

## Juridical analysis of violence threats through electronic systems (Decision Study Number 82/PID.SUS/2021/PN.LWK)

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### ABSTRACT

Rapid changes in society, the economy, and culture have resulted from the advancement of information and communication technology. Information technology is currently a two-edged sword, because, in addition to improving welfare, progress, and human civilization, it is also an effective means of committing illegal acts. The lack of human resources prepared to use information technology, both intellectually and psychologically, has made the complexity of information technology a tool that is easy to use as a criminal medium, or has influenced the birth of new things in everyday life. The approach method of reviewing the problem studied in terms of legal science and conducting an analysis of the legal norms and regulations that apply in laws and regulations based on primary, secondary, and tertiary legal materials is used in this study. to make conclusions based on the data collected during the study. The occurrence of criminal acts of threats of violence carried out through the electronic system, namely the short message service (SMS), is specifically influenced by psychological and sociological factors, and generally occurs as a result of the perpetrators' lack of legal awareness in social life. If the elements of criminal responsibility are met, criminal responsibility for the perpetrators of these crimes can be sought. The application of the law against perpetrators of criminal acts of threats of violence via short message services (SMS) was found to be in accordance with legal procedures based on trial facts in the study of the decisions examined. The defendant's actions, according to the panel of judges, settled the elements of Article 45 b Amendments to Law No. 11 of 2008 on Information and Electronic Transactions by Law No. 19 of 2016.

**Keywords:** Violent Threats, electronic systems, information and electronic transactions

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## 1. INTRODUCTION

The importance of information technology in human life, one of which is the use of mobile phones, seems to have become a mandatory requirement for everyone. It carries various information content, and information spreads to all corners of the world at high speed. Becoming various means for various groups, conveying various information to all levels of society, without the need to use face-to-face media in one place. But in reality the use of mobile phones does not always have a positive impact on human life, the existence of mobile phones is a real threat that affects the pattern of community interaction.

The rapid development of information and communication technology has led to changes in society, economy, and culture. Information technology will be a double-edged sword today, because an efficient way to carry out illegal acts is also an effective means to increase prosperity, progress and civilization.

The lack of readiness of human resources in the use of information technology, both intellectual ability and psychological preparation, makes the complexity of information technology an easy tool to use as a criminal medium, or the law protecting this technology will protect the interests or needs of the wider community that have been met by technology. so that all forms of litigation related to electronic means are regulated by the Information Technology and Electronic Transactions (ITE) Law.

Criminal law that must equate with technology that will give the possibility that there are parties who take advantage of existing facilities and hurt others. So how is the legal witness received by the perpetrator and what factors caused the perpetrator to commit the crime. On the other hand, how is the juridical review of the judge's legal considerations in deciding an act as a criminal act of threat of violence through the electronic system.

Based on this description, the researcher is interested in discussing the crime of providing electronic information and

containing threats of violence submitted to private persons or sending short messages to convey inappropriate threatening words to someone and the factors behind them. In addition to providing academic knowledge about the crimes mentioned above, it is hoped that through this writing everyone will be more obedient/obedient and thorough in using technology, especially in the use of electronic systems in everyday life.

## 2. METHODOLOGY

The searches in this journal are normative, or analytically descriptive, and the searches are only secondary data used to implement this law. The purpose of descriptive research is to describe or explain something to explain real world items or events.

## 3. RESULT AND DISCUSSION

### Factors Behind Someone Threatening Violence Through Electronic Systems

#### A. Legal Awareness Factor

Humans are born with characteristics such as nature, character, talent, and will, and one in social life, humans need each other as social beings. The neighborhood community is a location where people can learn to collaborate, socialize, and earn a living to meet their needs. However, it is possible for conflicts to arise when one person's interests and desires are different from the interests and desires of others, resulting in a conflict in society. This results in a social environment that is less harmonious, chaotic, peaceful, and secure. Therefore, In order to live life among people, it is very important to regulate relationships and make laws that foster a sense of individual justice so that these terrible things do not happen.

