

Analysis of Criminal Laws in Hate Speech on Social Media

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Abstract. Technological developments make it easier for people to carry out activities to meet their needs and interact with other humans wherever they are. Technology also brings benefits such as making it easier for people to carry out daily activities. Technological developments are also one of the factors that can give rise to crime. The forms of crime that exist today are becoming more varied day by day. Meanwhile, the impact of hate speech on human rights violations is light to serious. It always starts with just words, whether on social media or through leaflets, but the effect is able to move the masses and trigger conflict and bloodshed. If it is not handled effectively, efficiently and in accordance with statutory provisions, it will have the potential to give rise to widespread social conflict, and potentially lead to acts of discrimination, violence and/or loss of life. This research uses normative juridical research methods, namely examining statutory regulations and legal theories related to criminal acts, hate speech via social media based on Indonesian positive law. The problem approaches used are the law approach and the case approach.

Keywords : Crime, Law Enforcement, Hate Speech

Introduction

The development of technology and information at this time has developed very rapidly. Technology and information are a necessity for society today. Naturally, it is impossible for humans to be separated from technological progress whose aim is to make their lives easier. Naturally, it is impossible for humans to be separated from laws whose aim is to maintain existence. In today's modern era, the existence of various technological speeds has led to changes and developments in the times, information technology science has also developed in accordance with this modern era. Indonesia has been impacted by developments in information technology in this era of globalization. One of the uses of information technology is the existence of various kinds of social media spread to users in various circles (Budi Suhariyanto: 2014).

Social media is part of the needs of Indonesian society which cannot be separated anymore as time progresses. All public behavior, including social media, is regulated by law. Many people misuse social media to carry out hate speech online without realizing that their actions are a violation of the law. (Ferry Irawan Febrian Syah, Halda Septiana Purwinarto: 2020). On social media we often find sentences and writings that tend to lead to hate speech and *cyberbullying*, but there are also sentences and writings that are considered normal. The development of information and communication technology has brought Positive and negative influences are like a double-edged sword. On the one hand, the use of information and communication technology contributes to improving human welfare and civilization, on the other hand, these technological advances can be used to carry out acts that are against the law, which attack various legal interests of people, society and the State.

With the development of increasingly diverse social media, it is not uncommon social media is misused by its users. The background of various kinds, whether in business interests, politics, and even hating a certain group. One of the things that is becoming a hot topic of discussion at the moment is *Hate Speech* which appears on various social media. In the legal sense, speech Hate (*hate speech*) is words, behavior, writing or performances that are prohibited because they can trigger acts of violence and prejudice on the part of the perpetrator of the statement. or victims of these actions. Website that use or apply from this site using internet forums and news to emphasize a particular point of view .

Articles that regulate actions regarding *Hate Speech* against a person, group or institution based on a Circular Letter National Police Chief No. SE/2/11/ 2021 contained in Law No. 11 of the year 2008 about electronic information & transactions and Law No. 40 of 2008 concerning elimination of racial and ethnic discrimination . The scope of hate speech offenses is classified as defamation, another term commonly used for defamation is insult. From a behavioral perspective, insults are not a bad thing. Experts differ in their opinions regarding the meaning and definition of honor and good name, but agree that honor and good name are a person's right or the human right of every human being. Thus, only humans can gain honor and a good reputation.

Formulation of The Problem

Based on the background that has been described, this article will discuss the legal regulation of hate speech in Indonesian positive law and how to prove criminal acts of hate speech via social media.

Research Methods

In searching for data sources, the type of research used is normative juridical methods and empirical approaches. The normative juridical approach is an approach carried out by examining the rules or norms or regulations related to the problem to be discussed. This research uses a type of normative legal approach, namely the approach law which This is done by reviewing written norms so that they constitute data secondary, which originates from primary legal materials and secondary legal materials as well as tertiary legal materials. This approach is taken to collect various kinds of laws and regulations, theories and regulations related to the issue to be discussed. That approach performed with how to learn the rules and regulations in the form of legal rules or regulations law and legal principles related to the title of this thesis and related to the issues discussed .

