

The Urgency of Setting Criminal Sanctions Against Spreaders of Election Hoaxes

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Abstract

The increasing development of technology and information provides a number of benefits and negative impacts. The spread of fake news (hoaxes) is one of the cases that often occurs in Indonesia. Perpetrators of spreading fake news use social media as a platform for spreading fake news. Regarding the spread of fake news, it is regulated in Law Number 1946, the Criminal Code, and the ITE Law of 2016. The urgency in several of these policies includes law enforcement factors, the benefits of law for society, as community control, and not giving rise to multiple interpretations and realizing justice. This research uses a type of normative juridical research. The data collection technique used is library research. The analysis used is a normative analysis method. This research shows the urgency of several policies that regulate the spread of fake news in Indonesia.

Keywords Technology and Information, Spread of Fake News, Urgency

INTRODUCTION

The Indonesian state is a country based on democracy which guarantees the freedom of every community in making various efforts to carry out social interaction, communication carried out to obtain information with the main aim of developing talents in the field of science and for the social environment, as stated in the statement which is stated in Article 28 F of the 1945 Constitution which states "Everyone has the right to communicate and obtain information to develop their personal and social environment, and has the right to search, obtain, possess, store, process and convey information using all types of available channels." In conveying information or news by the public, especially in Indonesia, nowadays the way they communicate is through online media. Online media is a communication tool through social networks using access from the internet network which can connect one person's communication with another person. This online media was born due to the rapid development of technology in various corners of the world. 1 The development of information technology and this technology helps and makes it easier for a person's life to run smoothly in various areas of activity. Various daily activities are carried out through online media, namely buying and selling activities, online services, communication, information reporting and other activities. These various conveniences certainly really help a person's daily activities, especially in terms of communication and information. In terms of communication and information via online media, there are also various platforms that people use to interact and exchange information, known as social media. Social media is a means of interacting, communicating and building networks through online communication media.2 Social media has a big role in communication and dissemination of information to the wider community in all areas such as the business, tourism, education, health, politics and religious sectors. Social media is often used as a



medium for disseminating news or information related to various issues. Issues that are often spread via social media are related to health and political issues. Political issues via social media have a big influence so they are widely used as political campaigns to disseminate information more effectively and efficiently.

The ease of progress in information and communication technology certainly gave rise to negative things in it, so the government issued the Information and Electronic Transactions Law (UU ITE) Number 19 of 2016. In the ITE Law there are several articles that contain issues related to misuse of electronic information dissemination. Various forms of crime appear in electronic media (cybercrime), especially on social media platforms. Type forms of crime (cybercrime) committed using online or electronic media are extortion, fraud, hacking, carding, illegal contents, defamation, spreading fake news (hoaxes), and others. The spread of fake news (hoaxes) is one of the most common cases experienced by the wider community without exception. The spread of fake news through social media knows no boundaries among the user community, from children to adults and even from all over the world, this is because social media can be easily accessed by everyone. The widespread spread of fake news (hoaxes) certainly has a negative impact on the development of the Indonesian state in various sectors. This is because hoaxes can cause debates that can end in the breakdown of a relationship, especially since hoaxes contain SARA elements which are very vulnerable to triggering unrest between groups of society so that they can disrupt the stability of diversity and statehood. The hoax issue that is currently widespread is related to election issues. 2024 is the year of democracy because it is approaching the period of simultaneous elections which are divided into legislative elections (Pileg) and Presidential elections (Pilpres) 2024 which will take place on February 14 2024.

News related to the election, especially the presidential and vice presidential candidates, has certainly flooded social media, but much of the news that has been spread has not been confirmed as true. This becomes a target for irresponsible parties to promote opinions or issues that can bring down candidate pairs in the community. The perpetrators of spreading hoaxes will achieve their goals if many people believe and are influenced by the news that is spread, causing chaos and dilemmas regarding candidate pairs. Lack of public knowledge and laziness in finding out the truth of news/information causes the spread of fake news (hoaxes) quickly. Basically, people have very little interest in reading, so many people are fooled by just reading the title and first paragraph without examining and tracing the truth of the information.

