



## RESTORATIVE JUSTICE POLICY AS CRIMINAL COMPLETION IN THE LAW OF INFORMATION AND ELECTRONIC TRANSACTION (ITE)

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**Abstract:** *The implementation of restorative justice principle emphasizes the return to its original state and the occurrence of peace between the perpetrator and the victim or the victim's family and community leaders. This study aims analyze the basic idea of implementation of restorative justice policy as a completion of criminal cases on the Information and Electronic Transaction Law. The method used in this research is descriptive analytical method along with normative juridical approach. This study shows that the application of Restorative Justice as a settlement of criminal cases in the Electronic Information and Transactions Law (UU ITE) is deemed appropriate, considering that in the settlement of criminal cases, investigators have the principle that criminal law is the last resort in law enforcement (ultimum remidium), and prioritizes restorative justice in resolving cases as stated in the Circular Letter Number: SE/2/11/2021 concerning Ethical Cultural Awareness to Create a Clean, Healthy, and Productive Indonesian Digital Space and the National Police Chief's Telegram Letter No. ST/339/II/RES.1.1.1./2021 concerning Guidelines for Handling Cyber Crime Cases using the ITE Law. With the return to its original state or reconciliation, the criminal case can be resolved and does not need to be continued until a court decision is issued.*

**Keywords:** *Restorative Justice, Policy, UU ITE, Law*

### Introduction

The era of globalization that we are going through is a sign of the development of technology. Globalization has become the driving force behind the birth of the era of information technology

development.<sup>1</sup> Advancement in information and communication technology today make ease people to spread and gain information. People can easily communicate without any boundaries of distance, space and time. Along with the development of technology, society is also required to be able following every development that is happening. The development of technology today is not only for the sake of establishing communication and socializing, but also leads to an unlimited world business network.<sup>2</sup>

When the influence of information technology in human life is getting bigger, the risk of information technology being misused is also getting bigger. In reality, many bad things can happen through information technology. Information technology is a general term for digital technology that assists humans in creating, communicating, storing, converting and/or disseminating information. In the development of information and communication, technology causes changes and takes place rapidly in all aspects, among others; social, economic, and cultural aspects significantly. The use of digital technology has changed both the behavior of society and human civilization globally, especially during the Covid-19 pandemic where almost all physical activities have been changed into digital activities.<sup>3</sup>

Cyber crime is a criminal activity in which a computer or computer network becomes a tool, target or place for crime to occur. In March 2008, Law No. 11 of 2008 concerning Electronic Information and Transactions was validated. The law regulates several criminalizations of criminal acts of defamation through social media which previously were not considered as criminal acts through several breakthroughs and expansions in terms of their principles and criminal sanctions. With the enactment of Law

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<sup>1</sup> Budi Suharyanto, *Tindak Pidana Teknologi Informasi ( Cyber crime): Urgensi Pengaturan dan Celah Hukumnya* (Jakarta: Rajawali Pers, 2013), p. 1.

<sup>2</sup> Toni Yuri Rahmanto, "Penegakkan Hukum Terhadap Tindak Penipuan Berbasis Transaksi Elektronik," *Jurnal Penelitian Hukum De Jure*, vol. 19 No. 1 (2019), p. 1.

<sup>3</sup> Atikah Mardhiya Rohmy, Teguh Suratman dan Arini Indah Nihayaty, "UU ITE Dalam Perspektif Perkembangan Teknologi Informasi dan Komunikasi," *Dakwatuna: Jurnal Dakwah dan Komunikasi Islam*, vol. 7, no. 2, (2021), pp. 309-339.

