



Volume 37 No 3, September 2022

DOI: 10.20473/ydk.v37i3.32484

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Yuridika (ISSN: 0215-840X | e-ISSN: 2528-3103)

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FAKULTAS HUKUM UNIVERSITAS AIRLANGGA



Article history: Submitted 1 January 2022; Accepted 16 June 2022; Available Online 1 September 2022.

## Fake Accounts on Social Media as a Criminal Act of Electronic Information Manipulation in Indonesia

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### Abstract

There are often cases where irresponsible individuals create social media accounts using other people's personal identities as if the account is the original account of the person whose identity is being used, hereinafter referred to as fake social media accounts. Such actions can be threatened with Article 35 jo. Article 51 paragraph (1) of Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law). The type of research used by the author in this study is prescriptive normative law research with a statute approach and a case approach. In Verdict Number 1739/Pid. Sus/2020/PN Jkt.Brt, the defendant was declared guilty of committing a crime under Article 28 paragraph (1) jo. Article 45A paragraph (1) ITE Law. Not only fulfilling the elements in Article 28 paragraph (1) of the ITE Law, but the defendant also fulfilled the elements in Article 35 of the ITE Law. However, the defendant was not found guilty of a criminal offense under Article 35 of the ITE Law, even though Article 35 of the ITE Law was one of the prosecutor's indictments. Based on this research, the defendant was not found guilty of a criminal offense under Article 35 of the ITE Law because the form of the indictment in Verdict Number 1739/Pid.Sus/2020/PN Jkt.Brt is less precise. The form of indictment used by the public prosecutor is an Alternative Indictment where ideally the public prosecutor ought to use Cumulative Indictment on a *concursum realis* crime that the defendant committed.

**Keywords:** Electronic Information Manipulation; Fake Accounts; ITE Law; Concurrent Crime.

### Introduction

The identity listed on a social media account should match the actual account creator and not be in the name of someone else. In reality, nowadays there are often cases where irresponsible people create social media accounts using other people's personal identities as if the account is the original account of the person whose identity is being used, hereinafter referred to as fake social media accounts. Often people then use fake social media accounts to carry out negative actions such as

deceiving others, so that the identity of someone who is used becomes defamed. In Indonesia, the act of an irresponsible person who uses the identity of another person to create a fake account on social media as if the account is authentic can be threatened with Article 35 *jo.* Article 51 paragraph (1) of Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law).<sup>1</sup> Although there are regulations in the ITE Law to prohibit the creation of fake accounts on social media as if the accounts were real accounts, in reality, there are people who create fake accounts using other people's identities, thus violating Article 35 *jo.* Article 51 of the ITE Law. In Indonesia, one of the examples is the case of Verdict Number 1739/Pid.Sus/2020/PN Jkt.Brt where the defendant created a fake account on Instagram under the name of a witness named Gde Brawiswara Putra, which was used to deceive by inviting people to invest using a forex trading robot software scheme.<sup>2</sup> In the case of Verdict Number 1739/Pid.Sus/2020/PN Jkt.Brt, the defendant caused the victim, Adriansyah, to suffer a material loss amounting to Rp5.000.000,00 (five million rupiahs) as a result of the fake account.

In the Verdict Number 1739/Pid.Sus/2020/PN Jkt.Brt, the defendant was found guilty of committing a criminal act : "Each person who intentionally and without rights spreads false and misleading news that results in consumer losses in electronic transactions" as regulated in Article 28 paragraph (1) *jo.* Article 45A paragraph (1) ITE Law. The defendant not only fulfilled the elements of Article 28 paragraph (1) *jo.* Article 45A paragraph (1) ITE Law, but the defendant had also fulfilled the elements of Article 35 of the ITE Law. However, the defendant was not found guilty of a criminal offense under Article 35 of the ITE Law. Therefore, in Verdict Number 1739/Pid.Sus/2020/PN Jkt.Brt there is a discrepancy in the implementation of the law with the norms regulated in Article 35 *jo.* Article 51 paragraph (1) ITE Law.

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<sup>1</sup> Deas Markustianto dan Budi Setiyanto, 'Tindak Pidana Pembuatan Akun Palsu Dalam Media Sosial (Studi Putusan Nomor: 10/PID.SUS/2013.PN.PT)' (2013) 8 *Recidive Jurnal Hukum Pidana dan Pengangulangan Kejahatan*. [44].

<sup>2</sup> Putusan Nomor 1739/Pid.Sus/2020/PN Jkt.Brt 2022. [3].

In this research, the author will analyze Verdict Number 1739/Pid.Sus/2020/PN Jkt.Brt to find the cause of the discrepancy in the implementation of the law with the norms regulated in Article 35 *jo.* Article 51 paragraph (1) ITE Law. The author will discuss the regulations of electronic information manipulation in the provisions of the legislation in Indonesia, the elements in Article 35 of the ITE Law, the elements in Article 35 of the ITE Law which are fulfilled by the defendant, the types of indictments used by the Public Prosecutor, and the types of indictments that the Public Prosecutor ought to have used in this case.

