

Hate Speech Law Enforcement in Indonesia

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Abstract

Information technology that is currently developing will make it easier for people to know or communicate remotely in various parts of the earth instantly in a matter of seconds though. The facilities used started from radio, television, telephone set, mobile phone, telegram, facsimile, and the internet. The ease of using the internet besides having a positive impact, but in the field of law, especially criminal law, also has a negative influence, namely causing a paradigm shift in the study of crime, especially hate speech crimes. The handling of hate speech crimes is based on the Criminal Code, Law No. 11 of 2008, Law No. 40 of 2008, Law No. 7 of and Regulation of the Chief of the National Police of the Republic of Indonesia No. 8 of 2013. In terms of evidence, revealing whether someone's actions can be categorized as hate speech is based on the evidence regulated in the Criminal Procedure Code. The ITE Law itself has actually formulated what can be used as evidence in examining hate speech cases on social media, but there is still confusion.

Keywords

hate speech; law; ITE regulation



I. Introduction

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. It certainly has a relatively enormous positive impact on improving human welfare. However, technological developments do not only have a positive influence because the technology has also been used to commit crimes. Technological developments have made it easier to commit crimes, so they are becoming more and more common, where the modus operandi is also increasingly sophisticated, making it more difficult to control. The pattern of identity that occurs in cyber media has changed from anonymity to become more personal. Users are encouraged to publish personal content such as personal data from birthdate, gender, belief, the inclusion of a photo of themselves, and so on to provide space to interact on the network. Netizens treat accounts on social media as their private space. The pattern of information distribution no longer takes place passively as has happened in traditional media such as newspapers, television, and radio. Society had been seen as consumers, and the media as producers and distributors of information. In the cyber world, users play an active role in the production, distribution, and discussion like mass media (Nasrullah, 2014). Communication is the process of delivering messages by someone to other people to tell, change attitudes, opinions or behavior either directly orally or indirectly through the media. In this communication requires a reciprocal relationship between the delivery of messages and recipients namely communicators and communicants (Hasbullah, et al: 2018).

The freedom of information creation and distribution phenomenon in social media causes free control of information content that is spread among netizens. It triggers the emergence of fake news or often referred to as hoaxes, and information containing hate speech. Data collected by the Ministry of Communications and Information Technology states that there are as many as 800,000 websites in Indonesia that are indicated as spreading fake news and hate speech.

With information technology which is currently developing, it will make it easier for people to know or communicate remotely in various parts of the earth instantly in a matter of seconds. The facilities that can be used starting from radio, television, telephone, mobile phone, telegram, facsimile, and finally the internet. The ease of using the internet as well as having a positive impact, but in the field of law, especially criminal law, also has a negative consequence, namely causing a paradigm shift in the study of crime, especially crimes related to technology. (Raharjo, 2002).

The spread of hate speech by utilizing information technology is usually done by spreading negative information about a person or group of people, such as certain ethnic groups via social media. The distribution of such information or electronic documents is increasingly happening, and the spread is also wider, where the types and modes of crime continue to grow. develop. On the other hand, the success rate of revealing the perpetrators of the spread of speech through social media is still the lowest. It is certainly very worrying for the community at large. The losses incurred as a result of this crime are not small because they could damage a person's reputation and personal integrity and create hostility and conflict in the form of SARA (Racial Issues). The crimes committed are also increasingly sophisticated and complicated, thus causing law enforcement to be harder it is to do.

In a legal sense, hate speech is a word, behavior, writing, or performance that is prohibited because it can trigger acts of violence and prejudice either on the part of the perpetrator of the statement or the victim of the action. The articles that regulate hate speech actions against someone are all contained in Book I of the Criminal Code Chapter XVI, especially Article 310, Article 311, Article 315, Article 317, and Article 318 of the Criminal Code. Meanwhile, insults or defamation of a government, organization or group are regulated in particular articles, which are: 1) Insults against foreign heads of state (Article 142 and Article 143 of the Criminal Code); 2). Insult to a group of people/groups/organizations (article 156 and article 157 of the Criminal Code); Article 143 of the Criminal Code); 3). Insulting religious officials (Article 177 of the Criminal Code); 4). Contempt for the existing power in Indonesia (Pasa; 207 and Article 208 of the Criminal Code) (Sri Mawarti, n.d.).

Communication ethics in social media in Islam, there are several rules. First, you have to be persistent. Second, don't spit on your privacy too vulgarly. Third, make friends on social media only with people you know. Fourth, don't bring up information that is new to SARA (racial issues), pornography, and hate speech.

