

JURIDICAL ANALYSIS OF THE SPREAD OF HATE SPEECH CONDUCTED BY RESPONSIBLE PARTIES THROUGH SOCIAL MEDIA

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ABSTRACT

Convenience freedom argues with dependence on technology brings the development of new types of crime that as appearance speech hatred or hate speech that is done on social media either from typing as well as videos. such things, if not arranged more continue so, would be very worrying, society will not be off bounds and will raise inconvenience or feeling offended at someone or a group certain. The article will discuss How law criminals looked at criminal speech hatred or this hate speech and will also discuss what is the proof system in following criminal speech hatred. The method used to study which normative law is enforced with the method of researching material libraries and approaches used is approach related legislation with follow criminal speech hate. Results and discussion obtained If We see in the Criminal Code and regulations other legislation already explained several articles that can be imposed on someone who does speech hatred or hate speech. Articles that regulate action about Speech Hatred to a person, a group, or institution based on a Circular Letter National Police Chief No: SE/06/X/2015 contained inside Article 156, Article 157, Article 310, Article 311, then Article 28jis. Article 45 paragraph (2) of Law Number 19 of 2016 concerning information and transactions electronics and Article 16 of Law No. 40 of 2016 concerning deletion of Racial and Ethnic Discrimination. and proof that was made For inspect follow criminal speech hatred This is still based on with tools arranged evidence in the Criminal Code

Keywords: *speech hate, UU ITE, criminal code*

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INTRODUCTION

Social media platforms provide users and media with freedom of expression to exchange information and express diverse opinions. The development of social media also follows the development of technology and information moments. With the increasingly diverse social media, it is not uncommon for users to abuse social media (B. D. Hidayat et al., 2021). Background The backgrounds vary, in terms of business interests, politics, or even hatred of certain groups. One of the hot topics currently busy is Hate Speech which can be seen on various social media. Regarding the issue of conveying information, electronic communication in terms of evidence has even increased, and the number of cases that have occurred has not been processed before the courts. For certain reasons, it has also become a challenge for law enforcement and law enforcement officials to resolve problems due to the rapid development of technology (Mawarti, 2018).

Hate speech is harmful or offensive content that is complex and diverse and generally targets an individual or group. Hate speech can also mean fake news, fake information, or fake news. The term fake is of course unknown in Indonesian laws and regulations, but there are several regulations that regulate fake news, one of which is Article 28 of the ITE Law.

The ITE Law does not explain what is meant by "fake and misleading news", but if it is reviewed further, the ITE Law and its updates specifically regulate hoaxes (fake news) that are detrimental to consumers in electronic transactions (Akub, 2018). Not only news sites that

disseminate information or news through online media, but only those who use the internet can disseminate information or news through online media. This means that everyone is free to convey and disseminate information or news through their online media. Based on this, if you are not careful, the use of online media will result in the birth of legal actions that lead to criminal acts or violations of civil rights (Febriansyah & Purwinarto, 2020).

The issue of hate speech is not new in many countries, especially in Indonesia. Many factors lead to the emergence of discriminatory actions related to aspects of hate speech. Indonesia as an archipelagic country stretching from Sabang to Merauke has cultural diversity which is one of the reasons why Indonesia has different ethnicities, races, and religions for each of its inhabitants (A. Hidayat, 2021). However, diversity often triggers acts of discrimination. This discriminatory factor is one of the problems that hinder the development of the Indonesian state. In Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions ("UU 19/2016"), elements intentionally and incorrectly always appear in cybercrime formulations. 'Without rights' means Having no valid legal basis to carry out the proposed action. Basic rights can originate from statutory regulations, agreements, or other basic laws. 'Without rights' also has the meaning of abusing or exceeding a given authority.

As stated in Article 28 paragraph (2) of the ITE Law: "Every person intentionally and without rights disseminates information that is intended to cause hatred or hostility towards certain individuals and/or community groups based on ethnicity, religion, race, and inter-group (SARA) (M. Fatah Abqari, 2018).

The purpose of this article is to prevent hostilities, riots, or even divisions based on SARA as a result of negative and provocative information. The issue of hate speech in the public eye is quite a sensitive issue. therefore, this article is structured in a formal offensive manner and not offensive material (Arnanda, 2021). The prohibited acts in Article 28 paragraph (2) of the ITE Law are deliberately and without rights disseminating information that aims to create hatred or hostility towards certain individuals and/or ethnic groups based on ethnicity, religion, race, and inter-group (SARA). a sense of security in the use of technology and information can form protection laws against all disturbance actors, whether verbal, visual or involving physical contact. However, the extent of the private area of social network users has a minimum standard of prevention that is not easy to prevent the following criminal acts from occurring (Prastiwi et al., 2021).

