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The Implementation of Criminal Act towards Hate Speech in Social Media

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ABSTRACT

Indonesia is a country that adheres to a democratic system where people are given the freedom to express their opinions. Along with globalization era, communication media are increasingly developing, such as the existence of electronic communication media that can connect people regardless of distance and place. Information technology, beside contributing to improving communication progress, technology can also be an effective means for users of social media to commit acts against the law. Cybercrime is a type of criminal activity that makes use of advances in computer technology, particularly the internet. This research examines all the regulation and law in Indonesia regarding of hate speech towards social media through normative legal research. From the research result, it found that the implementation of Hate Speech in social media networks can be determined in Article 45A Paragraph (2) jo. Article 28 Paragraph (2) of Law No, 19/2016 as Amendment to Law No. 11/2008 concerning on Electronic Information and Transactions, there does not have to be an aggrieved party or there must be an objecting party, because it is not a material offense that requires the consequences of the act.

Keywords: Criminal Act, Hate Speech, Law Enforcement

INTRODUCTION

Nowadays, the development of technology is increasing rapidly and the crime rates are rising in tandem with these advancements. The use of social media sites as an online social interaction has become widespread and worldwide spread. In the past, people could only commit insults, defamation, and hate speech through written letters or oral speech. Nowadays, social media can also use to insult, defame, and hate speech through Facebook, Twitter, YouTube, blogger, path, Instagram and other social media sites. Hate speech expressed in social media networks can trigger acts of violence and prejudice, both on the part of the perpetrators and the victims.

Indonesia is a country that adheres to a democratic system where people are given the freedom to express their opinions. There are many ways that people can express their opinions, because freedom of opinion is not only verbally stated, but also in writing. Along with globalization era, communication media are increasingly developing, such as the existence of electronic communication media that can connect people regardless of distance and place. It is easier for someone to connect with other people since the networks are more adequate. The conversations of the freedom to express opinion can be deducted to area of moral, law, human right and democracy. There are many kinds of social media with their respective advantages since social media used as an expression and conveying opinions. Social media can bring a new way to conceptualize and measure public opinion, complementing survey-based opinion polls.² Sometimes social media users are not wise in expressing their freedom of opinion, it is not uncommon for them to use harsh words in expressing their opinions on social media. As the basic of freedom in expressing their opinions regardless of the meaning of their words, the public does not realize that this freedom has rules. Many people ignore it, even though the misuse of freedom of opinion can have bad consequences for the users.

Therefore, as an ethical in online world, it needs to be clear assertiveness considering that the online world is a medium that is very easy and often misused to express opinions. Within the development of existing Information Technology, media and communication, it can change the behavior of society and human civilization globally and it cause world relations to become borderless, and make rapid change on social, economic and culture. Information technology, beside contributing to improving communication progress, technology can also be an

¹ Irawaty and Martini, "The Freedom to Express Opinion Through Social Media: A Study of Higher Degree Students in Jakarta and Vicinity," *KnE Social Sciences* (November 11, 2020), https://knepublishing.com/index.php/KnE-Social/article/view/7884.

² Yini Zhang, Fan Chen, and Karl Rohe, "Social Media Public Opinion as Flocks in a Murmuration: Conceptualizing and Measuring Opinion Expression on Social Media," *Journal of Computer-Mediated Communication* 27, no. 1 (November 19, 2021), https://academic.oup.com/jcmc/article/doi/10.1093/jcmc/zmab021/6472790.

effective means for users of social media to commit acts against the law. Cybercrime is a type of criminal activity that makes use of advances in computer technology, particularly the internet. Based on the sophistication of the development of internet technology, cybercrime is defined as an illegal act that use the computer technology.³ The implications can be so complex and complicated. Thus, the subject of the perpetrator must also be qualified as a person who has actually committed an unlawful act. Hate speech through social networks is included as cybercrime. Hate speech is subjective, which means that the assessment of hate speech depends on the party who feels insulted on social media networks. Hate speech can only be processed by the police if there is a complaint from a party who feels insulted through social media networks.

Alleged crime of deliberately and without rights spreading information aimed at creating feelings of hatred or hostility, certain individuals and/or community groups based on ethnicity, religion, race and inter-group (SARA). From the complex problems above, authors feel that existing digital innovations have also given rise to the phenomenon of digital crime whose forms and methods continue to transform to become more complicated and increasing detrimental. Thus, a more detailed and comprehensive discussion regarding crimes on social media is needed. This research aims to analyze and identify the legal regulation regarding hate speech towards social media that usually conducted by irresponsible citizen in Indonesia.

