments (penalties). Tukiran Taniredja stated, that with human values, the State recognizes the existence of equal rights and obligations for every Indonesian citizen, and requires the State to treat Indonesian people and other human beings fairly and not arbitrarily [9].

Criminal politics with legal certainty implies that the prevention and control of criminal acts is based on the laws and regulations that apply in Indonesia, and does not distinguish the application of the law. This means that there is a national legal entity that applies in Indonesia. Democratic criminal politics implies that in preventing and overcoming criminal acts, they do not act arbitrarily and provide opportunities for perpetrators to defend themselves, and are respected and valued as innocent parties as long as there is no presumption of innocence.).

A just criminal policy implies that in preventing and overcoming criminal acts, upholds the values of justice, such as equality in law, punishment based on a balance between action and crime, there is no discriminatory treatment.

b. Criminal Politics of Information Crime and Electronic Transactions

The policy of overcoming criminal acts (criminal politics) with criminal law (legal substance) as part of the development of national law is the most strategic formulation stage, in which all plans for overcoming criminal acts with the criminal law system will be drawn up [10]. From the formulation stage, it will be applied through a judiciary (legal structure), which Max Weber suggests that there are three judicial administrations in society. *First*, the Kadi court, which is a court with a peace function based on the wisdom and discretion of the judge without the need to be controlled by the necessity of the system. *Second*, empirical trial, which is a trial that is more rational, although not yet complete, in which the judge decides his case by analogy with previous decisions in similar cases, trying to find and refer to it for interpretation in order to find its relevance to the cases being handled. *Third*, rational justice, namely a judiciary that works on the working principles of a bureaucratic organization and the results apply universally, which are handled by professional experts in the field of justice and lawyers [11].

S.J. Fockema Andreae provides an understanding of the judiciary as an organization created by the state to examine and resolve legal disputes [12]. W.L.G. Lemaire defines the judiciary as an enforcer of law (rechtstoepassing dus ook rechtspraak) [12]. However, the basic stage of criminal politics is the creation of the legal substance of The offenses of information and electronic transactions, which, at the level of this study, are in the form of ideas or conceptual ideas.

Criminal politics through legal substance (criminal law) in the form of formal sanctions, which are suffering that is intentionally imposed by a power in society to citizens who have been proven to violate a rule that applies in society. However, sanctions need to also pay attention to international powers which are often very large and strong to match the power and role of national law, so that the sanctions imposed must take into account.

The formal sanctions formulated in internationally applicable law, both in the form of penal and non-penal.. Especially when using the absolute universal principle, in which Cassese asserts, that every country can exercise its authority to prosecute someone accused of an international crime without having to consider the nationality of the person concerned, the locus delicti of the crime, and the nationality of the victim, without even having to consider whether the accused is under the law. State power or not [11].

In relation to the criminal politics of criminal acts of information and electronic transactions, criminal sanctions cannot yet be used as a factor for shock therapy and deterrence, thus strengthening the assumption that laws and regulations relating to the prevention and control of criminal acts of information and electronic transactions have not been able to reflect effective law. Solution (effective solution).

The formulation of criminal sanctions is part of the formulation of laws and regulations (legal substance) which becomes the central point of the study, which opens up criminal disparities with criminal sanctions that are maximum threat and are cumulative-alternative, and do not determine additional criminal sanctions.

The formulation of criminal sanctions in Table 1 can be categorized as criminal sanctions that widen the occurrence of criminal disparities, and opens up opportunities for the judicial mafia to carry out criminal transactions, so that deterrence factors and shock therapy will not materialize. Choices of cumulative-alternative (and/or) types and the maximum severity of criminal sanctions will be used as part of the transaction, so there is no meaning in formulating heavy or large criminal sanctions if they are cumulative-alternative and maximum.

The criminal sanctions formulated in Law Number 11 of 2008 as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 are not able to reach corporations that own cyber networks, such as Youtube, Google and others which clearly and unequivocally the corporation contains and or facilitates negative content, both aspects of decency, pollution, humiliation, and terror. The corporation should be held accountable for the actions of those who own and or commercialize the cyber network. The corporation's liability is limited to content removal, not criminal liability. The criminal sanctions formulated in the law are only able to reach individuals as network users.

