

Criminal Law Enforcement for Perpetrators of Hate Speech on Social Media

Emiel Salim Siregar¹, Dicky Abdillah², Mirza Syapiq³, Apriola Dwi Indraswary⁴,
M. Irvansyah⁵

^{1,2,3,4,5}Universitas Asahan, Kisaran, Indonesia

Emielsalimsrg1988@gmail.com

Abstract

Social media is part of the needs of the Indonesian people that cannot be separated again in line with the times. All public behavior, including social media, is regulated by law. Many people abuse social media to use hate speech in cyberspace, without realizing that their actions are illegal. The purpose of this study is to determine criminal liability for hate speech actors on social media. This study uses empirical legal research methods in which the law looks at social phenomena in the community to find solutions to existing legal problems then linked to laws and regulations. The results of the study found that many Indonesian people use social media to use hate speech. It happens because they do not understand the existing law. However, mistakes and omissions are individuals' responsibility as legal subjects. Suggestions that can be submitted are reforming the ITE law, socialization to the public by law enforcement related to education and law enforcement and the community itself should be smarter in using social media.

Keywords

social media; hate speech;
criminal liability



I. Introduction

The state of Indonesia is a state of law, namely that all behavior is regulated by law. The law regulates human actions in the real world and the virtual world such as internet networks. In the virtual world, people have done the exact same thing as what they do in the real world. Often in the virtual world, namely internet networks, people use social media as a means to conduct social relations with other communities (Lidén, 2020). This shows that social media on internet networks has become a necessity for the community in helping them to live socially (Varela et al., 2020). Soekanto in Ismail (2019) social change refers to changes in social aspects, community governance, and group behavior patterns. One example of social change is the increasing number of formal community institutions. For example various organizations ranging from government organizations, to social gathering organizations, are now becoming more formal, with a more rational pattern of relations. This is different from social organizations in the past, which are more informal by using emotional relationships.

Social media is an online information media that is a suggestion of human relations that is not limited by space and time, where users can share via internet media, join, participate, and create content in the form of YouTube, social media, blogs, and so on (Bright et al., 2022). The internet or social networks as well as social media and information technology have become an inseparable unit that makes new things emerge in life as it is today. In the industrial era 4.0 and web 2.0 technology, as it is now, most Indonesian people use social media as a necessity. Starting from small children to adults, most of them have used social media. Social media has affected the lifestyle of the

community. Moreover, it is added to activities such as registering for school, making electronic transaction payments, ordering taxis online, and many others which can now be accessed using social media without bothering to come to the location (Jacobs & Henry, 1996).

The presence of such sophisticated information technology has given a new nuance by touching almost all aspects of life. Technology has made it easy for people to carry out daily activities to meet their needs, as well as facilitate interaction between human beings wherever they are. This certainly has a relatively large positive impact on improving human welfare (Erwin Asmadi et al., 2022). However, technological developments do not only have a positive impact, because the technology has also been used to commit crimes (Disantara et al., 2022). Technological developments have made crime easier to carry out so that it is increasingly common, where the modus operandi is also increasingly sophisticated, making it increasingly difficult to control. One of the crimes that often occur in the community by utilizing or abusing information technology is hate speech through social media. without any benefits, but in essence that such behavior has violated the honor of another person or group as a human being whose dignity is protected by law (Goodall, 2013).

Technology in addition to having a positive impact also has a negative impact. In fact, according to data from the Directorate of Special Criminal Investigation, Polda Metro Jaya handled 1,627 criminal cases throughout 2016. Of the 1,627 cases, cybercrime was the case with the highest number, namely 1,207 cases. In general, what is meant by computer crime or crime in the cyber world (cybercrime) is "Attempts to enter and or use computer facilities or computer networks without permission and against the law with or without causing changes and or damage to the computer facilities entered or used. The term cyber crime currently refers to an act of crime related to cyberspace (cyberspace) and crimes that use computers. Barda Nawawi Arief pointed to the (systemic) framework of the Draft Convention on Cyber Crime from the Council of Europe (Draft No. 25, December 2000). He equates the terms between the two by giving the definition of cybercrime as "crime related to technology, computers and the internet" or simply means crimes related to technology, computers, and the internet (Supanto, 2016).