To minimize this, apart from the ITE Law, the government enforces regulations for perpetrators of spreading fake news (hoaxes) in the Criminal Code (KUHP), namely in Article 390 of the Criminal Code and in Law Number 1 of 1946 concerning Criminal Law Regulations in Article 14 paragraphs (1) and (2) and Article 15 which regulate hate speech and hoax news. A person can be subject to criminal sanctions if they fulfill the elements in the articles that regulate the spread of hoax news.

METHOD

This research is a type of normative juridical research. The data used in this research was obtained from legal materials which were used as main data through literature study. These legal materials are primary legal materials and secondary legal materials. The primary legal materials in this research are the Criminal Code, Law Number 1 of 1946, and the ITE Law of 2016. Meanwhile, the secondary legal materials used are scientific works, reading books, digital news, theses, journals, and other research. The data collection technique used is literature study to obtain theoretical conceptions, opinions or conceptual thoughts as well as previous research related to the author's research object. The data obtained will be processed and analyzed qualitatively. The data analysis used by the author is qualitative analysis, where the author will explain the data coherently in the form of logical, coherent and effective sentences, so as to facilitate interpretation and understanding of the analysis results. The analytical method used in this research is systematic, logical and descriptive.

RESULT AND DISCUSSION

The spread of fake news (hoaxes) is one of the crimes that is rampant in Indonesia. A hoax is false information or an issue whose truth has not been confirmed and is created by a person or group to be spread with a specific purpose. The spread of fake news (hoaxes) creates anxiety, dilemmas and even chaos in society regarding the information they receive. There are several characteristics included in the context of spreading fake news (hoaxes), including:

1. Ignoring the 5W + 1H rule, in this case the formula is the core in preparing news which in English terms includes What, Who, When, Why, Where, and How.
2. There is an invitation sentence to influence readers so that they can spread it without knowing the exact purpose.
3. The language used in the sentences is too empathetic, and uses excessive capital letters and punctuation.
4. If the information is an important message, but it is not found in the media or official website.
5. Inconsistent and contrary to logic/common sense plus there has been no research to analyze it.
6. Messages or information that have been forwarded repeatedly.
7. To ensure that information/news circulating can be trusted, it often includes official sources but does not also include the names of relevant sources who have authority.
8. And, don't use correct Indonesian.

The positive law that regulates the spread of fake news or hoaxes that can cause trouble is regulated in Article 14 paragraphs (1) and (2) of Law Number 1 of 1946 concerning Criminal Law Regulations. Article 14 paragraph (1) contains the act of spreading false news (hoax) which will or has the potential to cause trouble due to deliberate intention or certainty, meaning that the perpetrator clearly has the will and knowledge that the act of spreading false news will have the potential to cause trouble. Meanwhile, article 14 paragraph (2)



regulates that actions that are intentional will make it possible, that he should know or should suspect that an act of spreading hoax news will cause trouble. The differentiating value in the two articles is that the first paragraph contains the content that spreading hoax news will cause trouble because it is intentional, as an intention or certainty. 7 Article 15 of Law no. 1 of 1946 is charged with perpetrators of spreading hoax news who deliberately spread hoax news and know for certain that the hoax news will definitely cause trouble in the public sphere. The perpetrator of spreading hoax news will receive a maximum prison sentence of 10 (ten) years in Article 14 paragraph (1), a maximum prison sentence of 3 (three) years in Article 14 paragraph (2), and a maximum prison sentence of 2 (two) years.) year in Article 15 of Law no. 1 of 1946.