Criminal reform and punishment guidelines in the law need to be carried out by determining the categorization of criminal acts and sanctions, as well as the need for

Table 1. Criminal provisions Law No. 11 of 2008 combined with Law No. 19 of 2016

No	Deed		Sanction (maximal, Cumulative/Alternative)		Description
	Article	paragraph	Prison (mont)	Fine(IDR)	
1	45	1	72	1.000.000.000	and/or
2	45	2	72	1.000.000.000	and/or
3	45	3	48	750.000.000	and/or
4	45	4	72	1.000.000.000	and/or
5	45A	1	72	1.000.000.000	and/or
6	45A	2	72	1.000.000.000	and/or
7	45B	–	48	750.000.000	and/or
8	46	1	72	600.000.000	and/or
9	46	2	84	700.000.000	and/or
10	46	3	96	800.000.000	and/or
11	47	–	120	800.000.000	and/or
12	48	1	96	2.000.000.000	and/or
13	48	2	108	3.000.000.000	and/or
14	48	3	120	5.000.000.000	and/or
15	49	–	120	10.000.000.000	and/or
16	50	–	120	10.000.000.000	and/or
17	51	1	144	12.000.000.000	and/or
18	51	2	144	12.000.000.000	and/or
19	52	1			Weight 1/3 dan Principle Sanction
20	52	2			Principle Sanction + 1/3
21	52	3			Principle Sanction + 2/3
22	52	4			Principle Sanction + 2/3

the formulation of sentencing guidelines, namely considerations for judges in making criminal decisions.

Categorization of criminal acts and sanctions is an effort to classify or group actions according to the type and impact of the act and criminal sanctions, as in Table 2 which describes the ambiguity of the content of the act with criminal sanctions, so there is a need for renewal.

Indicators to measure the severity of imprisonment and/or fines are not clear or there are no guidelines or there is no standard formula as a parameter for imposing the type and severity of criminal sanctions. There is an assumption that the imposition of

Table 2. Categorization of Charges of Criminal Acts and Sanctions in Criminal Law Reform

No	Law No.1 of 2008 Jo Law No.19 of 2016				Innovation
	Article	Paragraph	Action Load	Sanction	
1	27	(1)	Decency	Criminal Sanctions is the same	There should be a different criminal sanction, because the type of qulaification of the act is different. Example decency with gambling, heavy where? Single Sanction systems
2	27	(2)	Gambling		
3	27	(3)	Insult and/or defamation		
4	27	(4)	Humilitation and/or defamation blackmail and/or threats		
5	28	(1)	Hoax and misleading	Criminal Sanction is the same	It is better if the criminal sanctins are differnt, because the type of qualification of the act has a different impact Single Sanction systems
6	28	(2)	Individual and/or Group Hatred or Hostility		
7	29	-	Threats of Violence or Intimidation to Individuals	Criminal Sactions	Single Sanction systems
8	30	(1)	Accessing Other People's Computers and/or electronic system in any way	Criminal Sanction	Single Sanction systems
	30	(2)	Access Computers and/or Electronic Systems in Any Way for the Purpose of Obtaining Information and/or Documents	Criminal Sanction	Single Sanction systems
	30	(3)	Access Compuetrs and/or Electronic Systems in Any Way by Violating, Breaking Through, Exceeding or Breaking the Security System	Criminal Sanction	Single Sanction systems

(*continued*)

Table 2. (*continued*)

