

REVIEW OF CRIMINAL PROVISIONS OF FAKE NEWS (HOAX) BASED ON LEGISLATION IN INDONESIA

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Abstract

The crime of fake news (hoax) is qualified as a material crime, namely a crime that must result in losses in the form of losses to consumers. Consumers are defined as users of manufactured goods (clothing, food, etc.), recipients of advertising messages, and service users (customers and so on). So that Article 28 paragraph (1) jo. Article 45A paragraph (1) of the ITE Law does not cover the general public. The definition of a consumer must be based on Law Number 8 Year 1999 concerning Consumer Protection. In addition, Article 28 paragraph (1) of the ITE Law is not a criminal offense against the act of spreading false news (hoax) in general, but the act of spreading false news in the context of electronic transactions such as online trading transactions. So, it can be concluded that the hoaxes regulated in Article 28 paragraph (1) jo. Article 45A paragraph (1) of the ITE Law is a material offense and its validity is limited to electronic transactions between consumers and producers, such as the sale of certain goods and/or services. So that the article cannot be applied to the general public.

Keywords: Crime, hoax, information, electronic transactions

INTRODUCTION

The development of communication and information technology is a natural thing to happen in the 21st century. Given the many discoveries in the field of technology. So, people have to adapt to the times. The fairness of the dynamics of technology and renewable information is directly proportional to the development of public knowledge in mobilizing and using all available access to information. So that not a few people experience dependence on technology. Almost all the people of the world have set technology as one of the necessities of life.

One of the greatest inventions in the world is the gadget (mobile/HP). HP today has undergone many developments in such a way. The features provided are very complete. So that people can easily carry out their life activities. Features such as the internet, and social media (Facebook, WhatsApp, Line, Twitter, and so on) are examples of facilities that exist in cyberspace today. Anyone can use it regardless of age and occupation. So, it can cause many impacts, both negative and positive impacts.

The impact of social media is very diverse. The positive impact that can be presented by social media is that it makes it easier for everyone to interact with other people massively, expanding the association. So, distance and time are no longer a problem. In addition, social media can make it easier to express yourself, and dissemination of information can take place quickly, at a lower cost. While the negative impact of social media is to keep people who are close and vice versa, face-to-face interactions tend to decrease, making people addicted to the internet, causing conflicts, privacy problems, and being vulnerable to bad influences from others.¹

It is clear that social media is like a double-edged sword, if you use it wrong, it will wreak havoc. Meanwhile, when used wisely, it will bring benefits. A very dangerous thing when social media is not used wisely is the occurrence of criminal acts. There are many types of criminal acts that can be created through social media, ranging from the crime of fake news (hoax), decency, defamation, SARA, and so on. All of this can be realized through information technology called the internet and social media.

In particular, fake news (hoax) has become a big threat that always approaches people in Indonesia. If you refer to the Indonesian Dictionary (Kamus Besar Bahasa Indonesia/K.B.B.I), it can be seen that the definition of a hoax is false information.² Fake news (hoax) is regulated in Article 28 paragraph (1) of Law Number 11 Year 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Transactions Electronic which reads: "Everyone intentionally and without rights spreads false and misleading news that results in consumer losses in Electronic Transactions".

Furthermore, regarding the criminal provisions for the crime of false news, it is regulated in Article 45A paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions which reads: "Any person who intentionally and without the right to spread false and misleading news that results in consumer losses in

Electronic Transactions as referred to in Article 28 paragraph (1) shall be punished with imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of Rp. 1,000,000,000.00 (one billion rupiah)".

These provisions state that terms of using social media or using the internet, should not be careless or unwise. Because everything in the real world and the virtual world is regulated by the laws and regulations in Indonesia. However, based on data from the Ministry of Communication and Information (Kominfo) shows that throughout 2021, 565,449 negative contents have been recorded. Kominfo has also debunked or published clarifications on 1,773 misinformation and disinformation in the community. The most hoax cases throughout 2021 were hoaxes surrounding the Coronavirus Disease 2019 (Covid-19) pandemic which reached 723 hoaxes.³

South Sulawesi Province as one of the largest provinces in Indonesia is not spared by the hoax case. It was recorded that throughout 2020, there were at least 49 non-criminal cases of the ITE Law. 5 (five) cases of which are hoaxes.⁴

¹ Nurul Fatmawati, 2021, *Pengaruh Positif dan Negatif Media Sosial Terhadap Masyarakat*, see <https://www.djkn.kemenkeu.go.id/kpknl-semarang/baca-artikel/14366/Pengaruh-Positif-dan-Negatif-Media-Sosial-Terhadap-Masyarakat.html>, Retrieved February 8, 2022

² Badan Pengembangan Bahasa dan Perbukuan, *Kamus Besar Bahasa Indonesia*, Kementerian Pendidikan dan Kebudayaan Republik Indonesia, KBBI Version 0.3.2 Beta (32), 2016-2019.