The occurrence of threats of violence through electronic systems is closely related to the legal awareness of the perpetrators. That every crime or violation of the use of technology and information has actually been regulated in a legal instrument (UU ITE), then the rules made by the State should also strengthen its citizens to follow the rules with peace in order to build peace based on harmony between a good legal system, on the other hand, it cannot be achieved simply by making new laws on a regular basis; instead, it requires a thorough examination of the extent to which the relevant legal system can be improved.

#### B. Psychological Factors

As Sigmund Freud explained the weakness of the "pleasure" premise Humans are driven by an urgent biological need for pleasure (the pleasure principle). This includes control over hunger, sex, and survival impulses. This can not be obtained legally or according to the rules of society, Freud argued that individuals will automatically try to do it in a shady way. In fact, the moral sense of good and evil that has been ingrained in you since childhood should be able to function as a superego that balances and regulates your id. On the other hand, if moral consciousness is absent and the superego is not fully developed, babies may grow up to be incapable of controlling their urges and ready to control anything to get what they want.

According to this point of view, crime is a product of ego weakness rather than a criminal nature. The gap between the desires of the superego and the id is weak, making people tend to do things they shouldn't. deviation. So that the relationship between the Id (satisfying innate desires), Ego (limiting it to reality), and Superego (adding moral value to all actions taken) that is weak and uncontrolled can cause anyone to have the potential to become perpetrators of criminal acts of threats of violence through electronic systems, especially In the era of modernization, various electronic systems on mobile phones have become media that can be accessed by anyone.

#### C. Sociological Factors

In the study of sociology, Albert Bandura explained that crime is the result of a learning process. Psychological mechanisms are achieved by exposure to criminal activity in the environment followed by repeated exposure with an increase or reward, to increase people's desire to imitate the criminal behavior. they see. Children will be willing to imitate stealing behavior if they see their parents stealing and understand that stealing money creates a positive incentive (having lots of money for fun). On the other hand, if a child's behavior is not appreciated or reacts negatively, the child learns not to repeat it; in other words, the child imitates rather than repeats to avoid negative consequences. Bandura feels that this is the case.. So the criminal act of threatening violence through the electronic system is because he sees and knows this from other people or his environment which he then uses for his benefit.

### Regarding Criminal Threats for Criminal Acts of Threats of Violence through Electronic Systems

The interpretation of the threat has meaning if the intention of someone who will do what the person who threatens does not want is not fulfilled by the person who threatens, and the promise or intention of the person who tries to do something is done by the person who sent the threat. don't want to be of great concern to the person receiving the threat. received threats. threat. An act of violence is an act that involves the illegal use of force or physical force to render an individual powerless. A person's actions (Active or physical) Great/strong or greater than usual are called violence in the phrase threats of violence (hetaanwenden van kracht vanenige betekenis).

Meanwhile, the physical strength threatened by the extraordinary violence has not yet materialized, but will materialize, making the designated object restless, anxious, and afraid. Threats of being killed or attacked, for example. The prospect of violence causes a very painful sensation for the soul of the sufferer.

Conventionally, the treatment of criminal acts of threats of violence is contained in Article 335 of the Criminal Code which regulates unpleasant behavior. Nevertheless, according to the Constitutional Court's Decision 1/PUUXI/2013, the Constitutional Court violated the 1945 Constitution with the phrase "other arbitrary acts or treatment" in paragraph 1 335 No. 1 of the Criminal Code and is binding. Does not cause legal and power problems. Thus, Article 335 paragraph (1) factor 1 of the Criminal Code in full reads: Whoever unlawfully forces another person to do something by using force or threats of violence, either against that person or against another person, is committing a crime or against another person, will no longer do or allow something.