One thing that must be properly understood, is that the current criminal law is what Jan Remmelink conveys in every offense, what functions and is considered a forming element other than human behavior as well as doing and not doing, a person's inner attitude, no matter how immoral or despicable to society, is not important. Currently, criminal law is still focused on action (daadstrafrecht). In this case, it is not only the qualifications of individuals who are socially dangerous that become the main focus but also the actions or actions they carry out. Several cases related to crime, social conflicts, conflicts, and divisions in society are often based on hatred, bias, or prejudice against certain (different) groups which are generally considered threats. The term hate crimes originally appeared in the United States legal system. This term later also developed in Europe and England. Where initially, in the legal system in force in these countries, the term hate crimes refer to acts that qualify as racially aggravated offenses (Azhar & Soponyono, 2020).

Before the era of social media, hate speech could only be found in leaflets, writings in books, anonymous letters, and the like. Now, we can get hate speech on our smartphones, even though we don't expect it. Those words are included in the group that we follow without being able to refuse. In a general sense, hate speech is defined as words, behaviors, and writings carried out by individuals or groups in the form of provocation, incitement, or insults to other individuals or groups. Hate speech usually touches many

aspects, ranging from race, color, ethnicity, gender, disability, sexual orientation, and citizenship, to religion and others. One of the hate speech cases that has received a lot of attention is hate speech toward public officials, religious leaders, and community leaders. Hate speech on social media aimed at public officials, religious leaders, and community leaders is actually not a new thing. Hate speech on social media has emerged since social media has become part of the modern lifestyle. However, hate speech occurred massively in line with the holding of the 2009 to 2014 presidential elections.

Hate speech does not only occur in Indonesia. In India, for example, Subramanian Swamy, author of the book “terrorism in India” (2006) has had problems with the laws of his country. Prime Minister Narendra Modi, who is in power, considers Swamy's writings to contain elements of hate speech whose contents can clash between Muslims and Hindus in India. According to Indian law, hate speech is any speech, attitude or behavior, writing or thing displayed, that can encourage violence or hurt religious feelings or promote hostility between different groups on the basis of religion, race, place of birth, place of residence or language. . Until now the trial process is still ongoing in the Supreme Court of India. Another case happened to an Australian woman (Magi) who was convicted and deported from Abu Dhabi, United Emirates, without having time to defend herself. He was accused of writing something bad on social media about the local people's parking habits by uploading photos. The problem is that he uses the word "King Nobness" which refers to the rich in Arabia which is considered a cynicism and a sentence that is considered bad there. Eventually, the owner of the car complained about Magi to the police, and then he was arrested and tried in absentia, sentenced to prison, then deported (Bright et al., 2021) .

With social media, it is easier for people to express opinions, opinions, ideas, or ideas. However, this freedom will become a potential control in conflicts and problems if there is no one from someone so as not to overuse their freedom in social networks. Of course, behind the many uses of social media, there are also many negative impacts. Among the negative impacts that are definitely visible are that someone will become lazy because they are addicted to social media, he will continue to hold gadgets and play on social media so he doesn't care about his real life. Next, people will be more concerned with themselves because they spend more time surfing the internet and not socializing with other people. Another negative impact that is also very detrimental is cybercrime or often referred to as Cybercrime.

Cybercrime is an act where someone misuses digital technology or commits a crime not directly but through electronic intermediaries such as cellphones, tablets, computers, and so on and is used on internet technology digitally and with the intent to violate the law (Azhar & Sopyono, 2020).