Number 11 of 2008 concerning Information and Electronic Transactions, it then become a legal umbrella for the community.<sup>4</sup> In terms of implementing the evidence against the article, one must be very careful to not let this become a gap for arrogant parties to make this article a rubber article. Article 27 paragraph (3) of Law Number 11 of 2008 concerning Electronic Information and Transactions must be viewed more broadly, not only viewed in black and white through the Electronic Information and Transactions Law and the Criminal Code, but must be comprehensive analysis.<sup>5</sup>

According to Eddy Hiariej in the Public Discussion of the Law on Information and Electronic Transactions, Yogyakarta,<sup>6</sup> the Law on Information and Electronic Transactions, abbreviated as UU ITE, must be able to protect various legal interests to protect freedom of speech, expression of opinion orally and in writing. In addition, it is related to the legal interest in protecting the freedom of communication and obtaining information as rights that are constitutional rights of citizens as stipulated in Article 28F of the 1945 Constitution of the Republic of Indonesia, and basic rights to protect the dignity and reputation of others are protected under Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Such legal interests must obey to regulations and restrictions by law, because everyone has obligations to their community and in the exercise of their rights and powers. People can only be limited by law which is solely to ensure proper recognition and respect for the rights and freedoms of others as stipulated in Article 28J of the 1945 Constitution of the Republic of Indonesia.

However, the number of cases that have ensnared the public regarding freedom of expression has resulted in many people being

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<sup>4</sup> Fani Indriani, "Tinjauan Yuridis Tindak Pencemaran Nama Baik Melalui Media Sosial Berdasarkan Pasal 27 Ayat (3) Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik Dikaitkan Dengan Kebebasan Berpendapat," *Phd Diss.*, Riau University (2016).

<sup>5</sup> *Ibid.*

<sup>6</sup> Pradito Rida Pertama, "Kemenkumham Kaji UU ITE Terhadap Pasal Penghinaan dan Pencemaran Nama Baik," *detikNews*, 18 March (2021) in <https://news.detik.com/berita-jawa-tengah/d-5497990/kemenkumham-kaji-uu-ite-terhadap-pasal-penghinaan-dan-pencemaran-nama-baik> accessed 1st of December 2021.

processed related to the Electronic Information and Transactions Law (ITE). Most of the public violations that were processed by the police were related to defamation, slander and insults which were then subject to criminal sanctions for violating the Electronic Information and Transactions Law (ITE). The strict application of the ITE Law has an impact on decreasing public confidence in law enforcement related to this matter. This is because the implementation of the ITE Law is considered by many to be contradictory to the right to freedom of opinion and expression through the digital space which creates injustice for the community.

Those problems were then followed up by the government and the police with the issuance of Circular Letter (SE) of the National Police Chief No. SE/2/11/2021 concerning Ethical Cultural Awareness to Create a Clean, Healthy and Productive Indonesian Digital Space, the Police prioritize or emphasize the restorative justice approach settlement of cases out of the court through the mediation process, in handling cases of alleged violations of the ITE Law. This decision letter was later strengthened by the presence of the National Police Chief's Telegram Letter No. ST/339/II/RES.1.1.1./2021 concerning Guidelines for Handling Cyber Crime Cases using the ITE Law.

The issuance of this Decree raises questions because the handling of criminal cases related to violations of the ITE Law previously used criminal law rules and did not use Restorative Justice. This is contrary to the rules of criminal law that use the Criminal Procedure Code in handling special criminal cases, one of which includes alleged violations of the ITE Law.

Based on the description of the background above, the formulation of the problem in this study is as follows: *first*, Has the Restorative Justice policy been applied as a settlement of criminal cases in the Information and Electronic Transaction Law? This study aims to identify and analyze the basic idea of implementing the restorative justice policy as a completion of criminal cases in the Information and Electronic Transaction Law.

The method used in this research is descriptive analytical method along with normative juridical approach. Analytical descriptive means to describe and describe something that is the

object of critical research through qualitative analysis. Because what would be discussed is within the scope of legal science, the normative approach includes: legal principles, synchronization of laws and regulations, including inconcreto law discovery efforts.<sup>7</sup> In a normative juridical research, the use of a statute approach is a definite thing. It is said so, because in legal logic, normative legal research is based on research conducted on existing legal materials. Even though, for example, the research was conducted because of the presence of a legal vacuum, the legal vacuum can be identified, because there are already legal norms that require further regulation in positive law.<sup>8</sup>

This research is a normative legal research because what is studied is the principle of justice in the moral system and legal norms in the statutory system by focusing on the basic idea of proportionality in criminal law and the reflection of this idea in the policy of formulating criminal sanctions in legislation.<sup>9</sup> The approach used is the conceptual and statutory approach.<sup>10</sup> The conceptual approach refers to the opinion of criminal law experts on policies of restorative justice which were previously unknown as an alternative for criminal case settlement in enforcing the Information and Electronic Transactions Law (ITE), while the legislation examines the forms of formulation of offenses and criminal threats as well as procedures that should be implemented in legislation.

