THE CRIME OF HATE SPEECH THROUGH THE INTERNET (REVIEW OF ARTICLE 28 SECTION (2) OF THE INFORMATION AND ELECTRONIC TRANSACTION LAW)

By Nabila Yulianda Inkeputri & Muhammad Rustamaji

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Abstract

The problems contained in scientific papers are about what are the indicators or limits of hate speech in the ITE Law and how to apply or implement Article 28 of the ITE law on hate speech. This study uses a juridical-normative approach. From this research, it is found that Article 28 of the ITE Law does not explain in detail the indicators of hate speech itself. If grouped, the scope of crime (Hate Speech) is classified as a crime against honor. The next indicator that is included in hate speech is regarding understanding related to hatred and the last one is about elements between groups. In addition to its implementation which opens up space for multiple interpretations and subjectivity, the criminal threats contained in this article which are regulated in Article 45A paragraph (2) of this ITE Law also have problems regarding the application of criminal sanctions in this article are considered to be over the line and not in accordance with the characteristics of the law . this law as an administrative law.

Keywords: Hate Speech, Criminal Sanctions, Internet

PRELIMINARY

Background

Indonesia is one of the democracies in the world. In a country that adheres to a democratic system of government, freedom of expression orally or in writing is guaranteed by the constitution and the state. Freedom of expression has been regulated in Article 1 paragraph (1) of Law Number 9 of 1998 concerning Freedom to Express Opinions in Public. According to this law, every citizen has the right to express his thoughts orally, in writing, and so on freely and

responsibly in accordance with the provisions of the applicable laws and regulations.[1]

In the current era of information and communication technology development, mass media has an important role in communicating and sharing information. Mass media is an official means and channel as a communication tool to spread news and messages to the wider community. People can use mass media with the help of internet networks and spread news, knowledge, and even communicate on social media.[2] The government as the person in charge of the state, and in order to ensure the implementation of the 1945 Constitution, issued Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, in which the basic considerations contained that to ensure the recognition and respect for rights and freedom of others and to fulfill just demands in accordance with considerations of security and public order.[3]

With the wider discussion space in cyberspace, especially on social media, there are problems that have a negative impact. The negative impact that occurs with the ease of communicating and exchanging information through social networking sites among fellow social media users is spreading news which contains insults, scorn or defamation based on ethnicity, religion, race and inter-group (SARA). who at first just wanted to put out their words on social media status, but users forgot that everyone can read these words, so they became public consumers. In this situation, the act is classified as a criminal act which is called hate speech.[4]

Research conducted by Okky and Budi using Artificial Intelligence (AI) to detect hate speech and abusive language tweeted by Indonesian citizens on

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[1] Sulkiah Hendrawati, "Pertanggungjawaban Pidana Terhadap Tindak Pidana Ujaran Kebencian (Hate Speech) Melalui Media Sosial", Jurnal Res Justita: Jurnal Ilmu Hukum, Vol. 1,(Juli 2021), h. 247

[2] Nanda Ivan Natsir, Muhammad Natsir, Abdul Hamid, "Penanggulangan Tindak Pidana Hate Speech Melalui Media Sosial di Wilayah Hukum POLDA NTB", Jurnal Kompilasi Hukum, Vol. 4, (Desember 2019), h.83

[3] Sukardi, Nur Fadhillah Mappaselleng, Syarifuddin, "Efektivitas Penyidikan Terhadap Tindak Pidana Ujaan Kebencian di Subdit V Tipidcyber Ditreskrimsus Kepolisian Daerah Sulawesi Selatan", Journal of Lex Generalis, Vol. 2, (Maret 2021), h. 149

[4] Ismail Koto, "Hate Speech dan Hoax Ditinjau dari Undang-Undang ITE dan Hukum Islam" Jurnal Sosial dan Ekonomi, Vol. 2, 2021, h.49

Twitter social media, stated that out of a total of 13,169 tweets that were collected using the Twitter Search API, it was recorded 5,561 tweets are hate speech. And according to Okky, the hate speech is categorized into five categories, such as: religion, race, physical, gender, or sexual orientation, and other swearing).[5]

