RINGKASAN

Kemajuan teknologi informasi dan media elektronika telah mendorong arus globalisasi pada berbagai aspek kehidupan sekaligus mengubah pandangan manusia tentang berbagai kegiatan yang selama ini di dominasi oleh aktivitas yang bersifat fisik. Kemajuan teknologi informasi tersebut sangat berdampak positif dan sangat berdaya guna, di sisi lain juga menimbulkan dampak negatif berupa penyalahgunaan penguasaan teknologi informasi untuk melakukan kejahatan yang saat ini di kenal sebagai tindak pidana siber.

Tindak pidana siber tersebut memiliki karakteristik yang berbeda dengan tindak pidana pada umumnya yaitu (1) dilakukan tanpa kekerasan, (2) sedikit melibatkan kontak fisik serta, (3) menggunakan peralatan, teknologi dan, memanfaatkan jaringan telematika. Seringkali jejak yang ditinggalkan tidak meninggalkan bekas secara fisik melainkan secara elektronik dalam bentuk data elektronik (informasi elektronik). Pada tindak pidana siber pembuktian menjadi suatu masalah yang sangat penting mengingat "informasi elektronik" yang akan digunakan sebagai alat bukti tidak tercantum sebagai alat bukti sebagaimana di atur dalam Pasal 184 KUHAP.

Pengggunaan informasi elektronik sebagai alat bukti telah di atur dalam tiga perundang-undangan pidana yaitu UU No.25 Tahun 2003 perubahan UU No.15 Tahun 2002 Tentang Tindak Pidana Pencucian Uang dalam Pasal 38 , didalamnya menyatakan bahwa alat bukti elektronik dapat di jadikan sebagai alat bukti di samping alat bukti berdasarkan KUHAP, UU No 20 Tahun 2001 perubahan UU No. 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi dalam Pasal 26 A, yang menyatakan bahwa alat bukti elektronik dapat digunakan sebagai alat bukti petunjuk dan UU No. 15 Tahun 2002 perubahan UU No.1/Prp/ tahun 2002 Tentang Terorisme dalam Pasal 27 , didalamnya juga menyatakan bahwa alat bukti elektronik dapat di jadikan sebagai alat bukti di samping alat bukti berdasarkan KUHAP. Ketiga undang-undang tersebut telah memberikan perluasan penapsiran terhadap alat bukti dengan mengakomodir penggunaan informasi elektronik sebagai alat bukti.

Selain tindak pidana yang di atur dalam tiga undang-undang di atas, dengan mendasarkan pada Pasal 16 UU Pokok Kekuasaan Kehakiman yang menyatakan bahwa hakim harus dapat menggali hukum, maka untuk menemukan hukum dan menerapkan informasi elektronik sebagai alat bukti sesuai dengan Pasal 184 KUHAP penegak hukum dapat melakukan terobosan-terobosan melalui metode penafsiran (intepretasi) serta dapat bercermin pada yurisprudensi dan pendapat ahli hukum. Dengan demikian penerapan informasi elektronik sebagai alat bukti dalam pembuktian perkara pidana dapat berkedudukan sebagai alat bukti keterangan ahli, surat dan petunjuk. Penggunaan metode penafsiran tersebut harus tetap mengedepankan prinsip kemanfaatan, prinsip keadilan dan kepastian hukum.

SUMMARY

Progress of information technology and electronics media have pushed the globalization current of various aspects of life at one changing the viewpoint of human being about all kinds activities which are so far predominated by activity having the physical character. The information technology Progress very positive affects and is very useful, on the other side it also generate the impact has a negative in the form of abuse information technology to the conduct crime which is so far known as cyber crime.

Cyber crime has different characteristic with the common crime that is (1) Conducted with non violence, (2) Entangling little physical contact, (3) Using equipments, technology, and exploiting networking telematika. Oftentimes tracrs being not leave the secondhand physically but in electronic in the form of electronic data (electronic information). Cyber crimer justification becomes a very important problem remembering that the " electronic information" being used as an evidence appliance is not enclosed as a means of evidence as it is arranged in Section 184 article (1) KUHAP.

The use of electronic Information as a means of evidence has been arrang in three legislation of crime that is UU No. 25 the year of 2003 jo UU no. 15 the year of 2002 about Money Laundry in section 38, in which it in revealed that appliance of electronic evidence can be used as a means of evidence in spind of electronic evidence based on to KUHAP, UU No. 20 the year of 2001 jo UU no. 31 the year of 1999 about Eradication of Corruption Crime in Section 26 A, expressing that appliance of electronic evidence can be used as a means of guidance and UU no. 15 the year of 2002 jo UU No. 1/Prp/ the year of2002 about Terrorism in section 27, in it is also expressed that appliance of electronic evidence can be usedas a means of evidence besides electronic evidence based on KUHAP. The third constitution have given the advance the extent interpretation extension to electronic evidence by accomodating use of electronic information as a means of evidence.

Besid crimes arranged in the three constitution, by depending on Section 16 Fundamental UU Kekuasaan Kehakiman expressing that judge think deeply on the law, hence to find the law and apply the electronic information as a means of evidence in accordance to Section 184 article (1) KUHAP of law enforcer can make penetration throughof interpretation method and also take a look at jurisprudence and opinion of the experts. Hence, the application of electronic information as a means of evidence in criminal verification can penetration as a means of evidence from the of expert, letter and guide. The used of interpretation method has to strich forward the principle of usefulness of justice and rule of law.

ABSTRACT

Use of Electronic Information as a means of evidence in cyber crime cannot be applied directly in criminal verification because in section 184 article (1) KUHAP has been arranged by limited kinds of evidence appliance which can be used to prove the defendant mistake for crime which have been done that is appliance of evidence of eyewitness boldness, expert boldness, letter, guide and defendant boldness. This research conducted to find of what makes legal fundament of electronic information that can be used as a means of evidence and what will be the position electronic information in criminal verification. This research is legal research and the method be used are legislation approach, conceptual approach and case approach. Electronic information as a means of evidence by yuridist can refer to section 28 letter of F amandement UUD 1945, Section 16 article (1) Jo. 28 article (1) UU Kekuasaan Kehakiman And Section 184 article (1) KUHAP. Particulary use of Electronic Information as a means of evidence has been arranged in UU crime of Money Laundry, UU of Eradication of Corruption Crime, and UU Crime of Terrorism. The application of interpretation method, the apply of Electronic Information serve the purpose of electronic evidence in accordance to Section 184 article (1) KUHAP that is as a means of evidence of expert boldness, letter and guide. Here after the application of the interpretation method of law it is expected that it can become the jurisprudence.

Keywords : Electronic Information, Evidence, Electronic evidence, Cyber Crime.