

HATE SPEECH AND ITS THREAT TO LAW ENFORCEMENT

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Hate speech accompanies intellectual freedom in new media (New Media). In the context of Indonesia, this phenomenon is very important during a political event such as legislative elections (pileg), presidential election (presidential election), or elections of regional head (pilkada). Since the 2014 presidential election, the term 'haters' was widely known, titled people with golden messages hateful to certain people or groups. Especially for netizens (youth users) - the Y and Z generation, the practice of communication with these hate messages should receive special attention. In addition to the heir of the nation, this is what coloring cyberspace now. They are native to the digital world (digital native). They are aware of the right to speak and express, but understand that the online realm is the public domain inherent in normative responsibility. This paper reviews efforts to send hate messages through hate speech legislation (Hate Speech) laws and how ITE laws against hate speech acts.

Keywords: *Hate Speech; Online Medial Criminal Law; Law Enforcement*

I. INTRODUCTION

The danger of hate speech against democracy is beyond doubt. European countries that have had bad experiences with hate propaganda like the Nazis in general have more strict regulations to ban hate speech. While America where civil liberties became an important part in national history chose to tolerate hate speech. However, a hate crime is set in its

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own legislation. In some cases the United States also has a precedent for punishment of hate speech which is strongly perceived as causing violence. The dangers of hate speech are also affirmed by the United Nations which in 1966 issued the International Covenant on Civil and Political Rights (ICCPR) which prohibited "*hate campaign against incitement, incitement to discrimination, hostility and violence*".

However, regulation limiting hate speech is controversial because it limits freedom of speech which is a fundamental aspect of democracy. The critics of the prohibition of hate speech believe that keeping the freedom of speech as a basic right is more expensive than the danger that can be prevented from the punishment of speech that is considered dangerous (Hare & Weinstein 2009; Post 2009). A similar debate took place in Indonesia. Hate speech is not prohibited in this country, but its application is feared to restore the repressive model of government for more than three decades under Soeharto.

At that time the discourse on the dangers of SARA (tribal, religious, and racial) sentiments was used by the rulers as a basis of legitimacy to suppress political opponents. Political freedoms recently enjoyed by Indonesians have made efforts to limit freedoms easily suspected. In addition, hate speech legislation is linked to a clause on desecration that has been used as a source of legitimacy for discrimination and persecution against minority religious groups. This raises the dilemma of law enforcement against hate speech in Indonesia. This dilemma creates a 'no action' situation that makes hate speech in Indonesia spread freely without the slightest hindrance.

This condition provides an opportunity for the transformation of some hardliners to divert the arena of struggle from '*bomb-armed warfare*' to '*war with the words*'. As a result, leaders or hard-line media are free to campaign against individuals or other groups based on communal sentiments, including calls for violence and murder. Online books and media that place certain denominations in battle situations with other denominations are free to spread. Religious figures conduct lectures publicly and disseminated through online media explicitly calling on his supporters to draw swords to kill or expel certain denominations.¹ An event that launched the formation of militias to hunt down members of groups accused of heresy was openly and attended by representatives of governmental authorities. Elsewhere, the government apparatus or politicians not only witnessed but instead became the lecturer who could enter the category of hate speech.

This type of research is descriptive qualitative research. The source of the data used in this speech is the hoax case which becomes hate speech. Data collection techniques used in this study are recording

¹ Nte, N. D., U. K. Esq, B. K. Enokie, and O. Bienose. "Cyber Crime Management Among Students". *JILS (Journal of Indonesian Legal Studies)*, Vol. 5, no. 2, Nov. 2020, pp. 295-34, doi:10.15294/jils.v5i2.34005.

techniques, techniques refer, and record techniques. Writing method using descriptive research specification analysis. this research should be able to achieve the desired goals. Descriptive Analysis, intended to provide as accurate data on hate speech, its rules and implications. The point is to reinforce the hypothesis, to reinforce the old theory or in the framework of formulating a new theory.

