

POTENTIAL TECHNOLOGICAL INTERVENTIONS IN TRANSNATIONAL CRIME FROM THE PERSPECTIVE OF CRIMINAL LAW IN INDONESIA

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Abstract: *Any crime can essentially become a transnational crime, as long as it contains foreign elements. Transnational crimes can also occur in all countries around the world. Therefore, transnational crime is a common problem of nations around the world, and one of the mechanisms that can be used to address it is through international conventions and treaties. The era of the fourth industrial revolution is a knowledge-based era, where various alternatives for fulfilling human needs are more knowledge-based. It is an era characterized by massive utilization of digital technology and artificial intelligence in various aspects of human life. The dark side of the fourth industrial revolution era is that the rapid development of science and technology is not only utilized for improving human quality of life and happiness, but also misused to commit crimes. The problem of this research is whether the criminal law in Indonesia is able to solve legal problems related to transnational crimes committed using advanced science and technology.*

This research is normative juridical research, using secondary data which is then categorized into primary, secondary, and tertiary legal materials, which are then analysed qualitatively. The research approach used is a combination of legal and conceptual approaches.

The results of this research are that Indonesian criminal law is only able to enforce criminal law within the jurisdiction of Indonesia. Although assisted by international conventions and treaties, Indonesian criminal law has not been able to enforce the law against transnational criminals who are outside the jurisdiction of any country. Indonesian criminal law can only enforce the law against conventional legal subjects (individuals or corporations), but cannot enforce the law against contemporary legal subjects created by science and technology, such as artificial intelligence, even if such artificial intelligence has clearly committed a criminal act.

Keywords: *Intervention, Technology, Transnational Crime*

INTRODUCTION

A transnational crime is a crime that violates the values and norms contained in the state's positive law conducted across countries. Transnational crimes are the same as crimes in general, the difference is that these crimes have foreign elements, such as:

1. The country where the crime occurred is different from the nationality of the perpetrator of the crime.
2. The perpetrators of the same crime commit crimes in several different countries on an ongoing basis.
3. Crimes that occur in one or more countries are committed by criminals from several different countries.
4. Crimes occur in several countries that are committed by citizens, but among the perpetrators of these crimes there is coordination or cooperation, or there is a superior and subordinate relationship.

Transnational crime creates an unfair situation between law enforcement officials and perpetrators of crimes related to jurisdictional issues. This is one of the reasons transnational crime perpetrators have a relatively low risk of being arrested by law enforcement officials in a country where transnational crimes occur. Another characteristic of transnational crimes that cause perpetrators to have a low risk of being arrested is that transnational crimes are carried out in an organized manner, or are committed by transnational criminal organizations.

Any crime can essentially become a transnational crime, as long as it contains foreign elements. Transnational crime can also occur in all countries around the world. Thus, transnational crime is a

shared problem among nations worldwide, where one mechanism that can be used together to overcome it is through the United Nations Convention against Transnational Organized Crime (UNTOC). Indonesia accepted UNTOC by enacting Law Number 5 of 2009 concerning the Ratification of the United Nations Convention against Transnational Organized Crime, by providing conditions for the implementation of Article 35 paragraph (2) of UNTOC, which is; "The Government of the Republic of Indonesia is not bound by the provisions of Article 35 paragraph (2) and maintains that in the event of disputes arising from differences in interpretation and application of the contents of the Convention, which are not resolved through channels as provided for in paragraph (1) of that Article, may appoint the International Court of Justice only based on agreement of the disputing parties." One of the problems faced by Indonesia in the implementation of Article 35 paragraph (2) of UNTOC is related to the settlement of disputes between parties through arbitration. This is because in the legal system in Indonesia, transnational crime is part of criminal law, while the settlement of disputes through arbitration is part of civil law.¹

Some specific forms of crime regulated in UNTOC include:

1. Article 5; Criminalization of Participation in an Organized Criminal Group. According to Article 2 (a), "Organized criminal group" means a structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit." Based on this provision, it can be understood that transnational crime is basically a crime that cannot be committed by an individual, but must be committed by a well-organized criminal organization. Law enforcement against corporations or groups that commit crimes can be carried out using the mechanism referred to in the Supreme Court Regulation of the Republic of Indonesia Number 13 of 2016 Regarding Procedures for Handling Criminal Cases by Corporations. Organized crimes typically include drug trafficking and human trafficking. In Indonesia, drug crimes are regulated in Law Number 35 of 2009 concerning Narcotics. Meanwhile, human trafficking crimes are regulated in Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Trafficking in Persons.
2. Article 6; Criminalization of Money Laundering. In Indonesia, this issue is regulated as referred to in Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes.
3. Article 8; Criminalization of Corruption. Corruption issues in Indonesia are regulated as referred to in Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.
4. Article 23; Criminalization of Obstruction of Justice. In Indonesia, this matter is regulated in the Criminal Code.

The regulations are set out in the Criminal Law Code. Some forms of transnational crimes include aggression, war crimes, certain ethnic exterminations, piracy at sea, kidnapping, and narcotics, which are criminal acts that harm the international community.²

Currently, we are perceived to be in the era of the fourth industrial revolution, the era of knowledge, where various alternative ways of meeting the needs of life are more knowledge-based.³ It is an era characterized by the massive use of digital technology and artificial intelligence in various aspects of human life.⁴ This is triggered by the development of science and technology, particularly information and telecommunications technology. The five technologies that build the industry 4.0 system are (1) the

¹ The Republic of Indonesia Law Number 48 of 2009 Concerning Judicial Authority, Article 58; "Civil dispute resolution efforts can be carried out outside of state courts through arbitration or alternative dispute resolution."

² Romli Atmasasmita, *Pengantar Hukum Pidana Internasional*, Refika Aditama, Bandung, 2006, page. 4-5.

³ Etistika Yuni Wijaya, Dewi Agus Sudjimat, Amat Nyoto, *Transformasi Pendidikan Abad 21 sebagai Tuntutan Pengembangan Sumber Daya Manusia di Era Global*, Universitas Kejuruan Malang, Vol. 1 (2016), page. 264.

⁴ Susilahudin Putrawangsa dan Uswatun Hasanah, *Integrasi Teknologi Digital dalam Pembelajaran di Era Industri 4.0 Kajian dari Perspektif Pembelajaran Matematika*, Tasqif Pemikiran Dan Penelitian Pendidikan, Vol. 16, No. 1 (Juni, 2018), page. 43.

Internet of Things (IoT), (2) Artificial Intelligence (AI), (3) Human-Machine Interface, (4) Robotic/Automation and Sensors technology, and (5) 3D Printing technology.⁵

The dark side of the fourth industrial revolution era is that due to the rapid development of science and technology, it is not only used to improve the quality of human life and happiness but also incorrectly used to commit crimes. Crimes committed through the appropriate use of science and technology can potentially cause optimal damage to society and result in maximum benefits for the perpetrators of the crimes.

To provide an illustration of the danger of using science and technology in the era of the 4th industrial revolution to assist transnational drug crimes, and to test whether existing legal devices are still capable of enforcing the law, the following drug dealer case modelling is constructed:

1. A large drug dealer operates in the middle of the ocean, in international waters that are not part of any country's jurisdiction.
2. The drug dealer controls several drug-producing regions and many drug marketing regions.
3. With the help of Artificial Intelligence (AI) experts, the drug dealer creates an algorithm that can process various input data consisting of various parameters needed to decide how drugs from the producing areas can be safely, timely, and accurately delivered to consumers.
4. Using the big data from its database, the AI device can autonomously perform its tasks, make decisions, and issue commands to distribute drugs from the producing areas to the consumers without the involvement of the intended drug dealer.
5. The drug delivery route from the producing areas to the consumer, based on its own considerations (based on its algorithm), the AI device can order the direct or indirect delivery of drugs, namely through several other areas that are used as a transit area only to avoid law enforcement scrutiny.
6. On one occasion, law enforcement in Indonesia was able to thwart drug distribution in Indonesian jurisdiction and arrest drug criminals in Indonesia.

The research question is; can criminal law in Indonesia solve this legal problem?