RESEARCH METHODOLOGY

Research is a process of collecting, processing, presenting and analyzing data in an event. In order to obtain a study result that can be accounted for scientifically, the method used is normative juridical. Normative legal research is to examine or analyze primary legal materials and secondary legal materials by understanding law as a set of rules or positive norms in statutory system that regulates human life, it indicates that the solutions to the problem in this research were based on Indonesian laws and literature.⁴ This research examines all the regulation and law in Indonesia regarding of hate speech towards social media.

RESULT AND DISCUSSION

Criminal law is part of law in force of a country. Subjects of criminal law in conducting their activities in society often cause deviations, that not only endangers himself but can also harm others. In order to create a safe and orderly social order, norms and provisions are needed that aim to regulate how

³ Situmeang Ampuan and Junimart Girsang, "The Effectiveness Of The Ite Law In Handling Hate Speaking Through Social Media In Batam City," *Legal Brief* 11, no. 3 (2022): 1794–1799.

YURIS: Journal of Court and Justice Vol. 2, Issue.1, (2023)

⁴ Dhimas Joeantito Hartono and Sugiharto, "The Criminal Responsibility for Pornography Video Maker Through Digital Forensics on Social Media," *YURIS (Journal of Court and Justice)* 1, no. 2 (2022).

community members in doing their activities without disturbing the interests of other community members. In order to create a safe and orderly social order, norms and provisions are needed to regulate how community members carry out their activities without disturbing the interests of other community members.

These provisions should have coercive sanctions. It means that when someone violates the provisions that have been made, then the violator will be given a penalty. The severity of the punishment depends on the type of violation committed. Criminal law in its efforts to achieve its goals is not solely by imposing criminal sanctions but also by taking preventive measures. Criminal law policy is essentially an effort to realize criminal laws and regulations following the circumstances at a particular time (ius constitutum) and in the future (ius constituendum).⁵ The National Commission on Human Rights (Komnas HAM) in the handbook for handling hate speech stated that hate speech is very dangerous, because of the following reason:

- 1. Degrading other human, Humans are God's creation and no one has the right to demean humans and the humanity of anyone as God's creation.
- 2. Cause material losses and human victims. Research data shows that the number of material losses and victims of identity-based violence is greater than other types of violence.
- 3. Have an impact on conflict incitement to antagonize people or groups which can lead to conflict, this conflict can be between individuals and expand into communal conflict or between groups
- 4. Have an impact on group extermination (genocide). This incitement of hatred can lead to stereotyping/labeling, stigma, exclusion, discrimination, violence. At the most horrific level, it can cause collective hatred of ethnic massacres, burning of villages or extermination (genocide) of groups that are the target of hate speech.⁶

Law is an important instrument in the prevention and control of crime. In addition, crime grows and develops in society, and there is no crime without society or as Lacassagne said that society has criminals according to their services. Crime has been accepted as a fact, both in the simplest of societies (primitive) and in modern societies. The aspects of hate speech as intended aims to incite and ignite hatred against individuals or against groups of people in various communities that are distinguished from several aspects below:

1. Tribe, Seeking general support, by inciting violence, discrimination or hostility so that social conflicts between tribes occur.

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⁵ Suci Ramadani et al., "Criminal Law Politics on Regulation of Criminal Actions in Indonesia," *Linguistics and Culture Review* 5, no. S1 (November 1, 2021), https://lingcure.org/index.php/journal/article/view/1651.

⁶ Bimawan Domas Hidayat, Agus Surono, and Maslihati Nur Hidayati, "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, no. 2 (2021): 28.