In this case the researcher did the use of language by the speakers through the words produced, then the data obtained is recorded, Sudaryanto. Analytical technique data use data using extralingual matching method. The nekstralingual method connects the language problem with things that are outside the language. This study examines hate speech in the case of Ahok, and other cases and forms of hate speech.

II. TECHNOLOGICAL DEVELOPMENT AND HATE SPEECH IN INDONESIA

The development of information technology has been very sophisticated, fast and easy, so as to be a lifestyle for people around the world, not least in Indonesia, also affected by the development of information technology in this globalization era. One of the uses of informatics technology with the appearance of various social networking sites is widespread to various kinds of children, students, housewives, the economy up to the bottom economy, and many others can use social networking sites for their own needs users.² Then in the era of globalization rapid technological developments make human life more pampered, especially in the development of information technology. It can be said that this development makes human life more easily connected to each other more effectively and efficiently.

According to UNESCO, hate messages refer to the expression of incitement to harm (especially discrimination, hostility, and violence) against certain social or demographic groups, such as words that defend, threaten or encourage acts of violence.³ This concept is sometimes extended to expressions. This concept is sometimes extended to expressions that foster a climate of prejudice and intolerance that is assumed to fuel discrimination, hostility and violent attacks. In common language, the definition of hate messages tends to be widespread, sometimes even including derogatory or individual insulting words. Especially in crucial moments, such as elections, the concept of hate messages may be vulnerable to manipulation. Accusations of stirring hatred may be traded between political opponents or used by those in

² Suhariyanto, Budi. 2014. *Tindak Pidana Teknologi Informasi (Cybercrime)*. Jakarta: Raja Grafindo Persada.

³ Gagliardon, et.al. 2015. *Countering Online Hate Speech*. Paris: UNESCO Publishing.

power to curb opinions and criticism. Meanwhile, according to the Council of Europe, hate messages include all forms of expression that is propagated to incite, promote or justify race, xenophobia, anti-Semitism, or other forms of hatred rooted in intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility towards minorities and migrants.⁴

Rita Kirk Whillock in his essay *Ethical Considerations of Civil Discourse: The Implication of the Rise of Hate Speech* mentions that hate messages are essentially rhetorical anihilis against the opponent. Although only through words, hateful messages that aim to nullify or kill opponents. As a result, dialogue or discourse becomes stuck. There is no willingness to appreciate and listen to the other person. There is no willingness to be open, to learn, and to change.

From his research, Bartlett called the message of hatred as a dark portrait of the internet, beyond the issue of child pornography, drug trafficking, provocation, and the market of asasinasi. The Internet itself, according to Barlett, has become an important political platform in various parts of the world, ranging from the campaign of Barack Obama in the United States to flash mob of the occupation movement. However, the same technique also used extreme political movements to spread hate messages and recruit new supporters.⁵

Ethics in the online world needs to be emphasized, given the online world is something that has been considered important for the world community. However, more and more parties are abusing cyberspace to spread unusual things about things, such as ethnicity, religion, and race. Spread of news that is slander in the Internet world, for example, to be noteworthy.⁶ An Internet Service Provider (ISP) is usually the party that is held responsible for any content that contains defamation. In fact, contents containing slander are beyond the responsibility of the ISP; especially there are third parties who enter it without the knowledge of ISP. Just like management in a bookstore, the Internet world differentiates the role between distributors and publishers. In this case, ISP simply acts as a publisher contracting distributors to manage their networks. The above is what is often referred to as Libel is a statement or expression of someone who caused damage to the reputation of others in a particular community because of his expression. Or can be in the form of character assassination and in the professional world though.⁷

⁴ Weber, Ane. 2009. *Manual on Hate Speech*. Strasbourg: Council of Europe Publishing.

⁵ Bartlett, Jamie. 2015. *The Dark Net: Inside the Digital Underworld*. New York: Melville House Publishing.