The term "other actions or unpleasant treatment" in Article 335 paragraph (1) number 1 of the Criminal Code has led to confusion and legal injustice, according to the article of the Constitutional Court Repealing the Rules for the Crime of Unpleasant Acts. This is because the execution of this article allows investigators and public prosecutors to act arbitrarily, especially in the case of the reported party. However, if the threat of violence is carried out using an electronic system, the alleged crime, article 29 of the Electronic Information and Transaction Law Number 11 ("UU ITE"), as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information Transactions. Article 335 of the Criminal Code can be used in 2016: Article 29 of the ITE Law:

Everyone provides Electronic information and/or Electronic Documents containing threats of violence or intimidation directed at him/her directly, knowingly and without his/her consent.

Article 45 B of Law 19/2016:

Any person who sends Electronic Information and/or Electronic Documents containing threats of violence or intimidation aimed at the person as referred to in Article 29 shall be sentenced to a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 750,000,000.00 (seven) hundred million rupiah).

1. Legal Studies in Decision Number 82/Pid.Sus/2021/Pn.Lwk Concerning Perpetrators of Criminal Acts of Threat of Violence Through Electronic Systems The author's analysis of Decision number 82/PID.SUS/2021/PN.LWK will be explained based on the descriptions below:

#### 1. Indictment

Based on the summary of the case decided by the Luwuk Court Judge with decision number 82/PID.SUS/2021/PN.LWK, the Defendant was charged with alternative and subsidiary charges and brought to trial by the Public Prosecutor. The Public Prosecutor cannot judge which offense is the most appropriate to be indicted based on the form of the indictment against the Defendant, whether the Defendant violates the following provisions:

The Defendant's actions violated the provisions of Article 45B of the Republic of Indonesia Law of 2016 Number 19 concerning Revision of the Law of the Republic of Indonesia on Information and Electronic Transactions or of 2008 Number 11 of 2008 concerning the Behavior of the Respondent who violated the provisions of Article 51 (2) in conjunction with Article 36 in conjunction with Article 27 (27). 113) As stated in Law Number

11 of the Republic of Indonesia of 2008, or the Defense of Information and Electronic Transactions, has been revised and supplemented by Law Number 19 of the Republic of Indonesia of 2016 concerning Amendments to Law Number 11 of the Republic of Indonesia of 2008, or defense of information and electronic transactions, is threatened with a third charge, a clear criminal provision from a subsidiary of the First Law of the Republic of Indonesia concerning the Elimination of Domestic Violence, No. 23 of 2004, promulgated in 2004 and its Subsidiaries. increase. Paragraph 45 (1) Article 45 (2) Law of the Republic of Indonesia Number 23 concerning Elimination of Domestic Violence.

In addition, that the indictment in this case is based on a combined indictment of alternative and subsidiary, which is used there is only one criminal offense that must be charged to the defendant, but the prosecutor is not sure which one to indict, so the indictment is used as an alternative for the judge to choose. The question arises because the defendant's actions or criminal acts resemble or are equated with other criminal acts but are not criminal acts as After Andi Sofyan and abd van Bemmelen an indictment is made alternatively if:

- a. Prosecutors are not sure which actions will be proven in court, one or the other.
- b. The public prosecutor has doubts about the application of the criminal law requirements by the judge to activities that in his opinion are real.

#### 1. Demand

Finally, the Public Prosecutor in his indictment cites the reasons that arise from the facts of the case in essence as follows:

- 1) Quoting the Defendant HENGKY MAKKA, S.Pd., SH. Finally, it is determined and regulated and sentenced to criminal acts based on Article 45B, "As referred to in Article 29, using violence or intimidation to obtain information and/ or electronic documents against someone. Convicted of committing a crime "without the right to use". Such as information and trade changes to the Law of the Republic of Indonesia Number 11 of 2008 (Electronic Law Number 19 of 2016).
- 2) Sentencing the Defendant HENGKY MAKKA, S.Pd., SH. to one year and five months in prison, reduced to one year and five months if the Defendant continues to order the defendant to remain detained during detention.
- 3) A fine of Rp. 60,000,000,- is also imposed on the Defendant (sixty million rupiah) for 3 (three) months of subsidized confinement.
- 4) State the evidence in the form of:
  - (6 (Six) Print Out Sheets Photo of SMS from brother HENGKI MAKKA to sister MUIN LOTO Still attached to the case file.
  - 1 (One) mobile phone Nokia 130 red color
  - 1 (One) Telkomsel type SIM card with the number 082348938876 Returned to the owner, namely the witness of the MUIN LOTO victim
- 5) Amendment to the Law of the Republic of Indonesia Number 11 of 2008 (Electronic Law Number 19 of 2016) (two thousand rupiah)

