

Criminal Action of Spreading Fake News

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Abstract

The rise of the crime of spreading false news in the last two years has increased sharply. The data released by the Directorate of Cyber Crime for handling cases of spreading notifications and/or fake news has increased sharply. The crime of spreading false and misleading news is also contained in Article 390 of the Criminal Code, only in that article there is the phrase "broadcasting false news". In this crime, the means used are electronic media. Internet is one of the facilities used through electronic media. Based on Law Number 11 of 2008 Article 28 paragraph (1) concerning Information and Electronic Transactions states that everyone intentionally and without rights spreads false and misleading news that results in consumer losses in electronic transactions. The purpose of writing this journal is to explain and examine accountability in the crime of spreading false and misleading news, to find out the responsibility for the criminal act of spreading false and misleading news based on Law Number 11 of 2008.

Keywords

cyber crime; hoax; fake news;
criminal act



I. Introduction

Freedom of expression and opinion, as well as the right to obtain information through the use and utilization of information and communication technology, is aimed at advancing public welfare and the intellectual life of the nation as well as providing a sense of security, justice, and legal certainty for users and administrators of electronic systems. as mandated in Article 28 F of the 1945 Constitution which states, "Everyone has the right to communicate and obtain information to develop his personal and social environment, and has the right to seek, obtain, possess, store, process, and convey information by using all means available channel types." Seen in the context of social, national, and state life, the rights, and freedoms through the use and use of information technology are carried out by taking into account the restrictions stipulated by law. These restrictions are aimed at ensuring the recognition and respect for the rights and freedoms of others to fulfill fair demands following considerations of morals, religious values, security, and public order in a democratic society.

The development of internet-based information technology is felt to have changed the mindset of humans in communicating because the internet changes to distance and time quickly so that it seems as if the world becomes unlimited because everyone can be connected to communicate with other people from different places and long distances when someone uses a device with internet-based electronics to obtain information. Technological advances marked by the emergence of the internet have become one of the causes of the emergence of social change until there are conflicts in people's lives and the occurrence of divisions within the community itself. The development of internet-based information technology is considered to have become a double-edged sword because, in addition to contributing to the improvement of welfare, progress, and human civilization, it is also an effective means of violating the law.

Along with the development of internet-based information technology, it is easier for people to get information about anything from various social media applications, such as Instagram, Facebook, and WhatsApp. However, it is also easier for irresponsible parties to spread false news (hoaxes). As part of information technology innovation, social media provides a space for someone to express opinions and voice their thoughts that previously might not have been able to be expressed because of the limited space for expressing opinions. Social media has also become a new space of expression for the world community in recent years.

This indicates that it is easier to communicate and exchange information through internet-based information media or online media between fellow internet users in the form of information or news distributed individually or in groups, which can also result in the dissemination of information that cannot be justified or indicated as fake news. Hoax). The case of fake news (hoax) which is familiar among Indonesian people, which involves many divisions that often occur in various places.

The spread of fake news (hoax) in Indonesia is increasingly happening through social media. This is because the nature of social media can open the possibility for any anonymous account to contribute, also everyone, no matter what their background, every social media user has the same opportunity to write. Some irresponsible social media users take advantage of loopholes to use social media to spread slander, incitement, and hoaxes.

Therefore, the Indonesian state through the formation of legislation which is a legal regulation regarding the crime of spreading false news (hoax) in Indonesia has been regulated in the Criminal Code, Law Number 1 of 1946 concerning Criminal Law Regulations, and Law No. Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (hereinafter abbreviated as the ITE Law). The ITE Law became the first regulation in the field of information and communication technology.

The provisions and legal rules for the criminal act of spreading false news (hoax) are emphasized in Article 45 paragraph (1) of the ITE Law, which states, "everyone who intentionally and without rights spreads false and misleading news that results in consumer losses in electronic transactions as referred to in Article 28 paragraph (1) shall be sentenced to a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah)." Article 28 paragraph (1) of the ITE Law states, "everyone intentionally and without rights spreads false and misleading news that results in consumer losses in Electronic Transactions.", and Article 28 paragraph (2) of the ITE Law reads, "Every person intentionally and without rights disseminates information aimed at causing hatred or hostility to certain individuals and/or groups of people based on ethnicity, religion, race and intergroup (SARA). Then, Article 45 paragraph (2) regulates the punishment of perpetrators who violate the article on spreading hoaxes with hate speech, it is stated that, "everyone who fulfills the elements as referred to in Article 28 paragraph (1) or paragraph (2) shall be sentenced to a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1.000.000.000,00 (one billion Rupiah).