In conducting research, researchers used qualitative methods. Qualitative research method is a method or method of research that emphasizes analysis or descriptiveness. In a qualitative research process, things that are subject's perspective are more emphasized and the theoretical basis is used by the researcher as a guide, so that the research process is in accordance with the facts encountered in the field when conducting research .

Discussion

Legal Regulations on Hate Speech in Indonesian Positive Law

Freedom of opinion and expression is a characteristic of a democratic state and is everyone's right and is one of the rights guaranteed by the State in the constitution. The Constitution of the Republic of Indonesia Article 28E paragraph (2) and paragraph (3) guarantees the right of every person to express thoughts and attitudes in accordance with his conscience as well as the right to express opinions. These rights also reflect the administration of a state that adheres to democracy. However, the implementation of the right to opinion and expression is still limited by the human rights of other people. This is intended to create harmony for the state in providing protection to every citizen. Especially for Indonesia as a country that has a diversity of cultures, customs and beliefs.

Law enforcement prioritizes legal certainty, which means prioritizing the principles of legality and positive law that apply in Indonesia.(Irawati, 2023) Institutions that have authority in the field of law enforcement, especially inquiries and inquiries, the police will always be faced with people who commit criminal acts, unlawful acts and crimes. Based on the results of an interview with Mr. Ismanto as an Investigator at the Central Java Special Crime Police, he stated that investigations and investigations are the first step in uncovering a criminal act, to implement the provisions of Article 5 of Law Number 2 of 2002, according to Article 13 of Law Number 2 of 2002. 2002, the main functions of the National Police are as follows : maintaining security and public order, enforcing the law, and providing protection, guidance and service to the community. Criminal law enforcement is part of the (criminal) law enforcement mechanism, so that punishment is often understood as "criminal sanctions". This means that the punishment to be served is planned in several stages, namely : The stage of determining the penalty by the legislator; The stage of imposing criminal penalties by the authorized body; And The stage of criminal implementation by the authorized implementing agency.

Regulations related to hate speech were initially regulated in the Criminal Code, then Law Number 11 of 2008 concerning Information and Electronic Transactions was passed, which regulates criminal acts of hate speech committed via social media.(Manongga et al., 2023) One of the legal principles adopted by Indonesian positive law is *lex specialis derogate legi generali* where in this case the ITE Law has a more specific nature in regulating criminal acts of hate speech via electronic media, so that in implementing punishment law enforcement uses the ITE Law to handle cases of hate speech committed via electronic media. Then in 20 21 the Indonesian National Police issued a Circular Letter with Circular Number: SE/2/11/2021 concerning Ethical Cultural Awareness to Create a Clean, Healthy and Productive Indonesian Digital Space. That in the context of fair law enforcement, the National Police always prioritizes education and persuasive steps so

that it can avoid allegations of criminalization of people who are reported and can guarantee that Indonesia's digital space remains clean, healthy, ethical and productive. (Irawati & Wijaya, 2023)

Through the National Police Chief's Circular (SE) No.SE/2/11/2021 concerning Ethical Cultural Awareness to Create a Clean, Healthy and Productive Indonesian Digital Space, the National Police prioritizes or emphasizes a *restorative justice* approach (restoring justice), resolving cases outside the court through a mediation process, in handling cases of alleged violations of the ITE Law. National Police Chief General Lisyto Sigit Prabowo's policy in the SE is a follow-up to developments in the situation and dynamics of society regarding the implementation of the ITE Law. This is because the implementation of the ITE Law is considered by many to be contradictory to the right to freedom of opinion and expression through digital spaces, which creates injustice for society. It is hoped that with this arrangement, hate speech in society, especially what occurs on social media, can be handled properly.

