



## Criminal Response Formulation Policy Distribution News (Hoax) through Social Media

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### Abstract

*The spread of fake news (hoax) is increasingly prevalent nowadays. Hoax is fake news that often appears on the internet and aims to spread panic and mass fear. Many irresponsible individuals carried out an activity to achieve a goal that can cause unrest, chaos, and disrupt state security. The research objective is to understand the criminal provisions in the ITE Law into conditions that follow the development of the criminal act of spreading hoaxes—knowing the policy formulation in handling the spread of fake news (hoax) through social media in Indonesia in the future. The approach method used in this research is a normative juridical approach. The types of data used in this study are secondary data and primary data. This research is classified as a kind of qualitative research. The results of this study indicate that: The provisions that follow the development of the criminal act of spreading fake news (hoax) are seen from several aspects. First, the factory itself, the second legal factor of law enforcement officers, the third is facilities and infrastructure, fourth, the community factor. In terms of this aspect, the formulation of criminal law in dealing with fake news in the future looks better and more complete, especially in the concept of the Criminal Code, which regulates things that can be convicted regarding fake news and hate speech, the form of fake news and hate speech in cyberspace. The current criminal law policy still has shortcomings, especially in terms of policy formulation.*

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## Introduction

Information and communication technology has changed the behaviour of society and human civilisation globally (Ramli, 2004). The development of information and communication technology causes world relations to be borderless and causes significant and rapid social, economic and cultural changes. This has led to the emergence of new crimes, namely computer crimes. These crimes are committed by using computers as a means of action (Edmon, 2003).

Technology and law are parts that influence each other. Heidegger has argued that, on the one hand, we can see technology as a means of achieving a specific goal, and on the other hand, technology can also be seen as a human activity. The interplay between technology and law shows that each technology is developed to meet specific needs. Through this, technology is provided with benefits and services for humans, including increasing the work's coefficient and effectiveness. Law is also a limitation in behaviour, and violations are subject to compelling sanctions by the country's highest authority (Sitompul, 2012).

Currently, a new legal regime has been born, known as cyber law. Cyberlaw is defined as the equivalent word for cyber law, which is presently internationally used as a legal term related

to information technology. The spread of fake news (hoax) or fake news that often appears on the internet today aims to spread panic, and mass fear and activity carried out by many irresponsible individuals.

The effort to present a legal instrument that is in line with the development of the world of information and telecommunications cannot be negotiated. The Indonesian government regulates information crimes and electronic transactions in Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law of the Republic of Indonesia Number 11 of 2008 concerning Electronic Information and Transactions. Lack of firm and transparent enforcement of criminal law against hoaxes and other unpleasant acts on social media often triggers the spread of hoaxes.

Data content dissemination of false news (hoaxes) that has been identified verified and validated by a team of Automatic Information System (AIS) Ministry of Communication and Information (Kemenkominfo) a total of 1,731 hoaxes since August 2018 until April 2019 hoax political categories dominate in numbers 620 items hoax. This followed by 210 hoaxes in the government category, 200 hoaxes in the health category, 159 hoaxes related to slander, 113 hoaxes about crime and the rest hoaxes about religious, natural disasters, myths, international and other issues (Daon001, 2019)

The research "Comparative Study of Regulating Spread Hoaxes a Criminal Act in Indonesia Compared to Singapore" compiled by Andreas Siambaton and I Gusti Ngurah Parwata concluded that hoax regulation Indonesia listed in article 45A of the ITE Law has an interpretation, which is less specific when compared to the arrangement of hoaxes as a criminal act in Singapore.

In this research, we will discuss more specifically the criminal provisions in the Law of the Republic of Indonesia Number 19 of 2016 concerning Electronic Information and Transactions, which become provisions that follow the development of criminal acts of spreading fake news (hoax) and formulation policies in handling the spread of fake news (hoax) through social media in Indonesia in the future

## **Methods**

The approach method used in this research is a normative juridical approach. The types of data used in this study are secondary data and primary data. This research is classified as a kind of qualitative research.

## **Results and Discussion**

Order and order are assets towards society's welfare; therefore, various norms in society's religious standards, moral norms, norms of decency are formed to achieve order and order in society.

Criminal law is used to tackle crime problems, so two approaches can be used in crime prevention policies using criminal law, namely; (1) the integral approach between penal and non-penal policies; (2) A critical approach between the policy approach and the value policy (Arief, 1996).

