

Law Enforcement Formulation of Criminal Acts of Statistical Data Leakage

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ABSTRACT

The act of data leakage carried out by statistical officers is one of the statistical crimes contained in Statistics Law Number 16 of 1997 article 37. In fact, until now the application of law enforcement to data leakage measures has never been applied. The existence of Statistics Law Number 16 of 1997 regarding statistical crimes related to data leakage is questionable. The methodology used in this study is empirical research by analyzing data and facts regarding the incidence of statistical data leakage. The results of this study show that the potential occurrence is caused by unethical statistical officers, lack of data security and social engineering. Law enforcement in the act of data leakage of statistical officers can be carried out with a deterrence mechanism and cooperation with law enforcement related to the enforcement of articles of Statistics Law Number 16 of 1997 article 37 as the ultimate remedium.

Keywords: Authority; CoStatistical Crime; Law Enforcement; Data Leakage; Statistics

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INTRODUCTION

In criminal law enforcement, legal certainty plays an important role in creating order and justice in people's lives. Legal certainty is one of the fundamental principles in any legal system and is an important aspect of the rule of law. Certainty means "provision or statute" while if the word "certainty" is combined with the word "law" it becomes legal certainty, which is interpreted as a legal instrument of a country that is able to guarantee the rights and obligations of every citizen.¹ The problem of crime always arises in every society according to its time and various efforts have been made to overcome it. One of the means of countermeasures used in overcoming crime is to use criminal law.² In criminal law, legal certainty has a very important role. The principle of legal certainty in the context of criminal law must be written clearly and unequivocally to provide a clear understanding of what acts are considered criminal acts.

¹ Nyoman Gede Remaja (2014). Legal Meaning and Legal Certainty. Kertha Widya. Volume 2 Number 1. Journal of Faculty of Law Unipas, Bali, pg. 2

² Lalu Parman (2012), Reorienting the Thought of Using Criminal Law as a Means of Crime Reduction. Jatiswara. Volume 27 Number 1. Journal of the Faculty of Law, University of Mataram, Mataram, pg. 173

Statistics as a discipline and practice in Indonesia is growing rapidly along with the development of a country's government and economy. Statistics as a science plays an important role in collecting data on various aspects of business, in industry and in all fields in the economy.³ In Indonesia, legal certainty for statistical crimes is not fully guaranteed. Although there is a legal framework governing the use of statistical data in Indonesia, its implementation still faces challenges. Normatively, there is a legal framework that regulates statistical crimes, but empirically law enforcement of statistical crimes is still not optimal.

The current legal framework regarding statistical crimes is contained in Law Number 16 of 1997 concerning Statistics (Statistics Law). Crimes have been regulated in Article 34, Article 36 paragraph (2), Article 37, Article 38 and Article 39 of the Statistics Law. The criminal sanctions that can be given in the context of such statistical crimes have been regulated depending on the level of crime proven. Such sanctions include imprisonment, fines, or a combination of both in accordance with the applicable provisions of the law. But in reality, until now there has never been any action against statistical crimes imposed on individuals or corporations. Article 37 of the Statistics Law emphasizes that the guarantee of confidentiality of information applies also to statistical officers. The confidentiality of information involving statistical officers is important to maintain the integrity of data and the privacy of individuals involved in statistical activities. In practice, statisticians are usually required to carry out their duties in compliance with high ethics and professional standards, including maintaining the confidentiality of data obtained.

Statistical officers are non-Civil Servant partners recruited to carry out census/survey activities conducted by BPS. Statistical officers are given employment contracts for a certain period of time with the target of completing the work that has become their duty load. This research will focus on law enforcement of criminal data leakage acts carried out by statistical officers where expressly that the information from respondents is guaranteed confidentiality. Criminal acts of data leakage carried out by statistical officers may violate legal provisions related to privacy, confidentiality, or unauthorized use of data. Although there is no specific information regarding related articles in the Statistics Law, in the context of Indonesian law in general, several other laws and regulations may apply in cases of data leakage involving statistical officers.