### **Electronic Information Manipulation Regulations in the Provisions of Legislation in Indonesia**

Electronic Information Manipulation in the provisions of laws and regulations in Indonesia is regulated in Article 35 of the ITE Law which states: “Each person intentionally and without rights or against the law manipulates, creates, changes, deletes, destroys Electronic Information and/or Electronic Documents with the aim that the Electronic Information and/or Electronic Documents are considered as if the data is authentic”.<sup>3</sup> The punishment for anyone who violates Article 35 of the ITE Law is regulated in Article 51 paragraph (1) of the ITE Law which states: “Every person who fulfills the elements as referred to in Article 35 shall be sentenced to a maximum imprisonment of 12 (twelve) years and/or a maximum fine of Rp. 12,000,000,000.00 (twelve billion rupiahs)”.<sup>4</sup> In the case of Verdict Number 1739/Pid.Sus/2020/PN Jkt.Brt, the defendant created a fake account on Instagram social media on behalf of Gde Brawiswara Putra and used the account to deceive Adriansyah for Rp 5,000,000.00 (five million rupiahs) and should be charged under Article 28 paragraph (1) *jo.* Article 45A paragraph (1) concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law) or Article 35 *jo.* Article 51 paragraph (1) concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. In this

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<sup>3</sup> Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik.

<sup>4</sup> *ibid.*

case, the public prosecutor charged the defendant with an Alternative Indictment by accusing the defendant under Article 28 paragraph (1) or Article 35 of the ITE Law.<sup>5</sup> This means that if one of the charges can be proven then the charges in the other articles do not need to be proven again. To prove whether the defendant in Verdict Number 1739/Pid.Sus/2020/PN Jkt.Brt has violated one of the articles charged, it is necessary to know the elements of each of the articles indicted. Every criminal act must consist of elements by actions that contain behavior and the impact caused by these actions.<sup>6</sup> Article 28 paragraph (1) of the ITE law regulates that “Each person who intentionally and without rights spreads false and misleading news that results in consumer losses in electronic transactions”. The following are the elements in Article 28 paragraph (1) of the ITE Law that have been fulfilled by the defendant in Verdict Number 1739/Pid.Sus/2020/PN Jkt.Brt:

1. The “Each Person” element

The definition of “person” in the Big Indonesian Dictionary (KBBI) is a human.<sup>7</sup> In the opinion of Chaidir Ali, humans are legal subjects who have legal personalities and everything that is based on the demands of the community’s needs is recognized by law as a supporter of rights and obligations.<sup>8</sup> Humans are referred to as legal subjects because they have the rights and obligations to take legal action. The enactment of human rights is starting at birth until death.<sup>9</sup> According to Wirjono Prodjodikoro, humans as individuals can be the subject of criminal acts, this is based on the views of Indonesia’s Criminal Code/Kitab Undang-Undang Hukum Pidana (KUHP).<sup>10</sup> Therefore, the defendant in the Verdict Number 1739/Pid.Sus/2020/PN Jkt.Brt fulfills the element of “each person” because the defendant is a legal subject of a person/human who makes the news that cannot be legally accounted for.

2. The element “intentionally and without rights”

The element “intentionally and without rights” states that the element of “deliberate action” needs to be considered to find out whether the act contains malicious intent.<sup>11</sup> According to Memorie Van Toelichting, “intentionally” has the

<sup>5</sup> ‘Surat Edaran Jaksa Agung Nomor SE 004/J.A/11/1993 Tentang Pembuatan Surat Dakwaan’.

<sup>6</sup> Moeljatno, *Asas-Asas Hukum Pidana* (PT Rineka Cipta 2015).[64].

<sup>7</sup> ‘Orang’ (*Kamus Besar Bahasa Indonesia*) <<https://kbbi.web.id/orang>> accessed 15 November 2021.

<sup>8</sup> Chaidir Ali, *Badan Hukum* (Alumni 1976).[16].

<sup>9</sup> Endrik Safudin, *Dasar-Dasar Ilmu Hukum* (Setara Press 2017).[10].

<sup>10</sup> Wirjono Prodjodikoro, *Asas-Asas Hukum Pidana Di Indonesia* (Refika Aditama 2003).[59].