RESEACRH METHOD

This research is normative juridical research,⁶ also known as doctrinal research⁷ or library research because most of the research was conducted in the library or other places where the secondary data⁸ needed for this research is located. The obtained secondary data is categorized by grouping it into primary legal materials, secondary legal materials, and tertiary legal materials. The primary research results are positioned as additional data to explain or strengthen the secondary data. The primary, secondary, and tertiary legal materials are then presented descriptively and analysed qualitatively, which is a method for processing data in depth. The data comes from observations, interviews, and literature. Qualitative data analysis⁹ is carried out using techniques for summarizing, categorizing, and interpreting qualitative data. Qualitative analysis is a method for analysing data using interview and

⁵ "Ministry of Defense of the Republic of Indonesia, Directorate General of Defense Power, Utilization of Technology and Digitization in the Era of Industrial Revolution, November 8, 2022. <https://www.kemhan.go.id/kuathan/2022/11/08/pemanfaatan-teknologi-dan-digitalisasi-pada-era-revolusi-industri.html#:~:text=Setidaknya%20terdapat%20lima%20teknologi%20yang,%2C%20serta%20teknologi%203D%20Printing.,> downloaded March 5, 2023

⁶ Bambang Sunggono, *Metodologi Penelitian Hukum*, RajaGrafindo Persada, Jakarta, 2013, page. 41. See also Salim HS. dan Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis and Disertasi*, RajaGrafindo Persada, Jakarta, 2013, page. 11

⁷ Bambang Sunggono, *op.cit.*, hlm. 42. Lihat juga Salim HS. dan Erlies Septiana Nurbani, *op.cit.*, page. 11.

⁸ Salim HS. dan Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis and Disertasi*, RajaGrafindo Persada, Jakarta, 2013, hlm. 12. see also Soerjono Soekanto, dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Rajawali Pers, Jakarta, 1990, hlm. 15.

⁹ Salim HS., and Erlies Septiana Nurbani, *op.cit.*, hlm. 12. Lili Rasjidi dan Ira Thania Rasjidi menyebutnya "yuridis kualitatif". See also Lili Rasjidi dan Ira Thania Rasjidi, *Monograf Filsafat Ilmu, Metode Penelitian Hukum Dan Menggunakan Teori/Konsep Di Bidang Ilmu Hukum*, Bandung, 2013, hlm. 25.

observation techniques by answering questions. Qualitative data takes the form of text or narrative. The research approach used is a combination of legal and conceptual approaches.¹⁰

RESULT AND DISCUSION

This relates to the modelling of the narcotics case, and there are several laws and regulations in Indonesia that are relevant, namely:

1. Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Law.
2. Criminal Code (KUHP)
3. Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics.
4. Law of the Republic of Indonesia Number 5 of 2009 concerning the Ratification of the United Nations Convention against Transnational Organized Crime.
5. Law of the Republic of Indonesia Number 7 of 1997 concerning the Ratification of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

Regarding drug trafficking perpetrators in Indonesia, whether committed by Indonesian citizens or foreign citizens, they are subject to the provisions as stipulated by Law No. 35 of 2009 concerning Narcotics, Article 113, 114, or 115. Drug trafficking perpetrators will then be tried in criminal courts using criminal procedure law, and for other perpetrators who are not the main perpetrators, it is possible to be punished as stipulated by the Criminal Code. If the origin of the narcotics is further traced by law enforcement officials in Indonesia, the origin of the drugs in question will be known.

Knowledge of the origin of the narcotics that enter Indonesia and their routes can be followed up legally using the mechanisms stipulated by Law No. 7 of 1997 concerning the Ratification of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. This is applicable if the countries involved are both parties to the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. If it turns out that the related country is not a party to the convention, a legal basis for cooperation in criminal law enforcement related to the eradication of drug trafficking and psychotropic substances with the country in question needs to be sought first.

The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 contains regulations regarding jurisdiction, based on the territory of the country, as well as registered ships and aircraft of that country. This jurisdiction applies to citizens and residents in that territory. Therefore, the party state does not have jurisdiction in the international waters that are not part of the jurisdiction of any country.