The 2008 ITE Law contains 8 articles of criminal law provisions, but the 2016 ITE Law amends Article 45 and adds All Articles 45 A and 45 B apply to include criminals involved in Information Technology crimes (Cyber Crime). One of the provisions of Article 45 paragraph (3) of the 2016 ITE Law: "Anyone who intentionally and without rights distributes and/or distributes Electronic Information and/or Electronic Documents containing insults and/or defamation sends and/or makes access accessible. to them. up to Article 27 paragraph (3) shall be subject to imprisonment for a maximum of 4 (four) years and/or a maximum fine of Rp. 750,000,000.00 (seven hundred and fifty million rupiah) (Pakpahan, 2021).

Changes to the tree of elements of the provisions of Article 45 paragraph (1) of the 2008 ITE Law to become Article 45 paragraph (3) of the 2016 ITE Law regarding insults/defamation of good name. For a reduction in the maximum prison sentence. 6 (six) years to 4 (four) years,

and fines ranging from 1 billion to 750 million original. The impact is related to the reduced threat to criminal actors, investigators, public prosecutors and judges who cannot detain suspects/defendants. In addition, there are provisions explaining the changes (Abidin, 2022).

Article 27 of the 2008 ITE Law was previously written "clearly" then in its explanation, Article 27 of the 2016 ITE Law becomes "Provisions in paragraph This refers to the conditions regarding defamation and/or defamation of Goods as regulated in Indonesian law, Criminal Law (Criminal Code). further clarifies the meaning of defamation and/or defamation as regulated in the Criminal Code and changes in the nature of the offense (Anam & Hafiz, 2015).

Chapter effectiveness can naturally be seen from at least two aspects, namely regulation and implementation/enforcement (law enforcement). please arrange, the formula for this chapter is sufficient. As for application/enforcement, the article in question depends of course on every situation that occurs or in other words it is quite difficult to apply the parameters of effectiveness in that article (Adami Chazawi, 2010).

Defamation in the Criminal Code is regulated in Chapter XVI which includes a family of defamation ok. Good humiliation in general is a situation in which a person is accused of doing something that is true, however the nature of the fact is embarrassing because it is known by the public as referred to in Article 310 paragraph (1) of the Criminal Code and vice versa if accused is not true, it is deemed to have committed slander/slander/slander. Meaning of Article 311 paragraph (1) 1) Criminal Code. However, If the insult was committed in any other way than "Acts of accusing something", for example by mentioning the word animal and so on, are included in Article 315 of the Criminal Code and are called "insulting". As explained in the 2008 ITE Law, defamation/defamation is an ordinary offense that can be legally processed even though there is no complaint from the victim, but by referring to the Criminal Code as defined in the 2016 ITE Law, the offense is changed to a complaint of offense (klacht delic) which requires the victim to make a complaint to the authorities. Explanation of the norm of content of Article 27 of the 2016 ITE Law does not directly adopt the considerations of the Constitutional Court Decision Number 50/PUU-VI/2008 Jo Constitutional Court Decision Number 2/PUU-VII/2009.

The formulation governing fake news offenses through electronic or online media has been regulated in Article 28 paragraph (1) which reads: "Every person intentionally and without right spreads false and misleading news that results in consumer losses in Electronic Transactions." Likewise Article 14 and Article 15 of Law Number 1 of 1946 Concerning Criminal Law Regulations also regulate fake news. Existence of the Criminal Code and Law Number 1 of 1946 Concerning Criminal Law Regulations Regarding Fake News This is a general provision (lex general) that can complement the provisions in the ITE Law because the provisions in ITE are limited to electronic or online information (Permatasari & Wijaya, 2019).

The actions regulated in Article 28 paragraph (1) of the ITE Law are one of the actions prohibited by the ITE Law. The ITE Law does not explain what is meant by "fake and misleading news". The formulation of Article 28 paragraph (1) of the ITE Law uses the phrase "spreading fake news". There is a provision similar to Article 390 of the Criminal Code with a slightly different conclusion, namely using the phrase "broadcasting fake news". Article 390 of the Criminal Code reads as follows: "Goods that aim to benefit themselves or others by opposing the right to lower or increase the price of merchandise, likes or letters worth money

by broadcasting fake news, are subject to imprisonment for a maximum of two years and eight months."