Whereas the Public Prosecutor in his charge against the Defendant is a lighter threat of punishment and a fine, as in Article 45B of Law Number 19 of 2016 which reads:

Everyone who sends electronic information and/or electronic documents containing threats of violence or intimidation against a person as referred to in Article 29 shall be punished with imprisonment for a maximum of four years. and/or Rp. You will be subject to a fine not exceeding 750,000,000.- (seven hundred and fifty million rupiah).

Guidelines for the Public Prosecutor to prepare criminal charges in general criminal cases based on SEJA number SE013/A/JA/12/2011 dated December 19, 2011, taking into account the interests of the victim. the condition of society, and the condition of the perpetrator. In general, there are two types of circumstances that are considered when imposing a sentence: juridical considerations and non-juridical factors. Non-juridical considerations come from information about the condition of the perpetrator or victim and the community.

So according to the author, the lightness of the sentence of the Defendant, namely the Defendant himself had felt guilty and regretted his actions and would not do it again, there was no element of wanting to gain economic benefits, and did not cause major impacts such as physical injury and did not kill the victim. In addition, the main determination of the prosecution is seen from the psychological perspective of the defendant, it appears that there is a weakness in controlling emotions so that threats of violence occur based on domestic problems which incidentally the victim is the wife of the Defendant, which can be seen from the testimony of the victim's witness below:

----- Thursday, January 30, 2020 at around 00:07 WITA, the Defendant sent a message via SMS (short message service) cellular phone to the victim's witness with the sentence "What's wrong with the animal that got stuck with two motorbikes to the next time it died? why don't you go into the house of the heart" and then at around 01.34 WITA the Defendant sent another text message to the victim's witness with the sentence "Everything related to money, I will not give it because I want to try to divorce the pig, the dog died, and then on Friday, January 31st." 2020, at approximately 18.08 WIT, the Defendant sent back a message via a cellular phone SMS (short message service) service to the Witness Victim with the sentence "The adopted animal pig called" then Friday, January 31, 2020 at approximately 18.09 WITA with the sentence "Don't try to get out of the house" and on Sunday, February 2, 2020 around 11.16 am the Defendant sent a Another message via SMS (short message service) cellular phone service to the Victim's Witness with the sentence "Beware Jang Dare to mask the house", that the witness was frightened and because of the Victim's Witness was increasingly afraid of the Defendant's threat, the Victim's Witness reported the incident to the Buko Police. , not long after that the Victim's Witness and the Defendant were mediated by the Buko Police with the Head of Paisbatu Village. At that time the Defendant would change but in just a few days the Defendant returned again accusing and cursing and threatening the Victim's Witness, because the matter could not be resolved amicably anymore, the Victim's Witness then asked for the Victim's Witness report to be processed at the

Resort Police so that it could be followed up as soon as possible, as time passed, the Witness finally The victim knew that the Defendant was looking for the motorcycle license because the Defendant wanted the motorcycle to be used to facilitate his relationship with other women in Luwuk. That the Victim's Witness explained that it turned out that the Defendant already had a mistress who caused the Defendant to commit psychological violence either directly or through a cellular telephone short message service, in which the Defendant also intended to divorce the Victim's Witness.

