



Protection Victims of Criminal Acts of Extortion and or Threats Through Social Media

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ABSTRACT

This research is motivated by the large number of people who commit unlawful acts in the form of extortion and/or threats using social media that can harm their users. The impact on victims affects physical, psychological, and material health. This research uses a Normative juridic research type with a Law approach and a concept approach. From the results of the study it can be concluded that the rules of criminal sanctions against perpetrators of extortion and/or threats are regulated in the Criminal Code, Law Number 31 of 2014 concerning Protection of Witnesses and Victims. While crimes through social media (Cybercrime) are regulated in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE).

Keywords: victim protection, cybercrime, extortion, threats

Introduction

Cybercrime is a crime or criminal act committed using information technology. The term "Cyber Law" is interpreted as equivalent to the word Cyber Law, which is a legal term used internationally related to the use of information technology. Cyber-unlawful acts cannot be easily overcome using conventional positive law. This is because crime cannot be separated from five interrelated factors, namely: the perpetrator of the crime, the nature of the crime, the victim of the crime, and the community's response to the crime and the law. The law is certainly an

important tool to prevent and eradicate crime, as well as other tools that are no less important.¹.

In the Criminal Act of Extortion and/or Threats regulated in Article 368 Paragraph (1) of the Old Criminal Code, Article 369 Paragraph (1) of the Criminal Code, and Article 482 of Law No. 1 of 2023. The acts regulated in criminal law are two different acts. However, the ITE Law formulates the criminal acts of extortion and threats in one Article. In the criminal acts of extortion and threats carried out through electronic media, the element of extortion is the first element, because in essence extortion is the substance, while threats are the method used by the perpetrator to carry out his extortion. Therefore, the content of extortion and/or threats in Article 4,5, paragraph (4) of the ITE Law focuses on the criminal act on the content of extortion. Although the term "extortion" used in this article seems to be a criminal act, extortion is now one way to intimidate victims.²

Blackmail is conveying a threat to another party. The "threat" must contain "a promise that the person conveying the threat will do something that is not desired by and very worrying for the person receiving the threat if something desired by the person conveying the threat is not fulfilled by the party receiving the threat."³. Every act of extortion and/or threats via the internet or social media is, in principle the same as conventional extortion and/or threats, the only difference is the means, namely via social media or the internet, so that personal photos and videos are included in electronic information and/or electronic documents.

Research methods

The research method used in this study is Normative Juridical research. This type of legal research is often referred to as library research. By using existing norms, in normative research, law is conceptualized as what is written in laws and regulations, or law is conceptualized as rules or norms. This method uses a legislative and conceptual approach. The legal materials used are primary law sourced from the Criminal Code and Laws, and secondary legal materials in the form of all publications

¹ Budi Suhariyanto. Tindak Pidana Teknologi Informasi (*cybercrime*). PT Rajagrafindo Persada. Jakarta. 2013. h.4

² Endri Susanto, Lalu Parma, Ufran. Tindak Pidana Pemerasan dan Pengancaman Melalui Media Sosial. Fakultas Hukum Universitas Mataram. 2023. h. 1178

³ Budi Suhariyanto. Tindak Pidana Teknologi Informasi (*cybercrime*). PT RajaGrafindo Persada. Jakarta. 2013. h. 123

on law, including textbooks, legal dictionaries, legal journals, and comments on court decisions.

Results and Discussion

Legal Rules for Criminal Acts of Extortion and/or Threats Using Social Media

A criminal act is an act of doing something that is stated by law as a prohibited act and is subject to criminal penalties. In criminal law, there are several terms such as crime, criminal act, criminal case, and criminal act. A criminal act is defined as an act against or violating the law, whether intentionally or unintentionally, by a person whose behavior has been determined as a crime that can be punished by law.⁴ In criminal law, it is divided into two, namely material criminal law and formal criminal law. What is meant by material criminal law is a regulation that confirms what actions can be punished, who can be punished, and what the law is. While what is meant by formal criminal law is a regulation that regulates how to punish someone who violates (implementation of material criminal law)⁵.

The purpose of criminal law is to regulate society in such a way that the rights and interests of society can be guaranteed. By imposing sanctions on people who commit crimes or perpetrators, the order and order of society can be guaranteed. So that a peaceful and safe life can be created and the peace and welfare of society can be achieved.⁶

There are various types of criminal acts which are classified based on certain grounds, namely:

- a. Criminal acts are qualitatively distinguished into crimes and violations.

- 1) Crime

Doctrinally, crime is an act that is contrary to justice, regardless of whether it is threatened by law or not.

- 2) Violation

⁴ Nikita Putri Samantha, *Pertanggungjawaban Pidana Terhadap Pelaku Tindak Pidana Pemerasan Dengan Menggunakan Senjata Tajam*, Fakultas Hukum Universitas Islam Sultan Agung, Semarang, 2021, h. 24

⁵ H.Muchsin. *Ikhtisar Hukum Indonesia Setelah Perubahan Keempat UUD 1945 dan Pemilihan Presiden Secara Langsung*. Badan Penerbit Iblam. Jakarta. h.65

⁶ Ayu Dian Ningtias. *Pengantar Hukum Indonesia*, Fakultas Hukum Universitas Islam Lamongan, 2019, h.63

A form of criminal act that refers to activities that are recognized by society because the law has regulated them.

