

CYBER CRIME AND CYBER PORN IN THE CONTEXT OF THE ELECTRONIC INFORMATION AND TRANSACTION LAW

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Background

Information and Communication Technology (ICT) has been become parts of our daily life. The make use of ICT made our life much easier and more comfortable. Activities ranging from work, education, to entertainment nowadays mostly dealing with the use of ICT. Arranging electronic document, calculating, sending and reading e-mail, surfing the internet, and chatting constitute daily task related to ICT. Most of the business companies using computers to run their day-to-day business

Likewise the real world, in the cyber world, we also get the positive aspects, besides negative aspects as potentials threats such as viruses, spam, cracking, and sniffing. We are to face the reality that people out there who had bad intention toward us are exist

Computers users are familiar with viruses attack, spam or other ICT crimes. Anybody knows "Brontok "worm made in Indonesia, which can infect computer and

it spreads fast through USB Flash Disk and computer network. The "Brontok" attacked our computer severely make most of them need to be re-formatted. As consequences, we lost much i.e money, time, productivities, and more. To some extent, the effects of virus attack can make default of a company which is business depend on ICT

In line with the development of technology, cyber crime also moving fast. It is not possible to eliminate the attacks of a cyber crime from the cyberspace totally, but there is a possible step to check them, either a prevention or precaution step. One of those is enforced the law (cyber law)

The potential of Cyber Crime

Criminal activity on ICT, however, has a potential to bring the endangering on the political, economical, and socio-cultural. Moreover, this crime is fearful than another crime against person.

The attacks on the electronic system through the network based on the technology of information i.e the financial institution, the telecommunication satellite, the electricity, and air-traffic can hamper the national economic. There is a crucial problem in the information technology such as internet bring about the emerging a new kind of crime like a hacker who can break into a bank-computer system, and transferred out the account, alteration the data unlawful, a terrorist using the internet in planning attack, a theft using a credit card unauthorized to shop in the net, etc.

However, the development of information technology will bring a benefit to the society such as the availability of e-commerce, e-government, foreign direct investment, development of a small/medium business, etc.

Imagine, if an infrastructure of information technology used by the public is not protected with a such proper security, such as : a network of financial institutions is hacked or altered the data by an authorized access, as consequence all the data will be damaged.

Motivation to commit of the cyber crime is increased rapidly, because of the potential benefits gained from this crime. A regular bank crime brings an average loss up to US \$ 14.000, but on the cyber crime results an average loss up to US \$ 2 Million. How big totally the loss by the cyber crime is unaccountability, since very few of the corporation reported this crime, caused by they are fear be panic among the client and this may bring the another big damage for them

Government has taken serious measures relating to the information security. Ministry of communication and information technology (Depkominfo) has established ID-SIRTI (Indonesian Security Incident Response Team on Information Structure). Meanwhile, National Police (Polri) also founded Cyber Task Force Center. There is ID-CERT, an independent institution which aimed to protect on the system security of Technology of Information.

The establishment of ID-SIRTI by DEKOMINFO, is definitely not to take over the role and the function of the

Security Institutions but without the task force of Depkominfo, the functions of the Police and The Prosecutor are always play an instrument in preventing Cyber Crime, it is also those ID-cert and the another Institutions that founded by the IT Society is still work

In the globalization era nowadays, paying attention to the system security on the technology based on the internet is "a must", since the computer network in nature is a domain public but always unsafe. On the time a data sent from one computer to another computer in the internet, so that the data may be intercepted or altered by the other user of the internet by mean of, it called a "Sniffer".

Cyberporn

Convention of Cyber crime in Budapest 2001, reaffirmed that child pornography is extremely illegal and urged the every country adopted the regulation on this crime on their perspective laws.

Child pornography defined thus include of representation of sexual activity by children. Limitation of age widely varies from country to country. From under 18 year of age or under 16 year of age

Pornography come from the greek language, that is porne means a hurlot and grapein means writing. Definition of pornography developed time by time related to the value in the society. At the present, definition of pornography, not

only the activity of sexual of a person, but it become an ideology that emerged in a modern society. With the main symbol is the harassment of women.