Hate speech or hate speech in cyberspace has been regulated in Article 27 of Law Number 11 of 2008 concerning Electronic Information and Transactions regarding the prohibition of intentionally and without rights distributing and/or transmitting and/or making accessible Electronic Information and/or Electronic Documents. to 4 charges or substances, namely: [6]

- 1) charge that violates decency
- 2) gambling payload
- 3) charge of insults and/or defamation and
- 4) extortion and/or threats

The ease of using the internet and all supporting applications make it very easy for users to express their feelings, whether they are happy, sad, or even hate themselves. It means that anyone can be the perpetrator of hate speech. It is necessary to have rules that regulate all their behavior to control individual behavior so as not to cross the line which can lead to crime. In this case, criminal law or criminal justice has a crucial role above all else. Criminal law is several regulations that are part of positive law containing prohibitions and requirements determined by the state or other powers authorized to determine criminal regulations. The prohibition or necessity is accompanied by criminal threats and if this is violated, the state has the right to make demands, impose penalties, and carry out crimes.

Criminal justice is essentially a system of power to enforce criminal law or a system of judicial power in the field of criminal law which is realized or implemented in 4 (four) subsystems, namely: investigative power (by the investigating agency/institution); Prosecution power (by the public prosecutor's agency/institution); The power to try and impose a crime (by the judiciary); and the power of criminal execution (by the implementing agency/execution apparatus). The four stages/subsystems constitute an integral criminal law enforcement system known as the integrated criminal justice system. The integrated system is laid on a legal basis for each of them (Harahap, 2010).

From this general explanation, it can be seen that hate speech crimes can be said anywhere without us realizing it. Criticism of certain things if it is not maintained in such a way it will be brought into the realm of hate speech or hate speech. From this phenomenon, the article tries to examine how criminal law views the crime of hate speech or hate speech and will also discuss how the system of proof in the crime of hate speech or hate speech.

II. Research Method

The research is field research, and qualitative research, namely an examination conducted based on an in-depth analysis of the attitudes of the community from various aspects, and the value of information regarding a finding is not dependent on a certain amount but is based on the fact that these symptoms exist that is seen from various studies seen in depth (Supriyanto et al., 2021). While the approach in this study is a normative juridical approach. The normative juridical approach refers to the legal norms contained in the laws and regulations and religious regulations as well as the legal norms that exist in a society that discuss the laws and regulations related to the issues to be discussed, namely the crime of hate speech. (Zainudin Ali, 2014).

III. Result and Discussion

3.1 Positive Legal Perspective on the Process of Handling Hate Speech

The police have a role in the judicial process, which plays a function from the investigation process to the detention procedures. The police have the authority to determine who should be investigated, arrested, and detained. The public prosecutor can also only carry out his functions if the submission of the results of the examination from the investigator has been completed. The public prosecutor can make an indictment from the results of the examination from the investigator based on the minutes of the investigation examination. Likewise, demands can be adapted to the minutes of the Police investigators. After that, there is a prosecution process, namely the action of the public prosecutor to delegate the case to the competent District Court, in terms of and according

to the method stipulated in the Criminal Procedure Code with a request that it be examined and decided by a judge in a court session.

Hate speech is generally described as an act of communication carried out by an individual or group in the form of provocation, incitement, or insult to another individual or group in terms of various aspects such as race, skin color, gender, disability, sexual orientation, nationality, religion, and others. When viewed from a legal point of view, hate speech is defined as words, behaviors, writings, or performances that are prohibited because they can trigger acts of social conflict, violence, and prejudice either on the part of the perpetrator of the statement or the victim of the action. (Marpaung, 2010).

In the context of handling criminal cases related to hate speech, it is by the laws and regulations governing hate speech, starting from the Circular Letter of the Chief of Police Number: SE/06/X/2015 concerning the Handling of Hate Speech, the Criminal Code, Law No. Number 11 of 2008 concerning Information and Electronic Transactions and Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination.

Articles governing actions regarding Hate Speech against a person, group, or institution based on the Chief of Police Circular No: SE/06/X/2015 are contained in Article 156, Article 157, Article 310, Article 311, then Article 28jis. Article 45 paragraph (2) of Law No. 19 of 2016 concerning information and electronic transactions and Article 16 of Law No. 40 of 2016 concerning the elimination of Racial and Ethnic Discrimination (Edaran Kapolri No: SE/06/ X/2015 Terdapat Di Dalam Pasal 156, Pasal 157, Pasal 310, Pasal 311, Kemudian Pasal 28jis. Pasal 45 Ayat (2) UU Nomor 19 Tahun 2016 Tentang Informasi Dan Transaksi Elektronik Dan Pasal 16 UU No 40 Tahun 2016 Tentang Penghapusan D, n.d.).