<sup>11</sup> I Nyoman Ngurah Suwarnatha, ‘Ringkasan Diskusi Bidang Hukum Penerapan Pasal 28 Ayat (1) Undang-Undang Informasi Dan Transaksi Elektronik Mengenai Penipuan Dalam Transaksi Elektronik’ (2019).[2].

same meaning as “willed and known”.<sup>12</sup> This means that, when doing an action, the perpetrator wills his actions and the consequences. In reporting false news related to forex trading software and convincing the victim, Adriansyah, to send money amounting to Rp5,000,000.00 (five million rupiahs), the defendant knew the consequences for his actions, namely material loss of Rp. 5,000,000.00 (five million rupiahs) which will be experienced by Adriansyah because, in reality, the defendant did not provide forex trading software services as he admitted to the public through Instagram social media and also to Adriansyah. Therefore, the defendant, in this case, fulfills the element of “intentionally and without rights.”

3. The element of “spreading false and misleading news”

Fake news is an attempt to deceive or trick readers or listeners into believing something, even though the creator of the hoax knows that the news is fake.<sup>13</sup> Fake news is an event that is reported through a piece of information that is not based on facts.<sup>14</sup> A person fulfills the elements of Article 28 paragraph (1) if the person has the intention to create, reduce, add, cut, and distribute false news that is misleading and causes harm.<sup>15</sup> The defendant had fulfilled the element of “spreading false and misleading news” because the spread of false news in the form of offering forex trading software through Instagram social media was carried out intentionally. In addition, the defendant offered forex trading software services on Instagram, even though the defendant knew that the defendant did not provide these services. The defendant’s act of offering forex trading software services where these services do not exist can be called fake news. As a result, the fake news succeeded in deceiving the victim.

4. The element “which results in consumer losses in electronic transactions”

The meaning of “consumer” in Article 28 paragraph (1) of the ITE Law is based on Law Number 8 of 1999 concerning Consumer Protection (Consumer Protection Law).<sup>16</sup> The definition of consumer based on Article 1 Number 2 of the Consumer Protection Law is “Every person who uses goods and/or services available in the community, both for the benefit of himself, his family, other people, and other living creatures and not for trading”.<sup>17</sup> Consumers in the sense of Article 28 Paragraph 1 of the ITE Law are all people or parties who use electronic trading services. Electronic transactions according to Article 1 Paragraph 2 of the ITE Law are legal acts carried out using computers, computer networks, and/or other electronic media. Therefore, a consumer is anyone who obtains legal consequences from legal actions by using a computer, computer network, and/

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<sup>12</sup> Ernst Utrecht, *Hukum Pidana I* (Penerbitan Universitas 1968).[299].

<sup>13</sup> Dedi Rianto Rahadi, ‘Perilaku Pengguna Dan Informasi Hoax Di Media Sosial’ (2017) 5 Jurnal Manajemen dan Kewirausahaan.[61].

<sup>14</sup> Suwarnatha (n 11).

<sup>15</sup> *ibid.*

<sup>16</sup> ‘Keputusan Bersama Menteri Komunikasi Dan Informatika Republik Indonesia, Jaksa Agung Republik Indonesia, Dan Kepala Kepolisian Negara Republik Indonesia Nomor 229 Tahun 2021, Nomor 154 Tahun 2021, Dan Nomor KB/2/VI/2021 Tentang Pedoman Implementasi Atas P’.

<sup>17</sup> Undang-Undang Republik Indonesia Nomor 8 Tahun 1999 tentang Perlindungan Konsumen 1999.

or other electronic media.<sup>18</sup> Based on the definition of “consumer” that has been described, the victim Adriansyah in Verdict Number 1739/Pid.Sus/2020/PN Jkt. Brt can be called a consumer because Adriansyah uses an electronic network in the form of social media and Adriansyah contacted the defendant to use the services of the defendant before he knew that the service was not real, but just a hoax. Adriansyah suffered material losses of Rp. 5,000,000.00 (five million rupiahs) due to false news spread by the defendant. Therefore, the defendant had fulfilled the element of “resulting in consumer losses in electronic transactions”. Based on the elements described above, the defendant in the Verdict Number 1739/Pid.Sus/2020/PN Jkt. Brt had fulfilled the elements of Article 28 paragraph (1) of the ITE Law.

To prove that the defendant has violated Article 35 of the ITE Law, all the elements in this article must be fulfilled. Article 35 of the ITE Law states: “Each person intentionally and without rights or against the law manipulates, creates, changes, deletes, destroys Electronic Information and/or Electronic Documents with the aim that the Electronic Information and/or Electronic Documents are considered as if the data is authentic”.<sup>19</sup> The elements of Article 35 of the ITE Law are as follows:<sup>20</sup>

1. The “Each Person” element

The meaning of “each person” based on the ITE Law is a person, whether an Indonesian citizen/*Warga Negara Indonesia* (WNI), foreign citizen/*Warga Negara Asing* (WNA), or a legal entity that is a legal subject, where his actions in committing a crime can be accounted for. The defendant in Verdict Number 1739/Pid.Sus/2020/PN Jkt. Brt is considered capable of being responsible for his actions because the defendant is physically and mentally in a good condition, and there is no justification or excuse for forgiveness before the law. Therefore, the defendant fulfills the “each person” element in Article 35 of the ITE Law.