³ Rosy Dewi Arianti Saptoyo, 2022, *Data Sebaran Hoaks Sepanjang 2021, Terbanyak Soal Pandemi Covid-19*, see <https://www.kompas.com/tren/read/2022/01/03/163216365/data-sebaran-hoaks-sepanjang-2021-terbanyak-soal-pandemi-covid-19?page=all>, Retrieved February 8, 2022

⁴ Wirfa Prasuci, Hambali Thalib, and Nur Fadhillah Mappaselleng, *Efektivitas Perlindungan Hukum Terhadap Korban Penyebaran Berita Bohong Melalui Media Facebook*, *Journal of Lex Generalis*, Vol. 2, No. 3, March 2021, p. 1259

The public's lack of understanding in sorting out true and untrue news is a problem. Efforts are needed to socialize the law related to fake news. Because the law is a tool of social engineering. As stated by L.J. van Apeldoorn "The purpose of the law is to regulate the peaceful association of life. Thus, the existence of a law when viewed from Apeldoorn's view is the existence of public order and peace (*orde en rust*).⁵ The paper that will be discussed in this paper is how to regulate and interpret fake news (hoax) in the current laws and regulations in Indonesia?

METHOD

Legal research (*rectsonderzoek*) is a know-how activity carried out to solve legal issues faced,⁶ Legal research (*Recht onderzoek*) is a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues faced.⁷ This research uses normative or doctrinal legal research. According to Terry Hutchinson,⁸ the meaning of doctrinal legal research is "Doctrinal research: research which provides a systematic exposition of the rules governing a particular legal category analyzes the relationship between rules, explain areas of difficulty and, perhaps, predicts future development."

Meanwhile, according to Peter Mahmud Marzuki,⁹ is referred to as normative legal research because this type of research is carried out by analyzing legal norms (existing provisions). This research is also research that discusses systematically, analyzes the relationship between provisions, and examines and predicts possible developments in the future. This research has research objects, namely norms, legal concepts, legal principles, and legal doctrines.¹⁰ Thus, this study focuses more on literature research, meaning that it is more dominant to examine secondary legal materials produced from research.

The approach method used in this research is the statute approach. In the legislative approach, the researcher examines laws and regulations related to the legal issues studied, and looks for the legis ratio and the ontological basis for the birth of law.¹¹ The types and sources of legal materials used in this research are materials that are related to the problems and objectives of the research, including primary legal materials, secondary materials, and non-legal materials.

After all legal materials are obtained, both primary, secondary, and non-legal materials, then they are identified and inventoried. Then the legal materials are analyzed using a statutory approach in order to get a systematic and complex picture of all types of legal materials with a qualitative analysis process that describes legal materials into simple and logical sentences, as well as interpretations and conclusions. The analysis aims to produce new legal prescriptions or opinions and be able to solve every legal problem.

DISCUSSION

The crime of hoaxes is basically regulated by Law Number 11 Year 2008 concerning Electronic Information and Transactions as amended by Law Number 19 Year 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as UU ITE).

Based on Article 45A paragraph (1) of the ITE Law, it is affirmed as follows:

"Every person who knowingly and without rights spreads false and misleading news that results in consumer losses in Electronic Transactions as referred to in Article 28 paragraph (1) shall be sentenced to a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah)".

Referring to these provisions, it is clear that the criminal element of fake news in the ITE Law is a material crime. That is a crime that requires a consequence. So that the teaching of criminal causality

⁵ Donald Albert Rumokoy and Frans Maramis, *Pengantar Ilmu Hukum*, PT. RajaGrafindo Persada, 2014, Jakarta, p. 47

⁶ Peter Mahmud Marzuki, *Penelitian Hukum (Revised Edition)*, Kencana Prenadamedia Group, Jakarta, 2017, p. 60

⁷ Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, 2010, p. 35

⁸ *Ibid.*, p. 32

⁹ Agus Yudha Handoko, *Hukum Perjanjian Asas Proporsionalitas dalam Kontrak Komersial*, Kencana Prenadamedia Group, Jakarta, 2010, p. 38

¹⁰ I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, Kencana Prenadamedia Group, Jakarta, 2017, p. 2

¹¹ Peter Mahmud Marzuki, 2017, *Op.Cit.*, p. 133-134.

applies in it. As stated by Ahmad Sofian¹² in his book that the teaching of causality in criminal law in Indonesia is used in material crimes, crimes qualified by the consequences and impure crimes.

