

RESEARCH ARTICLE

Hate Speech and Hoaxes in Social Medias: The Dark Portrait of Uncertainty in Law Enforcement

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Abstract

Social media is like a basic need for some people, the use of social media is very much, but the misuse of social media is often encountered, one of which is spreading hoaxes or hate speech through social media. This research is intended to analyze and examine hate speech and hoaxes spreading from the perspective of law enforcement as well as a legal instruments in Indonesia. This research emphasized and found that the prohibition of spreading hate speech itself is regulated in Article 28A of Law Number 11 of 2008 concerning Electronic Information and Transactions jo. Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. One of the recent cases that occurred was a high school teacher in Banten who spread hoax stories of hatred with the aim of reminding SMA 1 Sajiro Banten students to be aware of the latent dangers of communism that would emerge.

Keywords: *Hate Speech; Hoaxes; Criminal Law; Law Enforcement*

1. INTRODUCTION

Social media is one of the communication media which is currently loved by many groups because it is considered as an effective, transparent and efficient communication media so that it has an important role as an agent of change and renewal. Meanwhile, the definition of social media according to Xarella (Aditya, 2015: 51; Marwan & Ahyad, 2016) states that social media is a site where people communicate with their friends, whom they know in the real

world and cyberspace. The advantages of social media compared to other conventional media are:

- 1) Fast, concise, compact and simple. If we see, every conventional media production requires special skills, standard standards and superior marketing skills. On the other hand, social media is so easy to use (user friendly), even users without an Information Technology (IT) knowledge base can use it. All you need is a computer, tablet, smartphone, plus an internet connection
- 2) Creating a more intense relationship. Conventional media only communicate one way. To overcome this limitation, conventional media tries to build relationships with 27 models of interaction or live connection via telephone, sms or Twitter. Meanwhile, social media provides wider opportunities for users to interact with partners, customers, and relationships, and build reciprocal relationships directly with them.
- 3) Wide and global reach. Conventional media have global reach, but to sustain it is expensive and takes longer. Meanwhile, through social media, anyone can communicate information quickly without geographical barriers. Social media users are also given great opportunities to design content, according to the targets and desires of more users.
- 4) Control and scalable. In social media with the available tracking system, users can control and measure the effectiveness of the information provided through feedback and reactions that arise. Meanwhile, in conventional media, it still takes a long time ([Pranesti & Arifin, 2019](#); [Sirait, 2020](#)).

The use of social media from year to year tends to increase causing new problems where everyone is free to reveal what they think in their social media accounts or share news sites to their social media accounts but this freedom creates another problem where there are many hoaxes, hatespeech or hate speech that thrives on social media. Problems like this that sometimes bother social media users, especially those who play social media, just want to increase their interaction with their friends online, especially the one most frequently discussed lately, namely Hate Speech social media ([Astrini, 2017](#); [Nurlatifah, 2019](#); [Rifauddin & Halida, 2018](#)).

One of the most recent cases is an act committed by a high school teacher named Yayi Haidar Aqua as the owner of me facebook Ragil Proyooda Hartajo who is suspected of spreading hoaxes about the existence of PKI members who want to massacre clerics whose purpose is to spread this to his social media accounts to remind SMA 1 Sajiro Banten students to be vigilant against the latent danger of communism, however, the police consider Yayi Haidar Aqua's actions to be a form of hoax spreading with hate speech (Ferdian, et.al, 2019; Rahmatullah, 2019; Utami, 2018).

Indonesia itself in overcoming hate speech has given birth to several regulations, namely the Chief of Police Circular Letter Number SE/06/X/2015 which states that hate speech is getting more attention from the public both nationally and internationally along with increasing concern for the protection of human rights, in addition to hate speech through social media. is also a criminal act that has been regulated in article 28 paragraph (2) of the Law on Electronic Information and Transactions, then whether the government's action by giving birth to this law is an act of dealing with hate speech or to silence the public's freedom of opinion because the article is considered an article rubber.