2. The element “intentionally and without rights”

The meaning of “intentionally” (*opzet*) according to the provisions of Indonesian criminal law is the conscious and willful intention of a person to commit a crime.<sup>21</sup> This is in accordance with what was stated by Pompei, namely that a person can be said to fulfill the conditions of intentionality if he knows and wants it.<sup>22</sup> In the case of Verdict Number 1739/Pid.Sus/2020/PN Jkt. Brt, the defendant intentionally created a fake account in the name of Gde Brawiswara Putra with the username @gdewawiswaraputra on Instagram and claimed to be the real Gde Brawiswara Putra to deceive consumers/victims by offering forex trading

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<sup>18</sup> Suwarnatha (n 11).[3].

<sup>19</sup> Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik.

<sup>20</sup> Putusan Pengadilan Negeri Surabaya Nomor: 3062/Pid.Sus/2019/PN.Sby.

<sup>21</sup> *ibid.*[13].

<sup>22</sup> Eddy OS Hiariej. *Teori Dan Hukum Pembuktian* (Erlangga 2012).[169].

software for IDR 5,000,000.00 (five million rupiahs).<sup>23</sup> Based on the author's analysis, the defendant created a fake account in the name of Gde Brawiswara Putra with the intention and motivation to get money from the consumer/victim, but the defendant did not intend for the loss suffered by Gde Brawiswara Putra where his name was defamed due to a fake account created by the defendant. However, the defendant's actions were still categorized as intentional based on the Theory of Intentionality as Certainty proposed by Eddy OS Hiariej. The Theory of Intentionality as Certainty is one type of intentionality where an intention causes two results.<sup>24</sup> The first result is the result that is intended by the defendant and the second result is the one that is not intended by the defendant but the result surely will happen.<sup>25</sup>

Based on the author's analysis in the case of Verdict Number 1739/Pid.Sus/2020/PN Jkt.Brt which is associated with the Theory of Intentionality as Certainty, the first result that the defendant wants is to get Rp.5,000,000.00 (five million rupiahs) from the victim, namely Adriansyah, in a way as if the defendant was indeed selling forex trading software through a fake account in the name of Gde Brawiswara Putra. Then, the second result is the result that the defendant does not want which that the defendant does not have a direct motivation to harm Gde Brawiswara Putra in terms of defaming his name because the motivation desired by the defendant is to get money from the consumer/victim, but the result to defame Gde Brawiswara Putra is certain to have happened and should have been anticipated by the defendant. Therefore, the defendant fulfilled the element of "intentionally". In addition, related to the element of "without rights", according to Van Apeldoorn rights are laws that are associated with certain humans or legal subjects and thus become a power.<sup>26</sup> In this case, the defendant without rights used personal data belonging to Gde Brawiswara Putra by creating a fake account on behalf of Gde Brawiswara. Gde Brawiswara Putra's data that the defendant used is a form of personal data, following the definition of personal data in Article 1 Number 29 Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions which states that "Personal data is any data about a person either identified and/or can be identified separately or in combination with other information either directly or indirectly through Electronic and/or non-electronic Systems".<sup>27</sup> This means that, in this case, the defendant unlawfully used personal data belonging to Gde Brawiswara Putra without consent. This is a prohibited act, as regulated in Article 26 paragraph (1) of the ITE Law which states that, unless stipulated otherwise by laws and regulations, the use of any information through electronic media concerning a person's personal data must be carried out with the consent

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<sup>23</sup> Putusan Pengadilan Negeri Jakarta Barat, *Op.Cit.*[13].

<sup>24</sup> Eddy OS Hiariej (n 22).[173].

<sup>25</sup> *ibid.*

<sup>26</sup> CST Kansil, *Pengantar Ilmu Hukum Dan Tata Hukum Indonesia* (Balai Pusaka 2015).[120].

<sup>27</sup> Peraturan Pemerintah Nomor 71 Tahun 2019 tentang Penyelenggaraan Sistem dan Transaksi Elektronik.

of the person concerned.<sup>28</sup> Therefore, the defendant fulfills the “without rights” element in Article 35 of the ITE Law.