II. Research Method

This research is a qualitative research method used in the writing of this scientific paper is normative juridical, namely by using a book reference approach and legislation. The normative juridical research method is legal research from an internal perspective with the object of research being legal norms.

The source of this scientific research uses data obtained by examining primary legal materials, namely statutory regulations and even secondary law in the form of doctrines or theories obtained from legal literature and scientific research. Furthermore, it will be related to the issues to be discussed, namely the enforcement of criminal law for perpetrators of hate speech on social media.

III. Result and Discussion

Indonesia is a state of law. Every society's behavior is regulated by law. Acts that violate the law must be accounted for by each individual in living life as a legal society. If a crime occurs, then criminal liability is obligatory by the person who has committed the obligatory criminal responsibility for every human being if a crime is committed. Crime is committed. Criminal liability is a form of determining whether someone who has committed a crime can be convicted or not, in this case the person is responsible for his actions before the law. Crimes in cyberspace or social media include online fraud, the spread of provocative content, pornographic content that is often done by the public. Meanwhile, the elements of violating the law on social media, especially hate speech, include insults, defamation, blasphemy, unpleasant acts of provoking, inciting and spreading false news as stated in the circular letter of the National Police Chief regarding the handling of hate speech. In this day and age, freedom of expression through social media has become a common thing for Indonesians, and has even become a necessity for everyone. The existence of the internet and social media is indeed quite easy for humans to interact with each other, but it can cause a legal problem if people violate the boundaries that have been regulated by the law that has been set. Through social media people can use it for criminal matters. Freedom of opinion does not mean that people can freely express all their opinions without taking into account the good and bad or the advantages and disadvantages for others. Of course, there are limits that the public must know and must obey if they do not want to get caught in legal problems in using social media. This is to protect the rights of others to use social media.

Therefore, there are many impacts caused by social media, both positive and negative. People use social media for various things including shopping, doing business, communication and other things. Not a few people misuse social media for evil deeds that can cause harm to others such as being used to make hate speech, spread fake news, online fraud, create pornographic content to be displayed and much more on social media so that they are easily caught in cases in the Act. Information and Electronic Transactions through social media. People who don't think long if their actions can be given sanctions that have been stipulated in the law if what is done on social media violates boundaries and harms others, even though the initial intention was only for fun or playing games, even small things like that will cause problems. law for him. Therefore, the public must be smart in addressing legal issues related to the use of social media on internet networks. The Crime of Hate Speech Hate speech is actually a crime that has existed for a long time, but currently its development is growing rapidly and worryingly since the existence of social media that can be freely accessed by the general public.

There are many social media that can be used to spread hate speech, such as whatsapp, youtube, twitter, instagram, facebook and so on. The wide access to various social media has made hate speech easy to do. Hate speech has become increasingly common in line with the development of information technology. With the existence of technology, it is easier for hate speech crimes to occur, because the information becomes very easy to spread in a matter of seconds. The spread of hate is not limited to certain groups, but can be accessed by everyone who is open to information technology. Hate speech is a fertile place for the development of hate speech crimes, which are called black campaigns. This is done by spreading negative content about the behavior or nature of political opponents so that it is considered as defamation, and even considered as an attempt to assassinate the political character of other candidates. Black campaigns are not only carried out by the candidates themselves, but may also be carried out by their

supporters, because public opinion certainly greatly influences a person's electability level. Law Enforcement against the Crime of Hate Speech Police officers understand their duties as law enforcers who have an important role in handling hate speech. Therefore, the police are always ready to receive any reports or complaints from the public at any predetermined working hours and immediately follow up on any reports received. Meaning a. if the public comes to make a complaint during the working hours of the complaint service, the police will immediately respond or receive a report and follow up on the report in question. The police can only act in handling hate speech cases if there is a report from the public on the case they have experienced.