⁶ Achmad Ali. 1998. *Menjelajahi Kajian Empiris Terhadap Hukum*, Yarsif Watampone, Jakarta.

⁷ Sahariyanto, Budi. 2012. *Tindak Pidana Teknologi Informasi (Cyber crime) Urgensi Pengaturan dan Celah Hukumnya*. Jakarta: Rajawali Pers.

Formerly in the 1980s humans exchanged information with face to face, letters, and telegrams that took time and money. Entering the 21st century the rapid development of information technology, the discovery of the internet makes the flow of globalization as if there is no limit.⁸ Information traffic becomes very heavy.⁹ Communication is increasingly easy, until various news and events on the other side of the place can be accessed by everyone. Utilization of social media in Indonesia is currently growing extraordinary. Even so, the development of life information technology in the real world is not parallel with life in cyberspace. Social media is now filled with news of false information (hoax), provocation, slander, intolerant attitude and anti Pancasila. Technological advances in the era of globalization make information so rapidly wide. The existence of the internet as an online medium to make information that has not been verified properly and whether or not spread quickly. Within seconds, an event can be instantly dispersed and accessed by Internet users through social media. Through social media, hundreds or even thousands of information is spread every day. Even people sometimes have not had time to understand the material information, reactions to the information is already visible.

III. HATE SPEECH AND CRIMINAL LAW

It is in these circumstances that the act can enter into a criminal act, because the status he writes contains hate speech (Hate Speech) which can be read by many people. To that end, the government has issued Law No. 11 of 2008 on Information and Electronic Transactions.¹⁰

Still warm, the rise of hate speech problematics (Hate Speech) residing in Indonesia, among them are Buni Yani case, Basuki Tjahya Purnama (Ahok), Jamran and Rizal. Hate Speech is no longer a new problem in Indonesia, although the end of this year began to be critically reviewed by the government. The dynamic nature of the law does not mean that a legislation can be renewed. Similarly, the ITE legislation, which after 8 years finally changed to become Law No. 19 of 2016.

Hate Speech and Lingual Forms There are 7 forms of hate speech in the Chief of Police Circular (SE / 06 / X / 2015) including humiliation,

⁸ Hari Cio, "Konsep Social Network-Jejaring Sosial", <http://hari-cio8a.blog.ugm.ac.id/2013/04/09/konsep-socialnetwork-jejaring-sosial/>, diakses tanggal 4 Juli 2018.

⁹ Nugoho, Alois A. 2016. *Komunikasi dan Demokrasi: Esai-esai Etika Komunikasi Politik*. Yogyakarta: Kanisius.

¹⁰ Republic of Indonesia, 2009, *Undang-undang RI Nomor 11 tahun 2008 tentang Informasi dan Transaksi Elektronik, Ketentuan Umum*.

defamation, defamation, unloving acts, provoking, inciting and spreading false news such as Humiliation.¹¹

Humiliation, as the first problem that includes hate speech is contempt. Humiliation is the process of humiliating a person (Big Indonesian Dictionary).¹²

a) *Insult Economic Welfare Problems*

Hate Speech: *we do not agree to direct cash assistance, because it does not educate*

Lingual shape marker: *it does not educate*¹³

Speaking "*then we do not agree to direct cash aid, because it does not educate*" is a form of speech hatred insulting economic prosperity. The lingual expression marker above is the phrase "*it does not educate*". Speakers utter in a loud and sarcastic tone that the speech is impolite because it is caused by hate speech.

b) *Humiliation of the Problem of Social Life*

Hate Speech: *I'm so confused, how about the hill thorns yes how come win yes. that's what I think. what victory is false. meaningless. if so the leader should evaluate yes.*

Lingual Forms Markers: *meaningless*

Speaking "*I am so confused, how about the hill thorns yes how can win yes. that's what I think. what victory is false. meaningless. if a leader has to evaluate yes.*" is an offensive form of hatred against economic well-being. The lingual expression marker above is a "*meaningless*" sentence. Speakers utter in a loud and sarcastic tone to another paslon so that the speech is not polite because it is caused by speech that encourages the speaker's emotion, and discourages the opponent.