II. Research Method

This research was conducted in a normative juridical manner. Normative juridical research is that law is conceptualized as what is written in legislation (law in books) or law is conceptualized as a rule or norm which is a benchmark for human behavior that is considered appropriate.

The normative juridical research used as the type of research in this thesis will be used to analyze the application of criminal provisions in the crime of spreading false news on social media according to the provisions stipulated in the Criminal Code and the ITE Law through a study of the South Jakarta District Court decision Number 628/Pid.Sus/2021/Pn.Jkt.Sel.

The approach in this study uses normative law based on primary and secondary legal materials, namely research that refers to the norms contained in the legislation.

- 1) Primary Legal Material is legal material consisting of national legal rules which are described in a hierarchical manner, namely:
 - a. 1945 Constitution of the Republic of Indonesia.
 - b. Law Number 1 of 1946 concerning the Criminal Code.
 - c. Law Number 48 the Year 2009, namely Judicial Power.
 - d. Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions.
- 2). Secondary Legal Materials, are legal materials obtained from textbooks, journals, articles, published scientific works, expert opinions/legal experts, as well as other documentation that has relevance to the legal issues studied in this thesis regarding the crime of spreading false news. on social media Instagram.
- 3). Tertiary Legal Materials are legal materials that provide meaningful instructions or explanations for primary and secondary legal materials, such as legal dictionaries, encyclopedias, internet searches, and others.

III. Result and Discussion

3.1 The Definition of Fake News (Hoax)

Fake news is news, information, fake news, or lies. While in the KBBI it is called a hoax, which means fake news. Fake news is a negative excess of free speech on the internet. Especially social media and blogs. Fake news and hate speech are growing in Indonesia as an implication of post-reform democracy that upholds freedom of expression. It's just a fact that is found, from freedom of speech, there is excessive freedom. Society then loses the ability to interpret, between which is fact and which is fictitious, which is critical and which is hatred.

Spreading Fake News is a conventional crime. Conventional crime is a crime against life, property, and honor that causes physical and psychological harm, whether carried out in ordinary ways or in new dimensions, that occurs in the country.

In fighting fake news, the government at least has several legal umbrellas that are adequate to punish the perpetrators of fake news creators and spreaders. Article 28 Paragraph (2) of the ITE Law Article XIV and XV of Law Number 1 of 1946 concerning Criminal Law Regulations.

3.2 Aspects and Facilities Used in Disseminating Fake News (Hoax)

All Indonesian people nowadays often share information in various media. In the Big Indonesian Dictionary, media is a means of communication used by the entire community such as newspapers, magazines, television, and so on. Media in communication comes from the word "mediation" because they are present between the viewer and the environment. This term is often used to describe the mass media. Some of the functions of the media, namely, first, it has become a tool to find information for the public. It is from

the media that local news, national, and even foreign news can be received. Second, as an agenda. Through the media, the human work agenda can also be determined. Third, the media as a liaison function.

It is undeniable that the media has a function to connect humans. Not only in the sense of providing news information but also other information in the newspaper will contain about people in other areas. Fourth, the media is a means of education because not only a few media provide many messages about education. For example, how to maintain health, how to deal with floods and others. Fifth, as a function of persuasion. Media has the power to persuade and seduce listeners, viewers, or readers. For example, campaigns to make people pay taxes, or to save in the bank. Sixth, the media as entertainers, the media is very thick on broadcast media, with many soap operas, music, and sports events by watching on television or listening to the radio.

To recognize fake news, the public needs to be continuously educated to be able to consciously identify false news or fake news which is still widespread in cyberspace with the following characteristics:

- a) Coming from untrusted sites. There are a few things to know about untrustworthy sites, namely:
- b) There is no date of occurrence.
- c) The place where it happened is also unclear.
- d) Emphasizing SARA issues/conditions with excessive SARA issues.
- e) Most of the content is strange and straightforwardly also strongly corners certain parties. When you check other writings, it is also the same, it is not of good quality and is more degrading to certain parties excessively.
- f) The news is not balanced. Delivering a one-sided fact and consideration.
- g) The storyline and content are illogical, rare, and weird.
- h) The language and grammar used are somewhat ambiguous and unrelated to each other.
- i) Using highly emotional and provocative language.
- j) Suggest you click, share, and like a content
- k) The distribution (sharing) is done by social media accounts

3.3 Legal Threats for Spreading Hoax News

Hoax itself has a definition, namely a piece of news or statement that has invalid information or fake news that has no certainty that is deliberately disseminated to make things excited and cause fear. However, some hoaxes are deliberately created to make the way of thinking about something misguided because they are deceived by hoax news or opinions. If previously this hoax was widely disseminated via SMS or email, then hoaxes are now circulating more on social media such as Instagram, Facebook, Twitter, Path, WhatsApp, and certain blogs.