Websites that use or implement Hate Speech are called *Hate Sites*. Hate speech can take the form of insults, defamation, unpleasant actions, provocation, inciting, spreading fake news. Crimes against hate speech are carried out because these actions can have an impact on discrimination, violence, loss of life and/or social conflict. The law enforcement process cannot be carried out comprehensively, which means that not all forms of criminal acts against perpetrators who have committed crimes can be prosecuted in court. Whether a person cannot be prosecuted is limited by the law itself, for example a complaint is required first so that a criminal act can be processed or what is usually called a complaint offense. As in article 27 of the ITE Law, initially this article did not contain a clause stating that the offense in question was a complaint offense which was then often submitted for judicial review to the Constitutional Court because it was considered that this rule placed restrictions on freedom of opinion, so the ITE Law was amended to several articles in the previous ITE Law, one of which is an important point is article 27 paragraph 3 which in its explanation provides a clear clause stating that criminal acts of insult or defamation are a complaint offense, so that law enforcers cannot carry out the prosecution process before holding a complaint by the party concerned who feels their rights have been violated.

The impact of hate speech is the emergence of words that will influence human behavior, or these words can also influence people, especially human opinions. According to Herawati, the impact of social media users on the use of internet technology is not having a critical attitude and culture towards the problems they will face. For example, hoax news is one type of media on social networks, the ratio is 10 out of 90, which means 10% of internet users commit fraud. and the remaining 90% spontaneously spread information through social networks. Hate speech also has an impact on human rights violations ranging from minor to serious. At first it was just words, on social media or through leaflets, but the effect may have been to mobilize the masses to trigger conflict and bloodshed. Therefore, it is necessary for law enforcement officers and agencies, especially the police, to participate in preventing and carrying out preventive and repressive measures in handling *Hate Speech cases*.

Forms of hate speech can be criminal acts regulated in the Criminal Code (KUHP) and other criminal provisions outside the Criminal Code, which take the form of insults, defamation, blasphemy, provoking, inciting, and spreading fake news. All of these actions have a purpose or can result in acts of discrimination, violence, loss of life and/or social conflict. Based on the results of an interview with Mr. Ismanto as an Investigator at the Central Java Special Crime Police, in cracking down on hate speech, the law enforcers who have the authority to do so are the Police. The police themselves have the authority which is regulated in the Circular Letter of the National Police Chief SE Chief of Police No.SE/2/11/2021 dated.

If an act is found that has the potential to lead to a criminal act of hate speech, every member of the National Police is obliged to take action. Judging from year to year, cases of hate speech on social media are still very high. It is hoped that the National Police Chief's Circular Letter SE Kapolri No.SE/2/11/2021 will be able to overcome the cases that occur. The author appreciates the points about restorative justice in this circular letter. It is stated that criminal law is used as a last resort in enforcing the law and prioritizing restorative justice, especially for parties who decide to take peaceful steps. However, these guidelines exclude cases that are considered to have the potential to divide, sara, radicalism and separatism.

Proving Crime of Hate Speech Through Social Media

Proof is the presentation of legally valid evidence to the judge examining the case in order to provide certainty about the truth of an event stated. According to Subekti, proof is a process of

how evidence is used, presented or defended against certain procedural laws. However, if we look at it from a formal juridical perspective, the law of evidence in Indonesia does not yet accommodate electronic documents as evidence, while in practice in Indonesia through electronic trade transactions electronic business transactions are widely used. By increasing electronic activity, evidence that can be used legally must also include information or electronic documents that must also be able to be used as legally valid evidence. Therefore, in practice what is known and developed is called electronic evidence.

The legal basis for the use of electronic evidence in court became increasingly clear after Law no. 19 of 2016 concerning electronic information and electronic transactions (ITE Law) article 28 paragraphs (1) and (2), ITE Law Article 5 paragraphs (1) and (2) concerning print out (print results) as valid evidence. Article 5 paragraph (3) of the ITE Law states that the validity of electronic evidence is recognized by the judge if an electronic system is used that complies with the provisions stipulated in article 16 paragraph (1) of the ITE Law. Article 43 paragraph (3) of the ITE Law states that "Search and/or seizure of electronic systems related to suspected criminal acts must be carried out with the permission of the Chairman of the local District Court".