Transnational crime involves foreign elements (individuals of different nationalities). In relation to law enforcement against drug offenders, this convention serves as an extradition agreement between the parties, in case there is no existing extradition agreement between the parties. Law enforcement against transnational crime requires cooperation between countries. In implementing this convention, cooperation between parties is referred to as mutual legal assistance, including:

1. Obtaining evidence or statements from individuals.
2. Providing legal document services.
3. Conducting searches and seizures.
4. Examining objects and locations.
5. Providing information and evidence.
6. Providing original documents or certified copies of relevant documents, including bank, financial, corporate, or trade records, or
7. Identifying or tracing the proceeds of crime, assets, equipment or other objects for the purposes of proof.

¹⁰ Johnny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif*, Bayumedia Publishing, Malang, 2012, hlm. 306-307. Salim HS and Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis and Disertasi*, RajaGrafindo Persada, Jakarta, 2013, hlm.17. Lihat juga: Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi*, Kencana, Jakarta, 2013, hlm. 177-180.



The issue of mutual legal assistance is crucial for the enforcement of law against transnational crimes. Currently, Indonesia has established laws on this matter as stated in the Republic of Indonesia Law No. 1 of 2006 concerning Mutual Legal Assistance in Criminal Matters and Republic of Indonesia Law No. 15 of 2008 concerning the Ratification of the Treaty on Mutual Legal Assistance in Criminal Matters.

The mutual legal assistance regulated in the Treaty on Mutual Legal Assistance in Criminal Matters is broader than that regulated in the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. It includes:

1. Obtaining evidence or statements from a person.
2. Arranging for a person to provide evidence or assist in criminal proceedings.
3. Delivering documents related to the legal process.
4. Conducting searches and seizures.
5. Investigating an object and place.
6. Delivering original or legalized copies of documents, records, and evidence.
7. Identifying or tracing assets obtained from criminal activities and assets used to commit criminal activities.
8. Blocking and seizing proceeds of criminal activities that can be seized or confiscated.
9. Confiscating and returning proceeds of criminal activities.
10. Searching for and identifying witnesses and suspects.
11. Providing other assistance as agreed upon in accordance with the purpose of this agreement and the provisions of the laws and regulations of the Requesting Party.

The existence of national laws and international conventions/treaties in the enforcement of criminal law against transnational criminals becomes less effective if the transnational criminals are not located within the jurisdiction of a particular country.

Enforcement of criminal law generally begins with the fulfilment of the elements of the criminal law provisions that contain the threat of punishment. A person can only be punished if their actions fulfil the criminal elements contained in the criminal law provisions. If it can be proven that the role of the drug dealer as referred to in this case model is entirely carried out by an independent AI device, meaning; there is no intervention from the drug dealer other than turning on the AI device, then it can be confirmed that it will be difficult to prosecute the drug dealer using the provisions contained in Republic of Indonesia Law Number 35 of 2009 concerning Narcotics. The use of the AI device will also be difficult to prosecute under Republic of Indonesia Law Number 11 of 2008 concerning Electronic Information and Transactions, which was then amended by Republic of Indonesia Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions because the operation of the AI device in question is not related to "electronic information and transactions". In this case, the AI device is used to assess a specific situation which is then followed by decision-making, where all processes are carried out independently. Similarly, the party that creates the AI algorithm used by the drug dealer will be difficult to prosecute if it is clear that they are unaware of the use of the algorithm they created, or if the use of the algorithm is not in accordance with what was agreed upon.

CONCLUSION

The criminal law of Indonesia is only able to enforce criminal law within the jurisdiction of Indonesia. Even with the help of international conventions and treaties, Indonesian criminal law has not been able to enforce the law against transnational criminals who are outside the jurisdiction of any country.

Indonesian criminal law is only able to enforce the law against conventional legal subjects (individuals or corporations), but cannot enforce the law against modern legal subjects created by science and technology, such as artificial intelligence, even if they commit a crime.

SUGGESTION

Regarding transnational crimes, it is necessary to redefine the definition of legal subjects and legal jurisdiction, both in national laws and international conventions/treaties, in order to encompass all the legal aspects of transnational crimes.

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