This means that without a report from the community who is a victim or has legal standing as a reporter, a case investigation cannot be carried out, because the case of spreading hate speech is a complaint offense. Therefore, it is hoped that the public will immediately make a report if there are other parties who have spread bad information about themselves using social media. There is a lot of evidence used in proving the crime of hate speech that was obtained and examined in the investigation process, namely print screenshots of hate speech, evidence of electronic devices used to post (spread) hate speech such as cellphones and notebooks. Other evidence that is no less important is the statements of witnesses and victims, as well as statements from expert witnesses who are considered to have the ability to analyze the authenticity of the electronic evidence obtained. Several laws that regulate the spread of hate speech contain several juridical problems, namely Article 156 paragraph (1) of the Criminal Code Whoever publicly expresses hostility, hatred or belittling (minacting) against one or several groups of the Indonesian people, is threatened with a maximum imprisonment of four (four) years. 4) years or a maximum fine of four thousand five hundred rupiah (Febriansyah & Purwinarto, 2020). In this article, there is a jurisdictional limitation; there are no provisions on the subject and criminal liability (PJP) of corporations; Law No. 1/PNPS/1965 concerning Blasphemy of Religion Article 1 Everyone is prohibited from intentionally telling, advocating or seeking public support, to interpret a religion in Indonesia or to carry out religious activities that resemble religious activities from other countries. that religion; which interpretations and activities deviate from the main points of the religious teachings. (There are no offense qualifications; Does not contain legal subjects and PJP other than individuals; Only recognizes a single criminal) (Nurdin, 2017); Law Number 40 of 1999 concerning the Press Article 18 paragraph (1) Any person who unlawfully intentionally takes an action that results in obstructing or hindering the implementation of the provisions of Article 4 paragraph (2) and paragraph (3) shall be punished with imprisonment for a maximum of 2 (two) years. two) years or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah). This article does not include the determination of the qualifications for a Crime or Violation offense; no additional penalties for corporations that violate); Law Number 40 of 2008 concerning the Elimination of Discrimination and Race (There are no qualifications for offenses; fines for high corporations are not balanced with changes/special rules regarding "replacement penalties" for fines (which according to Article 30 of the Criminal Code, pid. The substitute is only imprisonment for a maximum of 6 bln.); Law Number 19 of 2016 concerning Information and Electronic Transactions (no qualification of offense; Penalties are quite high: max 12 M (for Corporations it can be 20 M), but there are no changes / special rules regarding "substitute criminal" fines (which according to Article 30 of the Criminal Code, the replacement is only imprisonment for a maximum of 6 months); the rules for the Corporate PJP only exist in "Explanation of Article 52 paragraph 4" ; There are no special provisions for criminal penalties to substitute fines for corporations; The formulation of Article 52 is very reckless & unclear).

Criminal law policy cannot be separated from the idea of developing a national legal system based on Pancasila as the life value aspired to by the Indonesian nation. This implies that the renewal of the Criminal Code should also be motivated by sources oriented to the basic idea of Pancasila which contains the concept of God, Humanity, Nationality, Democracy and Social Justice values. In the report of the National Criminal Law Reform symposium held in Semarang that the National Criminal Law Reform is essentially an effort that directly concerns the dignity of the Indonesian nation and state and is the main means for the creation of national goals (Arief, 2008).

For this reason, in realizing a national criminal law reform, especially in the Main Criminal Code, it is necessary to have a concept / idea in formulating a new Draft Criminal Code that can reach crimes, especially crimes related to hate speech in future social media, especially those contained in the concept of hate speech. Indonesian Criminal Code. Articles in the Draft Criminal Code related to the crime of spreading hate speech: Article 209, Insulting the State Ideology of Pancasila; - Article 238 (1), Public humiliation of the president and vice president; - Article 239; broadcast, show, or attaching writings or pictures so that they are visible to the public, or playing recordings so that they can be heard by the public, or distributing them by means of information technology, which contains insults to the President or Vice President with the intention that the contents of the insults are known or more publicly known- Article 244; publicly insulting the heads of friendly countries who are carrying out state duties in the Republic of Indonesia. - Article 245; Everyone who publicly insults a representative from a friendly country serving in the Republic of Indonesia. Enforcement of criminal law for perpetrators of hate speech on social media. Starting with a report from the public.