METHOD

The method used in this study is an empirical research method. The study used data analysis and facts related to statistical crime cases and law enforcement related to statistical data leaks. The study involved interviews with statisticians as the primary data source. The approach taken in this research is an empirical approach or sociological approach. In principle, the empirical approach views law as a phenomenon or reality that exists in society and its relationship reciprocally with other systems outside the law.⁴

³ Muhammad Firdaus (2021). *Econometrics: An Applicative Approach*. Jakarta : PT Bumi Aksara, pg. 7

⁴ Irwansyah, 2021, *Legal Research on Choice of Article Writing Methods and Practices (Revised Edition)*, Yogyakarta: Mirra Buana Media, pg. 21. .

DISCUSSION

Illegal acts involving misuse of data or statistical methods, including things such as data manipulation, falsification of research results, or violations of data privacy are included in statistical lies. Presumably lying with statistics involves knowingly spreading false number or at least deceptive figures.⁵ The results showed that the application of statistical crime law enforcement, especially regarding the crime of statistical data leakage by statistical officers, has not run optimally. This is in line with the results of Bayu Sulistomo's research which examines law enforcement against respondents as legal subjects or perpetrators of statistical crime crimes that do not work effectively.⁶ In another study conducted by Dian Hayati Nazwaraji who revealed that the use of criminal sanctions in the current Statistics Law has not paid attention to the criminal law enforcement system integrally combined with the theory of law enforcement factors by Soerjono Soekanto including legal substance factors, law enforcement actors and community factors.⁷ This research focuses on the nature of law enforcement, the potential and obstacles of law enforcement and the application of ideal law enforcement that can be applied to perpetrators of statistical data leakage crimes.

The Essence of Leak Law Enforcement

The essence of statistical data leakage law enforcement is to ensure that violations of statistical data security are investigated, prosecuted, and acted upon in accordance with applicable law. The nature of law enforcement statistical data leakage is related to institutional theory according to Lawrence, Suddaby, and Leca. Institutional theory explains why and how motivational actors in organizations make changes in their organizational systems.⁸ In this case, the nature of a statistical officer who has been appointed to conduct data collection in the field, has a motivation that will advance the organization in this case BPS. From the motivation of a statistical officer under the auspices of the BPS Institute gave birth to a responsibility. Immanuel Kant developed a theory of responsibility relating to ethics. Immanuel Kant emphasized the importance of the individual as a moral agent to act in accordance with moral responsibility in order to produce ethical actions.⁹ In this theory Immanuel Kant views responsibility as a moral obligation that must be obeyed by the individual. A statistical officer as a legally appointed individual must abide by the rules set by the agency. The statistical officer becomes a moral agent who acts in accordance with the assigned responsibilities. The

⁵ Joel Best, 2005, Lies, Calculations and Constructions: Beyond "How to Lie with Statistics", Journal Storage(JSTOR), Volume 20 Number 3, pg 211.

⁶ Bayu Sulistomo (2016). Optimization of the implementation of basic statistical activities through the Reform of Law Number 16 of 1997 concerning Statistics. Thesis. Atmajaya University Jogjakarta

⁷ Dian Hayati Nazwaraji (2020). Policy on Reformulation of Criminal Sanctions Law Number 16 of 1997 concerning Statistics. Khairun Law Review. Volume 1 Number 1. Pg. 34

⁸ Damanik S. & Shauki E.R, 2019, Opinion Analysis of BPK RI Examination Results Report (Study on the Indonesian Maritime Security Agency), Indonesian Treasury Review Journal of State Treasury and Public Policy, Volume 4 Number 4, pg. 166

⁹ Juliati, Elisabeth Seran & Irene Ludji, 2022, Infodemic in the Middle of a Pandemic According to the Perspective of Immanuel Kant, Journal of Theology & Christian Education, Volume 18 Number 2, pg. 187

responsibility is not only to complete the work but also relates to other rules related to the work process.