Doctrinally, crime is an act that is contrary to justice, regardless of whether it is threatened by law or not.

3) Violation

A form of criminal act that refers to activities that are recognized by society because the law has regulated them.

- b. Viewed from the action or its consequences, criminal acts can be categorized as formal and material criminal acts.

1) Formal crimes

It is a type of crime that focuses on unlawful behavior. Referring to the Criminal Procedure Code (KUHAP).⁷

2) Material crimes

It is the result of a crime that has been committed. Referring to the Criminal Code (KUHP).

- c. According to its nature, it can be divided into intentional crimes and negligent crimes depending on the type of error (*delict dolus* and *delict culpa*)⁸.

1) Intentional crime (*delik dolus*)

A crime that has an intentional aspect.

2) Negligence crime (*delictus culpa*)

A crime that has an aspect of carelessness⁹.

Legal regulations for criminal acts of extortion and/or threats via social media, namely:

1. Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions

a. Article 45 paragraph 1

“Any person who intentionally and without the right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain content that violates morality as referred to in Article 27 paragraph (1) shall

⁷ Nikita Putri Samantha, *Pertanggungjawaban Pidana Terhadap Pelaku Tindak Pidana Pemerasan Dengan Menggunakan Senjata Tajam*, Fakultas Hukum Universitas Islam Sultan Agung, Semarang, 2021.h.26

⁸ *Ibid.*27

⁹ *Ibid*

be punished with imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah).”

b. Article 45, paragraph 4

“Any person who intentionally and without the right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain extortion and/or threats as referred to in Article 27 paragraph (4) shall be punished with imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah).”

2. Criminal Code

The crime of extortion is regulated in Article 368 of the Criminal Code, which reads:

a. Article 368 paragraph (1)

"Whoever, to unlawfully benefit himself or another person, forces someone with violence or the threat of violence to give something, all or part of which belongs to that person or another person, or to make a debt or write off a receivable, is threatened for extortion, with a maximum prison sentence of nine years."

b. Article 368 paragraph (2)

“The provisions of Article 365 paragraphs (2), (3) and (4) apply to this crime.

This is different from the crime of threats regulated in Article 369 of the Criminal Code, which reads:

c. Article 369 paragraph (1)

“Anyone to unlawfully benefit themselves or others, with the threat of defamation verbally or in writing, or with the threat of revealing a secret, forces someone to give something that is wholly or partly owned by that person or another person, or to create debt or write off receivables, is threatened with a maximum imprisonment of four years.”

d. Article 369 paragraph (2)

“This crime shall not be prosecuted except upon complaint from the person who has been the victim of the crime.”

3. Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (TPKS)

In this TPKS criminal act, it is regulated in Article 14 paragraphs 1 and 2 which reads as follows:

a. Article 14 paragraph (1)

“Everyone is without rights

- a) Recording and/or taking sexually charged images or screenshots against the will or without the consent of the person who is the object of the recording or image or screenshot;
- b) Transmitting electronic information and/or electronic documents containing sexual content against the will of the recipient, which is aimed at sexual desires and/or
- c) Stalking and/or tracking using an electronic system against the person who is the object of the electronic information/document for sexual purposes, will be punished for committing electronic-based sexual violence, with a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah)."

b. Article 14 paragraph (2)

"In the event that the act as referred to in paragraph (1) is carried out with the intention of:

- a) To commit blackmail or threats, coerce; or
- b) Misleading and/or deceiving,
- c) A person to do, allow something to be done, or not to do something, shall be punished by imprisonment for a maximum of 6 (six) years and/or a maximum fine of IDR 300,000,000.00 (three hundred million rupiah)."

Victims Protection of Criminal Acts on Extortion and/or Threats Through Social Media

Protection is any effort to protect rights and provide assistance to make witnesses and/or victims feel safe, and this is provided and implemented by the Witness and Victim Protection Agency (LPSK) by the provisions of this Law, carried out by several other agencies. This protection is provided in all stages of the criminal justice process in the judicial environment.¹⁰

Previously, there were no detailed provisions regarding the form of victim protection, which caused an imbalance in legal protection between victims and

¹⁰ Rena Yulia. Viktimologi Perlindungan Hukum Terhadap Korban Kejahatan. Graha Ilmu. Yogyakarta. 2021. Edisi kedua. h.63

perpetrators of crimes which would ultimately lead to injustice. The lack of legal protection for victims may make them reluctant and unwilling to cooperate with the authorities. There may even be a lack of protection because victims are reluctant to report it to the authorities.¹¹

Roeslan Saleh still maintains the existence of criminal law and criminal law seen from the perspective of criminal politics and from the perspective of the purpose, function, and influence of criminal law itself. The term used by him is "there is still a moral basis for criminal law"¹². Normatively, according to Article 5 of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, it states that victims have the right to:

- a. Obtain protection for the security of his/her person, family, and property, and be free from threats related to the testimony that will be, is being, or has been given;
- b. Participate in the process of selecting and determining protection and security support;
- c. Provide information without pressure;
- d. Receive an interpreter
- e. Free from statements that ensnare
- f. Receive information regarding the development of the case;
- g. Receive information regarding court decisions;
- h. Know if the convict is released;
- i. Keep his/her identity confidential;
- j. Receive a new identity;
- k. Receive temporary residence;
- l. Receive new residence
- m. Receive reimbursement for transportation costs according to needs;
- n. Receive legal advice
- o. Receive temporary living expenses assistance until the protection period ends, and/or

¹¹ *Ibid.*h.62

¹² Siswanto Sunarso. *Viktimologi dalam Sistem Peradilan Pidana*. Sinar Grafika. Jakarta Timur. 2015.h.256

p. Receive assistance

The core purpose of protection for witnesses and victims in the interests of examination before the court is to protect the safety and security of the individual, family, property, and freedom from all types of threats. As the testimony is the result of threats and disturbances, it will have an impact on false testimony, fabricated testimony, and ultimately create legal risks for the witnesses and victims themselves..¹³

Regarding what is meant by threats, it is any form of action that causes direct or indirect consequences that result in witnesses and/or victims feeling afraid and/or being forced to do or not do something related to giving testimony in a criminal justice process (Article 1 point 4 of Law Number 13 of 2006).¹⁴

Furthermore, Article 30 paragraph (1) of Law Number 13 of 2006 states that: "If LPSK receives an application from a Witness and/or Victim as referred to in Article 29, the Witness and/or Victim shall sign a statement of willingness to comply with the terms and conditions for protection of Witnesses and/or Victims."

Regarding the statement of willingness to comply with the terms and conditions of protection, which must be signed by the witness and/or victim, this is regulated in: Article 30 paragraph (2)

"The statement of sorrow follows the terms and conditions for protection of Witnesses and Victims as referred to in paragraph (1) and contains:

- a. Willingness of Witnesses and/or Victims to provide testimony in the trial process;
- b. Willingness of Witnesses and/or Victims to obey the rules concerning their safety.
- c. Willingness of Witnesses and/or Victims not to have any contact whatsoever with anyone other than with the approval of LPSK, while they are under LPSK protection;
- d. Obligation of Witnesses and/or Victims not to inform anyone of their existence under LPSK protection; and
- e. Other matters deemed necessary by LPSK.

The definition of victim includes two definitions, the first is a direct crime victim and the second is an indirect crime victim, either individually or collectively, a group that experiences suffering, whether mental, physical, or wealth. A direct victim is a victim who directly experiences and feels suffering because of the occurrence of a violent crime. Direct victims have the following characteristics:

- a. Victims are people, either individually or collectively.

¹³ *Ibid.*h.257

¹⁴ Bambang Waluyo. *Viktimologi Perlindungan Korban dan Saksi*. Sinar Gravika. Jakarta. 2011.h. 38

- b. Suffering losses, including physical injuries, mental injuries, emotional suffering, loss of opinion, oppression of human rights
- c. Caused by negligence formulated in a criminal act.
- d. Caused by abuse of power.¹⁵

Indirect victims are victims of someone's intervention in the creation of direct victims, or the victim's participation in prevention, conversely, in the case of third parties and/or parties whose lives depend on the direct victims, such as husband/wife, children, close relatives, etc., they become victims of the crime.

Conclusion

The crime of extortion and/or threats via social media is regulated in Article 368 of the Criminal Code (KUHP), Article 45 of Law Number 19 of 2016 concerning Electronic Information and Transactions (UU ITE), Article 29 of Law Number 44 of 2008 concerning Pornography, to Article 14 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence. In this case, the criminal law regulations in Indonesia have not been able to become a legal basis to protect citizens from one form of Cybercrime with elements of threats and/or extortion that is most prevalent in Indonesia. The modes vary, from cyber sexual extortion in the form of Video Call Sex (VCS) to threats to distribute recordings of sexual relations taken without the victim's knowledge after meeting via a dating application.

Forms of protection for victims of extortion and threats against cyberporn crimes can be based on the impact or loss felt by the victim. In general, such protection includes:

- a. Restitution. This form of protection is based on the provisions of Article ,1 paragraph (5) of the Republic of Indonesia Government Regulation Number 44 of 2008 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims. Compensation or Restitution itself aims to ensure that the losses felt by the victim can be properly addressed.
- b. Medical Assistance and Psycho-Social Rehabilitation Assistance. This assistance is based on the provisions of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims. Victims have

¹⁵ Maya Indah. Perlindungan Korban Suatu Perspektif Viktimologi dan Kriminologi. Kencana. Jakarta. 2019.h.30

the right to receive assistance both medically and psycho-social rehabilitation assistance.

- c. Protection from the Family to provide support to the victim, the Family must assure the victim that what happened to him/her should not damage their future, and should not lower the victim's spirit.
- d. Protection from the Community. The community also has an important role in helping to restore the victim's mental condition. The community must be able to protect and nurture the victim by not isolating the victim, and not distancing themselves from the victim

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