The spread of hoax news or false news violates Article 28 paragraph 1 of Law Number 11 of 2008 concerning ITE which reads:

"Everyone intentionally and without rights spreads false and misleading news that results in consumer losses in electronic transactions."

Article 28 paragraph (1) fulfills the following elements:

- a. Everyone here is shown to be the perpetrator of hoaxes spreading fake news
- b. Mistakes: intentionally, intentionally which can be interpreted as a form of intentional and without rights to spread false and misleading news, proven to have committed to carrying out the offenses threatened in the article.

- c. Against the law: without rights here without rights is defined as against the law, namely without one's own rights (*Zonder Eigen Recht*), contrary to the law in general (*in strijd met het recht in het algemeen*), contrary to one's personal rights (*in strijd met een anders. subjectieve recht*), contrary to objective law (*tegen het objectieve recht*), in spreading false news or Hoax is an act that is against the law and against personal rights
- d. Acts: spreading someone because they have spread the news that is not in accordance with the facts.
- e. Object: fake news is the same as being fake, meaning that something that is broadcast contains things that are not true. There is an equation with being misleading, namely the content of what is broadcast contains things that are not true and misleading to tell empty news, but also talks incorrectly about an event.
- f. Constitutive consequences: resulting in consumer losses in electronic transactions. What results in consumer losses in electronic transactions are all forms of loss, not only losses that can be valued in money, but all forms of losses. For example, the emergence of feelings of anxiety, shame, distress, and loss of hope of getting pleasure or some benefit. This last element requires that false and misleading news must result in a consumer loss.

The criminal sanctions in Article 28 paragraph (1) are contained in Article 45 paragraph (1), namely maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1.000.000.000,00 (one billion rupiah). In criminal law in Indonesia, perpetrators of spreading hoax news are subject to sanctions in article 45 paragraph (2) which reads:

"Every person who intentionally and without rights spreads false and misleading news that results in consumer losses in Electronic Transactions as referred to in Article 28 paragraph (1) shall be sentenced to a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1,000,000. .000,00 (one billion rupiah)".

Article 45 paragraph (2) fulfills the following elements:

- a. Everyone means everyone here is shown to the perpetrator.
- b. Deliberately and without rights spreading false and misleading news Intentionally, which can be interpreted as a form of intentional and without rights to spread false and misleading news, has been proven to have committed to carrying out the offenses threatened in the article.
- c. Resulting in consumer losses in electronic transactions. What results in consumer losses in electronic transactions are all forms of loss, not only losses that can be valued in money, but all forms of losses. For example, the emergence of feelings of anxiety, shame, distress, and loss of hope to get pleasure or some benefits. This last element requires that false and misleading news must result in a consumer loss. This means that no criminal prosecution can be carried out if there is no consumer loss in electronic transactions
- d. By using electronic media, people who carry out legal actions are carried out using computers, computer networks, and or other electronic media.
- e. By abusing the actions of Article 28 paragraph (1), the sentence is 6 (six) years / a fine of Rp. 1,000,000,000.00.

IV. Conclusion

The spread of hoax news causes a lot of consumer losses in electronic transactions. What causes consumer losses in electronic transactions are all forms of loss, not only losses that can be valued in money, but all forms of losses. For example, the emergence of

feelings of anxiety, shame, distress, and loss of hope of getting pleasure or some benefit. This last element requires that false and misleading news must result in a consumer loss. This means that there can be no punishment if there is no consumer loss in the electronic transaction. And the form of criminal responsibility in the hoax case is to apply, namely the criminal sanctions of Article 28 paragraph (1) contained in Article 45 paragraph (1), namely maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1.000.000.000,00 (one billion rupiah).

It is better to provide the public with knowledge of healthy internet with media literacy so that they can recognize the characteristics of hoax news, and news recipients can access, analyze, and evaluate, in taking the meaning of news, because the community is responsible for their own actions, especially in terms of accountability. the spread of false and misleading news (hoax).

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