- 2. Religion, insulting on the basis of religion, in form of incitement to commit violence, discrimination or hostility.
- 3. Religious sect, Advocating or seeking public support for the interpretation of a religion practiced in Indonesia or conducting religious activities that resemble those religious activities, with the intent to incite others to commit violence, discrimination or hostility.
- 4. Belief, Inciting hatred or statement of hostility to the beliefs of others, thus discrimination between communities arises.
- 5. Race, Showing hatred to others because of treating, distinction, limitation, or selection based on race which results in the revocation, reduction of recognition of human rights.
- 6. Intergroup and Ethnicity. Showing hatred to another person or group because of humiliation, distinction, restriction, or election based on ethnicity and group.
- 7. Skin Color and Gender, Any form of distinction, exclusion or restriction that has the effect or purpose of reducing or eliminating the recognition, utilization of human rights, based on skin color and gender.
- 8. Disabled people, expressing hatred towards disabled, therefore, there are restrictions, obstacles to difficulties or deprivation of the rights on disabled people
- Sexual Orientation, Gender expression, Complicating hatred for others who have a sexual orientation, thus discrimination against these people occurs.
- 10. Sexual Orientation, Gender expression, complicates hatred or resentment towards others who have a sexual orientation that results in discrimination against such people.⁷

It means that hate speech can be done through various media, which contain elements of hate speech, among others such following below:

- Campaigns, in form of verbal and non verbal.
 Express their thought in public, either in writing or oral, by inciting people to commit violence, discrimination or hostility.
- 2. Banner

Displaying writings accompanied by pictures and contains information in public that contain statements of hatred or contempt with the intention of inciting people to commit violence, discrimination or hostility.

- 3. Social media networks, Hate speech committed through print or electronic mass media, such as:
 - a. Distributing and making accessible electronic information or

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⁷ Rizki Pangihutan Sihaloho, "Hubungan Antara Self Awareness Dengan Deindividuasi Pada Mahasiswa Pelaku Hate Speech," *Jurnal Ilmiah Mandala Education* 5, no. 2 (2019): 117.

electronic documents that contain insults and defamation.

- b. Spreading false news which cause hatred or hostility of certain individuals or groups of people based on ethnicity, religion, race and intergroup.
- 4. Expressing opinions in public

Expressing thoughts in public by inciting people to commit violence, discrimination or hostility.

5. Religious lectures

Lectures that incite to hostility, discrimination or violence on the basis of religion by misusing the contents of holy book.

- 6. Print or electronic mass media
 - Distributing and making accessible electronic information or electronic documents that contain statements of hostility, hatred or contempt
- Pamphlets, Broadcasting, showing or pasting writings accompanied by pictures in public that contain statements of hatred or contempt with the intention of inciting people to commit violence, discrimination or hostility.⁸

People should obey the law not only because they recognize the legitimate source of the law nor because they are convinced of its rationality. People obey the law not because they consider it as their duty to the state. Nor do people obey the law because they fear the sanctions imposed by the law. In some circumstances, they maintain that disobeying the law means treason; in others, they sympathize with the lawbreaker. Therefore, law enforcement is greatly influenced by internal factors of the law itself, for example, the law, its enforcers, its tools and public legal awareness. There are several causes of hate speech on social media as following below:

1. Cause a Separation

As a result of various slanders circulating from the impact of hate speech, it can be seen that Indonesia is currently divided. Many claims that Indonesia is diverse but behaves otherwise. Starting from a difference of opinion that triggers the emergence of fake news (hoax) even though there is nothing wrong with having a different opinion. But differences of opinion do not mean that we have to be hostile to each other and even make Hate Speech to trigger division.

2. Benefited for Certain people

Based on the case of Hate Speech, some parties benefit. These parties are not only the creators of hate speech but also the masterminds or

⁸Chandra Oktiawan, "Analisis Yuridis Tindak Pidana Ujaran Kebencian Dalam Media Sosial," *Al-Adl: Jurnal Hukum* 13, no. 1 (2021): 175.

⁹Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum* (Jakarta: Rajawali Pers, 2015), h. 5.

actors and the people with the most significant interests who benefit from it.

3. Young Generation Becomes Intolerant and Discriminatory

Hate speech, and sentiments of SARA (ethnicity, race and religion), significantly impact the mindset and attitude of the younger generation. A teenager often exposed to damaging content tends to have an intolerant attitude towards people with different backgrounds.

Hate speech has a significant impact on young people to act intolerant. One of them is that harmful content on the internet supports intolerance and discrimination, and strengthening SARA issues, such as indigenous and non-indigenous, encourages a negative perspective on existing differences. It is worrying because the younger generation has made the internet the primary source of reference in finding information. For young people, SARA issues, such as indigenous and non-indigenous, impact how they view different people.

4. Horizontal Conflict to Genocide

Hate Speech can cause horizontal conflict; horizontal conflict can affect individuals or groups; this conflict occurs in the same class as social class, strata class, and the worst is the occurrence of genocide.