3. The element of “manipulating, creating, changing, deleting, destroying Electronic Information and/or Electronic Documents with the aim that the Electronic Information and/or Electronic Documents are considered as if the data is authentic”

The definition of “manipulation” is not further explained in the ITE Law, but, according to the Big Indonesian Dictionary (KBBI), the meaning of manipulation is an individual or group effort to influence the behavior, attitudes, and opinions of others without the person realizing it. The legal terminology dictionary does not regulate the meaning of the word “manipulation,” but in the dictionary, it is written the meaning of “*manipulatie*” which means cheating, with cunning senses to enrich oneself.<sup>29</sup> The defendant’s act of creating a fake account on behalf of Gde Brawiswara Putra succeeded in influencing the attitude of others, namely Adriansyah, who believed that the account created by the defendant was an authentic account belonging to Gde Brawiswara Putra. As a result, Adriansyah suffered a loss of Rp. 5,000,000.00 (five million rupiah) due to manipulation by the defendant. In addition to Adriansyah who suffered losses, Gde Brawiswara Putra was also harmed because as a result of the account his name was defamed as if as he manipulated other people, one of whom was Adriansyah. In fact, the account was created and operated by the defendant. Therefore, the defendant fulfills the element of “manipulating.” Social media accounts can be categorized as Electronic Information.<sup>30</sup> Articles and photos uploaded to social media can be categorized as Electronic Information and Documents as stipulated in Article 1 Numbers 1 and 4 of the ITE Law. The creation of a fake account on Instagram social media in the name of Gde Brawiswara Putra by the defendant can be proven through Digital Evidence Number 112-IX-2020-LDFCCPMJ#01 wherein the evidence is an Instagram account with the username @gdewawiswaraputra. Therefore, the defendant fulfills the element of “creation of electronic information and documents.” The next element is the element “Electronic Information and/or Electronic Documents are considered as if the data is authentic.” The word “considered” is intended for a person or an electronic system. In other words, it is intended for a person or electronic system that can treat the information or electronic document as if it were authentic or genuine.<sup>31</sup> The definition of “authentic” is not explained further in the ITE Law, but the meaning of “authentic” in the KBBI is trustworthy, genuine, genuine, or legal. The regulation in Article 35 of the ITE Law has the intention of maintaining the reliability of electronic information or documents, especially in electronic transactions. Authentication

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<sup>28</sup> Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik.

<sup>29</sup> Viswandro, *Kamus Istilah Hukum* (Penerbit Medpress Digital 2014).[135].

<sup>30</sup> Markustianto (n 1).[48].

<sup>31</sup> Josua Sitompul, *Cyberspace, Cybercrimes, Cyberlaw: Tinjauan Aspek Hukum Pidana* (Tatanusa 2021).[249].



indicates that information or electronic documents can be trusted. In determining the authenticity of electronic information or document, two things must be considered, namely content and source. Electronic information or documents can be said to be authentic if:<sup>32</sup>

- a. The source comes from a person or party who has the right or has the authority to publish related electronic information/documents; and
- b. The content is the content desired by the person or party who has the right or authority.

The word “authentic” in Article 35 of the ITE Law does not only have the meaning of data created by or before an authorized official based on laws and regulations but also includes company-owned or personal data created by them.<sup>33</sup> This means that the data in question can be in the form of personal data such as the personal data of Gde Brawiswara Putra used by the defendant. Meanwhile, what is meant by authentic content is information or data contained in the information or electronic documents, which are content created, published, issued, sent by the source in question.<sup>34</sup> Based on the explanation previously explained, the defendant fulfills the element “Electronic Information and/or Electronic Documents are considered as if the data is authentic”.

After knowing the elements in Article 28 paragraph (1) and Article 35 of the ITE Law from this research, it can be seen that the defendant fulfills the elements in the two articles, namely the defendant not only committed a crime of spreading false news and causing harm to consumers as stipulated Article 28 paragraph (1) of the ITE Law, but the defendant also committed a criminal act of manipulation of electronic information as regulated in Article 35 of the ITE Law, thus the defendant can be called as concurrently committing a crime. Concurrent crime (*concursum*) is a person who commits two or more criminal acts in which the first crime committed has not been sentenced or between the initial crime and the subsequent crime has

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<sup>32</sup> Penita Azriani Nababan, ‘Pembuktian Tindak Pidana Penipuan Melalui Arisan Online Berdasarkan Undang-Undang Nomor 19 Tahun 2016 Tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik (Analisis Putusan Nomor 503/PID.SUS/2018/PN JMB)’ (Universitas Sumatera Utara 2020).[77].

<sup>33</sup> Sitompul (n 31).[248].

<sup>34</sup> Abi Jam’an Kurnia, ‘Hukumnya Membuat Fake Account Di Media Sosial’ (*Hukum Online*, 2019) <<https://www.hukumonline.com/klinik/detail/ulasan/lt5cbfeef123453/hukumnya-membuat-ifake-account-i-di-media-sosial/>> accessed 26 November 2021.

not been limited by a Judge's Decision. Concurrent crime or *concursum* is a problem related to the provision of a crime.<sup>35</sup>