The police receive reports of complaints from the public for the crime of spreading hate speech, where in the reporting process the complainant provides information about the crime that has occurred and the party suspected of being the perpetrator. various complaints or reports from the public will be received and processed properly. The readiness of the police to handle each report is not in doubt. the police are always ready to receive complaints from the public during the working hours that have been set. to follow up on the report in question. Dealing with every crime including hate speech is of course the task of the police, so all resources are prepared to carry out handling which begins with receiving and studying reports from the public. Reports received from the community must first be analyzed in more depth so that further actions can be planned properly. Follow-up is done by studying the report accompanied by an analysis of the initial evidence that was included by the complainant. In this case, the victim usually submits evidence accompanying the report submitted Preliminary evidence provided by the reporter usually becomes the focus of attention before the investigative action is carried out. The main observation is aimed at examining the authenticity of the evidence in question. Expert witness statements play an important role in the process of investigating hate speech cases, because expert witnesses are considered to be able to analyze tools -evidence according to the field and level of expertise it has. digital forensic experts are needed to ensure that evidence (electronic documents) really contains hateful meaning. The law does not look at a person's social strata in determining justice.

A general rule is part of the principles adopted by law. Social strata do not distinguish between criminal responsibility for someone if they commit a crime of hate speech on social media (Drury et al., 2022). The criminal law policy regarding the prevention of the crime of spreading hate speech in Indonesia itself has been regulated in such a way with the law on information and electronic transactions. 19 article 28 paragraph (2) of the information and electronic law reads "everyone intentionally and without rights

disseminates information aimed at causing feelings of hatred or hostility to individuals and certain community groups based on ethnicity, religion, race and inter-group (SARA). ". It is clear that this article is a legal certainty that contains hate speech. Article 28 contains the element of everyone, which means that anyone who commits a crime of hate speech must be held accountable for his actions before the law. unintentionally, must be held responsible for the act with the applicable law (Asmadi, 2021).

The problems that arise in the community due to maximum education and socialization about social media which they consider to be normal, it turns out that there is a legal snare that regulates their actions so as to give the impact of weak protection. law against the community, while everyone is obliged to be responsible for their actions before the law if they violate the law, whether it is done on the basis of negligence or on the basis of intentional. This is a serious problem for the nation and state because of the crime Hate speech can be done by anyone in cyberspace including children who are not old enough. The law has a coercive nature although this theory is still much debated but as a state of law, Indonesia uses law to regulate society towards a better direction as a means of changing the situation. social law is a suggestion in improving public order both in the real world and in the virtual world (internet).

IV. Conclusion

Based on the results of the research obtained, it can be concluded that the Criminal Law Policy in Regulating and Combating Hate Speech on social media, including those already in the Criminal Code as the parent of material criminal legislation and already in the law outside the Criminal Code. These laws include Law Number 1 of 1946; Law Number 1/PNPS 1965; Law Number 40 of 1999; Law Number 32 of 2002; Law Number 40 of 2008; Law No. 19/2016. This law has many juridical weaknesses that result in the criminal system being unable to work properly and optimally. The Criminal Code requires regulating the spread of hate speech by regulating it as a violation or crime, but laws outside the Criminal Code do not include the qualifications for offenses. The six laws have the same juridical weaknesses/problems. The juridical weakness related to corporate crime in the field of hate speech is not contained in criminal acts regulated by existing laws, but the weakness lies in the criminal liability (PJP) of the corporation, and in the penalties imposed on corporations that commit corporate crimes in the field of speech. hatred. For example, the problem of corporate criminal liability (PJP) in the field of hate speech, among others, is in the form of no provisions on when the corporation can be accounted for, while in terms of criminal sanctions if the fine is not paid, there is no regulated problem of what punishment can be substituted for the fine that can be given to replace it.