c) *Insult Development Issues*

Hate Speech: *I think simple, the question is how to build a human, the answer is not connected at all*

Lingual Shape Markers: *no connect at all*

The saying "*I think simple, the question is how to build a human, the answer is not disconnected at all*" is a form of speech hatred insulting the problem of development. The lingual form of the expression above is the phrase "*not connected at all*". Speakers utter in a caustic tone and sound cornered to other pascars so that the speech is impolite because it is caused by harsh speech, which encourages the speaker's emotion, and discourages the opponent.

d) *Disgrace of Bureaucratic Problems*

¹¹ Mangantibe, Veisy. "Ujaran Kebencian dalam Surat Edaran Kapolri Nomor: Se/6/X/2015 tentang Penanganan Ucapan Kebencian (Hate Speech)." *Lex Crimen* 5.1 (2016).

¹² Chaer, Abdul. 2007. *Linguistik Umum*. Jakarta: PT. Rineka Cipta

¹³ Wijayanto, A. (2014). Ketidaksantunan Berbahasa: Penggunaan Bahasa Kekerasan di Sinetron Bertema Kehidupan Remaja. In *Prosiding seminar Nasional: Ketidaksantunan Berbahasa dan Dampaknya dalam Pembentukan Karakter*. Surakarta: Muhammadiyah University Press.

Hate Speech: *Has it happened? Not yet. The report card is red, if we see here, C C performance report, we talk about the realization of the program, 100% plan implemented 70%, talk BPK audit does not reach unqualified reasonable.*

Lingual Forms Marker: *The reporter is red*

Speaking *"Has it happened? Not yet. The report card is red, if we see here, C C performance report, we talk about the realization of the program, the 100% plan is done 70%, the BPK audit talk does not reach unqualified fair. "Is a form of hate speech derogatory bureaucratic problem. The lingual expression marker above is the sentence "The rapor is red". Speakers speak with a loud, hard tone and are heard to corner other pascars so that the speech is impolite because it is caused by harsh speech, which encourages the speaker's emotion, and discourages the opponent.¹⁴*

The legal arrangement of Hate Speech in Indonesia is not yet clear and firm in other countries such as Australia, Canada and New Zealand. However, several available human rights and judicial instruments have provided information on this issue, although not comprehensive and have received little attention.¹⁵

The issues raised in this paper are how the hate speech act (Hate Speech) and how the ITE laws against hate speech.

News lie (Hoax), giving something foreign to the people of Indonesia. Lately the public was busted by receiving the false news. The existence of false news (hoax) from many parties, such as soft drinks with the news lie that soft drinks that can be used for toilet, carburetor, rust, and so forth. In addition, the government also can not avoid the harmful jungle, wherever there are government officials who have been preached to kick the typewriter that is published on facebook Dahlan Watihellu. This is a reality in India, where the police officer's uniform resembles a uniform of civil servants. Another lie that also hit the government is disseminated in social media used to pay Rp50.000/pack.¹⁶

Not only spreading false news (hoax), not infrequently the irresponsible parties also spread speech hatred (hate speech) through social media. Hate speech is a news that has a contempt or defamation content, where initially the owner of the social media account just wrote what he or she thinks. However, sometimes they forget that what they write can be read by people who also use social media.

¹⁴ Sudaryanto .2015. *Metode dan Aneka Teknik Analisis Bahasa: Pengantar Penelitian Wahana Kebudayaan secara Linguistik*. Yogyakarta: Sanata Dharma University Press.

¹⁵ Komisi Nasional HAM. 2015. *Buku Saku Penanganan Ujaran Kebencian (Hate Speech)*. Jakarta: Komisi Nasional Hak Asasi Manusia Republik Indonesia.

