

JURIDICIC REVIEW OF FRAUD IMAGES FOR SALE THROUGH ONLINE

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ABSTRACT

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Interconnection networking is an important medium in daily life and provides many benefits, especially information that is faster and easier to get. E-commerce transactions or shopping at the Online Store allows the occurrence of fraud in selling goods or products offered. The number of problems that arise in buying and selling in Online Stores such as advertising an item or product does not match the original image or form and reality, to the goods or services not accepted by consumers, and so forth. The problem taken from this research is how the application of the criminal law of image retrieval of goods sold through online and how the efforts made to overcome the occurrence of criminal acts of fraud selling goods through online. This study uses a normative juridical approach using data obtained through library research, namely legislation, books, papers and other documents relating to research. Based on the results of the discussion it can be concluded that a person can be said to be committing fraud pictures of goods sold through online if they meet the basic elements of: Subjective and Objective Elements.

INTRODUCTION

The internet has become a necessity for humans today, this is because everything is now connected to the internet. Not only for entertainment, the internet can now also be used as a medium for shopping, studying, working and many other things. With increasingly complex needs and the internet making things easier, the internet has become an inseparable human need. To get internet, now it's very easy. This is different from a few years ago, where the internet was still a step and also still very expensive. At present, there are many choices for internet users to use service providers, especially for the internet from the smartphone that is used.

Internet or interconnection networking is an important medium in daily life and provides many benefits, especially information that is faster and easier to get. These benefits make the internet a medium that connects humans in all parts of the world to interact without limits. According to Alvin Toffler, the existence of the internet gave rise to the nickname "Third Wave Society". The purpose of the nickname is that people

with the presence of the internet experience significant changes in their three dimensions of humanity, namely Human Behavior (human action), Interaction between Humans (human interaction), and Relationships between Humans (human relations).

Online shopping or E-Commerce is a transaction process that is carried out through the media or intermediaries in the form of online buying and selling sites or social networks that provide merchandise or services. Now online shopping has become a habit for some people, because of the convenience provided, many people assume that online shopping is one means to find items that are needed such as daily necessities, hobbies, and so on. Online shopping can also be interpreted as the desire of consumers to spend their money to get something they want at an online store. The process can be done by ordering desired items through vendors or manufacturers and resellers using the internet. Furthermore, make payments by transferring via bank, e-bank, or COD (Cash on Delivery)[1].

Besides the many benefits or benefits felt by the community, the emergence of e-commerce transactions is unlikely to not cause problems. According to a buyer, choosing an e-commerce transaction that offers practical buying and selling transactions is a smart choice. As a result, buyers often forget that e-commerce transactions are not free from danger. Based on the general explanation of Law No. 11 of 2008 concerning Information and Electronic Transactions Article 1 General Provisions number 2, explained that electronic transactions are legal acts carried out using computers, computer networks, and / or other electronic media.

An agreement as outlined in a written form, hereinafter referred to as a contract, must fulfill the legal conditions of the agreement, specifically Article 1320 of the Civil Code, because the article stipulates that there are four legal conditions that must be met for the validity of a contract, namely[2]:

- 1) Agree those who bind themselves
- 2) Able to make an agreement
- 3) A certain thing
- 4) A lawful cause

The online fraud case is one of the cases that is now rife, especially now that the development of the times, electronic devices are also increasingly sophisticated. With the increasingly sophisticated electronic devices, people will be easier to access the internet. In the past, people used the internet is still very limited, accessing the internet can only be done by people who are in big cities, due to limited signals and lack of knowledge about technology in rural areas or villages, so they find it difficult to access the internet and understand technology. In contrast to now, people from all walks of life both in villages and in cities can use the internet for various things. Old and young, until children are now able to use it for their needs. Online fraud is in principle the same as conventional fraud. The difference is only in the means of his actions namely using an electronic system. Online fraud can also be formulated as a crime legally because the actions taken can harm a person and also this regulation is listed in criminal law and again the perpetrators are subject to clear sanctions.

METHOD

The research used is empirical normative research. Normative legal research is legal research that examines written law from aspects of theory, history, philosophy, comparison, structure and composition, scope and material, general explanation of article by article, formality and force binding a law but does not bind the applied aspects or its implementation .

Empirical research is an unwritten positive legal research concerning the behavior of community members in community relations. Normative legal research by examining written law that is binding from all aspects related to the subject under study. Empirical legal research by studying.