According to the ITE Law, article 1 number (1) states, electronic information is: one or a collection of electronic data, including but not limited to writing, sound, images, maps, plans, photos, electronic data interchange (EDI), electronic mail (electronic mail), telegram, perforation that has been processed which has meaning or can be understood by people who are able to understand it. In explaining the position of electronic information evidence based on Article 5 of the ITE Law, the author has identified several criminal law laws and regulations that explain electronic evidence. Including the following:

- a. Law Number 8 of 1997 concerning Company Documents.
- b. Law Number 20 of 2001 concerning Amendments to Laws Number 31 of 1999 concerning Eradication of Corruption Crimes.
- c. Law Number 15 of 2003 concerning Stipulation of Government Regulations in Replacement of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism, becomes law.
- d. Law Number 21 of 2007 concerning Eradication of the Crime of Human Trafficking.
- e. Law Number 35 of 2009 concerning Narcotics.
- f. Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering.
- g. Law Number 9 of 2013 concerning Prevention and Eradication of Terrorism Financing Crimes.
- h. Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction.
- i. Law Number 28 of 2014 concerning Copyright.

According to Paton, evidence can be oral, *documentary* or material. Oral evidence is the words spoken by someone at trial: testimony about an event is oral evidence. Letter including documentary evidence, while material evidence is physical items other than documents. More strictly regarding the regulation of electronic evidence, this has also been regulated through Law no. 19 of 2016 concerning Electronic Information and Transactions (UU ITE), which specifically regulates electronic evidence. In Article 5 of the ITE Law, it is stated explicitly that electronic information and/or documents and/or printed results are valid evidence and have valid legal consequences. In more detail, Article 5 of the ITE Law states that:

- a. Electronic Information and/or Electronic Documents and/or printouts are valid legal evidence.
- b. Electronic Information and/or Electronic Documents and/or printouts as referred to in paragraph (1) are an extension of valid evidence in accordance with the Procedural Law in force in Indonesia.
- c. Electronic Information and/or Electronic Documents are declared valid if the Electronic System is used in accordance with the provisions regulated in this Law.
- d. Provisions regarding Electronic Information and/or Electronic Documents as intended in paragraph (1) do not apply to.

1). Letters which according to the law must be made in writing; (which includes but is not limited to securities, and letters used in the process of enforcing civil, criminal and state administrative procedures) and

2). The letter and its documents according to the law must be made in the form of a notarial deed or a deed made by a deed-making official .

From what has been described above, it can be concluded that in general the form of electronic evidence is in the form of Electronic Information and Electronic Documents, in addition to examining witnesses using *teleconference*.

According to Article 1 paragraph (3) of the ITE Law, what is meant by Electronic Information is: One or a collection of electronic data, including but not limited to writing, sound or images, maps, plans, photos or the like, letters, signs, numbers, access codes, symbols or perforations that have meaning or can be understood by people who are able to understand them that have been obtained so that they have the meaning of the limitations regarding electronic documents as regulated in paragraph (14) above are: "Every electronic information that is created, forwarded, sent, received, or which can be seen, displayed and/or heard via a computer or electronic system, including but not limited to writing, sound or images, maps, plans, photographs or the like, letters, signs, numbers, access codes, symbols or perforations that have meaning or significance or can be understood by people who are able to understand it."