At this time many people abuse freedom of expression, namely they do not look at the applicable law and express themselves arbitrarily and use freedom of expression to express their hatred for someone or another individual which is currently referred to as hate speech, namely an act of communication. carried out by an individual or another group in terms of various aspects such as race, gender, skin color, sexual orientation, nationality, religion and others. Hate speech actions can be carried out in the form of campaign speech activities in the form of; spreading banners or banners, spreading fake news on social media networks, vilifying someone in public or directly in the form of opinions (demonstrations).[6]

On the other hand, the existence of the Electronic Information and Transactions Law Article 28 paragraph (2) which is one of the laws used in the regulation of social media users in Indonesia is still a controversial law in the sense that there are some Indonesian people who support the existence of this article. but on the other hand there are some people who hope that the law is immediately abolished on the grounds that the law restricts freedom of expression even though in essence freedom of opinion should be balanced with intelligence in speech so that it does not offend or hurt the feelings of others in using social media so that they are not entangled in the case of criminal law UU ITE article 28 paragraph (2). On social media we are free to think and express,[7] The Constitutional Court has even issued a Constitutional Court Decision Number 52/PUU-XI/2013 which concludes that the Norms of Article 28 paragraph (2) of the ITE Law are constitutional and do not conflict with democratic values, human

[5] Antara, Tempo, "Peneliti UI Deteksi Ujaran Kebencian di Twitter Pakai AI" diakses melalui <https://tekno.tempo.co/read/1410572/peneliti-ui-deteksi-ujaran-kebencian-di-twitter-pakai-ai >, pada tanggal 10 September 2021

[6] I Made Kardiyasa, A. A. Sagung Laksmi Dewi, Ni Made Sukaryati Karma, "Sanksi Pidana Terhadap Ujaran Kebencian (Hate Speech)", Jurnal Analogi Hukum, Vol. 2, (2020), h. 79

[7] Roida Pakpahan, "Analisa Implementasi UU ITE Pasal 28 Ayat 2 dalam Mengurangi Ujaran Kebencian di Media Sosial", Journal of Information System, Informatics and Computing, Vol. 5, (Juni 2021), h. 112

rights, and the principles of the rule of law.

Formulation of the problem

The formulation of the problem in this scientific work is

1. What are the indicators or limits of hate speech in the Information and Electronic Transactions Law?

2. How is Article 28 of the Information and Electronic Transactions Law on Hate Speech Implemented?

Research methods

This research is a juridical-normative research,[8] namely research that doctrinally examines the basic rules and legislation regarding the problems encountered in the Application or Implementation of Article 28 of the Law on Information and Electronic Transactions concerning Hate Speech.

This type of research can also be called descriptive analytical research in the sense that the results of this study are presented in an analytical descriptive manner. So this type of research was chosen as a way of presenting and not the subject of the research itself.

In the use of data, there are 2 types of data used in this study, namely primary data and secondary data. Primary data is data obtained directly from the field based on interviews with respondents or based on observations of the problems studied. While secondary data is data obtained from written materials including official documents, books, research results in the form of reports, diaries, and others.[9]

Like legal research in general, this research relies more on secondary data, namely written materials about law. Based on this, the types of data in this study consist of: Secondary Data, namely legal materials scattered in various writings which are divided into:[10]

1. Primary legal materials, which consist of laws and regulations and other related regulations regarding consumer protection

[8] Soerjono Soekanto, Penelitian Hukum Normatif, PT. Raja Grafindo: Jakarta, 2004, h. 14

[9] Soerjono Soekanto, Pengantar penelitian Hukum, UI-Pers: Jakarta, 1986 h, 12

[10] Soerjono Soekanto & Sri Mamudji, , Penelitian Hukum Normative: Suatu Tinjauan Singkat, edisi 1, Cet. V, PT RajaGrafindo Persada: Jakarta, 2001 h. 29

2. Secondary legal materials, namely legal materials in the form of legal writings in the form of books, papers, articles

3. Tertiary legal materials, namely legal materials containing explanations of the meaning of various terms related to the object of research such as language dictionaries, legal dictionaries, political dictionaries, and encyclopedias.