In connection with the values to be achieved or protected by criminal Law, Bassiouni stated, as quoted by Barda Nawawi Arief, that the goals to be completed by the criminal are generally manifested in social interests that contain specific values that need to be protected. According to Bassiouni, these social interests are: Maintenance of community order; Protection of citizens from crimes, losses or unjustifiable dangers committed by others; Re-(socialisation) of

lawbreakers; and Maintain or maintain particular basic views regarding social justice, human dignity and individual justice.

The use of criminal law in ITE will include aspects of the assessment of what should be a criminal act and the problem of what sanctions should be used or imposed on the violator. From these two aspects, if there are three main problems, namely the formulation of criminal acts; Formulation of criminal responsibility; and Formulation of Sanctions, both in the form of criminal acts and disciplinary actions. It is said by (Moeljatno, 1995) that criminal acts must be separated from criminal liability. For the existence of criminal liability (to be accountable), in addition to committing a criminal act, the maker must also have a fault (guilty). Therefore, an act that can be subject to a crime if it contains two aspects, namely an act that is prohibited by law and a person who violates the prohibition (Amrani, 2019).

Mochtar Kusumaatmadja stated that the law's primary purpose is the guarantee of order, justice, and certainty (Mochtar, 2002). Thus, the law is a system that has characteristics and characteristics that become the driving and regulator of community life. Related to the traits and features of the law and society, Roscoe Pound further introduced what is known as law as a social engineering tool (Pound, 1944).

The presence of the Criminal Code (KUHP), Law of the Republic of Indonesia Number 1 of 1946 concerning Criminal Law Regulations and Law of the Republic of Indonesia Number 11 of 2008 concerning Electronic Information and Transactions are a written manifestation of law as one of the guidelines for enforcement officers law in carrying out and enforcing legal norms to create order and order during society.

Hoax or false information is a phenomenon in Indonesia that is deliberately disguised to make it look right, and this is not without the characteristics of Indonesian people who use social media a lot. In recognising the lies of information, two central elements should be used as benchmarks: content and information sources. The development of information technology, including the internet, also presents its challenges for developing Law in Indonesia. Law in Indonesia is also required to adapt to the social changes that occur.

The spread of hoaxes news cannot be separated from internet users, especially social media users. According to Philip and Kevin Keller, social media is a means for consumers to share text, image, video and audio information. The characteristics of social media include user participation, openness, conversation and connection (interaction). Some of the social media that are often used include (1) social networks or Social Networks, namely: YouTube, Facebook, Twitter, Instagram, WhatsApp and others. (2) social media communities such as: kaskus.co.id.bainly.co.id, Bersosial.com and setersnya. (3) blog sites such as Maxmanroe.com, Bloggerborneo.com, Sugeng.id and others. Also (4) social bookmarking sites such as: StumbleUpon, Reddit, Slashdot and othersites brookmark.

Based on the latest report We Are Social, in 2020, it was stated that there were 175.4 million internet users in Indonesia. Compared to the previous year, there was an increase of 17% or 25 million internet users. Based on Indonesia's total population, which amounts to 272.1 million, it means that 64% of the Indonesian population has experienced access to cyberspace.

Of the total 1,731 hoaxes from August 2018 to April 2019 identified, verified and validated by the AIS Team of the Ministry of Communication and Information, hoaxes politics dominate the 620 hoaxes. She was followed by 210 scams in the government category, 200 cons in the health category, 159 cons related to slander, 113 cons about crime and the rest hoaxes about religious issues, natural disasters, myths, international and other issues.

## **Arrangements for the Spread of Fake News in Indonesia**

Arrangements for the spread of fake news (hoax) have been contained in Indonesia's legal regulations. Including In the Criminal Code (KUHP) and the Law of the Republic of Indonesia Number 1 of 1946 concerning Criminal Law Regulations, several Articles regulate fake news or hoaxes include Articles 310, 311, 378, 390 of the Criminal Code. Other rules are governing fake news or hoaxes, namely in the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law of the Republic of Indonesia Number 11 of 2008 regarding Information and Electronic Transactions Article 28 paragraph (1) and those who violate may be subject to sanctions as referred to written in Article 45A paragraph (1) regarding the contents of fake and misleading news, Article 45A paragraph (2), namely content that creates a sense of hatred or enmity for individuals and certain groups of society based on ethnicity, religion, race, and between groups (SARA).