The legal materials in this study were collected through literature studies both on books and research results in the form of journals that specifically discuss proportionality in criminal law. The legal materials were then analyzed descriptively and qualitatively. In qualitative analysis, there are three streams of activities that occur

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<sup>7</sup> Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif* (Jakarta: Rajawali, 1985), pp. 4–15. See also Roni Hanitijo Soemitro, *Metode Penelitian Hukum dan Jurimetri* (Jakarta: Ghalia Indonesia, 1983), pp. 11-12

<sup>8</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2006), p. 93

<sup>9</sup> Soetandyo Wigjnosobroto, *Hukum, Paradigma, Metode dan Dinamikan Masalahnya* (Jakarta: HuMa, 2002), pp. 147-150.

<sup>10</sup> Johny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif* (Malang: BayuMedia Publishing, 2006), pp. 320

simultaneously: the reduction of legal materials, presentation of legal materials, and drawing conclusions.<sup>11</sup> In this study the reduction of legal materials related to Restorative Justice as a settlement of criminal cases in the Information and Electronic Transactions Law (ITE).

### **Restorative Justice in the Perspective of Criminal Law**

The concept of restorative justice is a new approach model in efforts to resolve criminal cases. In contrast to the current system (criminal law system), the approach or concept of restorative justice focuses more on the direct participation of perpetrators, victims and the community in the process of resolving criminal cases. Therefore, this approach is popularly known as the "non-state justice system" in which the role of the State in the settlement of criminal cases is small or even non-existent. However, the presence of the approach or concept of restorative justice is colored by various questions, both theoretically and practically.<sup>12</sup>

Restorative Justice in resolving conflicts emphasizes direct resolution between criminals and victims of crime in criminal cases. This approach in Restorative Justice has actually existed since ancient times before the state was formed or community organizations were still in the form of tribes. At that time there was a payment of compensation made by someone who had committed a crime or the family of the perpetrator of the crime against the victim who had been harmed as a result of the evil act.<sup>13</sup>

The restorative perspective views crime, although the crime committed also violates the criminal law, the more important aspect

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<sup>11</sup> Mahrus Ali, "Proporsionalitas dalam Kebijakan Formulasi Sanksi Pidana," *Jurnal Hukum Ius Quia Iustum*, vol. 25, no. 1 (2018), pp. 137-158.

<sup>12</sup> Kristian Kristian and Christine Tanuwijaya, "Penyelesaian Perkara Pidana Dengan Konsep Keadilan Restoratif (Restorative Justice) Dalam Sistem Peradilan Pidana Terpadu Di Indonesia," *Jurnal Hukum Mimbar Justitia*, vol. 1, no. 2 (2015), pp.592-607

<sup>13</sup> Romli Atmasasmita, "Masalah Santunan Terhadap Korban Tindak Pidana," dalam BPHN, *Pertemuan Ilmiah Tentang Pembinaan, Penerimaan, Bekas Narapidana dan Pemberian Santunan Terhadap Korban Tindak Pidana*, (Jakarta: BPHN Depkeh, 1994), p. 53.

is not the act of violation but the process of causing harm or victimization to victims of crime, the community and actually violating the interests of the offender himself.<sup>14</sup> A violation of criminal law is understood as a conflict between individuals that causes harm to the victim, the community and the offender himself. Among the three groups, the interests of crime victims are the main part, because the main crime is violating the rights of victims.<sup>15</sup>

The involvement of crime victims in the criminal justice process is important, because the relationship between victims, communities and offenders is the focus for conducting criminal mediation and reconciliation in order to resolve the conflicts they face. Parts that are highlighted are empowering participants, promoting dialogue, and resolving problems that are mutually beneficial and to the satisfaction of all parties.<sup>16</sup> The restorative justice approach places a higher value on direct involvement of the parties. The victim functioned as an element of control. Offenders are encouraged to accept responsibility as an important step in repairing the harm caused by crime and in building a social responsibility value system.<sup>17</sup>