The types of data mentioned above were collected through a literature study, namely the study of various secondary data or documents, both on primary, secondary, and tertiary legal materials and classified based on their respective materials.

Discussion

Indicators or limitations of hate speech in the Information and Electronic Transactions Act

The rapid advancement of technology, communication and information that actually uses computers, smartphones and other media always brings positive and negative impacts. Currently mastery of information in the global network is a must if we do not want to become objects. In cyberspace, there has been a paradigm shift, especially in the use of information as a resource to rule the world. Much can be done using computers, information and communication technologies leading to the Internet as a manifestation of the combination of the three. technology field.

Crime is a social problem faced by Indonesia or part of society and the state, but it is a problem faced by the entire world community. Crime, as Saiichiro Uno said, is a universal phenomenon, not only in increasing numbers but also in quality being taken seriously compared to the past. Moreover, the experts also said that aside from being a universal problem, it also continues continuously as said by the legal experts Alan Cofey, Edward Eldefonso, and Walter Hartinger with the phrase "There has been a civilized that did not find itself continually with crime".[11]

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[11] Supriyanta, "Perkembangan Kejahatan dan Peradilan Pidana", Wacana Hukum, Vol. VII, (Oktober 2008), h. 18

One thing that is currently happening is about attacks on individuals or what is often known as hate speech offenses. The problem of hate speech crimes has recently received a lot of attention, both among the government, law enforcement and society. Hate speech is an oral or written act carried out by an individual or group in the form of provocation or incitement to other individuals or groups in various aspects such as race, religion, skin color, gender, disability, sexual orientation, nationality, and others. In a legal sense, hate speech is a word, behavior, writing, or performance that is prohibited because it can trigger acts of violence and unrest in social life.[12]

Regulations regarding the dissemination of information that cause hatred and the issue of SARA or hate speech have been regulated by several positive Indonesian laws. Namely Article 156 of the Criminal Code; Article 157 paragraphs (1) and (2) of the Criminal Code; Article 310 paragraphs (1), (2) and (3) of the Criminal Code; Article 28 paragraphs (1) and (2) of Law Number 19 of 2016 concerning Electronic Information and Transactions.

If a conclusion is drawn from the above elements, it can be interpreted that hate speech is all actions and efforts carried out by a person or more directly or indirectly to spread hatred or incite someone or more or certain groups based on hatred on the basis of ethnicity, ethnicity, skin, gender, people with disabilities, and sexual orientation. Based on the provisions of the Circular Letter of the Chief of Police Number SE/06/X/2015 concerning Hate Speech, it is explained that hate speech can be in the form of criminal acts regulated in the Criminal Code and other criminal provisions outside the Criminal Code, in the form of, among others; a. Insult; b. Defamation; c. Blasphemy; d. Unpleasant acts; e. Provoke; f. Spreading fake news

In Indonesia itself, the legal aspects of evidence and aspects of criminal law relating to the dissemination of information containing SARA are more often used ITE. The main points of the Petitioners' petition are the unclear meaning of the term or phrase "and between groups" and the absence of boundaries between

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[12] Zulkarnain, "Ujaran Kebencian (Hate Speech) di Masyarakat dalam Kajian Teologi", Sudia Sosia Religia, Vol. 3, (Januari-Juni 2020), h.74

the terms or phrases "and between groups". The Petitioner argues that the article is detrimental to his constitutional rights because it has the potential to be used as a tool to criminalize the applicant. In his warning,

The eradication of hate speech is actually motivated by the protection of freedom of speech. How to get everyone to have free speech without interrupting or interfering with other people's free speech. Therefore, hate speech is not just a subjective feeling of hatred between individuals, but a person's response to hatred against certain groups or this can be called discrimination, with invitations that can cause divisions such as inciting others to commit violence. we are prohibited from having an opinion on something that invites hatred and also committing acts of violence against a group.