5. Potentially Cause National Disintegration

Hate Speech can trigger the birth of division or disintegration in a nation or state. People in Indonesia tend to have sensitive emotions and are easily provoked.

Beside the impact above, there are factors that encourage perpetrators to commit hate speech crimes, such as:

a. Individual Factor

The factor that causes the perpetrator to commit a crime is the primary internal factor, called psychological factors due to heartache. Therefore, the high emotional power of the perpetrator and the low mentality of the perpetrator causes the perpetrator to commit hate speech crimes, especially insults committed on social media.

b. Lack of Social Control

The lack of social control means the lack of reasonable internal control from the environment inside the family. People often do not want to know about the condition of their family, and from the external party where the community does not care about the criminal events that occur around them, the loss of control and the absence of social norms or conflicts of norms in question.¹⁰

YURIS: Journal of Court and Justice Vol. 2, Issue.1, (2023)

¹⁰ Zulkarnain Zulkarnain, "Ujaran Kebencian (Hate Speech) Di Masyarakat Dalam Kajian Teologi," *Studia Sosia Religia* 3, no. 1 (2020), h. 77.

Besides the factors above, several other factors still cause perpetrators to commit hate speech, especially insults committed on social media, which follows:

Economic Environment

Economic and environmental factors also greatly influence the occurrence of hate speech crimes in social media. Economic factors that can trigger the occurrence of crimes usually start from the economic situation of the perpetrator, who is classified as low, unemployed, and pressed for high and urgent needs to encourage the perpetrator to commit hate speech crimes in social media.

2. Society Interest

People tend not to think about the impact of what will happen in the future by committing hate speech crimes on social media. Many people commit hate speech because they have specific goals, including personal matters, politics, and SARA and want to be known by many people.

3. Facility and Technological Development

The factors of facilities, facilities and technological advances undeniably also significantly influence the occurrence of hate speech crimes in social media. With the development of information technology, people can easily communicate indirectly. Therefore, getting information that does not meet the time limit is easy. Therefore the level of dissemination is really fast and can be accessed by everyone.

According to Riduan Syahrani, proof is the presentation of valid evidence based on the law to the judge examining a case to provide certainty about the truth of the case presented. The existence of evidence is significant to show the existence of legal events that have occurred. According to PAF Lamintang, people can know that the existence of two valid pieces of evidence is not enough for the judge to impose a sentence on someone. But from the valid evidence, the judge must also obtain confidence that a criminal offence has occurred. The existence of valid evidence is very important for a criminal judge in convincing himself to make a decision. Based on the provisions of Article 42 of Law Number 19/2016, concerning on Amendments to Law Number 11/2008 of Electronic Information and Technology, it is stipulated that investigations into criminal offences regulated in Law Number 19/2016 carried out based on the provisions of the Criminal Procedure Code (KUHAP) and the provisions in Law Number 19/2016

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¹¹ Sulkiah Hendrawati, "Pertanggungjawaban Pidana Terhadap Tindak Pidana Ujaran Kebencian (Hate Speech) Melalui Media Sosial," *Res Justitia: Jurnal Ilmu Hukum* 1, no. 2 (2021): 252.

¹² Rizky Novia Karolina et al., "Penerapan Pengakuan Bersalah Terdakwa Sebagai Justice Collaborator Dalam Sistem Peradilan Pidana Indonesia: Studi Putusan Pengadilan Negeri Pekanbaru Nomor 683/Pid. Sus/2016/PN Pbr.," USU LAW JOURNAL 7, no. 6 (n.d.): 133.

as Amendments to Law Number 11/2008 concerning on Electronic Information and Transactions. Valid evidence based on Article 184 of the Criminal Procedure Code Paragraph (1) consist of:

1. Witness Statement

Witness testimony is what the witness says in court. Witness testimony is the evidence in a criminal case about a criminal event that he heard, saw, and experienced; by stating the reasons for his knowledge, the witness may not provide information about the occurrence of a criminal offence that he heard from someone else.

2. Expert Statement

Expert testimony, regulated in Article 186 of the Criminal Procedural Code, means that the testimony stated by an expert at the court hearing, it also been given at the time of examination by the investigator or public prosecutor as outlined in the form of a report, it is made because of the oath at the time he accepted the position or job. Suppose it is not given at the time of examination by the investigator or public prosecutor. In that case, the examination at trial is asked to provide information recorded in the minutes of the examination.