The author also relies on data and information about law, both primary legal materials, secondary legal materials and tertiary legal materials. Primary legal materials are legal materials that are binding and are closely related to the issues to be investigated, in the form of legislation such as the 1945 Constitution of the Republic of Indonesia, Law Number 11 of 2008 concerning Information and Electronic Transactions, Civil Code and the Criminal Code.

Secondary legal material is legal material that provides an explanation of the primary legal material, namely the work within the law which has relevance to the issues to be examined in the form of books, opinions of scholars relating to this proposal.

Tertiary legal materials or supporting legal materials are legal materials that provide meaningful instructions or explanations of primary and secondary legal materials, namely legal dictionaries, encyclopedias, magazines, mass media, internet and so on.

RESULT AND DISCUSSION

Definition of Criminal Acts

The term criminal offense from a term known as Dutch criminal law is strafbaar feit. The Dutch WvS, as well as the Dutch East Indies Commission (KUHP), but there is no official explanation of what was agreed with the strafbaar feit. Therefore, the legal experts ask to give the meaning and content of those provisions. And denied until now there has been no uniformity of opinion.

Teguh Prasetyo formulated that:

"A criminal act is an act which by law is prohibited and threatened with crime. The definition of an act here is in addition to an active act (doing something that is actually prohibited by law) and an act that is passive (not doing something that is actually required by law)."

Meanwhile, according to Van Hamel described it as an act of rding (worthy or worthy of being convicted), and can be denounced because of exhaustion (en aan schuld te wijten).[5] Furthermore Pompe formulated that a strafbaar feit was as human as described by the law, against the law, the strafwa was actually nothing but a "act which according to one formulation of the law has been declared as punitive action".

Meanwhile, Moeljatno stated that a criminal act means an act that is prohibited and threatened with criminal acts, against anyone who violates the prohibition. These actions must also be felt by the community as a barrier to the social relations aspired by the community.

So the crime (*strafbaar feit*), events that can be convicted or acts that can be convicted. While offense, which in foreign languages is called *delict*, means an act that the culprit may be subject to punishment.

In a criminal legislation always regulates criminal acts. A criminal offense is an act that is prohibited by a rule of law, which prohibitions are accompanied by threats (sanctions) in the form of certain crimes for those who violate the prohibition.

To find out the existence of a criminal offense, it is generally formulated in the criminal laws and regulations concerning acts that are prohibited and accompanied by sanctions. In this formulation, several elements or conditions which are characteristic of the prohibition are determined so that they can clearly be distinguished from other acts that are not prohibited. Criminal acts refer only to the nature of their actions, which can be prohibited with criminal threats if violated.

According to Moeljatno, the elements of a crime (*strafbaar feit*) are:

1. The act must be a human deed.
2. The act must be prohibited and threatened with punishment by law.
3. The act is against the law (against the law).
4. Must be done by someone who can be accounted for.
5. The act must be blamed to the maker.

Simons also mentioned the existence of objective elements and subjective elements of criminal acts, namely:

Objective Elements:

1. People's deeds.
2. The visible consequences of the action.
3. There may be certain circumstances that accompany such actions as in article 281 of the Indonesian Criminal Code "openbaar" or "in public".

Subjective Elements:

1. People who are capable of responsibility
2. An error (*dollus* or *culpa*). The deed must be done by mistake. This error can be related to the consequences of the action or to the circumstances in which the action was committed.

The subjective elements and objective elements of a crime, namely:

- 1) Subjective Elements, The subjective elements of a crime are :
 - a) Deliberate or accidental (*dolus* or *culpa*).
 - b) The purpose or voice of an experiment or *poging* as referred to in Article 53 paragraph 1 of the Criminal Code.
 - c) Various kinds of intent or *oogmerk* such as those found for example in crimes of theft, fraud, extortion, and others.
 - d) Planning in advance or *voorbodachte raad* as for example contained in the crime of murder according to Article 340 of the Criminal Code.
 - e) Feelings of fear or *vress* as among others contained in the formulation of crimi-

nal acts according to article 308 of the Criminal Code.