Application or Implementation of Article 28 of the Law on Information and Electronic Transactions concerning Hate Speech

In Indonesia itself, there are many cases of hate speech. From the data held by the Criminal Investigation Unit of the Police, it was noted that there were at least a total of 4,360 police reports entered in 2018 which then increased by 4,790 in 2020 related to the ITE Law. From this data, it is noted that cases of defamation touched 1,500 reports and became 1,333 in 2019 and a sharp increase of 1,894 in 2020. In addition, cases of hate speech are at 200 cases per year.[13]

Indonesia itself has several legal regulations that regulate hate speech and one of the ones that is often used is regarding the crime of hate speech in Article 28 paragraph (2) of the ITE Law. But in implementation. The application of this article has encountered many problems due to the absence of clear indicators for the elements listed in Article 28 paragraph (2) so that it has multiple interpretations. This is related to the absence of further explanation regarding matters that still require explanation, such as the hatred in question, the form of information dissemination and other things.

There are differences of opinion regarding actions that can be said to have

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[13] Rayful Mudassir, Bisnis.com, "Polri: Pelaporan UU ITE Cenderung Meningkat sejak 2018-2020, diakses melalui < https://kabar24.bisnis.com/read/20210310/16/1366254/polri-pelaporan-uu-ite-cenderung-meningkat-since-2018-2020 >, pada tanggal 10 Oktober 2021

violated the provisions of the article. This is related to formal and material criminal acts from which the act is intended by the article. Formal criminal acts, if associated with the article, do not explicitly prohibit causing certain consequences from the act. In addition, the act requires proof that the act is aimed at causing hatred, and for a material crime if it is associated with the article, it is related to the evidence itself. These actions have resulted in tangible consequences, because they are related to hatred and others are something that only exists in humans.

In the absence of indicators that clearly explain the meaning contained in the article on hate speech, it opens up enormous opportunities for law enforcement officers, especially investigators, to be able to interpret subjectively. With free space for investigators to interpret the phrases in Article a quo, this creates legal uncertainty so that individual rights can be violated. Therefore, regarding this matter, good legal protection is needed considering that every human being needs to be protected according to his dignity and because it is regulated as an inherent right of every human being.

In addition to its implementation, which opens up space for multiple interpretations and subjectivity, the criminal threats contained in this article as regulated in Article 45A paragraph (2) of the ITE Law also have problems regarding the application of criminal sanctions in this article, which are considered to be over the line and not in accordance with the characteristics of the law. this law itself.

The implementation of hate speech crimes will be effective if law enforcement officers can work together professionally to enforce the law, because the duties, authorities and responsibilities of law enforcement are different but interrelated and cannot be separated. The police have a role in the judicial process, starting from the investigation process to the detention process. The police have the power to determine who deserves to be investigated, arrested and detained. The public prosecutor can only carry out his functions if the presentation of the results of the examination by the investigator has been completed. The public prosecutor can make an indictment based on the results of the investigator's

investigation on the basis of the investigation report, as well as a request that can be adapted to the police investigator's report.

In addition, norms, rules and regulations that apply must run perfectly or in other words called legal effectiveness. According to Soerjono Soekanto, the effectiveness of the law in legal action or reality can be known if someone states that a legal rule has succeeded or failed to achieve its goals, then it is usually known whether its influence has succeeded in regulating certain attitudes or behavior so that it is in accordance with its objectives or not. Legal effectiveness means that the effectiveness of the law will be highlighted from the objectives to be achieved, namely the effectiveness of the law. One of the efforts that are usually made so that the community obeys the rule of law is to include the sanctions. These sanctions can be in the form of negative sanctions or positive sanctions. which means to cause stimulation so that humans do not take disgraceful actions or take commendable actions. The factors that affect the effectiveness of the law are,[14]a. The legal factor itself; b. Law enforcement factors; c. Factors of facilities or facilities that support the law; d. community factors; e. Cultural factors. So, actually the government has taken definite steps in overcoming or at least suppressing the number of hate speech on social media with the enactment of some of these laws. However, in its application, Article 28 paragraph (2) has not been able to overcome problems such as hate speech.

The important steps that can be taken by each country in overcoming cyber crime are:

a. By modernizing the national criminal law and its procedural law, by harmonizing it with international conventions related to cyber crime.

b. Improve the national computer network security system.

c. Improve the understanding and capability of law enforcement officers regarding preventive, investigative, and prosecution of cases related to cyber crime.

d. Public awareness of cyber crime must be increased.