The involvement of active community will strengthen the community itself and upholds the value of a society that is responsive and caring for others. The perspective of restorative justice demands a collaborative effort with the community and government to create an environment where victims and offenders can reconcile conflicts between them and resolve their losses at the same time creating a sense of security in society.<sup>18</sup>

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<sup>14</sup> Trisno Raharjo, *Mediasi Pidana Dalam Sistem Peradilan Pidana Suatu Kajian Perbandingan Dan Penerapannya Di Indonesia* (Penerbit Buku Litera bekerjasama dengan Laboratorium Hukum UMY, 2011), p. 28

<sup>15</sup> Andrew Ashworth, *Victim Impact Statements and Sentencing*, *The Criminal Law Review* (August 1993), pp.25

<sup>16</sup> Mark S. Umbreit, *Victim Meets Offender: The Impac of Restorative Justice and Mediation*, (New York: Willow Tree Press, 1994), p.65

<sup>17</sup> Joe Hudson and Burt Galaway, *Restorative Justice*, (Illinois: Charles C. Thomas Publisher, 1996), p. 44.

<sup>18</sup> Trisno Raharjo, *Mediasi Pidana*,... pp. 29-30.

Daniel W. Van Ness stated that restorative justice is purposed to reach some value through the implementation of criminal justice, the first, conflict resolution or (conflict resolution) containing a charge of compensation payment (Recompense) and vindication (Vindication) and second, a sense of security (safety) which contains the content of peace (peace) and order (order).<sup>19</sup> Restorative justice focuses on solving problems and future behavior. The point lies in improving the conditions or suffering experienced by the community. cooperation is put forward in order to realize a win-win solution.<sup>20</sup>

### **Settlement of Criminal Cases Related to the Law on Information and Electronic Transactions**

Criminal law as a part and law in general does not show any difference with other laws, all laws make a number of provisions to ensure that the norms recognized in the law are actually obeyed by people. A criminal act is a form of violation committed by a person in connection with an action that is contrary to the law and is detrimental to other people. Criminal acts can happen to anyone and in various ways according to technological advances such as using social media.<sup>21</sup>

Along with the development of internet technology, causing the emergence of a crime called Cyber Crime or crime through the Internet network. The definition of Cyber Law is a legal aspect whose term comes from Cyberspace Law, the scope of which includes every aspect related to individuals or legal subjects who use and utilize internet/electronic technology starting when they start "online" and enter the cyber or virtual world. In countries that have

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<sup>19</sup> Daniel W. van Ness, "Restorative Justice and International Human Rights," dalam Joe Hudson dan Burt Galaway, *Restorative Justice* (Illonoise: Charles C Thomas Publisher, 1996) pp. 23-24.

<sup>20</sup> Trisno Raharjo, *Mediasi Pidana*,... p. 40.

<sup>21</sup> Ali Mukti Tanjung, "PENERAPAN TINDAK PIDANA PENGHINAAN MENURUT UNDANG-UNDANG INFORMASI DAN TRANSAKSI ELEKTRONIK (UU ITE) DAN KITAB UNDANG-UNDANG HUKUM PIDANA (KUHP)," *FOCUS MAGISTER ILMU HUKUM*, vol. 1, no. 1 (2020), pp. 1-18.



advanced in the use of the internet/electronics as a tool to facilitate every aspect of their lives, the development of cyber law is very advanced.

The development of information technology, including the internet, also presents its own challenges for the development of Indonesian law. Law in Indonesia is required to be able to adapt to the social changes that occur. Based on some literature and practice, cyber crime has several characteristics, namely:<sup>22</sup>

- a. The act that is carried out illegally, without rights or unethically occurs in cyber space/region (cyberspace), so it is not certain which country's jurisdiction applies to it;
- b. The act is carried out using any equipment connected to the internet;
- c. These actions result in material and immaterial losses (time, value, services, money, goods, price, self, dignity, confidentiality of information) which tend to be greater than conventional crimes;
- d. The perpetrators are people who control the use of the internet and applications;
- e. These acts are often carried out transnationally/across national borders;

Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE) has regulated the prohibition of the distribution of electronic information and/or defamation through social media as a means. However, the provisions governing this matter are seen as not providing a strong foundation, both from the juridical, philosophical, and sociological aspects, because they can lead to multiple interpretations, whether for the effect of prevention or punishment, or for the purpose of enforcing freedom of expression.

