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MODERN LAW CHALLENGES IN DIGITAL ERA

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Abstract

The development of science and technology has positive and negative impacts on the lives of humanity. Likewise with cyberspace, as one of the advances in technology is certainly a reality faced by legal metanarratives. Breakthroughs and approaches are needed comprehensive in responding to the powerlessness of legal metanarratives in facing cyberspace challenges. The type of research data is secondary data with primary legal material and secondary legal material. The collection technique is library research. While the data analysis technique used is descriptive qualitative. From the results of the research and analysis Modern law with all its doctrines as legal metanarrative which inherited the law in the past is now helpless when facing the flow of information technology that has given birth to cyberspace. So that state law can be enforced in cyberspace, breakthroughs, paradigm changes, flexibility, universal jurisdiction, harmonization and global (international) cooperation.

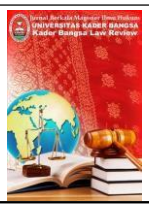
Keywords: Cyberspace, Cybercrime, Legal Metanarratives.

1. Introduction

Humans now live in modern civilization that demands that everything is fast, effective and efficient. The modern term seems to be an identity that must be attached to all devices of human life today. Apart from the modern term, it is considered ancient, traditional and out of date. The impact of changing times so rapidly as the development of science and technology has brought us into the digital age with all its sophisticated knick knacks, including the loss of barriers of space and time between countries.[1] Cyberspace is the latest digital product that is able to break through the boundaries of space and time, including the country's position which has been limited by territorial territory. According to Howard Rheingold, cyberspace is an imaginary space or virtual space that is artificial, where everyone does whatever is usually done in everyday social life in new ways. Through cyberspace, everyone is connected through an international network (internet), can interact with anyone, anytime, anywhere.[2]

[1] Yasraf Amir Piliang, Public dan Public Cyberspace: Ruang Publik Dalam Era Informasi, tersedia pada http://www.bogor.net/idkf-2/publikspace-dan-public-cyberspace-ruangpublik-dalam-era inf.

[2] Agustina, Enny. 2019. Implementation of Cybercrime Settlement



Cyberspace has been transformed into a public space (public sphere) as revealed by Hubermas. The internet is a medium of public discussion that is open to every individual on various themes without restrictions. Cyberspace has also diverted human activities that were originally carried out in the real world. The presence of e-mail, web blog, chat, webcam to Facebook and Twitter, then the e-learning, e-commerce, and e-banking are new media activities that have been carried out physically.[3]

The revolutionary change above in reality is not always a positive effect, because the work of technology is known to always have a double face, which on the one hand provides great benefits for human life, but on the other hand also provides convenience and even extends crime globally. The development of technology always has an impact both directly and indirectly, both in terms of positive and negative and will greatly affect every attitude and mental attitude of every member of the community.[4]In a criminological perspective, technology can be said to be a criminogenic factor, a factor that causes a person's desire to do evil or facilitates crime.[5]

2. Problems

Based on the description in the introduction above, A problem arises that must be discussed further, namely whether all the legal infrastructure that has been built so far is ready to face problems in the real world. The legal construction that has been in force is built on the understanding of positivism that is formal, physical in nature and capable of reaching national jurisdictions based on territorial boundaries. Now legal-metanarrative skills will be tested in dealing with the development of information technology.

3. Method

The type of research that the author uses is a type of normative legal research. The scientific logic of law in

with Indonesia Law 19/ 2016 about Information and Electronic Transactions. 3 rd European IEOM Pilsen (Czech Republican) Conference. Pp. 2526-2529

[3] Sutandyo Wignjosoebroto, 2018. "*Hukum Dalam Masyarakat, Perkembangan dan Masalah*" Bayumedia Publishing, Malang, 2008, hal. 244.

[4] Andi Hamzah, 2017. Aspek-Aspek Pidana Di Bidang Komputer, Sinar Grafika, Jakarta, , hal. 10

[5] Abdul Wahid dan Mohammad Labib, 2015. *Kejahatan Mayantara (Cybercrime*), Refika Aditama, Bandung hal. 59.

normative legal research is built on the basis of scientific discipline and the workings of normative legal science. This opinion was also strengthened by Peter Mahmud who stated that legal research is a process of finding legal rules, legal doctrines in order to answer the legal issues faced. Based on this means the data obtained by the author in this case comes from the results of library research.