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[14] Soerjono Soekanto, Faktor - Faktor yang Mempengaruhi Penegakan Hukum, PT RajaGrafindo Persada: Jakarta, 2007, h. 8

e. Cooperation between countries in prevention efforts must be increased.

Closing

Conclusion

In Indonesia, one of the legal aspects regarding hate speech is Article 28 paragraph (2) and is subject to criminal sanctions based on Article 45 paragraph (2) of the ITE Law. Article 28 of the ITE Law does not explain in detail the indicators of hate speech or hate speech itself. If grouped, the scope of hate speech crimes is classified as a crime against honor. The next indicator that is included in hate speech or hate speech is regarding understanding related to hatred and the last one is about elements between groups.

Law is basically defined as a regulation of an action or behavior of a person and society where there are sanctions given by the state if they violate it. In terms of the application of Article 28 paragraph (2) of the ITE Law in Indonesia regarding Hate Speech, there are many problems. This is because there are no clear indicators of the elements listed in Article 28 paragraph (2). As a result, this article has multiple interpretations. In addition to its implementation which opens up a space for multi-interpretation and subjectivity, the criminal threat in this article as regulated in Article 45A paragraph (2) of this ITE Law also contains problems regarding the application of criminal sanctions in this article is considered to be over the line and not in accordance with the characteristics of this law as an administrative law.

Suggestion

The government and legislative bodies need to re-discuss the provisions for hate speech contained in the ITE Law so that the rules regarding hate speech have clear indicators and do not have multiple interpretations. The provisions for criminal sanctions contained in the hate speech article in the ITE Law need to be reviewed so that the criminal threat is in accordance with the existing legal concept and does not exceed the limit so that it needs to be re-arranged.

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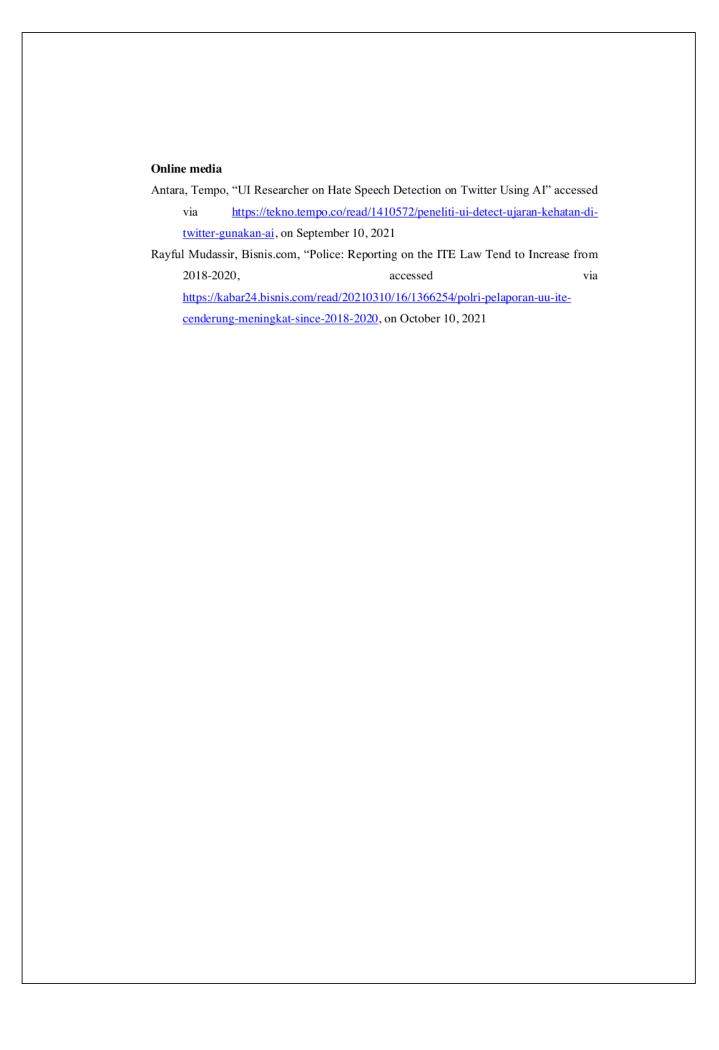

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