No	Law No.1 of 2008 Jo Law No.19 of 2016				Innovation
	Article	Paragraph	Action Load	Sanction	
	31	(1)	Interception or wiretapping	Criminal Sanction	Single Sanction systems
	31	(2)	Interception or wiretapping	Criminal Sanction	Single Sanction systems
	32	(1)	Change, Add, Subtract, Transmit, Destroy, Remove, Move and Hide	Criminal Sanction	Single Sanction systems
	32	(2)	Move or Tansfer to an Unauthorized Person	Criminal Sanction	Single Sanction systems
	32	(3)	Chane, Add, Reduce, Transmit, Damage, remove, Transfer, Hide Confidenttial Informtion or Cocuments, so that They Can Be Accessed by the Public	Criminal Sanction	Single Sanction systems
	33	-	Actions that Result in Disruption of the System si that the System does not Work	Criminal Sanction	Single Sanction systems
	34	(1)	Produce, Sell, Procure for Use, Import, Distribute, Provide or Possess hardware or Software, Pasawords, Access Codes to Facilittate the Actions of Aricle 27 to Article 33	Criminal Sanction	Single Sanction systems

(*continued*)

Table 2. (*continued*)

No	Law No.1 of 2008 Jo Law No.19 of 2016				Innovation
	Article	Paragraph	Action Load	Sanction	
	35	–	manipulation, Creation, Alteration, Deletion, Destruction of Information and/or Electronic Documents, so that it Appears as if the Data is Authentic	Criminal Sanction is the same	It is better if the criminal sanctions are different, because the types of qualifications for the action s are different violation of article 27 to article 34 the criminal sanctions are dofferent, why in article 36 the sanctions are the same as article 35? Single Sanction systems
	36	–	Commit Acts of Article 27 to Article 34 that Cause harm to Others		
	37	–	Carry Out the Acts of Article 27 to Article 36 Outside the Territory of Indonesia against the System in Indonesia	Criminal Sanctions plus 1/3 for individuals	Single Sanction systems additional sanctions revocation of certain rights and/or corporate business licenses

criminal sanctions is only limited to conventions or habits or previous decisions or at will by judges which are subjective. If this really happens, then true justice does not exist in court, even though the head of the decision letter reads "Justice based on the One Godhead".

The guidelines for punishment, which are the considerations of law enforcement officers in applying criminal sanctions have not been formulated in a criminal legislation, so that the considerations applied by law enforcement officers are subjective, and these can be "played" in making decisions and applying criminal sanctions.

The bad mentality of law enforcement strengthens and enlarges the criminal disparity. In determining the severity of criminal sanctions related to the use of the indefinite sentences system or the maximum system on the number or duration of criminal threats or praxis, judges have the freedom to determine the length of the sentence to be imposed as long as it does not exceed the maximum limit [14]. Moreover, law enforcement cannot

be separated from the practice of discretion, it does need it and sometimes becomes an alternative [14].

The application of judges' discretion will cause inconsistency in the application of legal norms that have an impact on dishonesty and injustice, as stated by Mirko Bagaric, that the inconsistent application of legal norms is a sure sign of unfairness. If the underlying standards are inherently unfair, their consistent application will only perpetuate the injustice [15]. It is very different from progressive-minded judges, who make themselves part of society, will always ask "what role can I give in this reformation period? What does my nation want with these reforms? He will refuse if it is said that his job is only spelling out the law. "Progressive judges will always put their ear to the beating hearts of their people," said Satjipto Rahardjo [16]. Judges who use discretion are more subjective in nature, while progressive-minded judges prioritize justice that grows in society. In connection with the criminal and sentencing issues above, Criminal law reform in the form of criminal reconstruction and sentencing is required in the Electronic Information and Transactions Act No. 11 of 2008 together with Act No. 19 of 2016, Amendment Act of No. 11 of 2008 related to information and electronic transactions.

Criminal restructuring and punishment of laws and regulations related to information and electronic trading offenses may include:

a. Criminal guidelines
b. Criminal sanctions:

    1) Forms of criminal sanctions:

        a) Penal
        b) Non penal

    2) The nature of criminal sanctions:

        a) Single, meaning a strict punishment, not using the maximum (longest) or minimum-maximum criminal threat.
        b) the use of additional penalties in the form of revocation of certain rights of an actor and/or revocation of business license, if the perpetrator is a corporation.
        b) Provision of compensation.