### **Legal Implementation on Verdict Number 1739/Pid.Sus/2020/PN Jkt.Brt**

Verdict Number 1739/Pid.Sus/2020/PN Jkt.Brt stated that the defendant was proven guilty of committing a crime in Article 28 paragraph (1) *jo.* Article 45A paragraph (1) ITE Law. The defendant was sentenced to imprisonment for one year reduced as long as the defendant was in custody with an order that the defendant remained detained and paid a fine of Rp50.000.000,00 (fifty million rupiahs) with six months in prison with an order that the defendant remains in custody and the judge determines the defendant to pay a court fee of Rp. 5,000.00. In Verdict Number 1739/Pid.Sus/2020/PN Jkt.Brt, the defendant was found guilty of committing a criminal act that "Each person who intentionally and without rights spreads false and misleading news that results in consumer losses in electronic transactions" as regulated in Article 28 paragraph (1) *jo.* Article 45A paragraph (1) ITE Law. However, in addition to fulfilling the elements in Article 28 paragraph (1) of the ITE Law, the defendant also fulfilled the elements in Article 35 of the ITE Law regarding the criminal acts of electronic information manipulation. Although the actions taken by the defendant had fulfilled the elements of Article 35 of the ITE Law, the defendant was not found guilty of a criminal offense under Article 35 of the ITE Law, even though Article 35 of the ITE Law was one of the indictments of the public prosecutor.

According to the author's opinion, this is due to the inaccuracy of the type of indictment submitted by the public prosecutor. Therefore, in Verdict Number 1739/Pid.Sus/2020/PN Jkt.Brt there is a discrepancy in the implementation of the law with the norms regulated in Article 35 *jo.* Article 51 paragraph (1) ITE Law. In this case, the defendant not only committed the crime of spreading false news as regulated in Article 28 paragraph (1) *jo.* Article 45A paragraph (1) of the ITE Law, but also

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<sup>35</sup> Ismu Gunadi dan Jonaedi Efendi, *Hukum Pidana* (Fajar Interpratama Mandiri 2014).[75].

criminal acts of electronic information manipulation as regulated in Article 35 *jo*. Article 51 paragraph (1) of the ITE Law, which means that the defendant should ideally be prosecuted with a concurrent crime. The indictment is a letter containing the formulation of the criminal act that was indicted against the defendant whose formulation is then taken and concluded from the results of the investigation which is associated with the criminal article that was violated and charged to the defendant, and the indictment is the basis for examination by the judge in a court session. The meaning of this indictment was stated by M Yahya Harahap.<sup>36</sup>

For the Court/Judge, the indictment is the basis and scope of the examination, the main consideration in making a decision and for the public prosecutor, the indictment is the basis for juridical evidence/analysis, criminal prosecution, and the use of legal remedies.<sup>37</sup> There are five types of indictment; single, alternative, subsidiary, cumulative, and combination indictments.<sup>38</sup> The form of the indictment is not regulated in law but is based on the Attorney General's Circular Number SE 004/J.A/11/1993 concerning the Preparation of the Indictment. In this case, the public prosecutor chose the Alternative Indictment with the first indictment, namely Article 28 paragraph (1) of the ITE Law, or the second indictment, namely Article 35 of the ITE Law. Alternative Indictment is used if the public prosecutor has not obtained certainty to be able to prove which criminal act is the most appropriate.<sup>39</sup> Alternative Indictment contains charges expressed with the word "or." For example, the first charge is fraud (Article 378 of KUHP) or the second charge is embezzlement (Article 372 of KUHP).<sup>40</sup> The purpose of the Alternative Indictment is to leave the choice to the judge or court for which crime the defendant will be held accountable

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<sup>36</sup> Ganawati Candra Dini, 'Penggunaan Bentuk Surat Dakwaan Kombinasi Oleh Jaksa Penuntut Umum (Studi Kasus Di Kejaksaan Negeri Surakarta)' (Universitas Sebelas Maret Surakarta 2008).[75].

<sup>37</sup> 'Jaksa Agung Republik Indonesia, Surat Edaran Jaksa Agung Nomor SE 004/J.A/11/1993 Tentang Pembuatan Surat Dakwaan'.

<sup>38</sup> Aristo MA Pangaribuan [*et. al.*], *Pengantar Hukum Acara Pidana Di Indonesia* (PT RajaGrafindo Persada 2017).[125].

<sup>39</sup> 'Jaksa Agung Republik Indonesia, Surat Edaran Jaksa Agung Nomor SE 004/J.A/11/1993 Tentang Pembuatan Surat Dakwaan' (n 37).

