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Formulation of Policy for Cyber Crime in Criminal Law Revision Concept of Bill Book of Criminal Law (A New Penal Code)

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Abstract. Development of national legal systems is aimed to establish the public welfare and the protection of the public. Many attempts has been carried out to renew material criminal law and those efforts results in the formulation of the concept of the draft Law Book of the Law of Criminal Law in the form of concept criminal code draft. The basic ideas in drafting rules and regulation based on the values inside the idology of Pancasila are balance among various norm and rules in society. The design concept of the New Criminal Code Act is anticipatory and proactive to formulate provisions on Crime in Cyberspace and Crime on Information and Electronic Transactions. Several issues compiled in this paper are whether the policy in formulation of cyber crime is embodied in the provisions of the current legislation and what the policies formulation of cyber crime is in the concept of the bill book of law - criminal law recently?.

1. Background

Since proclamation of independence of Republic Indonesia on August 17th, 1945, the noble national goals are to protect the people and the country of Indonesia in term of social defense, public welfare or social welfare, justice, and prosperous.

To achieve social welfare and social defense based on Pancasila and the Constitution of 1945. the implementation of values of ideology and constitution are implemented through national development in all aspects of national life [1].

Achievement of the quality of life for justice and prosperous society which are pursued by the Indonesian government is conducted through a sustainable national development including the development of the national legal system by the government of Indonesia. The national legal system is programmed in the Long Term Development Plan in the Vision and Mission of the National Legislation Program in year duration of 2005-2009 based on decree of parliament No.01 / DPR RI / III / 2004-2005 [1]

Development of the national legal system is in aim to establish public welfare and protection and it is accommodated in legislation program (Prolegnas). In any activities of Prolegnas, a legal



system must address the principle of *kenusantaraan* (diversities) which recognizes the diversity or heterogeneity of law. There are many diversities of law emerged in Indonesia such as customary law, Islamic law, the law of other religions, contemporary law and western law. Those laws are presented through unification against certain laws, partially form, and in the form of codification.

The attempts to to renew material for criminal law has resulted in the formulation of the "Draft Bill Book of the Law of Criminal Law". This attempt has been initiated because the concepts of basic thinking are no longer in line with the philosophy of Pancasila as state ideology and it does not reflects the idea of balance among the norm in society.

Preparation of concept according to Barda Nawawi Arief, is essentially a renewal effort or restructuring of the entire system of substantive criminal law contained in the previous Criminal Code of Dutch East Indies [2-3].

Based on the description above background, the issues raised in the paper consists several issues such as whether the policy formulation crime of "cyber crime" is embodied in the provisions of the current legislation and what the policy formulation crime of "cyber crime" in the concept of the bill book of law or Criminal Code recently.

2. Literature

The short meaning of policy is wise. It means that policy always uses reason, clever, and adept. Furthermore, the meaning of policy is a series of concepts and principles containing outlines and basic plans in the implementation of employment, leadership and how to act especially on the governance of the organization. Policy is also has a meaning as a statement of goals, objectives, principles or intent as guidelines for management in order to achieve the target [2,4]. The meaning of wise is means, able, smart, experienced, wise, whereas the policy means wisdom and policy [2,5].

The key to use policy which is related to the original meaning will associate with:

1. Government or polity, political wisdom or cunning,
2. Wise, prudent or expedient conduct or management, conduct or management,

A principle, plan, or course of action, as pursued by a government, organization and individual

The concept formulation in concept draft of Criminal Code until 2015 can be regarded as the embodiment of integration between the two approaches. These two approaches are policies orientation and the value of policy and oriented integrated approach. Construction of the criminal justice system is part of the construction of the National Law System which is based on the values of Pancasila. Consequently, the renewal of the National Criminal Law should be well motivated and oriented by basic ideas of Pancasila which contains the value of balance. The value of balanced covers religious norm or moral or divinity, humanity, nationality, democracy, and social justice.

3. Method

3.1. Approach Problems

The problem is formulated in this paper include the central issue of criminal law enforcement policy or policy formulation. Therefore, the approach cannot be separated from policy-oriented approach to analyze legislative policy in defining and formulating action of crime in cyber crime. The approach in this paper is a normative legal research. In a normative legal research, there are several approaches such as statute approach, conceptual approach and the comparative approach [2,7-13].

3.2. Research Specification

Specifications research conducted in this paper is a normative legal research or legal research literature suggested by Soerjono Soekanto. Comparative law is a method for a normative legal research. In this method research is conducted on various sub-systems of law which is applicable in a given society or across sectors of the legal systems in the various different communities.

3.3. Types and Sources of Data

Data taken from literature as secondary data consists of:

- a. Primary legal materials such as materials binding law. This material covers
 - 1) A basic rule contained in the Preamble of the Constitution of 1945
 - 2) Basic Regulation in the body of Constitution 1945, Provisions of the People's Consultative Assembly and Long Term Development Policy
- b. Secondary law providing an explanation of the primary legal materials, such as the draft law or Draft New Criminal Code Act 2015, the results of research and scientific works of the criminal law.
- c. Tertiary legal materials such as materials providing instructions and an explanation of the primary and secondary legal materials. These materials are taken from dictionaries and encyclopedias.

3.4. Method of Data Collection

Based on secondary data, the primary and secondary legal materials in formulation of the problem are set, and then they are classified according to the source and hierarchy to be studied comprehensively.