Statistical officers are morally responsible for maintaining the confidentiality of data collected in the field in accordance with Statistics Law Number 16 of 1997 Article 24. In accordance with the theory of Immanuel Kant, a statistician who maintains the confidentiality of data from the beginning to the end of the work is said to have produced ethical actions. Based on the theory the main objectives of law enforcement in this context are:

1. Law Enforcement
Conduct investigations and disclosures of perpetrators responsible for statistical data leaks. This includes identifying them and bringing them to court if there is sufficient evidence to support a lawsuit.
2. Legal Compliance
Ensure that all parties involved in statistical data breaches, both individuals and organizations, comply with applicable laws and regulations in the collection, processing, and storage of such data.
3. Victim Protection
Provide protection and support to victims of statistical data breaches, including assisting them in the recovery of lost data, as well as providing necessary information and assistance.
4. Crime Prevention
Build systems and policies that prevent future data leaks. This involves working together between different parties to identify vulnerabilities and take necessary steps to strengthen data security.
5. Appropriate Punishment
Punish perpetrators of data leakage with appropriate and fair sanctions in accordance with applicable law. This includes fines, imprisonment, or other sanctions appropriate to the extent of the violation.
6. Deterrence
Set an example for other data breaches by providing effective penalties. This aims to reduce the motivation to break the law in the event of statistical data leakage.
7. Education and Awareness
Increase awareness about the importance of statistical data security among individuals and organizations. This involves training, guidance, and security awareness campaigns.
8. Consistency and Fairness
Memastikan bahwa penegakan hukum dilakukan dengan konsisten dan adil, tanpa adanya diskriminasi atau ketidaksetaraan.

Statistical data leakage law enforcement plays an important role in maintaining data integrity, personal information security, and promoting compliance with data security regulations. By ensuring that statistical data breaches are seriously investigated and acted upon, communities can have more confidence in the use and storage of their data.

Potential Statistical Data Leak

The potential for leaking statistical data refers to the possibility that statistical data that is supposed to be confidential or sensitive may fall into the wrong hands or be misused. This can have a negative impact on the individuals, companies, or governments that own the data. There are three types of respondents who are sample surveys or census respondents, namely individuals/households, companies and government institutions or agencies depending on the type of survey conducted by BPS. Statisticians collect data using two methods, namely the CAPI (Computer Assisted Personal Interviewing) method using a device that has a census/survey application installed. The second method is PAPI (Pencil and Paper Interviewing) which still uses tools in the form of questionnaires containing questions that will be asked directly to respondents.

From the two methods, the biggest potential for data leakage is data collection using the PAPI method. This is because the questionnaires used by statisticians are very vulnerable to misuse. Based on the results of the study, questionnaires that have been filled with information from respondents are often misused by multiplying copies to be used in subsequent data collection activities. This is because some information such as respondents' identities (name, NIK, number of family members) will not change significantly for future data collection.

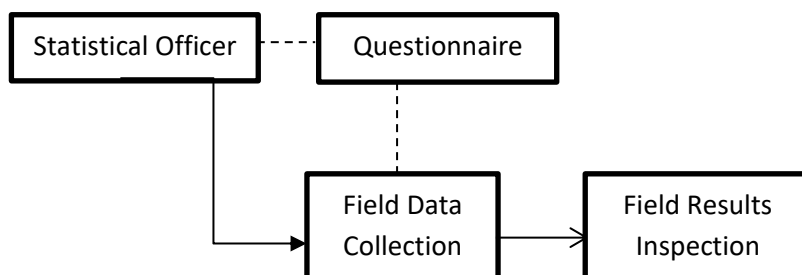


Figure 1. Process of Census/Survey Data Collection Activities with PAPI Method

In addition to the field data collection process, the stage of examining field results continues. The examination of field results is a stage of tidying up the document content from the content of the writing and the consistency of the content between questions. At these stages there can be potential data leakage.

The results showed the leaking of statistical data could be caused by unethical or careless officers. They can intentionally or unintentionally leak data to third parties. Unethical behavior carried out by statistical officers causes fraud that is detrimental to BPS. Statisticians are never provided with awareness to maintain data confidentiality in every training process before going to the field. Officer training has been carried out only to deepen the knowledge of officers in understanding surveys, but does not provide an understanding of the legal consequences if statistical officers commit actions that are contrary to the law.