The sentencing guideline is a basic guideline for judges' considerations in imposing a crime on a person and or the company has been legally and convincingly proven to have committed the offence. The sentencing guidelines contain indicators for considering the imposition of a just criminal, including:

a. human aspect, consisting of:

    1) the perpetrator of the crime

        a) person (individual, group, age, occupation, social status)
        b) corporation

c) government/country

2) a victim of a crime

a) person (individual, group, age, occupation, social status)
b) corporation
c) society
d) government/country

b. aspect of the offender

1) intentionally (dolus)
2) alpha (culpa)

c. aspects of the qualifications of the perpetrator's actions, consisting of:

1) light deeds
2) moderate action
3) heavy deeds

d. aspects of the impact of actions, consisting of:

1) the subject of the impact of the action

a) personal
b) group
c) society
d) country

2) the extent of the impact of the action

a) narrow
b) moderate
c) area

3) value the impact of actions

a) small
b) moderate
c) big

e. quantity aspect of action

1) first time
2) twice
3) more than twice

f. aspects of the nature of action

    1) complaint offense
    2) offense not complaining

g. aspects of the ability to be responsible

    1) responsible ability
    2) do not have the ability to be responsible

h. action aspect

    1) normal state
    2) disaster situation

i. action mode aspect

    1) without threats and/or violence
    2) by threats and/or violence

j. aspects of unlawful nature

    1) formal unlawful nature (contrary to the law)
    2) material unlawful nature (contrary to the law and/or unwritten law)

In addition to considering the above aspects, the sentencing guidelines must be based on the values of Pancasila, namely the values of divinity, humanity, unity, democracy and justice. This implies that the sentencing guidelines must pay attention to:

a. perpetrators of criminal acts as creatures created by God Almighty, so that the deprivation of the rights of perpetrators of criminal acts which are the rights of God Almighty, which cannot be taken by humans, such as death (divinity);
b. the dignity of the perpetrator as a human (humanity), meaning that the type and severity of the crime is equivalent to the human value and ability of the perpetrator;
c. the application of the same law without exception in the jurisdiction of Indonesia (unity);
d. the imposition of a criminal offense based on the deliberation of judges by referring to the legal facts and the defense of the perpetrators of the crime;
e. conformity of the crime with the guilt of the perpetrator of the crime (justice).

Therefore, punishment guidelines that contain progressive thoughts are needed in order to eliminate or minimize the value of judge subjectivity (discretion) in considering judges' decisions, and minimize criminal disparities.

Corporate actors as the subject of criminal acts have not yet been formulated in Law No. 11 of 2008 was amended and supplemented by Law No. 19 of 2016 amending Law No. 11 of 2008 related to information and electronic transactions, so that corporate actors

are free from legal bondage. Corporations need to be formulated in the above-mentioned law as the subject of criminal acts, both as providers and users of information services and electronic transactions, because prevention of criminal acts will not be effective if the punishment imposed is only for people who are administrators. As Muladi's opinion, that the corporation as the maker and also the one responsible for the motivation is to pay attention to tthe development of society itself, namely turns out to be for some offenses, just stipulating the management as those who can be punished is not enough [15]. Of course, it becomes a problem if the corporation as the subject of a crime can be subject to criminal sanctions, and criminal sanctions intended for people illustrate the vulnerability of criminal disparities and injustice.

Criminal sanctions in Law No. 11 of 2008 was amended and supplemented by Law No. 19 of 2016 amending Law No. 11 of 2008 related to information and electronic transactions, as Table 1 only formulates criminal sanctions in the form of penalties, namely imprisonment and fines which is the longest or the most threatening, and does not formulate additional penalties. In this regard, in accordance with Table 2, criminal sanctions need to be reconstructed by taking into account:

a. qualification of action (crime)
b. single criminal formulation
c. criminal formulation for corporations
d. additional criminal formulation

Empirically, criminal and sentencing issues in the Indonesian criminal justice process are always controversial, meaning that criminal prosecutions and decisions are far from being threatened (in abstracto), go so far as to grant immunity or amnesty to perpetrators of offenses, thereby hurting the sense of justice. Therefore, it is necessary to reconstruct the criminal offenses of information and electronic transactions within the framework of reforming the Criminal Law towards a just criminal politics.