Based on the description of the background above, the problem can be formulated as follows: What are the efforts of the authorities to provide legal sanctions to reduce hate speech? and What causal factors does someone do with hate speech?

METHOD

The method employed to investigate the enforcement of normative laws involves an intricate process of researching material libraries and adopting various approaches, with a specific focus on legislation concerning hate speech as a criminal offense. This multifaceted approach aims to unravel the complexities of normative law enforcement and its application in addressing the pervasive issue of hate speech (Efendi & Ibrahim, 2018).

Researchers delve into extensive material libraries, comprising legal texts, statutes, judicial decisions, and academic works, to comprehend the legal framework surrounding hate speech across different jurisdictions. By scrutinizing these resources, they gain invaluable insights into the evolution of legislation pertaining to hate speech, its interpretation by the judiciary, and its implications for societal cohesion.

Approaching the subject from a legislative standpoint entails the systematic analysis of relevant laws and regulations. Researchers explore how hate speech is defined, categorized, and penalized in varying legal systems, unveiling the nuanced differences and commonalities that exist. This method enables a comparative study, shedding light on the effectiveness of different legislative measures in curbing hate speech and promoting social harmony (Tan, 2022).

The research also focuses on understanding the nuances of criminalizing hate speech. By examining precedents and case studies, scholars gain a comprehensive understanding of how hate speech cases are prosecuted and how courts interpret and apply the law. This approach facilitates an examination of the challenges faced in enforcing normative laws related to hate speech, such as determining intent and proving harm (Ali, 2023).

Overall, the method of researching material libraries and approaching legislation related to hate speech as a criminal act offers a holistic perspective on the enforcement of normative laws in combatting this pressing social issue. The insights gleaned from such studies can inform policymakers and advocates in their efforts to develop more robust legal frameworks and societal responses to hate speech.

RESULTS AND DISCUSSION

Attempts by the Authorities Give Penalty Laws to Reduce Speech Hatred

Hate speech or so-called hate speech is an act that harms other people and can be said to be a crime because it fulfills the meaning or elements of a crime. As written by Teguh Prasetyo in his book, it states that a criminal act is an act that is regulated by law and if it is violated, it will be subject to criminal sanctions by applicable regulations.

It is clear to say that hate speech is an act or actions which are prohibited by law because if you follow hate speech you will be punished, in this case there are laws and regulations that regulate hate speech. As well as in the laws and regulations that regulate it there are written sanctions for perpetrators of threats.

According to distribution offenses, hate speech is included in formal offenses. Formal offenses are criminal acts after the articles in the Constitution have been carried out so that the perpetrators of hate speech can be punished because of the act itself. fines, imprisonment, and the death penalty (Utrecht, 1966). If someone has committed an act of hate speech, it is stated that it can be legalized. Because of this action, there are several criminal sanctions for perpetrators of hate speech, as follows:

1. If the perpetrator does follow said hatred on the internet then will catch Chapter Article 45 paragraph (2) of Law No. 11 of 2008 concerning ITE (Information and Transactions electronics).
2. If following said hatred of something religion is done in a manner direct nondirect, then will catch Article 165A of the Criminal Code.
3. If following said hatred to the tribe in a manner direct or no direct, then will get a penalty according to Article 156 of the Criminal Code.
4. If follow said hatred between groups in a manner direct or no direct, then will get a penalty according to Article 157 of the Criminal Code.
5. If following said hatred based on race and ethnicity in a manner direct or no direct, then will get a penalty according to Article 16 of Law Number 40 of 2008 concerning Deletion Racial and Ethnic Discrimination
6. If following said hatred based on deployment news Lie in a manner direct nor no direct, then will catch a penalty based on Article 310 of the Criminal Code.

Factors Reason Happening Speech Hatred

There are several causes for hate speech on social media and in Indonesia, first, there is a misunderstanding. In utterances, hatred may occur due to misunderstandings between individuals or groups about some of the information obtained. A certain person will immediately write hate speech without telling the truth of the information. The second is carried away by emotion (Katim, 2022). One of the factors causing hate speech is being too carried away by emotions in obtaining information. this often happens, thus provoking commotion and hatred to anyone. Third, there is no agreement. This is a person's expression if he does not like and does not agree with the information obtained, then the individual will make hate speech with harsh words and offend the party being criticized. Fourth, there is personal hatred. This is the most influential factor in hate speech.