Lack of awareness of statisticians will lead to weak adequate security to protect the confidentiality of statistical data and can make it vulnerable to threats. The threat in question is social engineering. In this context, social engineering is a method in which

individuals try to manipulate data officers by providing a lure for them to reveal confidential information. This can be an entry point for leaking statistical data. Lack of awareness among statisticians about the importance of statistical data security can result in inadequate measures to protect such data.

Law Enforcement Barriers to Statistical Data Leakage

Data leakage law enforcement based on Statistics Law Number 16 of 1997 faces a number of complex obstacles, especially in the context of investigating and investigating a data leakage case. Based on the results of the study, several obstacles were found, including :

1. Technical Challenges

Law enforcement of data leakage crimes often faces technical obstacles because the Statistics Law Number 16 of 1997 includes ordinary offenses. In this process, the victim, in this case, the respondent whose data was leaked by the perpetrator is difficult to prove evidence and difficult to report to law enforcement.

The criminal law enforcement process can be enforced when the victim is harmed, but until the time this study took place respondents both households, companies and government agencies did not know the mechanism of how to report the criminal act of data leakage.

2. Lack of Resources

Law enforcement of statistical data leakage is also hampered by Human Resources at BPS who do not understand the legal mechanisms and applicable legal rules. In terms of quantity at the BPS Regency / City level, in the organizational structure there is no special division that handles legal issues. The legal handling mechanism in BPS is carried out in stages starting from the District/City BPS reported to the Provincial BPS to be forwarded to the Central BPS. This bureaucratic process clearly hinders law enforcement, because only at the Central BPS level has divisions/bureaus responsible for legal matters.

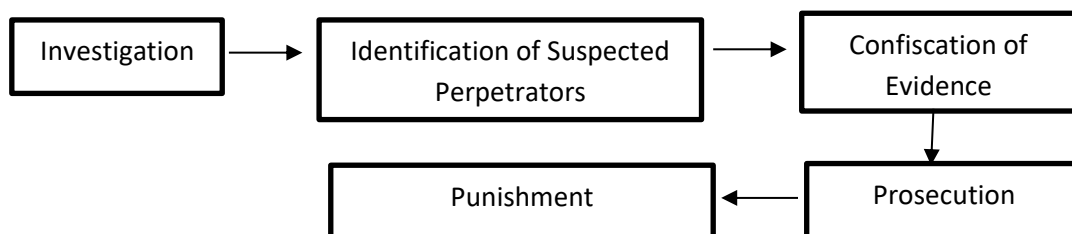
3. Incompatibility of Laws and Regulations

The laws and regulations applicable in BPS regarding law enforcement show incompatibility. Based on the results of the study, the threat of punishment applied for technical violations and moral violations committed by statistical officers is termination of employment as an ultimatum of remedium. Until now, BPS has never applied the criminal threats listed in the Statistics Law as an ultimatum of remedium for violations or statistical crimes.

To overcome these obstacles, it is necessary to socialize legal awareness, especially regarding the Statistics Law to BPS employees at the district / city level, statistical officers and respondents. Special training is also needed to increase legal understanding for BPS employees. Furthermore, legal certainty is needed regarding the level of offense and crime in order to determine the type of punishment. The above obstacles are the first steps of ideal law enforcement in BPS, especially regarding the criminal act of statistical data leakage.

Law enforcement related to statistical data leakage is an important step to protect data integrity and confidentiality, and provide a deterrent effect to criminals. Statistical data leakage crimes can be tackled with ideal law enforcement. According to G. Peter Hoefnagels that crime policy is the rational organization of social reaction to crime”.¹⁰ Law enforcement in criminal acts recognizes two types, namely the penal path or by using criminal law and using non-penal or non-criminal channels. In Das Sein, the current condition of law enforcement for the crime of statistical data leakage still applies a non-penal path, this is due to the high humanity that underlies the person in charge of policy in deciding cases. The long bureaucratic level starting from the district/city, provincial to central levels is also the basis that the problem of data leakage crimes is sufficiently resolved by non-penal channels with the heaviest penalty being the termination of the work contract between BPS and statistical officers. In accordance with Das Sollen, law enforcement of data leakage crimes should refer to Statistics Law Number 16 of 1997 Article 37, where statistical officers who deliberately violate the provisions in the obligation to ensure the confidentiality of information obtained from respondents are punished with a maximum imprisonment of 1 (one) year 6 (six) months and a maximum fine of Rp.15,000,000 (fifteen million rupiah). The penal path is a law enforcement effort that focuses on repressive actions after a criminal act, not by using a non-penal path which is essentially a preventive action before a crime occurs.