¹⁶ Budiman, Ahmad. (2017). Berita bohong (hoax) di media sosial dan pembentukan opini publik. *Majalah Info Singkat Pemerintahan Dalam Negeri Isu Aktual*, 9(1), 17-20.

As time goes by, the spread of hate speech has become a business field for irresponsible people. One of them is saracen. Saracen is a hoax news maker group that works professionally and has thousands of accounts in carrying out its action. This group has a very neat organizational structure. Saracen works by sending proposals to a number of parties, each proposal can be worth tens of millions of rupiah. Then offer hate speech dispersion (hate Speech) service in social media.

Hate speech is one of the criminal offenses in which the prohibition of its distribution has been regulated in Law Number 19 of 2016 concerning Amendment to Law Number 11 of 2008 on Information and Electronic Transactions, and also regulated in the Book of Law Criminal. In the Criminal Code the dissemination of information that causes the emergence of hatred and SARA issues can be charged with Articles 154, 155, 156, and Article 157. Where in Articles 154 and Article 155 of the Criminal Code regulate the ban on feelings of hostility, hatred or contempt against the Government and a ban to broadcast, displaying or attaching a public letter or painting containing a statement of feelings of hostility, hatred or humiliation to the Government of Indonesia in order to make its contents known or more publicly known.

While in Articles 156 and 157 of the Indonesian Criminal Code provide for the prohibition of expressing feelings of hostility, hatred or humiliation against any or several groups of the Indonesian people and the prohibition of broadcasting, displaying or posting articles or paintings in public, containing contents of feelings of hostility, hatred or contempt between or against the factions of the Indonesian people, with the intention that their content be known or more publicly known.

In 2007 the Constitutional Court through its Decision Number 6 / PUU-VI / 2007 granted a petition stating that Article 154 and Article 155 of the Indonesian Criminal Code violate the Constitution, more precisely Article 28 and 28E paragraph (2) and (3) of the 1945 Constitution. because that Article 154 of the Criminal Code can be regarded as article that contains the meaning of "*double-edged*". If the article is interpreted objectively and applied appropriately in handling certain situations and conditions that endanger the state, it can provide good benefits. On the other hand, if it is used arbitrarily with subjective interpretation according to the appetite of law enforcement apparatus, it may be detrimental to and contrary to the principle of the administration of a democratic constitutional state and may be misused or deviate from the *lex certa* principle.¹⁷

¹⁷ Dani Muhtada, and Ridwan Arifin, "Penal Policy and the Complexity of Criminal Law Enforcement: Introducing JILS 4(1) May 2019 Edition". *JILS (Journal of Indonesian Legal Studies)*, Vol. 4, no. 1, May 2019, pp. 1-6, doi:10.15294/jils.v4i01.30189; Mukhammad Najih, "Indonesian Penal Policy: Toward Indonesian Criminal Law Reform Based on Pancasila". *JILS (Journal of*

In addition, in relation to the petition, the Court also has its own reasons for initiating the petition. The Court considered that Article 154 and Article 155 of the Indonesian Criminal Code constitute formal offense which requires only the element of the action to be committed, which tends to cause a tendency of abuse of power. Also, the Court also believes that Articles 154 and 155 of the Criminal Code can also be said to be irrational, since a citizen of an independent and sovereign state is unlikely to be hostile to his own independent and sovereign state and government, except in cases of treason. With the decision of the Constitutional Court stating that Article 154 and Article 155 of the Indonesian Criminal Code are unconstitutional, the prohibition of humiliation or hate speech against the Government is not a crime or in other words the Government can not be a victim in the action or spreading hate speech).