- 1) Article 156 of the Criminal Code stipulates that whoever publicly expresses feelings of hostility, hatred, or contempt towards one or several groups of Indonesian citizens is threatened with a maximum imprisonment of four years or a maximum fine of four thousand five hundred rupiahs.
- 2) Article 157 paragraphs (1) and (2) of the Criminal Code states (1) Whoever broadcasts, shows, or pastes writings or paintings in public, the contents of which contain the expression of feelings of hostility, hatred, or humiliation among or against groups of the Indonesian people, by the intention is that the contents are known to the public, is punishable by a maximum imprisonment of two years and six months or a maximum fine of four thousand five hundred rupiahs (2) If the guilty person commits the crime while carrying out his search and at that time five years have not elapsed since the sentence is fixed because of the same kind of crime and the person concerned may be prohibited from searching.
- 3) Article 310 paragraphs (1), (2), and (3) of the Criminal Code more specifically regulates attacks on someone's honor or good name, which are further regulated as follows: (1) Whoever intentionally attacks someone's honor or good name by accusing something, which means clearly so that it is known to the public, is threatened with pollution with a maximum imprisonment of nine months or a maximum fine of four thousand five hundred rupiahs. (2) If this is done utilizing writing or pictures that are broadcast, displayed, or posted in public, the threat of written libel is punishable by a maximum imprisonment of one year and four months or a maximum fine of four thousand and five hundred rupiahs. (3) Not defamation or written defamation is if the act is carried out in the public interest or because it is forced to defend oneself.
- 4) Article 311 of the Criminal Code paragraph (1), namely if the person committing the crime of defamation or written defamation is allowed to prove what is alleged is true,

not prove it and the accusation is made contrary to what is known, then he is threatened with slander with a maximum imprisonment of four years.

In addition to the Criminal Code providing legal protection, Law Number 11 of 2008 concerning Information and Electronic Transactions was established which was then made several changes in it and promulgated by Law Number 19 of 2016 concerning ITE (Electronic Information and Transactions). The ITE Law is about criminal acts that are included in hate speech.

Furthermore, the regulation regarding hate speech in Indonesia is also contained in Law No. 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination, which is explained in Article 4 letter b, namely showing hatred or hatred towards people because of racial and ethnic differences in the form of actions: 1) Making writings or pictures to be placed, posted, or distributed; 2) giving speeches, expressing, or throwing unethical words; 3) taking people's lives, molestation, rape, obscene acts, theft with violence.

3.2 Hate Speech Crime

Indonesia is a legal state that protects the rights of freedom of expression of its citizens as regulated in the 1945 Constitution of the Republic of Indonesia, namely Article 28 and Article 28E paragraph (3), the freedom of opinion can be exercised orally or in writing which can be stated in various media form. Given the development of technology that is growing, it is easier for someone to express opinions using various media, both social media and chat communication media. A person can express his opinion in the form of typing or videos that can be uploaded on any platform as a form of expressing his thoughts and emotions.

Hate speech is commonly defined as an expression or act of attacking and encouraging violence in society. It is unfortunate that the increasingly sophisticated technology and the increasing number of platforms or social media that can be used by the public have contributed to an increase in cases of hate speech. This is because the easier and cheaper it is to use the internet is not supported by the public awareness factor. There are still many people who are ignorant or don't care about what he says or posts on his social media, and even many people who unwittingly spread fake news, or the truth is unclear.

The proof is the act of proving that it is true that a criminal event has occurred, and it is the defendant who is guilty of doing it, so he must be held accountable for it. Evidence is a problem that plays a role in the trial process. Through evidence, the fate of the accused is determined. If the results of the evidence with evidence determined by regulations are not sufficient to prove the guilt charged to the defendant, the defendant is released from punishment, on the other hand, if the defendant's guilt can be proven by the evidence referred to in Article 184 of the Criminal Procedure Code, the defendant is declared guilty. He will be punished [8]. In this crime, a person can be sentenced if the conditions are met, namely valid evidence and the judge's conviction. As with other crimes, in the crime of hate speech, two pieces of evidence are needed to be able to indict someone for their actions. The judge must be based on valid evidence and have tested its truth in front of the trial and have been believed to be in an acceptable condition, a criminal act has been committed and the defendant is right to have done so then it will be a shred of valid and perfect evidence.