Thus, this circular letter from the Chief of Police only refers to existing criminal acts, both those in the Criminal Code and criminal acts outside the Criminal Code, such as criminal acts in Law Number 19 of 2016 regarding Information and Electronic Transactions. This circular letter does not create new rules or norms in the field of criminal law. The increasing number of crimes committed in the misuse of information technology requires appropriate attention in the law enforcement process, because until now in Indonesia there is no law that specifically regulates hate speech *and* its procedural legal provisions, so the law enforcement process is still ongoing. guided by the provisions of conventional criminal procedural law. Because hate speech can take the form of criminal acts regulated in the Criminal Code (KUHP) and other criminal provisions outside the Criminal Code, which take the form of insults, defamation, defamation, unpleasant acts, provoking, inciting and spreading news. lies and all the actions above have a purpose or can have an impact on acts of discrimination, violence, loss of life and/or social conflict.

With the circular number SE/2/11/2021, it was signed by National Police Chief Listyo Sigit on Friday, February 19 2021. The SE stated that in handling alleged violations of the ITE Law, National Police investigators were asked to follow the following matters:

- a. following developments in the use of digital space which continues to develop with all kinds of problems;
- b. understand the ethical culture that occurs in the digital space by inventorying various problems and impacts that occur in society;
- c. prioritizing preemptive and preventive efforts through virtual police and virtual alerts which aim to monitor, educate, provide warnings and prevent the public from potential cyber criminal acts;
- d. in receiving reports from the public, investigators must be able to clearly differentiate between criticism, input, hoaxes and defamation which can be punished and then determine the steps to be taken;
- e. since receiving the report, the investigator communicates with the parties, especially the victim (not represented) and facilitates and provides the widest possible space for the parties in the dispute to carry out mediation;
- f. carry out a comprehensive study and title of cases handled by involving criminal investigation/dittipidsiber (can be done via zoom meeting) and make collective collegial decisions based on existing facts and data;
- g. investigators hold the principle that criminal law is the last resort in law enforcement (ultimatum remidium) and prioritizes restorative justice in resolving cases;
- h. to the parties and/or victims who will take peaceful steps so that they become part of the investigator's priority for implementing restorative justice, except for cases that have the potential to be divisive, SARA, radicalism and separatism;
- i. victims who still want their case to be brought to court, but if the suspect has realized and apologized, the suspect will not be detained and before the file is submitted to the public prosecutor, space will be given for mediation again;
- j. investigators to coordinate with the prosecutor in its implementation, including providing advice regarding the implementation of mediation at the prosecution level; And
- k. to carry out gradual supervision of every investigative step taken and provide rewards and punishments based on the leadership's assessment on an ongoing basis.

Even though the law in the Criminal Code for the crime of hate speech has not yet been regulated, the Circular Letter from the Chief of Police is sufficient to provide a strong legal basis. Thus, anyone who commits a criminal act of hate *speech* can be subject to a crime as regulated in the National Police Chief's Circular. More clearly regarding electronic evidence in criminal acts of hate speech, electronic evidence is regulated in Law No. 19 of 2016 concerning electronic information and transactions, article 28 paragraphs (1) and (2), article 45 paragraph (2), UU No. 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination. So, criminal acts of hate speech that are proven electronically must comply with the articles stipulated by law as described above.

Conclusion

In handling hate speech crimes, the police enforce the law against hate speech based on the Circular Letter of the Chief of Police Number: SE/2/11/2021 concerning Ethical Cultural Awareness to Create a Clean, Healthy and Productive Indonesian Digital Space. Looking at the Positive Law, Indonesia itself has regulated the crime of hate speech in the Criminal Code and Law no. 11 of 2008 jo. UU no. 19 of 2016 concerning Amendments to Law no. 11 of 2008 concerning Information and Electronic Transactions.

The process of electronic proof of criminal acts is generally regulated in Article 184 of the Criminal Procedure Law (KUHP) Paragraph (1), that valid evidence is witness statements, expert statements, letters, instructions, statements. Meanwhile, Law of the Republic of Indonesia Number 11 of 2008 concerning Information and Electronic Transactions provides a legal basis regarding the legal strength of electronic evidence and the formal and material requirements for electronic evidence to be accepted in court.

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