As for the factors, the reason perpetrator do crime speech hatred is as follows.

1. Factor individual / private. this cause crime like Power emotional, low mentally ill heart with victims, grudges, and more.
2. Factor ignorance society is to reason happening to follow crime speech hate. Lack of outreach/outreach to the public is what causes crime This happening in a society belonging to it no will exist rule about crime speech hatred specifically humiliation.
3. Factor Facilities and facilities also affect the era of globalization Now, p it also affects the growth of fast electronic media, especially the internet media so the deployment of information more easy, fast, and more effective Forgot. So that somebody not enough wise use internet media facilities or communication as well as No There is a limitation in use tool communication.

4. Factor lack of control social is lack of reasonable internal controls from party or environment in the family often No Want to know will condition members his family. besides it, there is a party external which is a society No care will incidents or crime going on around him as well as a loss of control and no exists norms social or conflict the norms meant.
5. Factor Environment is placed mainly in support of happening pattern behavior crime committed by someone. Influencing factors among others is giving the environment a chance to do crime and the environment giving association examples and examples.
6. Factor economy and poverty. The economy also greatly influences the occurrence of crime speech hate. Factor possible economy trigger happening crime usually started from circumstances economy belonging to the offender low, unemployment, no earn and desperate will something high needs, as well as urge so that push perpetrator, do crime speech hate.
7. Factor interest society. Society tends No think about the impact of what will happen later day with criminal speech hatred on social media. Many people do speak hatred Because their objectives are certain among them about matters personal, political, and SARA and only just want to know many people.

This section is the main part of the research results and is usually the longest part of an article. The research findings presented in this section are “clean” results. In the subtitle of this section, there is a detailed section in the form of subtopics without a number format. In this article there are no subtitles such as "research findings", or "research methodology", but the subtitles are in the form of topics and direct discussion based on research topics. As a result, the authors are free to make subtitles based on their research findings (Hastak & Risal, 2021).

The discussion in this article aims to: (1) answer the problem formulation and research questions; (2) show how the findings were obtained; (3) interpret findings; (4) link findings with established theoretical structures and knowledge; and (5) generating new theories or modifying existing ones.

The results of research in the field are integrated/linked with the results of previous research or with existing theories. Interpretation of the findings is done using logic, related theory, and relevant research. For this purpose, there must be journal references from relevant research consisting of recommendations for 80% of all references made in articles.

Here the researcher presents the summarized data for inspection using narrative text and, where appropriate, tables and figures to display the summarized data. Only the results are presented. No interpretation of the data or conclusions about what the data means is given in this section.

Data collected in tables or figures should complement the text and present the data in an easy-to-understand form. Don't serve raw data. If using tables or figures, they must be accompanied by narrative text. Do not repeat extensively in text the data you have presented in tables and figures. But, don't limit yourself to leaving comments either. (For example, simply stating that "Results are shown in Table 1" would be inappropriate).

The text explains the data presented in tables and figures and draws attention to important data that the researcher will discuss in the Discussion section and will be used to support research.

CONCLUSION

The increasing activity of the community on social media, the more cases of hate speech are rife. The government's efforts to respond to cases of hate speech have begun to apply preventive (content handling) and repressive (law enforcement) approaches. Through these two approaches, it is hoped that the public will be able to understand the utterances of danger and hatred and be able to better control what is conveyed on social media.

Factors that cause hate speech include misunderstanding between individuals and groups. I misunderstood. This can lead to debate between individuals and later groups will generate hate speech. understanding the legal rules of high society can also be a factor in hate speech. No control over himself makes someone express hate speech without limits. Different opinions are another factor for hate speech.

A person's emotions because of differences in opinion can make a person lose control because he feels unappreciated and his ego is humiliated. Therefore, since childhood, we must be instilled with an attitude of respect for differences of opinion so that later when we grow up we can respect others more.