2) Objective Elements, The objective elements of the crime are :

- a) The nature of breaking the law
- b) The quality of the offender, for example "the state as a civil servant" in a crime of position according to Article 415 of the Criminal Code or "the condition as a manager or commissioner of a limited liability company" in a crime according to Article 398 of the Criminal Code.
- c) Causality, namely the relationship between an action as a cause and a reality as a result.

Objectives that are objective are all elements that are outside the inner state of the human being or the maker, that is, all the elements concerning his actions, due to certain actions and conditions attached (around) to the actions and objects of criminal acts.

Every criminal offense contained in the Criminal Code (KUHP) in general can be translated into elements consisting of subjective elements and objective elements, can be described as follows:

Subjective elements are elements that are inherent in the offender or which are related to the offender, and are included in that is everything contained in his heart. Whereas the objective element is the elements that have to do with conditions, that is, in circumstances where the actions of the offender must be carried out.

Act Number 11 of 2008 concerning Information and Electronic Transactions as amended by Act Number 19 of 2016 concerning Amendments to Act Number 11 of 2008 concerning Information and Electronic Transactions does not specifically regulate fraud. During this time, the criminal act of fraud itself is regulated in Article 378 of the Criminal Code, with the formulation of the article as follows:

"Anyone with the intention to benefit themselves or others unlawfully by using a false name or false dignity (hoedanigheid); with deception, or a series of lies, moves others to hand over something to him, or to give debt or write off debts, threatened with fraud for up to four years in prison. "

Even though Act Number 11 of 2008 concerning Information and Electronic Transactions and amendments do not specifically regulate fraud, related to the occurrence of consumer losses in electronic transactions there are provisions of Article 28 paragraph (1) of Act Number 11 of 2008 concerning Information and Electronic Transactions which state:

"Everyone intentionally, and without the right to spread false and misleading news that results in consumer losses in Electronic Transactions."

According to R. Soesilo in his book Criminal Code, the defendant can only be punished with Article 390 of the Criminal Code, if it turns out that the news broadcast is false. What is seen as false news, not only tells a news that is empty, but also tells incorrectly about an event. This explanation also applies to Article 28 paragraph (1) of Law Number 11 Year 2008 concerning Information and Electronic Transactions. A news that tells the truth about an event is also a hoax.

Even so, the two criminal acts have something in common, which can result in harm to others. However, the formulation of Article 28 paragraph (1) of Law Number

11 Year 2008 concerning Information and Electronic Transactions does not require the existence of an element of "benefit oneself or others" as regulated in Article 378 of the Criminal Code concerning fraud.

In the end, law enforcement foresight is needed to determine when to use Article 378 of the Criminal Code and when to use the provisions in Article 28 paragraph (1) of Law Number 11 Year 2008 concerning Information and Electronic Transactions. However, in practice law enforcement authorities can impose layered articles on a criminal act that fulfills the elements of a criminal offense as regulated in Article 378 of the Criminal Code and meets the elements of a criminal offense Article 28 paragraph (1) of Law Number 11 Year 2008 about Information and Electronic Transactions. That is, if indeed the elements of criminal acts are met, law enforcement can use both articles.

Buying and selling agreements in modern times have been very developed. This development is one of them seen from the media used in implementing, for example electronic media. Buying and selling agreements made using online or cyberspace are called e-commerce. buying and selling through online or E-commerce itself is a trading or electronic buying and selling process that uses the internet as its medium. Others, e-commerce can also be interpreted as a sale and purchase transaction between business actors and consumers where the purchase and ordering of goods is done through cyberspace. The parties in e-commerce activities no longer need to face-to-face to conduct a transaction. Transactions are carried out electronically using internet media with social media facilities such as Whatsapp (WA), Facebook (FB), Instagram, Website, or Line and so on.

Because buying and selling online or e-commerce is based on practical trading transactions that do not have to be done directly or face to face, it cannot be avoided that many legal problems arise. These legal problems are often about advertisements. Acts of violation of advertisements that are generally carried out by business actors in the form of advertisements that do not meet the requirements due to unregistered products, advertisements of a product that has not yet received approval, advertisements of drugs or cosmetics that are not in accordance with the approved design, and so forth.

Social media as an intermediary for interaction that connects victims with perpetrators has a role in creating a real impression on the interactions that occur. But at the same time, Facebook also makes users unknowingly open information about themselves too much. This openness has a risk for users to be targeted by people who are looking for profits by exploiting the shortcomings of a user on the grounds of wanting to provide help[3].