Based on the discussion above, criminal politics reform is a reform of the criminal law system, Barda Nawawi Arief stated that reform of the criminal law system (penal system reform) can cover a very broad scope, which includes [16]:

a. reform of "substance of criminal law" which includes reform of material criminal law (KUHP and laws outside the Criminal Code), formal criminal law (KUHAP), and criminal law enforcement.
b. renewal of the "criminal law structure" which includes, among others, reform or structuring of institutions/institutions, management/management systems and their mechanisms as well as supporting facilities/infrastructure of the criminal law enforcement system (criminal justice system); and
c. renewal of "criminal law culture", which includes among others issues of legal awareness, legal behavior, legal education and knowledge of criminal law.

Sudarto stated that a comprehensive criminal law reform must include reform of material (substantive) criminal law, formal criminal law (criminal procedural law) and criminal law enforcement (strafvollstrecuengsgesetz). The three areas of criminal law must be jointly updated. If only one area is updated and the other is not, there will be

difficulties in its implementation, and the objectives of criminal law reform will not be fully achieved. The main objective of the reform is the prevention of criminal acts. AAG Peters stated that there are three principles that need to be considered in criminal law reform, namely the principle of legality (nullum delictum nula poena sine praevia lege poenali), the principle of error (nulla poena sine culpa), and the principle of secular compensation which requires punishment commensurate with the mistakes made by the perpetrator [18].

In the VII National Law Seminar in Jakarta on 12–15 September 1999, it was recommended that in the process of legal reform it is not enough just to prepare new laws and regulations in accordance with the objectives of the reform, but to restore the image of law and the enforcement of justice, the judiciary as a system which consists of interactions between elements of law enforcement, especially judges, clerks, police, prosecutors, lawyers and managers of correctional institutions need to simultaneously reform themselves [19].

The development of national law as an effort to restore the image of law and the enforcement of justice is a continuous and never-ending concept, so that issues of justice, law enforcement and people's attitudes towards the law should not ignore the circumstances and the time dimension when the law was applied, in addition to being unwise, it is also will potentially deny the principles and legal certainty itself [19]. Even though Friedrich von Savigny stated that the "file" of society into a codification would be useless because society is a being that is constantly changing, while the laws that have been written into the book are like carvings on granite that will not be changed and easily changed once just. The law must be allowed to flow with the flow of societal change [11]. Similarly, Henry S. Maine saw society not as a permanent model or ideal type, but as a system that could never be free from the dynamics of the process [9]. Therefore, social conditions that are criminogenic in nature become an inseparable part in determining the effectiveness of criminal politics, especially against criminal acts of information and electronic transactions.

4 Conclusion

Based on the discussion above, criminal politics against criminal acts of information and electronic transactions is not enough with criminal law reform, in the form of reforming legal substances, legal structures and legal culture, but more fundamental is solving the problem of criminogenic social conditions. Law enforcement against criminal acts of information and electronic transactions carried out at this time is only a description of the prevention and control of criminal acts of information and electronic transactions that are temporary, meaning that law enforcement does not resolve criminal acts of information and electronic transactions missing from the public, and what is being done at this time only reducing the criminal statistics of criminal acts of information and electronic transactions and narrowing the space for perpetrators of criminal acts of information and electronic transactions in an evolutionary (slow) manner, so that the enforcement of the image of law and justice is also evolutionary.

Therefore, in order to accelerate the image of law and justice in Indonesia, legal reform is needed, both in terms of substantive, institutional and legal culture. However, reforms from the aspect of legal substance greatly affect the work and performance of law enforcement and the legal culture of the community. Legal reform, especially criminal politics, must be based on Pancasila as the source of all sources of law, which has been normatively described in the 1945 Constitution of the Republic of Indonesia. On the other hand, legal reform needs to be carried out in Law No. 11 of 2008 as already stated amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, namely the need for criminal guidelines, formulation of corporate actors, and formulation of criminal sanctions that take into account the qualifications of the act (criminal act), single criminal sanction, the formulation of additional penalties in the form of non-penal (compensation and revocation of certain rights).

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