<sup>40</sup> *ibid.*[4-5].

for the crime committed.<sup>41</sup> In the author's opinion, the form of indictment used by the public prosecutor, in this case, is less precise. The crime committed by the defendant is *concursum realis/meerdaadse samenloop*, where ideally the form of indictment used for that type of crime is Cumulative Indictment. *Concursum realis/meerdaadse samenloop* are several acts committed by a person, each of which stands separately as a criminal act (crime/violation); therefore, the crime in question does not have to be of the same type or related to one another.<sup>42</sup> *Concursum realis/meerdaadse samenloop* is regulated in Article 65 of KUHP which states:

- (1) In the event that several acts must be considered as independent acts so that they constitute several crimes, which are punishable by the same principal punishment, only one sentence shall be imposed;
- (2) The maximum punishment imposed is the maximum amount of punishment that is threatened for that act, but it may be more than the maximum of the heaviest punishment plus a third.<sup>43</sup>

The crime, in this case, is a *concursum realis/meerdaadse samenloop* because the defendant fulfills the elements of each of the crimes committed and the crimes committed by the defendant are the crime of spreading false news as regulated in Article 28 paragraph (1) and the crime of manipulation of electronic information regulated in Article 35 of the ITE Law is a separate crime. Since the type of concurrent crime committed by the defendant is *concursum realis/meerdaadse samenloop* as regulated in Article 65 of KUHP, the ideal form of indictment used is the Cumulative Indictment form. In the Cumulative Indictment, several criminal acts are charged at once and all charges must be proven one by one.<sup>44</sup> Indictments that are not proven must be stated explicitly and demanded to be acquitted of these charges. This indictment is used if the defendant commits several criminal acts, each of which is an independent crime. This is in accordance with the opinion of Yessy Paramita

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<sup>41</sup> Leden Marpaung, *Proses Penanganan Perkara Pidana (Di Kejaksaan Dan Pengadilan Negeri Upaya Hukum Dan Eksklusif Bagian Kedua)* (Sinar Grafika 2011).[36].

<sup>42</sup> Amir Ilyas, *Asas Asas Hukum Pidana, Memahami Tindak Pidana Dan Pertanggungjawaban Pidana Sebagai Syarat Pemidanaan* (Cangkang Education 2012).[130].

<sup>43</sup> Pasal 65 Kitab Undang-Undang Hukum Pidana.

<sup>44</sup> 'Jaksa Agung Republik Indonesia, Surat Edaran Jaksa Agung Nomor SE 004/J.A/11/1993 Tentang Pembuatan Surat Dakwaan' (n 37).

Samadi in the journal *Lex Crimen* Vol. IV/No.2/April/2015 entitled Juridical Study of the Public Prosecutor's Indictment in Corruption Crimes, that, according to her, the indictment used for the *concursum realis/meerdaadse samenloop* type of crime must be in the form of Cumulative Indictments.<sup>45</sup> The implementation of the public prosecutor's indictment, in this case, is not in accordance with the theories previously described. The crime committed by the defendant is *concursum realis/meerdaadse samenloop*, where ideally the form of indictment used is Cumulative Indictment. In this case, the public prosecutor used the Alternative Indictment whereas the judge is only guided by one of the indictments described in the indictment.<sup>46</sup> The Alternative Indictments are mutually exclusive in that, among the indictments submitted, the judge is given the option to apply only one of the charges. In essence, the indictment is the basis for the judge's consideration in proceeding in court.<sup>47</sup> The indictment is the legal basis for the criminal procedure because the examination in court is carried out based on the indictment. Judges in proceedings rely on their decisions based on indictments and judges' decisions can only relate to events in the indictment.<sup>48</sup>

Based on the previous explanations, in this case, the judge only sentenced Article 28 paragraph (1) of the ITE Law to the defendant, even though the defendant had fulfilled the elements in Article 35 of the ITE Law and the defendant should have been also sentenced to Article 35 of the ITE Law. The judge only sentenced Article 28 paragraph (1) of the ITE Law to the defendant because the judge was guided by the indictment submitted, namely the Alternative Indictment, where the judge had to choose one of the indictments submitted. Therefore, the use of Alternative Indictment, in this case, is less precise because the defendant fulfills both elements of the criminal offense of Article 28 paragraph (1) and Article 35 of the ITE Law, so ideally the form of indictment used is Cumulative Indictment. Therefore, the

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<sup>45</sup> Yessy Paramita Samadi, 'Kajian Yuridis Dakwaan Jaksa Penuntut Umum Dalam Perkara Tindak Pidana Korupsi' (2015) 4 *Lex Crimen*. [7].

<sup>46</sup> Hendrika Ngape, 'Akibat Hukum Putusan Hakim Yang Menjatuhkan Putusan Diluar Surat Dakwaan Penuntut Umum' (2018) 2 *Justitia Jurnal Hukum*. [131].

<sup>47</sup> *ibid.* [135].

<sup>48</sup> Bambang Waluyo, *Pidana Dan Pemidanaan* (Sinar Grafika 2008). [64].

indictments ideally used by the public prosecutor, in this case, are as follows:

**First:**

Article 28 Paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions;  
**and**

**Second:**

Article 35 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. With regard to concurrent criminal punishment, KUHP has four systems or systems, namely *absorptie stelsel*, *cumulatie stelsel*, *verscherpte absorptie stelsel*, and *gematigde cumulatie stelsel*.<sup>49</sup>

1. *Absorptie stelsel*

*Absorptie stelsel* is a criminal concurrent criminal system where the punishment imposed is one of the heaviest crimes.