### **Application of the ITE Law Number 19 of 2016 concerning the spread of Hoaxes and Other Displeasing Acts**

Regulations regarding the spread of fake news (hoax) are needed to protect consumers who conduct commercial transactions electronically. Electronic trading can be carried out efficiently and quickly. Ideally, transactions should be based on trust between the transacting parties (mutual trust).

From a legal perspective, the parties need a contract to protect their interests and protect them from losses that may arise in the future. However, in cyberspace, the parties conducting transactions do not need to meet each other. In electronic commerce, each person can use another person's name to present himself. These things make it easier for scammers to offer products or provide information on the internet that is not necessarily following the actual conditions. Information like this can mislead consumers and cause harm to them. This is the basis for the regulation in Article 28, paragraph (1) of this ITE Law (Sitompul, 2012).

The spread of fake news (hoax) is regulated in Law of the Republic of Indonesia Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. Article 45A states that people who deliberately and without the right spread false and misleading news that result in consumer losses in electronic transactions are subject to punishment as stated in Article 28 paragraph (1) of the ITE Law, imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

Article 28 paragraph (1) is very narrow, namely only on spreading false news and misleading, which results in consumer losses. An essential element in Article 28 paragraph (2), namely, "creates a sense of hatred or enmity for individuals and/or specific groups of society based on ethnicity, religion, race and intergroup (SARA). The understanding related to hatred in Article 28, paragraph (2) of the ITE Law has no further explanation.

The first opinion said that it is a formal crime. The completion of a criminal act lies in the completion of the action. The reason is that the formulation of the article does not explicitly prohibit inevitable consequences. This lies in the phrase "intended for" in the formulation of the article, which means that the act of disseminating information is aimed at arousing hatred. Based on this explanation, it requires proof that the act of spreading is aimed at creating hatred. This is done by making logic to the form of these actions according to their nature and conditions, which can cause hatred between groups and so on, which the maker realises and wants (Chazawi & Ferdian, 2011).

The second opinion, this act is a material crime. The reason for the second opinion is in relation to evidence. Feelings of hostility and hatred exist only in the heart. It cannot be known and

proven until there is a basic form of action that describes displeasure or hostility. In this case, if the action has materialised temporarily, the result does not arise, the incident is considered an experiment, the perpetrator can be convicted (Chazawi & Ferdian, 2011).

This has led to multiple interpretations. However, this article's provisions have been used in solving many cases that violate the contents of this article, namely, the Ugie Khan case, the case, has a different background and has received a final decision.

Several examples of hoax cases that have surfaced in Indonesia are concerned about provocation between people who respond to these fake news cases. Here are some examples of fake news cases (hoaxes) that have a significant impact on Indonesia's various political situations. Case of Hoax Spreader Problem Sultan HB X2 Years and 6 Months Prison ; Sentenced to Muslim\_Cyber Account1; Case of High School teacher in Banten PKI Hoax Spreader; Spreader case in Bandung Call Hoax PKI Up and persecution Ulama; and outbreak Bohong Persecution News Ratna Sarumpaet

Criminal provisions in the Law of the Republic of Indonesia Number 19 the Year 2016 on Information and Electronic Transactions into the terms that follow the development of the crime of dissemination of false news (Hoax) on social media.

Several factors affect the Law of the Republic of Indonesia Number 19 the Year 2016 on Information and Electronic Transactions into the terms that follow the development of the rule of law the crime of dissemination of false news (hoaxes) in social media include:

#### **Factor statute Alone**

Legislation already many governing regarding the spread of fake news starting from the Criminal Code (KUHP) and the particular laws that regulate it. There are two forms of criminal acts of ITE in Article 28, each of which is formulated in paragraph (1) and paragraph (2). The ITE criminal offence in paragraph (1) consists of the following elements: (1) Error: intentionally; (2) Against the law: without rights; (3) Deed: spread; (4) Object: fake and misleading news; and (5) Constitutive effect: resulting in consumer losses in electronic transactions.

The elements of the criminal act in paragraph (2) are: (1) Mistake: intentionally; (2) Against the law: without rights; (3) Deed: spread; (4) Object: information; (5) Purpose: To create a sense of hatred or enmity for individuals and/or specific groups of people based on ethnicity, religion, race, and between groups (SARA).