It is also regulated in the Criminal Code (KUHP), namely in Article 311 paragraph (1) and Article 390. Article 311 of the Criminal Code contains the crime of defamation which has the potential for slander, punishable by a maximum prison sentence of 4 (four) years. Article 390 of the Criminal Code regulates that a person who, to benefit himself or another person, broadcasts false news (hoax) which causes harm to someone is threatened with a maximum prison sentence of 2 (two) years and 8 (eight) months.

Apart from that, the spread of fake news (hoaxes) is also specifically regulated in Law Number 19 of 2018 concerning Information and Electronic Transactions, namely in Article 28. Article 28 paragraph (1) of the ITE Law contains about someone who deliberately spreads fake news (hoaxes). which causes consumer losses through electronic media. Meanwhile, Article 28 paragraph (2) regulates someone who deliberately spreads false news (hoax) which is intended to cause feelings of hatred or hostility towards certain individuals and/or community groups based on religion, ethnicity, race and SARA. The provisions in the ITE Law are a form of implementation of the *Lex Specialis Derogat Legi Generali* principle, which means that special rules override general rules, so that if hoax news occurs using electronic media, criminal liability or criminal sanctions for the criminal act of spreading fake news (hoax) will occur. will refer to Article 28 Jo. Article 45 A paragraph 1 of the 2016 ITE Law carries a maximum prison sentence of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000,- (one billion rupiah).

The policies that regulate the spread of fake news (hoaxes) contain an urgency to support law enforcement against the spread of fake news (hoaxes), including the following:

1. Law enforcement factors

The rise in cases of spreading fake news (hoaxes), especially through electronic media, requires the government to try to minimize the increase in cases by issuing laws and regulations and law enforcement officers who also have an understanding of information technology in dealing with criminal acts of spreading fake news.

2. Benefits of law for society

The spread of fake news certainly brings a number of losses to society, so to minimize this the government issued legislation regarding the criminal act of spreading fake news which ensnares the perpetrators of spreading hoaxes in society, the Criminal Code, Law no. 1, and the ITE Law provides a number of benefits for society, especially in the ITE Law where in this era the world of information technology has become an important

element of life, so that controlling crimes that occur has become an important and main thing that is useful as protecting the public from the spread of hoax news.

3. As Community Control

The rules regarding the spread of fake news are a form of control over the public so that they can be wiser in providing news or information in public spaces.

4. Does not give rise to multiple interpretations and creates justice

Any revision or change to the ITE Law is highly anticipated because many people believe that the 2011 ITE Law is filled with rubber articles that still give rise to multiple interpretations in society, so the revision of the ITE Law aims to prevent the development of cases with articles that have multiple interpretations.

CONCLUSION

The rapid progress of technology has had a number of positive and negative impacts. The spread of fake news (hoaxes) is one of the negative impacts that is quite widespread in Indonesia. The issue that is currently spreading is related to election issues. Social media has become the main means for perpetrators of spreading fake news (hoaxes). The crime of spreading fake news (hoax) in Indonesia is regulated in Article 14 paragraph (1) with a maximum prison sentence of 10 (ten) years and Article 14 paragraph (2) with a maximum prison sentence of 3 (three) years and Article 15 of the Law Number 1 of 1946 concerning Criminal Law Regulations with a maximum prison sentence of 2 (two) years, Article 311 paragraph (1) with a maximum prison sentence of 4 (four) years and Article 390 of the Criminal Code (KUHP) with threats The maximum prison sentence is 2 (two) years 8 (eight) months, and Article 28 Jo. Article 45 A Law no. 19 of 2016 concerning Information and Electronic Transactions with a maximum penalty of imprisonment of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000,- (one billion rupiah).

There are several reasons for forming laws and regulations related to the spread of fake news, namely law enforcement factors, the benefits of law for society, as a means of controlling society, and not giving rise to multiple interpretations and realizing justice. It is also hoped that the public can be wiser in using technology, increase their interest in reading so that they are not easily influenced by news or information whose truth has not been confirmed, and carry out further searches related to news or information circulating.

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