REFERENCES

- Abidin, Z. (2022). Inkorporasi Hak-Hak Fair Trial dalam Rancangan Undang-Undang Hukum Acara Pidana. *Jurnal Hak Asasi Manusia*, 15(1). <https://doi.org/10.58823/jham.v15i1.117>
- Adami Chazawi. (2010). Pelajaran Hukum Pidana Bagian 1. In *Pelajaran Hukum Pidana Bagian 1*. Raja Grafindo Persada .
- Akub, M. S. (2018). Pengaturan Tindak Pidana Mayantara (Cyber Crime) dalam Sistem Hukum Indonesia. *Al-Ishlah: Jurnal Ilmiah Hukum*, 21(2), 85–93.
- Ali, H. Z. (2023). *Sosiologi hukum*. Sinar Grafika.
- Anam, M. C., & Hafiz, M. (2015). Surat Edaran Kapolri Tentang Penanganan Ujaran Kebencian (Hate Speech) dalam Kerangka Hak Asasi Manusia. *Jurnal Keamanan Nasional*, 1(3). <https://doi.org/10.31599/jkn.v1i3.30>
- Arnanda, F. R. (2021). Analisis Yuridis Penyebaran Informasi Kebencian Sara Dalam Uu Ite Setelah Putusan Mk Nomor 76/Puu-Xv/2017 Dikaitkan Dengan Kuhp. In *Novum : Jurnal Hukum* (Vol. 8, Issue 2).
- Efendi, J., & Ibrahim, J. (2018). Metode Penelitian Hukum Normatif dan Empiris. In *Kencana* (Vol. 2, Issue Hukum).
- Febriansyah, F. I., & Purwinarto, H. S. (2020). Pertanggungjawaban Pidana Bagi Pelaku Ujaran Kebencian di Media Sosial. *Jurnal Penelitian Hukum De Jure*, 20(2). <https://doi.org/10.30641/dejure.2020.v20.177-188>
- Hastak, H., & Risal, M. C. (2021). Tinjauan Yuridis Terhadap Tindak Pidana Ujaran Kebencian Di Media Sosial. *Alauddin Law Development Journal*, 3(1). <https://doi.org/10.24252/aldev.v3i1.14766>
- Hidayat, A. (2021). Critical Review Buku “Penelitian Hukum” Peter Mahmud Marzuki Penelitian Hukum Ad Quemtentang Norma. *YUSTISIA MERDEKA: Jurnal Ilmiah Hukum*, 7(2). <https://doi.org/10.33319/yume.v7i2.109>
- Hidayat, B. D., Suroño, A., & Hidayati, M. N. (2021). UJARAN KEBENCIAN PADA MEDIA SOSIAL PADA SAAT PANDEMI COVID-19 STUDI KASUS PUTUSAN

- No.72/PID.SUS/2020/PT.DPS. *Jurnal Magister Ilmu Hukum*, 6(2).
<https://doi.org/10.36722/jmih.v6i2.836>
- Katim, C. A. G. (2022). Restorative Justice dalam Tindak Pidana Ujaran Kebencian Dihubungkan dengan Surat Keputusan Bersama Menkominfo, Jaksa Agung RI, dan Kapolri Nomor 229 Tahun 2021, Nomor 154 Tahun 2021, Nomor Kb/2/Vi/2021 tentang Pedoman Implementasi atas Pasal Tertentu dalam Undang-Undang ITE. *Jurnal Hukum Lex Generalis*, 3(7). <https://doi.org/10.56370/jhlg.v3i7.288>
- M. Fatah Abqari. (2018). Tinjauan yuridis terhadap perbuatan ujaran kebencian yang berkonten sara. *Skripsi Fakultas Hukum Universitas Sriwijaya*.
- Mawarti, S. (2018). Fenomena Hate Speech Dampak Ujaran Kebencian. *TOLERANSI: Media Ilmiah Komunikasi Umat Beragama*, 10(1). <https://doi.org/10.24014/trs.v10i1.5722>
- Pakpahan, R. (2021). Analisa implementasi uu ite pasal 28 ayat 2 dalam mengurangi ujaran kebencian di media sosial. *Journal of Information System, Informatics and Computing*, 5(1). <https://doi.org/10.52362/jisicom.v5i1.465>
- Permatasari, I. A., & Wijaya, J. H. (2019). Implementasi Undang-Undang Informasi dan Transaksi Elektronik Dalam Penyelesaian Masalah Ujaran Kebencian Pada Media Sosial. *Jurnal Penelitian Pers Dan Komunikasi Pembangunan*, 23(1). <https://doi.org/10.46426/jp2kp.v23i1.101>
- Prastiwi, D. E., Tohadi, T., Munir, B., & Ekawati, D. (2021). Sosialisasi undang-undang ite dan dampak hukumnya bagi masyarakat. *Abdi Laksana : Jurnal Pengabdian Kepada Masyarakat*, 2(3).
- Tan, D. (2022). Metode Penelitian Hukum: Mengupas dan Mengulas Metodologi dalam Kajian Ilmu Hukum. *Amanna Gappa*.