The government has reconstructed the criminal policy in Article 27 paragraph (3) of the ITE Law which prohibits the distribution of electronic information and/or electronic documents

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<sup>22</sup> Abdul Wahid and M. Labib, *Kejahatan Mayantara (Cyber Crime)* (Bandung: Refika Aditama, 2005), p. 76.

containing insults and/or defamation through social media as a means.<sup>23</sup>

Article 27 paragraph (3) of the ITE Law stated:

*"Everyone who are intentionally and without rights, distributes and/or transmits and/or makes electronic information and/or electronic documents accessible with insults and/or defamation contents".*

The completion of the criminal case in the Law on Information and Electronic Transactions (UU ITE) prior to the issuance of the instruction Police chief on the implementation of the settlement with the principles of restorative justice is more directed to the minor crime (*tipiring/tindak pidana ringan*).

The definition of a minor crime (*tipiring*), according to Simanjuntak T., is a crime punishable by imprisonment or imprisonment for a maximum of three months and/or a maximum fine of Rp. 7,500 (seven thousand five hundred rupiah) and light insult, except for certain violations. to road traffic laws and regulations, as a guide in handling cases of minor crimes as regulated in Articles of the Criminal Code and other laws and regulations.<sup>24</sup>

Furthermore, according to Hidayatullah, the term "*tipiring*" (Mild Crime) is an abbreviation of the terms contained in CHAPTER XVI, Examination in Court Sessions, Part six Quick Examination, Paragraph I Procedure for Examination of Minor Crimes, Book of Laws - Law of Criminal Procedure (KUHAP). Based on Article 205 paragraph (1) of the Criminal Procedure Code, the criteria for minor crimes are cases that are punishable by imprisonment or imprisonment for a maximum of three months or a fine of a maximum of Rp. 2 of these sections. Meanwhile, based on the Regulation of the Supreme Court (PERMA) Number 2 of 2012 concerning Adjustment of Limits for Minor Crimes and the Amount of Fines in the Criminal Procedure Code that "The amount of loss

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<sup>23</sup> Indah Mutiara Kami and Fino Yurio Kristo, "Ini 7 Poin Utama Revisi UU ITE Yang Mulai Diberlakukan Hari Ini," 28<sup>th</sup> November 2016 in <https://news.detik.com/berita/d-3356235/ini-7-poin-utama-revisi-uu-ite-yang-mulai-diberlakukan-hari-ini> accessed in 1st December 2021.

<sup>24</sup> T. Simanjuntak, *Penerapan KNIAP Dalam Proses Penyidikan Tindak Pidana* (Jakarta: Dinas Hukum Polri, 1998), hlm. 4.

stated in the law above is no longer in accordance with the current exchange rate". Based on Article 2 paragraph (2) of this PERMA, the value of the loss is Rp. 2,500,000 (two million five hundred thousand rupiah).<sup>25</sup>

### **Policy Restorative Justice as a Settlement of Criminal Cases in the Information and Electronic Transactions Law (ITE)**

Criminal law policy or crime prevention policy with criminal law is a process consisting of three stages, namely the formulation or legislative stage, the implementation or judicial stage, and the implementation or executive/administrative stage. The policy of determining an act as a crime is also known as criminalization policy is included in the legislation policy that always gets attention. This is due to the fact that criminal acts are determined by law, so it can be said that the law creates crime. The law provides the authority and the basis for legitimacy to the law to state whether a person's actions constitute a crime or not. This does not mean that the law is criminogenic, but only labels an act as a crime. However, the law can be a criminogenic factor if it is inconsistent with stating that, apart from the feelings and values of society, there is an attitude of distrust regarding the effectiveness of the system.<sup>26</sup>