3.5. Method Data Analysis

All the data and information obtained in this study are analyzed using qualitative and normative analysis method. Qualitative analysis of the data presents the normative quantitatively and it is grounded in descriptive and predictive analysis. The policy formulation of cyber crime is formulated after analysis to find the weaknesses of juridical in policy formulation in the provisions of the current legislation. The policy formulation also considers the concept of the draft of New Law Penal Code, comparative study of criminal law, the views of scholars and theoretical studies. Analysis is also carried out for the second issue to discover the ideal policy formulation for cyber crime.

4. Discussion

4.1. Policy formulation crime of "cyber crime" is embodied in the provisions of the current legislation

Legislation and parlement are currently formulating crime of "cyber crime" according to the Law of Republic of Indonesia No. 11 in year 2008 about transaction of electronics and information. Analysis on Cyber Crime Convention is related to the formulation of the provisions in the articles of the ITE Law No. 8 of 2011. ITE criminal provisions in the Act have not been separated by the Council of Europe Convention on Cyber Crime on November 23rd, 2001 in Budapest Hungary. The reached agreement was incorporated the convention into European Treaty Series No. 185. This Convention is activated after the ratification conducted by at least 5 (five) countries, including at least ratification by three member states of Europe Council.

Positive attitude the Government of Indonesia with the ratification is established with full awareness and it is related to the increasing intensity of the digitalization, convergence and continuing globalization of information technology as a means to do a criminal act. The positive response is shown by the formulation of Law No. 8 of 2011 on Information and Electronic Transactions or ITE. Among of articles there are several articles that related to the the convention of cyber crime i.e. Article 27 until Article 37. Formulation in Article 27 of the cconvention cyber crime is known by the term of illegal access. Illegal access is to access the Electronic Information and or Electronic Records that contain forbidden act and violated ethics charge such as child pornography

In the convention of cyber crime, forbidden acts formulated Article 31 is called illegal Interception and system interference. Analysis of the formulation of Criminal Provisions within of the Act ITE No. 8 of 2011 is more focused on the problem of juridical, because the most strategic policy in the enforcement criminal law is the formulation stage. The emergence of problems in this phase is resulted in more serious implementation of the next stages i.e. the application and the execution stage. It is asserted that the formulation stage or formulation phase of legislative policy is the most strategic phase in the efforts of crime prevention and control through the penal policy. Therefore, any the mistakes or weaknesses of legislative policy are strategic errors that may obstruct the efforts of crime prevention and control in the application and execution stage.

The analysis of juridical issues includes several items such as

- 1) The qualifications of juridical
- 2) The guidelines for the threat of criminal penalties in criminals

The main position of Article 103 of the Criminal Code related to the first issue is that the provisions in Chapter I to Chapter VIII of the book is also applied to deeds by statutory provisions shall be punishable by others, unless by law otherwise specified .

It is related to the second issue, the policy formulation of volume of crime (Straf Maat) especially for criminal penalties is put at higher position. The high volumes of fines are not always met by the convict. Furthermore it becomes the juridis problem if the convicted person does not pay the fine imposed. Juridical problem exists if the formulation of sentencing guidelines to pay the fine imposed does not exist.

4.2. Policy of crime formulation crime of cyber crime in the concept of the new Penal Code

In the policy formulation, the concept of criminal provisions in Article 378 to Article 384 contains three Paragraph. The first paragraph is related to the use and destruction of electronics information and domain. The second is about no right to access computers and electronics systems, and the third is about the child pornography via computer

The title in the first paragraph does not seem related to actions to access a computer without the right, but the formulation of Article 378 is formulated in the elements of accessing a computer without authority, so that such formulations also covers the formulation of second paragraph about no right to access of computer and electronic systems and it is similar with the formulation of Article 381. The formulations this article also includes an element of "damage" that exist in the first paragraph. It can be concluded that the formulation between paragraphs are not consistent with the title of paragraph.

Formulation of the provisions in the second paragraph are impressed as a formal offense, but in the formulation of Article 381 in letters A, E, F and G, there is an element of a result. In letter A, there are words "may cause a disturbance". In letter E, there is a word "result, in the letter F, word "lead" is used and in the letter E, the word "result" is adopted. The same patterns are presented in the formulation of Article 383, in letter D, there are words "consequently can affect electronic systems in the Central Bank".

In the third paragraph, the formulation of the provisions of Article 384 in the explanation, it is said to be "quite obvious". However, the formulation of the letter B said, "Making available child pornography through a computer system". In the letter E, it is said, "Possessing child pornography in a computer system or a computer data storage medium", and it means there are similarities. The element of "supply contains the same meaning as having". These two elements are in possession of criminal.

Based on entire analysis in the second issue, it is concluded that the concept has formulated a criminal offense related to "Cyber Crime". It is made as participation through ratification of the "Council of Europe Convention on Cyber Crime," held on November 23, 2001 in Budapest, Hungary.

5. Conclusion

Policy formulation crime of "cyber crime" is embodied in the provisions of the current legislation. The provisions of legislation is a form of participation of Indonesia in the ratification of Council of Europe Convention on Cyber Crime on November 23rd, 2001 in Budapest Hungary. Juridical problems found from the analysis of the criminal provisions have shown that no formulation for juridical qualification for crime or offense, and it affects juridical. The finding shows less understanding about the ideal standard in the Criminal Code.

The concept of the draft Law Book of the Criminal Law Act 2015, in Book I about the General Conditions has formulated crime of cyber crime. This general provision responded to the formulation of the criminal provisions of Book II of Crime in Chapter VIII which stated that crime that dangerous for public safety, health, products, and environment.. In Book II, it is stated that criminal offenses related to "Cyber Crime" has been formulated in the provision at Part Five of "Crime against Informatics and Electronics". Policy formulation needs to be replicated and for reasons of implementation and it must be easy to implemented.

6. References

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