2. *Cumulatie stelsel*

*Cumulatie stelsel* is a criminal concurrent criminal system in which the punishment imposed is every criminal which is threatened with every criminal act.

3. *Verscherpte absorptie stelsel*

*Verscherpte absorptie stelsel* is a criminal concurrent criminal system that imposes one heaviest crime plus 1/3 of the sentence.

4. *Gematigde cumulatie stelsel*

*Gematigde cumulatie stelsel* is a criminal system in which the punishment imposed is any criminal punishable by any criminal act, but the total amount of the punishment must be reduced so that it does not exceed the heaviest punishment plus 1/3 of it.

The concurrent criminal case in the Verdict Number 1739/Pid.Sus/2020/PNJkt.Brt is *concursum realis/meerdaadse samenloop* as regulated in Article 65 of KUHP. The punishment for *concursum realis meerdaadse samenloop* is regulated in Article 65 paragraph (2) of KUHP which regulates that the maximum sentence imposed is the maximum total sentence that is threatened but cannot exceed the maximum sentence which is the heaviest penalty plus 1/3 of it. In connection with this case, the defendant should be sentenced to the maximum legal penalty which was six years in prison (Article 45A paragraph (1) of the ITE Law) plus 12 years of imprisonment (Article 51 paragraph (1) of the ITE Law). However, when the two are added together, the total sentence is 18 years. This is not allowed because, based

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<sup>49</sup> Lukman Hakim, 'Dekonstruksi Stelsel Absorpsi Dalam Perbarengan Tindak Pidana Sebagai Upaya Mewujudkan Keadilan Substantif' (2015) 44 Masalah-Masalah Hukum.[99].

on Article 65 paragraph (2), the punishment is not allowed to exceed the maximum punishment plus 1/3 of it. Therefore, in this case, the defendant may be sentenced to 12 years plus 1/3 of 12 years so that the maximum sentence is 16 years. If it is associated with the concurrent criminal punishment system previously described, the criminal system used in this case is *gematigde cumulatief stelsel* where the punishment threatened is the heaviest crime plus 1/3 of the punishment.

### **Conclusion**

The regulation of electronic information manipulation in the provisions of laws and regulations in Indonesia is regulated in Article 35 *jo.* Article 51 paragraph (1) of the ITE Law where the criminal threat is a maximum of 12 years. In the case of Verdict Number 1739/Pid.Sus/2020/PN Jkt.Brt, the defendant was charged with Article 28 paragraph (1) *jo.* Article 45A paragraph (1) concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law) or Article 35 *jo.* Article 51 paragraph (1) concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. Even though he has fulfilled the elements in Article 28 paragraph (1) and Article 35 of the ITE Law which is the manipulation of electronic information, the defendant was only found guilty of Article 28 paragraph (1) and sentenced to one year.

The legal implementation of Verdict Number 1739/Pid.Sus/2020/PN Jkt.Brt is less precise because the form of indictment used by the public prosecutor is the Alternative Indictment where ideally the public prosecutor uses Cumulative Indictment on a *concursum realis* crimes that the defendant committed based on Article 65 of KUHP; thus, ideally, the defendant is threatened with the heaviest punishment, which is a maximum of 12 years in prison (Article 51 paragraph (1) of the ITE Law) plus 1/3 so that the maximum sentence is 16 years. This is based on Article 65 paragraph (2) of KUHP. The inaccuracy of the type of indictment submitted by the public prosecutor in Verdict Number 1739/Pid.Sus/2020/PN Jkt. Brt caused a discrepancy in the implementation of the law with the norms regulated in Article 35 *jo.* Article 51 paragraph (1) ITE Law.

In this case, if the public prosecutor uses cumulative charges and the defendant is punished by Article 28 and also Article 35 of the ITE Law, then Verdict Number 1739/Pid.Sus/2020/PN Jkt.Brt can be one of the jurisprudence that acts of manipulation of electronic information in the form of fake accounts on social media can be criminalized, given the number of similar cases that occur on social media; therefore, it is hoped that the punishment can be a direct deterrent effect for the defendant which is in accordance with the Deterrent Effect Theory put forward by Wayne R Lafave where one of the objectives of the crime is as a deterrence effect so that criminals will no longer repeat their actions, and the punishment can serve as an education for the public to not commit the crime of manipulating electronic information. This is in accordance with the Educational Theory which states that the purpose of crime is to educate the public about good and bad deeds.

If there is a similar case in the case of manipulation of electronic information on social media in the form of fake accounts, it is hoped that law enforcer can find out that fake accounts on social media on behalf of others are actions that meet the elements of Article 35 of the ITE Law. Therefore, if there is a similar case, law enforcers will have no doubts about using the Cumulative Indictment.

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