Criminal law policy, especially in the legislative policy stage, in addition to have a central problem regarding the formulation of an act as a criminal act, is also regarding the determination of criminal sanctions that are threatened that are appropriate for the violator. The determination of criminal sanctions in this legislation is a fundamental and strategic issue. In this regard, Barda Nawawi Arief stated that the legislative policy stage is a strategic stage seen from the whole process policies to operationalize criminal sanctions. It is at this stage that the policy lines of the criminal and sentencing

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<sup>25</sup> Hidayatullah, "Alternatif Penyelesaian Tindak Pidana Ringan Melalui Forum Kemitraan Polisi-Masyarakat (FKPM), Studi Kasus FKPM Di Polres Salatiga" *Disertasi, Program Doktor Ilmu Hukum, Universitas Diponegoro* (Semarang: Universitas Diponegoro, 2012), pp. 112–113.

<sup>26</sup> Barda Nawawi Arief, "Penetapan Pidana Penjara Dalam Perundang-Undangan Dalam Rangka Usaha Penanggulangan Kejahatan" *Disertasi* (Padjajaran, 1986), p. 40.

system are formulated as well as the legal basis for the following stages, namely the stage of implementing the crime by the judiciary and the stage of implementing the crime by the criminal implementing apparatus.<sup>27</sup>

Policies to promote restorative justice (Restorative Justice) in the implementation of the settlement related criminal ITE Act was first echoed by the President of the Republic of Indonesia in the opening ceremony of the National Leadership Meeting TNI-Police on 15 February 2021. The President directs the need for better assessment and relevant criteria implementative related to the formulation of the substance. This is conveyed considering that after taking effect on April 21 2008, the implementation of Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Transactions Electronic Transactions (UU ITE), turned out to be controversial because some considered it to contain articles that were too flexible or rubber articles (*haatzai articlesen*).<sup>28</sup>

Following up on this, the Head of the Indonesian National Police General Police Listyo Sigit Prabowo then issued Circular (SE) No. SE / 2/11/2021 on Cultural Awareness Ethical to Create Space Digital Indonesia Clean, Healthy and Productive and ask the principal investigator of the Police to prioritize restorative justice approach (Restorative Justice) in handling cases related to Law Number 11 Year 2008 on Information and Electronic Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE).

In SE/2/11/2021 there are at least 11 (eleven) points that serve as guidelines for Polri investigators in handling cases related

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<sup>27</sup> Muhaimin Muhaimin, "Restoratif Justice Dalam Penyelesaian Tindak Pidana Ringan," *Jurnal Penelitian Hukum De Jure*, vol. 9, no. 2 (2019), pp. 185-206.

<sup>28</sup> Huma Kemenko Polhukam RI, Kepmenko Polhukam RI Nomor 22 tahun 2021 tentang Tim Kajian UU Tentang Informasi dan Transaksi Elektronik, 22<sup>nd</sup> Februari 2021 in <https://polkam.go.id/kepmenko-polhukam-nomor-22-tahun-2021-tentang-tim/> accessed 1<sup>st</sup> of December 2021.

to the ITE Law. Among the eleven points, the fourth to the ninth points include new rules related to the settlement of criminal cases that must prioritize restorative justice. The eleven guidelines are as follows:<sup>29</sup>

- a. Keeping up with the development of the use of digital space that continues to develop.
- b. Understanding the ethical culture that occurs in the digital space by taking an inventory of various problems and impacts that occur in society.
- c. Prioritizing preemptive and preventive efforts through virtual police and virtual alerts aimed at monitoring, educating, giving warnings, and preventing the public from potential cyber crimes.
- d. In receiving reports from the public, investigators must be able to clearly distinguish between criticism, input, hoaxes and defamation that can be punished.
- e. Since receiving the report, the investigator must communicate with the parties, especially the victim (not represented) and facilitate by giving the disputing parties the widest possible space to mediate.
- f. Investigators conduct comprehensive studies and case titles on cases handled by involving elements of the Criminal Investigation Agency (Bareskrim)/Directorate of Cyber Crimes (Ditpid Siber) can go through zoom meetings and make collegial collective decisions based on existing facts and data.
- g. Investigators have the principle of criminal law being the last resort in law enforcement (*ultimum remedium*) and promoting restorative justice in case resolution.
- h. Against parties and/or victims who will take peaceful steps to become part of the investigator's priority for restorative justice.
- i. Against victims who still want their case to be brought to court, but the suspect has realized and apologized, then no detention will be carried out. Before the file is submitted to the Public Prosecutor (JPU) to be given space for mediation again.