Application of the Criminal Law of Fraud Images of Goods Sold Through Online.

Various parties, both the government, the police, as well as providers / managers of online trading sites try to make various efforts to prevent and deal with fraud that can occur in online trading sites. In the field of regulation, Indonesia already has a comprehensive arrangement with the ITE, PK and Trade regulations, and Government Regulation no. 82 of 2012 concerning Organizing Financial Systems and Transactions[4].

Article 378 of the Criminal Code above, then legally the offense of fraud must fulfill the basic elements in the form of: Subjective element of the offense in the form of intentional perpetrators to deceive others formulated in the article of the law with the words: "with a view to benefit oneself or others unlawfully "; and the Objective Delik Element consisting of the element of whosoever; The element of moving other people so that the other person surrenders an object / giving a debt / writing off accounts receivable and the element of how to move another person that is by using a false name / dignity or false / deception / a series of lies.

Thus to be able to declare a person as a perpetrator of a fraud, must carry out an examination and prove legally and convincingly whether it is true of himself and that person's actions have been proven elements of a criminal act of fraud both the subjective and objective elements.

Efforts are made to tackle the occurrence of criminal acts of selling goods through online fraud.

Efforts are made to overcome the occurrence of criminal acts of selling goods through online fraud, namely through preventive and repressive efforts. Preventive effort is an effort made before the occurrence of a crime or more precisely as an effort to prevent a crime. efforts taken to prevent the occurrence of criminal acts of selling goods fraud via online through outreach or reporting through the media and also through coordination with government and non-government institutions and other parties in the context of law enforcement, or create a website as a forum so that people know about good online sales and bad, so if one person is deceived the others won't be fooled too and the online shop is deleted unilaterally because it has been cheated.

These efforts can provide an understanding of various acts of fraud and provide understanding to every citizen to be more vigilant because everyone has the potential to become a victim of criminal acts of selling goods through online fraud. In addition to the above efforts, it also provides an understanding to the public that every crime of fraud selling goods through online has strict sanctions on each culprit.

Other efforts, namely, repressive efforts. Repressive measures are actions taken by the police after the crime has taken place. Repressive efforts are carried out by following up on every report of a criminal offense including the crime of selling goods through online fraud. Then provide strict legal sanctions against criminal offenders, in order to provide a deterrent effect, in accordance with a sense of justice in the community and legal certainty. Every act that has been arranged before and expressly regulates sanctions should make everyone think further before committing a crime, especially fraud.

CONCLUSION

Someone can be said to do Fraud Images of Goods Sold Through Online if it meets the basic elements of: Subjective and Objective Elements. Thus to be able to declare a person as a perpetrator of a fraud, must carry out an examination and prove le-

gally and convincingly whether it is true of himself and that person's actions have been proven elements of a criminal act of fraud both the subjective and objective elements. And the efforts made to tackle the occurrence of criminal acts of selling goods through online fraud, namely through preventive and repressive efforts.

BIBLIOGRAPHY

- [1] D. A. Harahap, "Perilaku Belanja Online Di Indonesia: Studi Kasus," *JRMSI - J. Ris. Manaj. Sains Indones.*, vol. 9, no. 2, pp. 193–213, 2018, doi: 10.21009/jrmsi.009.2.02.
- [2] P. Studi, S. Ilmu, F. Hukum, U. Diponegoro, and C. Penerbitan, "Diponegoro law journal," vol. 5, pp. 1–19, 2016.
- [3] A. Rusmana, "Penipuan Dalam Interaksi Melalui," *J. Kaji. Inf. Perpust.*, vol. 3, no. 2, pp. 187–194, 2015, doi: 10.24198/jkip.v3i2.9994.
- [4] J. Solim, M. S. Rumapea, Agung Wijaya, B. M. Manurung, and W. Lionggodinata, "Upaya Penanggulangan Tindak Pidana Penipuan Situs Jual Beli Online Di Indonesia," *J. Huk. Samudra Keadilan*, vol. 14, no. 1, pp. 97–110, 2019, doi: 10.33059/jhsk.v14i1.1157.
- [5] H. Pidana and S. Grafika, "Leden Marpaung. Asas – Teori – Praktik Hukum Pidana , Sinar Grafika, Jakarta. 2009. Hlm 1` 1," vol. 3, 2015.