In contrast to the humiliation as well as the spread of hate speech aimed at individuals or groups of people. The action is still prohibited by the laws and regulations of Article 156 and 157 of the Criminal Code and Article 28 paragraph (2) of Law Number 19 of 2016 on the amendment of Law No. 11 of 2008 on Information and Transaction Elektronik. Which in Article 28 paragraph (2) of the ITE Act contains a prohibition for a person to disseminate information that generates a sense of hatred or hostility towards certain individuals and/or community groups based on SARA and its criminal sanctions. The criminal sanction for such action is regulated in Article 45A of the EU Law, which is a criminal sanction for any person who knowingly and without right to disseminate information intended to inflict hatred or hostility on certain individuals and/or community groups based on SARA with a maximum imprisonment of 6 (six) years and / or a maximum fine of Rp1,000,000,000.00 (one billion rupiah). Although the right to express and express opinions publicly for the right to obtain and disseminate information is a basic right of every Indonesian citizen even to every person guaranteed by the 1945 Constitution, namely Article 28E and Article 28F of the 1945 Constitution. Where everyone is entitled to opinion and opinion can be channeled through various mass media, but in the fulfillment of these rights there must be limitations so as not to interfere with the rights of others. Because today's freedom to express opinions and disseminate information tends to "go far". Which opinions expressed often lead to hate speech in public.

Therefore, the enactment of Article 156 and Article 157 of the Criminal Code and Article 28 paragraph (2) jo. Article 45A of the ITE Law is the right thing. The enactment of these two laws and regulations can be said to be an extension of Article 28J of the 1945 Constitution which regulates the limitation in the exercise or fulfillment of human

rights or the constitutional rights of citizens arranged in the Constitution. The existence of such article is intended solely to secure the recognition and respect of the rights and freedoms of others and to fulfill fair demands in accordance with moral judgment, religious values, security and public order in a democratic society.¹⁸

The regulation of hate speech restrictions contained in the constitutional or constitutional regulations of the 1945 Constitution and the law is appropriate. This is similar to that expressed by Irma Dian Sari, that the regulation of hate speech prohibition is important to do because hate speech can endanger the integrity of the nation and the country, causing collective hatred, exclusion, discrimination, violence, even at the most horrible levels, ethnic or genocide massacres against the target group of hate speech. While the National Human Rights Commission also argues that hate speech can lead to social conflicts that can lead to genocide, as is the case with Tutsi ethnic groups in Rwanda.

IV. CONCLUSION

From the existing opinion can be concluded that the news lie or hoax that lead to hate speech can be done various social among members of the community. Do not conceal lies and hate speech is allowed to exist or exist can also adversely affect the emergence of national and state divisions. Hence the need for synergy between the community and law enforcement officers. As a party the public must be smart in determining whether the information used can be the truth or lie and not directly to get information, that is must do the examination first, although the information obtained is hate speech (hatred) intended for related parties. own. For law enforcement officials, it has emphasized enforcing the law by giving appropriate and appropriate errors to hate speech. The hate speech of Indonesia has a legal instrument that can be used to provide hate speech spreaders. With the enactment of Law Number 19 of 2016 the handling of Law Number 11 of 2008 on Information and Transactions Elektronik, is a form of anchoring Against Article 156 and Article 157 of the Criminal Code that regulates the punishment and spreading hate speech (speech) that appeal to individuals and group. Hate messages are increasingly sensitive in the online realm. For a pluralistic society (multiracial, multiethnic, multi-religious), the impact of hate messages is alarming. The motto "*Unity in Diversity*" can be shaky, if we ignore the messages of hatred (eg thick SARA nuance) in the online realm. Cases that have occurred as a result of spreading hate messages are enough to be valuable lessons. In addition to using techniques through regulation,

¹⁸ Doly, Denico. (2017). Pengaturan penyebaran ujaran kebencian dan isu sara ditinjau dari hukum konstitusi. *Info Singkat Hukum*, 9(17), 1-4.

cultural efforts through increased media literacy are relevant to do. This media literacy is used on the empowerment of netizens in responding to hate messages in the online realm. Netizens whose media literacy is high, not only on consciousness but also possess the constructive ability to receive, produce and reproduce messages.

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