If we look at the Circular Letter of the Chief of Police Number SE/6/X/2015 regarding hate speech, in which there is still a mix of hate speech with defamation, insults, and slander comments. Then the ITE Law will be used against hate speech crimes. Article

42 explains that the investigation of criminal acts as referred to in this Law is carried out based on the provisions of the Criminal Procedure Code and its stipulations. (Edaran Kapolri No: SE/06/ X/2015 Terdapat Di Dalam Pasal 156, Pasal 157, Pasal 310, Pasal 311, Kemudian Pasal 28jis. Pasal 45 Ayat (2) UU Nomor 19 Tahun 2016 Tentang Informasi Dan Transaksi Elektronik Dan Pasal 16 UU No 40 Tahun 2016 Tentang Penghapusan D, n.d.).

Furthermore, the evidence in the Criminal Procedure Code that can be adapted into proving hate speech cases is expert testimony. It is necessary because not everyone understands technology. Most people only understand the basics of using existing technology, but not all understand the ins and outs of it. Article 1 number 28 of the Criminal Procedure Code states that expert testimony is information given by a person who has specific expertise on matters needed to make light of a criminal case for examination, while in Article 186 of the Criminal Procedure Code expert testimony is what an expert states in court. Article 160 Paragraph (4) of the Criminal Procedure Code states that if the court deems it necessary, a witness or expert is obliged to swear or promise after the witness or expert has finished giving testimony, while Article 179 of the Criminal Procedure Code states that Paragraph (1) Everyone who is asked for his opinion as a judicial medical expert or a doctor or other expert is obliged to provide expert testimony for the sake of justice, Paragraph (2) "All of the provisions mentioned above for witnesses shall also apply to those who give expert testimony, provided that they take an oath or promise to give the best and most accurate information possible. actually according to knowledge in their area of expertise.

Expert testimony in revealing hate speech crimes is a very prominent piece of evidence in the proof because only certain experts understand technology. In the criminal evidence system, expert testimony will determine whether the defendant is guilty or not, even though the strength of the evidence of expert testimony is free, which means it is very dependent on the judge, but the role of expert evidence in court practice is vital in criminal proof. However, it should be remembered that even though an expert can be seen as not an ordinary person because he has knowledge that is unshared by others, the expert must still uphold justice in giving his testimony, and there should be no interference from other parties that will affect his testimony.

Article 1 number 28 of the Criminal Procedure Code or other regulations, if we look at it, it is not explained what is meant by "special expertise" possessed by expert witnesses, but if we look at it from an empirical perspective or its application to the reality of this specific skill, it can be interpreted as knowing an expert in certain fields as indicated by the study or experience they have. Furthermore, the Experts presented at the trial are generally experts who have been questioned by investigators in the investigation process. In dealing with the crime of hate speech, for example, technology experts or people who have extensive knowledge in the field of technology and informatics can be presented.

Expert testimony in this hate speech crime is the research that examines whether proficient testimony from the police or the investigators themselves is allowed. According to the analysis carried out by the police, they may become expert witnesses because cybercrime carries out 2 (two) functions, namely the investigation function and the investigation function, and there is technical assistance for investigations and investigations. The technical assistance is in the form of a digital forensic laboratory which consists of several functions such as general digital forensics using analysis output and so on, self-phone forensics, audio video forensics (to find out what tools to use for recording, whether it has been edited or not, we could check it in metadata that deleted files can be recovered, or password recovery. For example, if A has a hard drive, then the hard drive is

encrypted and the encryption can be cracked. If A destroys his cellphone, the data can still be obtained using a technology called chip-off, voice analysis, and so on. Expert testimony from the police will not affect the results of the investigation, that expert testimony from the police does not come from the investigators themselves but from other institutions within the police institution such as forensic doctors, computer forensics, and others who are in the police force. Experts from the police will be independent and will not side with the police institution. Experts from the police are summoned by fulfilling formal and material requirements, for example by taking an oath in advance and using an official letter from the Criminal Investigation Agency for cybercrime (the same as summoning experts from outside parties).

IV. Conclusion

The handling of hate speech crimes is based on the Criminal Code, Law No. 11 of 2008, Law No. 40 of 2008, Law No. 7 of and Regulation of the Head of the State Police of the Republic of Indonesia No. 8 of 2013. Handling is carried out only with investigations and investigations through clarifications that are carried out by asking the expert for information, after sufficient evidence, the Ditreskrimsus member begins to make forced efforts, for example, to arrest the perpetrator or the suspect, after the witness's testimony that was carried out after the examination, then from the testimony of the suspect himself is strong enough, the Ditreskrimsus member will raise the status of the suspect to be a suspect, then the process of carrying out a case title to raise the status of a suspect to a suspect, after being declared a suspect, members of the Ditreskrimsus. If the evidence is confiscated, the prosecutor will return it to the members of the Ditreskrimsus to be corrected according to the prosecutor's advice, but if it is complete then the prosecution process will continue in court.

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