3. Letter

Evidence letter has been regulated in Article 187 of the Criminal Procedure Code; letters as evidence in criminal procedure law are not much different from civil procedure law because the strength of proof depends on the judge who will assess the truth of the letter evidence. But in this case, only the judge can consider only authentic deeds, while letters under the hand in the criminal procedure are not used.

4. Instructions and Terms

Instruction as evidence, it is regulated in Article 188 of the Criminal Procedure Code, which means that it is an act, event, or situation, which because of its correspondence, either between one another or with the criminal act itself, indicates that a criminal act has occurred and who the perpetrator is. Presumably, one can recognize that proof based on the clues in the evidence is impossible for the judge to obtain without considering the correspondence between one fact and another or between a fact and the criminal act itself.

5. Defendant Statement

The defendant's statement as evidence is regulated in Article 189 of the Criminal Procedure Code, meaning what the defendant states in court about the actions he committed or what he knows or experiences himself. The statement of the defendant can only be used by himself. However, the defendant's statement alone is insufficient to prove the defendant's guilt or innocence in committing the act charged to him. Still, it must be accompanied by other evidence.

In relation to cases of crime on social or electronic media, Law Number 19/2016 Concerning on the Amendment of Law Number 11/2008 regulates evidence that stipulated in Article 184 of Criminal Procedure Code. Article 5 paragraph (1) of Law Number 19/2016 Concerning the Amendment to Law Number 11/2008 regarding the Electronic Information and Transactions emphasizes that what is included as evidence are electronic information or electronic documents and printouts of electronic information. According to Article 5 paragraph (2) of Law Number 19/2016 as the Amendment to Law Number 11/2008 Concerning on Electronic Information and Technology, it is stipulated that Electronic Information and Electronic Documents and/or their printouts as referred to in paragraph (1) are an extension of legal evidence related to the applicable procedural law in Indonesia. From the provisions of Article 5 paragraph (2), it is known that the evidence of Electronic Information and Electronic Documents is not another. Separate evidence from the evidence in Article 184 of the Criminal Procedure Code, but Law Number 11 of 2008 concerning Electronic Information and Technology does not explain the expansion of evidence which is among the 5 (five) evidence in Article 184 of the Criminal Procedure Code.

Nevertheless, Electronic Information and Electronic Documents as defined by Articles 1 number 1 and 4 of Law Number 11/2008 on Electronic Information and Technology have the exact nature as letter evidence. The same characteristic is stated in written and/or images that can be seen and reads and contain specific meanings. Hence, the phrase "is an extension" in the sentence Electronic Information and/or Electronic Documents and their printouts as referred in Article 5 paragraph (1) of Law Number 11/2008 regarding the Electronic Information and Technology which is an extension of legal evidence following the applicable Law in Indonesia, it must be interpreted as an extension of evidence letter. Therefore, Electronic Information and Electronic Documents as an extension of letter evidence or the same position and function as letter evidence in terms of being used as material to form evidence. Although the position and function of Electronic Information and Electronic Documents evidence is the same as letter evidence, there are limits to their validity. In Article 5 paragraph (4) of Law Number 11/2008 which was amended by Law Number 19/2016 concerning on Electronic Information and Technology, it is determined that Electronic Information and Electronic Documents as referred in paragraph (1) does not apply to letters according to the law must be made in written form, and letters and their documents based on the law must be made in form of a notarial deed or a deed drawn up by the official who made the deed.

Based on this, in proving the criminal case of hate speech which is evidence, namely witness testimony, expert testimony, letters, instructions, testimony of the defendant, electronic information and electronic documents and / or printouts. However, the things that must be considered in the submission of electronic

information and electronic documents as evidence in the trial are authenticity of evidence, the substance of the evidence, and congruence between a piece of evidence and another

CONCLUSION

The Implementation of Hate Speech in social media networks can be determined in Article 45A paragraph (2) jo. Article 28 paragraph (2) of Law Number 19/2016 as Amendment to Law Number 11/2008 concerning on Electronic Information and Transactions, there does not have to be an aggrieved party or there must be an objecting party, because it is not a material offense that requires the consequences of the act. The Application of Article 45A paragraph (2) Jo. Article 28 paragraph (2) of Law Number 19/2016 as Amendment to Law Number 11/2008 concerning on Electronic Information and Transactions does not depend on the consequences caused, but if it fulfills the formulation of the provisions of Article 45A paragraph (2).

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