References

- Asmadi, E. (2021). Pencemaran Nama Baik di Media Sosial, Delik Biasa atau Aduan? DELEGA LATA: Jurnal Ilmu Hukum, 6(4), 16–32. <http://jurnal.umsu.ac.id/index.php/delegalata>
- Azhar, A. F., & Soponyono, E. (2020). Kebijakan Hukum Pidana dalam Pengaturan dan Penanggulangan Ujaran Kebencian (Hate Speech) di Media Sosial. Jurnal Pembangunan Hukum Indonesia, 2(2), 275–290. <https://doi.org/10.14710/jphi.v2i2.275-290>
- Bright, D., Brewer, R., & Morselli, C. (2021). Using social network analysis to study crime: Navigating the challenges of criminal justice records. Social Networks,

- 66(October 2020), 50–64. <https://doi.org/10.1016/j.socnet.2021.01.006>
- Bright, D., Brewer, R., & Morselli, C. (2022). Reprint of: Using social network analysis to study crime: Navigating the challenges of criminal justice records. *Social Networks*, 69(January), 235–250. <https://doi.org/10.1016/j.socnet.2022.01.008>
- Disantara, F. P., Chansrakao, R., & Jazuli, M. (2022). The Enigma of Ethics : Code of Ethics Enforcement on Covid-19 Health Protocol in the Mechanism of Regional Head General Election in Indonesia. 7, 1–21.
- Drury, B., Drury, S. M., Rahman, M. A., & Ullah, I. (2022). A social network of crime: A review of the use of social networks for crime and the detection of crime. *Online Social Networks and Media*, 30(May), 100211. <https://doi.org/10.1016/j.osnem.2022.100211>
- Erwin Asmadi, Adi Selamat, P., Asdhie Kodiyat, B., Koto, I., & Asmadi, E. (2022). Efektivitas Pemanfaatan Teknologi Informasi Dalam Persidangan Perkara Pidana Selama Pandemi Covid-19. *DE LEGA LATA: Jurnal Ilmu Hukum*, 6(2), 465–475. <https://doi.org/10.30596/delegalata.v6i2.5057>
- Febriansyah, F. I., & Purwinarto, H. S. (2020). Pertanggungjawaban Pidana Bagi Pelaku Ujaran Kebencian di Media Sosial. *Jurnal Penelitian Hukum De Jure*, 20(2), 177. <https://doi.org/10.30641/dejure.2020.v20.177-188>
- Goodall, K. (2013). Conceptualising ‘racism’ in criminal law. *Legal Studies*, 33(2), 215–238. <https://doi.org/10.1111/j.1748-121X.2012.00244.x>
- Ismail, et al. (2019). The Community Perceptions of Poverty in Gampong Ayon, Seulimeum Sub-district, Aceh Besar Regency (Research Results on March 2017). *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)*. P. 270-275.
- Jacobs, J. B., & Henry, J. S. (1996). The social construction of a hate crime epidemic. *Journal of Criminal Law and Criminology*, 86(2), 366. <https://doi.org/10.2307/1144030>
- Lidén, M. (2020). Emotions and Cognition in International Criminal Justice: An Exploration from Cognitive Biases to Emotional Intelligence. *Forensic Science International: Mind and Law*, 1(September), 1–10. <https://doi.org/10.1016/j.fsimpl.2020.100037>
- Supanto. (2016). Perkembangan Kejahatan Teknologi Informasi (Cyber Crime) Dan Antisipasinya Dengan Penal Policy. *Yustisia Jurnal Hukum*, 5(1), 52–70.
- Varela, N., Valega, J. A. G., & Lezama, O. B. P. (2020). Analysis of behavior of automatic learning algorithms to identify criminal messages. *Procedia Computer Science*, 175, 114–119. <https://doi.org/10.1016/j.procs.2020.07.019>