2. METHOD

Soekanto & Mamudji (2007) argue that legal research based on its objectives consists of: first, normative legal research which includes research on legal principles, research on legal systematics, research on the level of legal synchronization, legal history research, and comparative legal research. Second, sociological or empirical legal research which includes research on legal identification (unwritten) and research on the effectiveness of law. The type of research used in the research "Hate Speech Handlers in Social Media" is normative legal research because it is a study of legal principles or legal foundations, legal theories, and legal concepts. The data source used in this research is literature study. This research was conducted through literature study techniques, namely: how to collect data by studying legal materials, both primary legal materials, secondary legal materials and tertiary legal materials and/or non-legal materials. Searching for legal materials can be done by

reading, seeing, listening, and nowadays there are many searches for legal materials through the internet. The primary legal materials consist of:

- 1) The 1945 Constitution of the Republic of Indonesia.
- 2) Law Number 11 of 2008 concerning Electronic Information and Transactions jo. Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions.
- 3) Criminal Code.
- 4) UU no. 40 of 2008 concerning the elimination of racial and ethnic discrimination.
- 5) Chief of Police Circular Number SE / 06 / X / 2015 concerning Hate Speech.

Data analysis was carried out using a qualitative approach, where existing data were linked, compared, and described in words and / or sentences. After the analysis is carried out, the deductive thinking method is carried out, namely a pattern of thinking that is based on general matters, then spreads specific things.

3. RESULT AND DISCUSSION

A. The Rise of Hoaxes in Indonesia

Hoax or false information has become a phenomenon that is disguised to make it look true, this is not without the characteristics of Indonesian people who use social media a lot. The sad thing is that most of the people can easily believe in hoax news and do not hesitate to share it with the public. According to Professor of Communication Studies at Padjajaran University Bandung, Deddy Mulyana stated several factors causing the rapid circulation of hoax news are:

- 1) The Indonesian people themselves are considered unusual for a healthy democracy.
- 2) Most people are not used to recording and storing data, so they often talk without data.
- 3) Indonesian people, who are chatty in nature, then the information received is then shared again without verification (Septanto, 2018; Siregar, 2018).

In essence, a news is a description or idea that is processed based on editorial to be broadcast to the public. The use of social media causes the public to be interested in using communication media more often to get information as desired. However, there are several things that need to be

expanded from an early age, namely related to the circulation of hoaxes that aim to form public opinion, the ability of social media to provide facilities to the public in responding to these hoaxes to shape public opinion.

There are 7 types of hoax information ([Rahadi, 2017](#); [Utami, 2018](#)), namely:

- 1) Fake News, Fake News is news that aims to fake or include things that are untrue in a news
- 2) Clickbait: Trap links are links that are strategically placed on a site that aim to attract people to another site, where the content is factual but the title is too much.
- 3) Confirmation Bias, confirmation bias is the tendency to interpret recent events as well as evidence of existing beliefs
- 4) Misinformation, Misleading or false information intended to deceive
- 5) Satire, an article that uses exaggerated humor, irony, to comment on hot events
- 6) Post-truth, post truth is an incident where emotions play a role more than facts to form opinions
- 7) Propaganda, namely the activity of disseminating information, facts, arguments, half-truth gossip or truth to form public opinion.

Several aspects that are often the subject of hoaxes are related to religion, politics and economics. Some of the hoax cases that have occurred in Indonesia are Iron Man Bali. Vacuum Power Plant, Saracen Case, therefore, as smart citizens in using social media, we should not be easily provoked by the news that appears and must verify the information we get ([Manihuruk & Tarina, 2020](#); [Gunawan, Wijaya, & Idrus, 2018](#)).

The government itself in tackling the frequent hoax phenomenon has formed a National Cyber Agency, this agency is tasked with tracking down sources of hoax news and protecting government sites from hackers. In addition, in terms of sanctions, Indonesia already has the ITE Law, the Criminal Code and the Law on the Elimination of Racial and Ethnic Discrimination ([Iqbal, 2019](#); [Siregar, 2018](#)).