The results of this study show that law enforcement of data leakage criminal acts of statistical data leakage can be carried out with a penal line in accordance with Statistics Law Number 17 of 1997 Article 37. An investigation is the initial action of law enforcement to find and find out whether any criminal acts have occurred. While investigation is a process by investigators carried out in collecting evidence to make light of criminal acts and find suspects. So the investigation is the follow-up of the investigation process. That is, an investigation can only be carried out if the results of the investigation show a criminal act. Based on the obstacles underlying the enforcement of data leakage laws at BPS, what BPS must do is to provide legal certainty in the form of strict rules and limits regarding the severity of data leakage. Employees at the District/City BPS level who are in direct contact with field activities involving statistical officers must be equipped with an adequate understanding of law enforcement. If these obstacles can be overcome, then the formulation of law enforcement regarding statistical data leakage can be carried out.



¹⁰ Kristian and Kristine Tanuwijaya (2016). Criminal formulation policy against corporations as perpetrators of money laundering in Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering. Journal of the Pulpit of Justitia. Vol 2 No. 1. Pg. 691

Figure 2. Law Enforcement Formulation of Statistical Data Leakage

Some formulations that should be taken in law enforcement related to statistical data leakage :

1. Investigation
If there is a suspicion of data leakage, the first step of law enforcement begins with an investigation into the main source and the extent of harm caused by the crime. BPS District/City can involve law enforcement officials to collect evidence and identify how to process data leaks.
2. Identify the Alleged Perpetrator
Identification of the perpetrators of data leaks is a key step. This could involve tracing the origin of the leak, identifying who is responsible, and determining the motive of the perpetrators of the data leak. The perpetrator is not only a statistical officer, it could be that this statistician was negligent in guarding the questionnaire so that it was stolen by other parties and then leaked irresponsibly. Therefore, the perpetrator identification stage is very important to be carried out as a key step in law enforcement.
3. Confiscation of Evidence
Law enforcement will gather strong evidence for use in court. This can be a questionnaire or other items of evidence such as a duplicated copy of the questionnaire. Of course, evidence related to data leakage.
4. Prosecution
Once sufficient evidence is gathered, law enforcement will charge the perpetrator to justice. It involves legal proceedings where perpetrators face data leak charges. In this process, BPS strictly oversees law enforcement procedures.
5. Punishment
If found guilty, the perpetrators of the data leak may be subject to legal sanctions. The penalty is in accordance with Statistics Law Number 17 of 1997 Article 37 with a maximum imprisonment of 1 (one) year 6 (six) months and a maximum fine of Rp.15,000,000 (fifteen million rupiah).

In addition to penal criminal penalties, this legal problem can also be carried out through non-penal channels. Not only is the dismissal of the perpetrator from work but also victims of data leakage can claim compensation for losses caused. This could include financial losses caused by data leaks, recovery costs, or reputational loss.

In addition to pursuing perpetrators of leaks, law enforcement with non-penal channels can also provide advice on preventing future data leaks and assist victims in the recovery of leaked data. Law enforcement efforts related to statistical data leaks can be complex. Therefore, cooperation between the public and private sectors in law enforcement, is often required to address these issues effectively.

CONCLUSION

Law enforcement of the criminal act of leakage of statistical data through penal channels in accordance with Statistics Law No. 16 Year 97 article 37 can be carried out. Matters that hinder law enforcement through penal channels must slowly be addressed, starting from legal awareness of civil servants at the district/city level BPS and legal certainty for statistical officers. The penal path is a repressive effort that aims to eradicate statistical

data leakage because maintaining data confidentiality in the current era is very important. With the enforcement of the Statistics Law, of course, the existence of criminal law enforcement in the Statistics Law can be enforced.

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