If seen from these elements, a person can be held responsible for the crime regulated in Law of the Republic of Indonesia Number 11 of 2008 concerning Electronic Information and Transactions in conjunction with Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions Article 45A paragraph (1) and (2).

A person who can be subject to criminal responsibility for false information (hoax) must fulfil the aforementioned elements. The perpetrator of the spread of incorrect information (con) from the beginning has the intention to add, spread, create, reduce, and cause harm to the parties—concerned, which can be said to be a criminal act.

Actions that can be categorised as violating the provisions of Article 28 paragraph (2) of the Law on Electronic Information and Transactions, namely: 1) some parties feel they have been harmed by the actions of a person or group of people related to the elements of SARA; 2) The act contains pictures of people being sanctified in a religion which contradicts the original image; 3) Doing writings that slander the contents of the holy book of a religion that is different

from the teachings of that religion or; 4) Disseminating personal matters that contradict or violate the norms of decency and decency; and 5) The actions carried out contain SARA elements and are carried out on social media.

The provisions of Article 28, paragraph (2) of the Law on Electronic Information and Transactions are currently being used to resolve cases in the community. However, related to its use, it raises its problems in the community. This is evidenced by the number and news containing racial and hateful social media elements but cannot be acted upon.

### **Law Enforcement Factors**

Difficulties and obstacles in dealing with the wide spread of fake news, this is motivated by the lack of law enforcement officers who understand the ins and outs of information technology (internet), limited facilities and infrastructure, as well as a lack of public legal awareness in efforts to combat information technology crimes. One of which is the spread of fake news. Success in law enforcement is the mentality or personality of the law enforcer.

### **Facility and Infrastructure Factors. Facilities and infrastructure**

Constraints influence efforts to prevent criminal acts against hoaxes. The disclosure of cons still have limitations in (1). access and coordination with service providers and cellular and internet services, (2). Do not have a particular server for digital forensics to support work in Information and Electronic Transactions.

### **Community Factors Society has**

Entered a new culture that has not fully realised its strengths and weaknesses. Today's experience is that there is no understanding of how to use social media and take the positive side and how to avoid its negative impacts.

This condition is then used by some people who are not responsible for spreading false information (hoaxes) to attack other people personally for the sake of themselves and/or their group. The problem that becomes a challenge is that along with the rapid flow of media information, and the public is confused and unable.

### **Formulation Policy for Handling Spread Hoax through Social Media in Indonesia in the Future**

Criminal law policy deals with criminalisation, namely what actions are criminalised, what penalties should be imposed on the perpetrators of the criminal acts. Criminalisation and oppression are central problems that require a to handle the policy-oriented approach. Criminalisation (criminalisation)cover the scope of an unlawful act (act users), criminal liability (mensrea)and the sanctions to be imposed in the form of punishment (punishment)and action(treatment). Criminalisation must be done carefully, not to create the impression repressive that violates the principle of ultimum remedium (ultima ratio principle) and backfires in the social life in the form of excessive criminalisation (overcriminalisation), which reduces the authority of the law.

The formulation must pay attention to internal harmonisation with the criminal law system or general criminal rules currently in effect. The formulation policy is the most strategic stage of the penal policy because at that stage, the legislature has the authority to determine or formulate what can be convicted which is oriented towards the main problems of criminal law including actions that are against the law, mistakes, criminal responsibility and what sanctions can be. Worn. Therefore, efforts to tackle crime are the duty of law enforcement officials and the duty of lawmakers (legislative apparatus) (Harkrisnowo, 2003).

The formulation / legislative policy is one of 3 (three) series of criminal law policy processes: Formulation of criminal acts/ criminalisation and criminalisation that is threatened (criminalisation and threatened punishment); Criminalisation (adjudication of punishment sentencing); and Execution of punishment (Arief, 2012).

The law that has been chosen as a means to regulate the life of the community, nation and state in the form of statutory regulations through the state apparatus, it is necessary to follow up on efforts to implement the law correctly following the stipulated provisions. The formulation must pay attention to internal harmonisation with the criminal law system or general criminal rules currently in effect. It cannot be said that there is harmonisation/synchronisation if the formulation policy is outside the current criminal law system are (Harkrisnowo, 2003).