Criminal acts or material offenses are criminal acts whose formulation is viewed from the aspect of the emergence of consequences that are prohibited by law, so that this prohibition lies in the emergence of a consequence for the actions of the perpetrator. The determination of this effect is based on the formulation of the article that governs it. Often the result does not appear in a short time or immediately, but there is a time gap, in the sense that the result appears later after the act is done.¹³

The function of formulating an offense or criminal act in theory is twofold. That is related to the concrete application of the principle of legality in which sanctions can only be given if the act has been regulated in advance in the law. Furthermore, namely regarding the evidence as regulated in the Criminal Procedure Code. The formulation of the crime can be proven through the applicable law.¹⁴

The teaching of causality in criminal law itself is used to determine which actions from a series of actions are seen as the cause of the emergence of prohibited consequences. J. Remmelink¹⁵ argues that the focus of attention of criminal law juries is on the meaning that can be attached to the notion of causality so that they can answer the question of who can be held accountable or a certain result. In this context, apart from the legislator's point of view, decency and appropriateness have a very important role.

The Criminal Code itself does not provide instructions on how to determine the cause and effect that gives rise to offenses or criminal acts. The Criminal Code only stipulates that in the case of certain criminal acts it is necessary to have a certain consequence in order to impose a sentence on the perpetrator. Based on this, the offense or criminal act determines that a certain result becomes a *bestanddeel* (the core part of the offense), namely the constitutive element which is expressly stated in the Legislation. The formulation of the offense is hereinafter referred to as a material offense.¹⁶

Furthermore, if you look at Article 45A paragraph (1) of the ITE Law, it can be seen clearly and clearly (*expressis verbis*) that it is consumers who must be harmed as a result of fake news. The definition of consumers is not explained in the ITE Law, so they can use an alternative to the Indonesian Dictionary to define consumers as users of manufactured goods (clothing materials, food, etc.), recipients of advertising messages, and service users (customers and so on).¹⁷

Not a few people interpret or interpret consumers in the ITE Law as individuals in general (society). Whereas in criminal law there is a type of interpretation known as *La loi poenale est d'interpretation stricte* (law/Criminal Code must be interpreted narrowly, not broadly).¹⁸ So that consumer interpretation must be limited. Another type of interpretation that can be used is systematic interpretation. Systematic or dogmatic interpretation is carried out in the event that the Judge hangs the explanation of a provision on the system of regulations in which the relevant regulation is sucked in.¹⁹

If you look at Law Number 8 Year 1999 concerning Consumer Protection it can be found that the definition of a consumer is every person who uses goods and/or services available in the community, both for the benefit of himself, his family, others, or for the benefit of himself. other living things and not to be traded. Based on this, it can be concluded that the consumers who must be harmed are the users of goods and/or services as well as other living creatures.

The common thread is that consumers in Article 45A paragraph (1) of the ITE Law do not cover the general public. This is in accordance with the Joint Decree of the Minister of Communication and Information Technology, the Attorney General of the Republic of Indonesia, and the Head of the State Police of the Republic of Indonesia Number 229 Year 2021, Number 154 Year 2021, Number KB/2/VI/2021 concerning Guidelines for the Implementation of Certain Articles in the Law. Law Number 11 Year 2008 concerning Information and Electronic Transactions as amended by Law Number 19 Year 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. In the decree it is stated explicitly that Article 28 paragraph (1) of the ITE Law is not a criminal offense for spreading false news (hoaks) in general, but the act of spreading false news in the context of electronic transactions such as online trading transactions.

¹² Ahmad Sofian, *Ajaran Kausalitas Hukum Pidana*, 2nd Edition, Kencana Prenadamedia Group, Jakarta, 2018, p. 82-85

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*, p. 35

¹⁶ *Ibid.*, p. 206-207

¹⁷ Badan Pengembangan Bahasa dan Perbukuan, Kementerian Pendidikan dan Kebudayaan Republik Indonesia, KBBI Version 0.3.2 Beta (32), Jakarta, 2019.

¹⁸ J. Remmelink, *Pengantar Hukum Pidana Material 1*, (Translated by Tristam P. Meliono), Maharsa, Yogyakarta, 2014, p. 53

¹⁹ Didik Endro Purwoleksono, *Hukum Pidana*, Airlangga University Press, Surabaya, 2016, p. 33-34

Furthermore, the SKB also confirms that Article 28 paragraph (1) jo. Article 45A paragraph (1) of the ITE Law is a material offense, so that consumer losses as a result of fake news must be calculated and the value determined. And the definition of "consumer" in Article 28 paragraph (1) of the ITE Law refers to the Consumer Protection Law

CONCLUSION

It can be concluded that hoaxes as regulated in Article 28 paragraph (1) jo. Article 45A paragraph (1) of the ITE Law is a material offense and its validity is limited to electronic transactions between consumers and producers, such as the sale of certain goods and/or services. So, the article cannot be applied to the general public.

Efforts that can be made to prevent confusion in the community regarding the punishment of people who spread hoaxes is to fundamentally revise the ITE Law. So that the binding force is clearer and stronger than the Joint Decree.

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