B. Hate Speech Handling Regulations in National Regulations

Freedom of opinion has been guaranteed by the 1945 Constitution as stipulated in Article 28E paragraph 3 of the

1945 Constitution which states "*Everyone has the right to freedom of association, assembly and expression of opinion*" but this right to freedom of opinion is often misinterpreted and misused to create hoax news aimed at spreading hate speech (Rahardi, 2017: 66; Hidayat & Mahardiko, 2020).

Hate speech is speech, behavior, writing or performance that is prohibited because it can trigger acts of violence and commotion in people's lives, in the Chief of Police Circular Number SE / 06 / X / 2015 concerning Hate Speech, it is stated that Hate Speech is a criminal act regulated in Criminal Code and other criminal provisions outside the Criminal Code, in the form of:

- 1) Insult
- 2) Defamation
- 3) Blasphemy
- 4) Unpleasant acts
- 5) Provoke
- 6) Addressing
- 7) Spread fake news

The purpose of hate speech as mentioned above is to incite and incite hatred against individuals and / or groups of people in various communities who in conducting Hate Speech can be carried out using various media including:

- 1) In the campaign activity oration
- 2) Banners or banners
- 3) Social media network
- 4) Expression of opinion in public (demonstration)
- 5) Religious lectures
- 6) Print or electronic media
- 7) Pamphlet (Diantha, 2016; Chazawi, 2016).

Handling of suspected hate speech crimes has basically been regulated in national legislation, including:

- 1) Article 156 of the Criminal Code
- 2) Article 157 of the Criminal Code
- 3) Article 310 of the Criminal Code
- 4) Article 311 of the Criminal Code
- 5) Article 28 paragraph (2) jo. Article 45 paragraph (2) of Law number 11 of 2008 concerning Information and electronic transactions
- 6) Article 16 of Law no. 40 of 2008 concerning the elimination of racial and ethnic discrimination.

The operational level of the Chief of Police's circular letter SE / 06 / X / 2015 regarding Hate Speech is seen in the

handling procedures regulated in the circular (Mangantibe, 2016; Chazawi & Ferdian, 2011), namely:

- 1) Take preventive actions, where these preventive actions include *every member of the National Police so that they have knowledge and understanding of forms of hate speech that arise in society* and in order to make effective and prioritize the intelligence function to find out the real conditions in conflict-prone areas.
- 2) If preventive action has been taken by a member of the National Police but does not solve the problem as a result of this action, the solution can be done in several ways including through:
 - a. Law enforcement on suspicion of criminal acts of hate speech by referring to the provisions,
 - b. In the event that there has been a social conflict with the background of hate speech, the handlers hold on to:
 - i. Law Number 7 of 2012 concerning Management of Social Conflict.
 - ii. Regulation of Chief of the National Police of the Republic of Indonesia Number 8 of 2013 concerning Technical Social Conflict Management.

Furthermore, many regulations governing hate speech as described above law enforcers most often use Article 28 paragraph (2) jo. Article 45 paragraph (2) of Law number 11 of 2008 concerning information and electronic transactions, in which Article 28 paragraph (2) states that "*everyone deliberately and without rights disseminates information aimed at causing hatred or enmity for individuals and / or groups. certain society based on ethnicity, religion, race and intergroup*".

Based on the sound of the article above, what is meant by the act of expressing hatred there is no clear explanation, but referring to article 156 of the Criminal Code, the act of spreading hatred is an act of stating with words whose contents are viewed or judged by the general public as hating a group of Indonesian population where the act is. its contents are considered by the public to be derogatory, degrading, insulting against a group of the Indonesian population (Chazawi, 2016; Sitompul, 2012).

The absence of explanation related to hate speech is a weakness in its own right from Article 28 paragraph 2 of Law No. 11 of 2011 concerning Electronic Information and

Transactions because there are no restrictions related to actions that are deemed to violate the provisions of this article even though it serves to prevent restrictions or violations of freedom of opinion due to the fact that there are many actions which in fact may not violate statutory regulations which exists (Rahadi, 2017; Ahnaf & Suhadi, 2014).