#### 1. Judge's Decision

In this case, based on the amendment to the Electronic Information and Transaction Law (Law Number 11 of 2008) (Article 45B of Law Number 19 of 2016), the court chose the second alternative charge without hesitation. Based on the judge's legal considerations on the elements "Every person, with or without the ability to communicate information and/or electronic documents". including threats of violence or intimidation intended for personal use". The judge in describing the elements of the article was very clear, especially in the evidence presented by expert witnesses to prove the defendant's actions were an offense. So it is very appropriate when the judge states:

"The defendant has caused concern and fear for the victim's witness. Therefore, the Panel of Judges is of the opinion that, for the sake of realizing the principle of legal certainty, benefit and of course based on the value of justice in this case, the Defendant will be sentenced to a sentence commensurate with the form of action that has been carried out by the Defendant."

Then, the Judge stated that the Defendant stated that HENGKY MAKKA, S.Pd., S.H was declared a valid and persuasive proof of error "intentionally entering electronic information and/or electronic documents without permission for it". For those who include violence and intimidation" as well as the second alternative charge, the Public Prosecutor shall be sentenced to 10 years in prison and a fine of sixty million rupiah, which is lower than the demands of the public prosecutor.

That the judge's decision on the defendant's sentence is solely based on his assessment and belief in the evidence and facts presented during the negotiations. Article 193 paragraph (1) of the Criminal Procedure Code states, "If the court decides that the defendant is guilty of committing the crime he is accused of, the court will impose a sentence." Therefore, considering that the sentence by the judge above is the belief of the panel of judges in considering comprehensively the legal facts include all witness statements, defendants' statements, and evidence.

Thus, the judge's decision on this case can cause a deterrent effect for the community not to commit a similar crime and for the Defendant to be sentenced to a sentence commensurate with the form of the act he has committed..



## 4. CONCLUSIONS

Occurrence Using electronic technology, such as short message services, violent criminal threats are carried out (SMS) for two specific reasons, namely psychological factors, meaning the relationship between the Id (satisfying natural demands), the Ego (limiting it to reality), and the super ego (which adds moral value to the human body). every action taken weak and uncontrolled can cause anyone to have the potential to become a perpetrator of a criminal act of threatening violence through an electronic system and sociological factors, meaning that a person commits a criminal act of threatening violence through an electronic system because he sees and knows this from other people/his environment who then he uses it to his advantage. Whereas in general, these crimes occur because of the lack of legal awareness of the perpetrators in social life because state regulations must oblige citizens to obey them in order to realize peace based on order and peace.

Liability If the criminal element of guilt is determined, your claim can file a criminal complaint against the perpetrator of threats of violence through the Short Message Service (SMS). fulfilled, namely the ability to take responsibility as evidenced by the existence of intentional and criminal errors in the transfer of information and electronic documents that carry personal threats in the form of violence or violence, according to Article 44 of the Criminal Code. intimidation violence, and the absence of excuses, such as coercion of Article 48 of the Criminal Code, defense with violence that exceeds the limit (noodweer exces) paragraph (2) of Article 49 of the Criminal Code, and execution of orders without a legal process of forced defense that exceeds the limit (noodweer exces) Article 49 KU permission based on good faith Paragraph 2 Article 51 of the Criminal Code.

The use of short message services (SMS) in court decisions to perpetrate perpetrators of criminal acts involving threats of violence at the Luwu District Court Number 82/Pid.Sus/2021/PN has been based on trial facts, in accordance with the legal process for the treatment of the accused, depending on the following criteria fulfilled by the jury panel: Article 45B of Law no. 19 of 2016, concerning Amendments to Law no. 11 of 2008, relating to electronic data and transactions As a result, the Defendant will be sentenced to imprisonment for ever. 10 (ten) months and a fine of Rp. 60,000,000 (sixty million rupiahs) are the consequences that must be borne by the perpetrators and the Panel of Judges in their decision has applied the law by considering certainty, justice and legal expediency.

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### **D. Court Decision**

Putusan Pengadilan Negeri Luwuk Nomor 82/Pid.Sus/2021/Pn.Lwk