There also other arrangements, namely in-laws outside the Criminal Code, such as Law of the Republic of Indonesia Number 19 of 2016 concerning Electronic Information and Transactions, articles which are directly related to the criminal act of spreading false news and hate speech are Article 27 paragraph (3) Article 28 paragraph (1) and (2), Article 45 paragraph (1) and section (2), Article 52 paragraph (4). The contents of these articles are precise and detailed about the criminalisation of spreading fake news in the report, which leads to the criminalisation of the criminal act of spreading fake news.

Based on the elements of criminal acts in the formulation of the articles above, that the ITE Law does not mention or differentiate the qualifications of the offence as a crime or offence, of course, this has juridical consequences because the Criminal Code (WvS) still follows and determines the capabilities of offences between crimes and violations. , so this law must still refer to its parent provisions.

The conditions for implementing the ITE law are still not optimal. Therefore, there is a need for reformulation in the future regarding fake news with a broader definition and scope regarding counterfeit and misleading news phrases in the provisions of Article 45A. This is because the assessment of counterfeit news can vary. The effect of misleading is very broad, so that there will be no multiple interpretations that result in the confusion of norms in these articles in the future.

The Indonesian criminal law regulates the prohibition of spreading fake news that causes commotion in society. This prohibition is regulated in Article 14 and Article 15 of the Law on Criminal Law Regulations (Law No.1 of 1946) Article 14 and Article 15 of Law no. 1 of 1946 is the revocation and addition of the provisions in Article 171 of the Criminal Code (KUHP) which is part of chapter V regarding public order in book II of the Criminal Code regarding crimes.

Several laws regulating the spread of fake news contain juridical issues; (1) KUHP (limited jurisdiction; no provisions regarding the subject and criminal responsibility (PJP) of corporations; (2) Law Number 1 of 1946 concerning Criminal Law Provisions (no offence qualifications; Does not contain legal subjects and criminal responsibility other than individuals; Only knows criminal single); (3) Law Number 40 the Year 1999 Concerning the Press (does not include determination of offence qualifications (Crime / Violation); there is no additional punishment for corporations who violate it); (4) Law Number 32 the Year 2002 concerning broadcasting (there is no determination of offence qualifications (Crime / Violation); absence of provisions on corporate PJPs; Offenses for "broadcast" and "commercial advertising broadcasts" in this law are limited to broadcasts via radio or television; do not cover broadcasts in the field of digital technology, satellite, internet, and other forms of other specifics); (5) Law Number 19 the Year 2016 concerning Electronic Information and Transactions (no qualification for the offense; Fines are quite high: a maximum of 12 billion

for corporations it can be 20 billion rupiah), but there are no changes / specific rules regarding "substitute punishment" for fines (which according to Article. 30 of the Criminal Code. The only substitute is maximum confinement. 6 months.); The rules for corporate criminal liability are only in "Elucidation of Article. 52 verse 4"; There are no special provisions for criminal substitutions for fines for corporations).

In the Criminal Code concept, the criminalisation of fake news broadcasting is regulated in the chapter on crimes against public order. There are three formulas for the criminal act of spreading fake news in the chapter on Public Order. The three formulations in Article 309 paragraphs (1) and (2) and Article 310 of the Draft Criminal Code are the same as the formulations in Article 14 paragraph (1) and (2) and Article 15 Law no. 1 of 1946. The formulation of Article 14 paragraph (1) and (2) and Article 15 of Law no. 1 of 1946 requires three elements. These three elements are the element of broadcasting or spreading, the second element is fake news or rumours or news that is broadcast with additions or omissions, and the third element is chaos.

## Conclusion

The existing criminal law policies still have shortcomings, especially in terms of formulation, the Indonesian state's reformulation process regarding the spread of fake news. This is because the assessment of fake news can be different and have multiple interpretations resulting in a blur of norms and phrases that have a widespread impact in causing disturbing has implications on social conditions and state security. It is necessary to improve or revise Law Number 19 of 2016 concerning Electronic Information and Transactions, which can be cyberlaw Indonesian. There must be a reformulation of the ITE law by calculating hoaxes as a form of the criminal act into several provisions. This is because the material regarding cons can vary and the impact can be very detrimental to the public and the security and resilience of the country.

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