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<sup>29</sup> Surat Edaran (SE) No.SE/2/11/2021 tentang Kesadaran Budaya Beretika untuk Mewujudkan Ruang Digital Indonesia yang Bersih, Sehat, dan Produktif.

- j. Investigators should coordinate with the Public Prosecutor's Office in its implementation, including providing advice on the implementation of mediation at the prosecution level.
- k. In order to carry out gradual supervision of every step of the investigation taken. Then give rewards and punishments for the assessment of the leadership on an ongoing basis.

This Circular is valid for ongoing cases as well as cases that will arise in the future. For members of the police who do not comply with this SE there is a threat of punishment and investigators will be supervised by the Supervision of Investigation (Wassidik), Propam Polri, and Itwasum Polri regarding the implementation of the ITE Law in all regions.<sup>30</sup>

In connection with the issuance of SE No.2/2021, the Chief of the National Police Telegram No. ST/339/II/RES.1.1.1./2021 concerning Guidelines for Handling Cyber Crime Cases using the ITE Law. Through this telegram, the National Police Chief has classified cases under the ITE Law which can be resolved by means of restorative justice, especially those related to hate speech.

The hate speech contained in the telegram is as follows:<sup>31</sup>

- a. Which includes cases of defamation, slander, or humiliation that can be resolved by restorative justice. Related to that, the National Police Chief gave directions to his staff to follow Article 27 paragraph 3 of the ITE Law, Article 207 of the Criminal Code, Article 310 of the Criminal Code, and Article 311 of the Criminal Code, and
- b. Which has the potential to divide the nation (disintegration and intolerance). Regarding this, the National Police Chief divides into two types of criminal acts that can divide the nation. The first is SARA, whose legal process is guided by Article 28

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<sup>30</sup> Adhyasta Dirgantara, "Kabareskrim: Penyidik yang Langgar Pedoman Kapolri soal UU ITE Akan Dihukum," *detikNews* in 24<sup>th</sup> February 2021 <https://news.detik.com/berita/d-5436118/kabareskrim-penyidik-yang-langgar-pedoman-kapolri-soal-uu-ite-akan-dihukum> accessed 1st December 2021.

<sup>31</sup> Tim detikcom, "Kapolri Keluarkan Telegram Pedoman Penanganan Kasus UU ITE, Ini Isinya," *detikNews*, 22<sup>nd</sup> February 2021 in <https://news.detik.com/berita/d-5400803/kapolri-keluarkan-telegram-pedoman-penanganan-kasus-uu-ite-ini-isinya> accessed in 1st December 2021.

Paragraph 2 of the ITE Law; Article 156 of the Criminal Code; Article 156a of the Criminal Code; Article 4 of Law Number 40 of 2008. The second is the spread of false news that causes trouble, which is prohibited by Article 14 paragraph 1 of Law Number 1946.

## **Conclusion**

The application of Restorative Justice as a settlement of criminal cases in the Electronic Information and Transaction Law (UU ITE) is deemed appropriate considering that in the settlement of criminal cases, investigators have the principle that criminal law is the last resort in law enforcement (*ultimum remidium*), and prioritizes restorative justice in resolving cases. as stated in the Circular Letter Number: SE/2/11/2021 concerning Ethical Cultural Awareness to Create a Clean, Healthy and Productive Indonesian Digital Space and the Chief of Police's Telegram Letter No. ST/339/II/RES.1.1.1./2021 concerning Guidelines for Handling Cyber Crime Cases using the ITE Law. The implementation of this restorative justice principle emphasizes the return to its original state and the occurrence of peace between the perpetrator and the victim or the victim's family and community leaders. With the return to its original state or reconciliation, the criminal case can be resolved and does not need to be continued until a court decision is issued.

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