4. Result and Discussion

a. Character of Modern Law

The presence of modern law is motivated by a history of the past which involves a reciprocal relationship between law and society and the development of the modern state. This modernity has the following characteristics:

1. Having a written form;
2. The law applies to all regions of the country;
3. Law is an instrument used consciously to realize the political decisions of its people.[6]

The law with its trademark must be written indeed the needs of an increasingly complex modern state and its fields diverse. Nevertheless, the written law then makes the law must be formal, rigid, inflexible, made by the authorized authority and not at all related to the quality of legal certainty and justice.

Then the validity of the law in the state zone shows modern law as national law based on the theory of sovereignty country over its territory. Finally, law is not only an instrument of legitimacy, but also social engineering. As social engineering, law is a tool intended for change the behavior of citizens, in accordance with predetermined goals. If law is the means chosen to achieve certain goals, then the process does not stop at election law as a means only.

In addition to a solid knowledge of the nature of the law, it is also important to know the limits in the use of law as a means (to change or regulate the behavior of citizens). It is hoped that the law can serve the needs of modern society which is increasingly complex and diverse. However, it turns out that the law does not and cannot be in line with the development of society and the technology that follows it.

The law may be used as a tool by agents of change or pioneers of change is a person or group of people who get the trust of the community as the

[6] Satjipto Rahardjo, 2015. *Ilmu Hukum*, Citra Aditya Bakti, Bandung, hal 213-214.

leader of one or more social institutions.

A social change that is desired or planned is always under the control and supervision of the change leader the ways to influence society with an organized and pre-planned system, called social engineering or social planning. The law has direct influence or indirect influence in driving social change. For example, a regulation that determines a particular education system for citizens has an indirect effect which is very important for social changes.

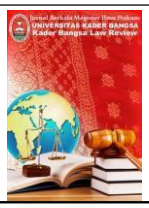
b. The Powerlessness of Modern Law

As previously stated, the current law is motivated by history and social life in the past, such as in the European region with the dominance of the positivism paradigm that gave birth to the concept of the Rule of Law. As a result, law is formal, procedural, applies nationally and the dominance of the state is in reconstructing and implementing law.

Positivism sees the need to separate strictly between law and morals (between *das sein* and *das sollen*). In the Positivist view there are no other laws besides the command of the authorities. Even the positive school of law known as the Legism school argues more explicitly that law is law. Based on the philosophical concept of Positivism school of law, Positivism formulates a number of premises and postulates regarding law that produce a basic view of the Positivism school of law that:

a. The legal system of a country applies not because it obtains a basis in social life, or in the soul of the nation, and it is also not based on natural law, but receives its positive form from the competent authority;
b. The law must be seen solely from its formal form, and thus must be separated from its material form;
c. The content of the law or legal material is acknowledged to exist, but is not a material for legal science, because it can damage the scientific truth of legal science.

John Austin, through his work "Analytical Legal Positivism" appeared became a major follower of the Juridical Positivism School. Here the law is an order of the sovereign party. There is state power who gives orders and there are people who obey orders. Consequently, violators are subject to a sanction. Because the aim



of Juridical Positivism is the formation of juridical systems (rules and doctrines) that are intended to be applied as positive law, then law is the creation of experts in the field of law and state authority. Legislation that comes from the state is the sole measure of the legality of human order. Austin explained further, the superior was forcing others to obey.

Another figure from the Juridical Positivism School is Hans Kelsen. According to him, the law must be cleansed of non-juridical factors, such as sociological, political, historical, and even ethical elements. This thought is known as the Pure Legal Theory (*Reine Rechtlehre*) from Kelsen. For Kelsen, law is a necessity that regulates human behavior as rational beings. In this case what is being questioned by law is not "how the law should be", but "what is the law".

Normative studies see the law in its form as a rule, which determines what is permissible and what is not permissible. Normative studies are prescriptive in nature, namely determining what is wrong and what is right. In other words, normative studies examine law in books. The normative study of the area is *das sollen* (what should be).