If described in Article 28 paragraph (2) of Law no. 11 of 2011 concerning Electronic Information and Transactions, the elements can be seen as follows:

- 1) Subjective: Everyone in this case is a person or a corporation
- 2) Error: deliberately, according to the theory of deliberation, deliberation is divided into 3, namely deliberate intent, conscious deliberate possibility, deliberate conscious certainty
- 3) Deed: spread
- 4) Object: Information
- 5) Purpose: to cause resentment or hostility to certain individuals and / or groups of people based on ethnicity, religion, race and between groups.

So that when it is related to the actions of a high school teacher named Yayi Haidar Aqua as the owner of me on Facebook, Ragil Proyooda Hartajo, who is suspected of spreading hoaxes about the existence of a PKI member who wanted to massacre clerics whose purpose was to spread this to his social media accounts to remind SMA 1 Sajiro students Banten to be aware of the latent dangers of communism will emerge as shown in the Figure 1.

For Yayi Haidar Aqua's actions, he could face a maximum sentence of 6 years and / or a maximum fine of Rp. 1,000.0000., 00 (one billion rupiah), but before that the mistake of Yayi Haidar Aqua must be proven beforehand in court based on existing evidence. For evidence in Law No. 11 of 2011 concerning Electronic Information and Transactions other than referring to Article 184 of the Criminal Procedure Code, which consists of:

- 1) Witness statement
- 2) Expert Statement
- 3) Letter
- 4) Guidance and
- 5) Statement of the Defendant



Figure 1. Screen capture of fake and hoax news in Social Media

There are also other evidence which is one of the special characteristics of the Special Law on ITE, namely:

- 1) Electronic information and /or electronic documents.
- 2) Printout of electronic information and/or electronic documents.

Regarding electronic information evidence and/or electronic documents, there are two views ([Isma, 2014](#); [Retnaningsih, 2015](#); [Juliswara, 2017](#)), namely:

- 1) The first view states that electronic evidence is categorized as existing evidence so that it does not stand alone, which is an extension of documentary evidence as regulated in article 184 of the Criminal Procedure Code.
- 2) Second view, states that electronic evidence is evidence in itself, electrical evidence is separate from evidence as stipulated in article 184 of the Criminal Procedure Code.

In proving a hate speech criminal case which is a means of evidence, namely witness statements, expert statements, letters, instructions, statements of the defendants, electronic information and electronic documents and / or printed results thereof. However, what must be considered in

submitting electronic information and electronic documents as evidence in court (Prisgunarto, 2015; Retnaningsih, 2015), are:

- 1) The authenticity of the evidence
- 2) The content or substance of the evidence
- 3) Conformity between one evidence and another.

4. CONCLUSION

This research concluded that hoax information is made aiming to influence and shape public opinion. There are 7 types of hoax information, starting from Fake News, Clickbait: Confirmation Bias, Misinformation, Satirem, and Post-truth, Propaganda. The provisions of laws and regulations that regulate the crime of hate speech are: Article 156, Article 157, Article 310, and Article 311 of the Criminal Code. Furthermore, another laws, article 28 paragraph (2) jis, Article 45A paragraph (2) Law Number 19 of 2016 concerning Electronic Information and Transactions, and Article 16 of Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination. Which man, if it is related to the case experienced by a high school teacher from Banten, then referring to the *lex specialis derogat legi generalis* principle used is Article 28 paragraph (2) jis. Article 45A paragraph (2) Law Number 19 Year 2016 concerning Electronic Information and Transactions. Evidence besides Article 184 of the Criminal Code, there are also other forms of evidence that are regulated in Law Number 19 of 2016 concerning Electronic Information and Transactions, namely Electronic Information and Electronic Documents and / or printouts.

5. DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no potential conflict of interest in the research, authorship, and/or publication of this article.

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“The claim "hate speech is not free speech" implies "free" is a type of speech, as opposed to how speech is treated in a free society.”

Michael Malice

ABOUT AUTHORS

Ahmad Nizar Numani is a social movement activist on Anti Hoaxes and Hate Speech. Many of his activities are to educate the public about the dangers of fake news and hate speech. In addition, the author is also actively collaborating with various community groups, communities, and the government in tackling hoaxes in Indonesia.