According to Laura Lederer "pornography", is the ideology of a culture which promote and condones rape, woman- battering, and other crimes of violence against women, Susan Brownmiller give a definition of pornography as "pornography promotes a climate of opinion in which sexual hostility against women is not tolerated", but ideologically encouraged. The intent is to deny the humanity of women, so that acts of aggression a viewed less seriously, and to encouraged aggression

Catharine Mac Kinnon a feminist and professor of law in the University of Michigan give a short definition, but perfectly that pornography has a central role in institutionalizing a subhuman, victimized, second-class status for women

Statutory of Pornography

Pornography law differ widely from region to region, there is a country, at least to posse a pornography materials. In various countries, a soft pornography which may not offend a public, when it sold at public places or air on television. On the contrary, hardcore pornography is usually regulating.

Child pornography is illegal in most of the countries in the world and in general, many of countries are limited in involving a pornography with violence and animal related.

Many countries attempt to limit the access to children under of age to the hardcore pornography, for instance, it sold only at a special bookstore, or request by mail, or broadcast on TV with guidance by the parents. In addition, adult store is usually prohibited for minors or the materials pornography wrapped or not displayed completely. But, in general, it is illegal sold or shown to children under of age

Regulation of Pornography from region to region

United States of America

Through First Amendment, USA against simulated child pornography. Regulations of pornography are varies from state to state. There is a call of a standard of communities

West Europe

Europe was the countries with freely on the value of sexual. They produced the pornography, but it sold in a specific area. The area call a red district or a red zone

Australia

The possession of pornography is consider an illegal based on the Australian Customs Service, the law passed and enforced since 1995

Singapore

Singapore is very strictly related to the pornography material, because the material is not sold in a public area. Singapore is also blocked the access of the sites with not a standard value of Singapore

Taiwan

Productions of painters, video, photo, CD-ROMs, and another products which depicted the activity sexual or activity uncommon involving the children under 18, is consider a criminal

Arab Saudi

Arab Saudi Pornography is prohibited, If it is still available, pornography is an illegal area

Philippines

Philippines poses Republic Act which are not allowed the children under 18 year engaged or forced an activity of sex

Sri Lanka

Sri Lanka possess Ciode Sec 286 A in 1995

Cambodia

Cambodia is now being discussing the pornography law

Malaysia

Malaysia is somewhat to banned totally the pornography, but the another opportunity is still open

Indonesia

Formally, pornography in Indonesia is illegal, but the enforcement of law is weak. In addition, interpretation of pornography is different from time to time. In 1980, Indonesian people was shocked by a nude calendar of an Indonesia artists. The artist and a photographer finally prosecute to the tribunal and sentenced

In the era of 1990-2000 , the effect of developing of technology information has increased and the availability of the Antenna Parabola, VCD, Laser disc, DVD, Internet , all showed the hot film or hot pictures , make it more easier to access, either in the big city or small town, more over in the rural area

Pornography in the Criminal Code

The criminal code deals with the pornography in chapter XIV. The important articles are 281, 282, 283. The article 281, 282, and 283 deals with the dissemination of the obscene material on the print media is consider a crime. This article provides for imprisonment up to 1 year and 6 month

Pornography on the Law of Electronic Information and Transaction

On the Electronic Information and Transaction Law in the article 27, chapter VII deals with the dissemination of the obscene material on the net is considered a crime . This article provides for imprisonment up to 6 (six) years and fine up to 1 Billion Rupiah (article 45)

A Need of Cyber Law

Policy on Security System is the important- one to pay attention. Policy on the system provides the outlines for make it a specific decision. For instance, what mechanism will be used for protecting the network and how to figure out the services. The policy on the security is also a basic to develop a guidance of a safe- program for follow-up by the user and the administrations

Policy on the security system in the national legal system which most

important is Cyber Law. Cyber Law regulating the activity of Cyber space include the punishment of the unlawful act or harmful Regulations on the internet is still new and further developing. There is a tendency to regulate in worldwide, but the sovereignty of the law make it difficult. This is a weakness of the enforcement of the law, specially related to commit a crime by individual or by terrorist and corporate who are out the country

Constitution of one nation can not enforced to other nation, since it violated the sovereignty and the constitution of the other nation. Constitution of the nation is only applicable in the respective nation.

That is the reason why, the society who care about the security of technology of information is interesting in global cooperation toward cybercrime which already done, being done, or will be done, such as Convention on cybercrime 2001, who led by European Community on 23 September 2001 in Budapest, Hongaria. Content of the convention is cover up the huge area, further it has a policy to protect the community against cyber crime, either by law or by international cooperation. In this convention, it is also consists of "the extradite automatic", it means although between countries did not have an extradite law, but this convention has already approved by respective counties, so that this may consider an extradite law. This aim to limit the jurisdiction of the country pertaining to the cybercrime