This condition continues to color the process of making and enforcement law in Indonesia until now that has entered the digital era. Laws that are too formal, rigid and inflexible, and apply nationally experienced difficulties in accommodating developments information technology so fast. The law so far built with the construction of the principle of legality, the principle of territoriality, and deeds are seen as limited physically. Law is also getting pragmatically with the aim of seems to accommodate all the problems in society or contain the political economic objectives of the ruler who everything is clearly momentary and local (sectorial-locality).

The presence of the Pornography Law or perhaps the Information and Electronic Transactions Law (ITE Law) for example, which aims to tackle the rise of pornography, porno-action, and various forms of cybercrime actually does not show results and is counterproductive. Furthermore, the presence of laws relating to natural resources (SDA), often shows its impartiality to the community, but precisely to the political economic interests of the authorities with foreign

capitalists. In other words, here the law is only made by interested actors.

Modern law with its character and doctrines

which has been accepted as legal mutative[7], now has powerlessness when dealing with the development of information technology. Jean Francois Lyotard in his book La Condition *Postmoderne: Rapport su le savair* (The Postmondern Condition: A Report on Knowledge, 1979), states:

> "These meta-narrativies sometimes grand narratives" – are grand, large-scale theories and philosophies of the world, such as the progress of history, the know ability of everything by science, and the possibility of absolute freedom. Lyotard argues that we have ceased to believe that narratives of this kind are adequate to represent and contain us all. We have become alert to difference, diversity, the incompatibility of aur aspirations, beliefs and desires, and for that reason postmodernity are characterized by an abundance of micro narrative.[8]

Cyberspace, also known as the virtual world and the world of mayantara has characteristics, namely, without boundary, 24-hour on-line, interactive, environmentally friendly, no license, no censorship and efficiency. [9]All of these characteristics become a problem in the legal context, especially related to various civil relations and when a crime occurs.

According to Satjipto Rahardjo, technological development greatly influences the patterns of

[7] Berangkat dari pandangan Lyotard yang membantah bahwa filsafat modern melegitimasi klaim atas kebenaran (sebagaimana yang diklaim oleh para filsuf filsafat modern) atas pemikiran mereka tentang dasar logis dan empiris, tetapi lebih kepada dasar dari cerita-cerita yang diterima (atau "*metanarratives*") tentang pengetahuan dan dunia - atau dengan apa yang diterminologikan oleh Wittgenstein sebagai permainan bahasa ("*Language Games*"). Lebih jauh lagi Lyotard membantah bahwa dalam kondisi postmodern ini, "metanarratives" tidak akan berfungsi lagi dalam melegitimasi klaim akan suatu kebenaran. Dirinya menyarankan bahwa dalam kebangkitan dari suatu keruntuhan "metanarratives" modern, masyarakat kemudian mengembangkan sebuah permainan bahasa ("Language-Games") yang baru-seseorang tidak dapat mengklaim tentang suatu kebenaran mutlak selain dari merayakan hubungan dunia yang selalu berubah.

[8] http://en.wikipedia.org/wiki/JeanFran%C3%A7ois Lyotard, diakses pada tanggal 25 Januari 2020.

[9] Budi Agus Riswandi, 2013. *Hukum dan Internet Di Indonesia*, UII Press, Yogyakartahal. 15-21.

relations in society.[10] Moreover, Sudarto clearly states that technological progress has an influence on crime patterns.[11]

Then Barda Nawawi Arief mentions more explicitly that Cybercrime is one of the dark sides of progress technology that has a very broad negative impact for all the field of modern life today.[12] These three statements show that technology has helped to change the patterns of public relations that have been carried out so far, including making it a crime media.

4. Conclusion

Modern law with all its doctrines as legal metanarrative which inherited the law in the past is now helpless when facing the flow of information technology that has gave birth cyberspace. So that state law can be enforced in cyberspace, breakthroughs, paradigm changes, flexibility, universal jurisdiction, harmonization, and global cooperation (international).

[10] Satjipto Rahardjo, 2016. Penegakan Hukum (Suatu Tinjauan Sosiologis), Genta, Yogyakarta, hal. 146

[11] Sudarto, 2014. Hukum Pidana dan Perkembangan Masyarakat, Sinar Baru, Bandung, hal. 104.

[12] Barda Nawawi Arief, 2016.Tindak Pidana mayantara "Perkembangan Kajian Cyber Crime Di Indonesia", RajaGrafindo Persada, Jakarta, hal. 1-2.

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