

DATE OF HATE IN SOCIAL MEDIA (FACEBOOK) ACCORDING TO LAW NUMBER 19 OF 2016 CONCERNING ELECTRONIC INFORMATION AND TRANSACTIONS

Nina Yolanda
E-mail: ninayolanda51@yahoo.co.id

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Abstract

Hate Speech is "The act of communication carried out by an individual or group in the form of provocation, incitement, or insult to other individuals or groups in terms of various aspects such as race, color, gender, disability, sexual orientation, citizenship and so on. Other problems in this thesis, namely: 1. Forms of Hate Speech on Social Media. 2. Government authority for the operation of Electronic Systems that violate the law. Hate Speech (Hate Speech) on social media (Facebook), namely forms of Hate Speech, namely insulting, defamation, defamation, unpleasant actions, provoking, inciting, spreading fake news.

Keywords: Hate Speech; Social Media; Communication

INTRODUCTION

Background

Along with the advancement of culture and science and technology, human behavior in social and state life is increasingly complex and even multi-complex. Such behavior when viewed from a legal perspective, of course, there are behaviors that can be categorized according to the norms and there are behaviors that are not in accordance with the norms. Against behavior in accordance with applicable norms (law), it is not a problem. But behavior that is not in accordance with the norms usually can cause problems in the field of law and harm society.¹ Behavior that is not appropriate or can be referred to as violation of agreed norms, turns out to cause disruption of the order and peace of human life, such abuses, usually labeled by the community as a violation and even a crime.

Crime in human life is a social phenomenon that every human being, society, and even the State will always face. The fact has proven that crime can only be prevented or reduced but it is difficult to eradicate completely. Crime needs serious attention considering the losses it can cause, which will adversely affect the state, society and individuals. Therefore, the state reacts in the form of prohibitions against acts against the law and sanctions for violators. The application of law by upholding the values contained in Pancasila is an effort to improve the quality of Indonesian society, by utilizing science and technology and paying attention to the development of modern globalization.²

Acts or crimes that need attention at this time are Hate Speech, Hate Speech itself is "The act of communication carried out by an individual or group in the form of provocation, insults, or incitement to individuals or groups in terms of aspects Ethnicity, religion, race, gender, skin color, disability, sexual orientation, citizenship and others. "In the legal sense of hate speech (Hate Speech), words, behavior, writing, or performances are prohibited because they can trigger acts of violence and the attitude of prejudice whether the perpetrator of the statement or the victim of the act. Hate speech can be done through various media, including through campaign activity orations, banners, social media networks,³

In Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE), Article 28 paragraph (2) and Jo article 45 are provisions used in cases of the spread of hatred. Article 28 paragraph (2) of the Law on Information and Electronic Transactions (ITE) reads as follows:

"Every person knowingly and without right distributes information aimed at creating hatred or enmity for individuals and / or certain groups of society based on ethnicity, religion, race and intergroup (SARA)".

The provisions for criminal sanctions in Article 28 paragraph (2) are provided for in Article 45 paragraph (2) which reads:⁴

"Every person who fulfills the elements as referred to in Article 28 paragraph (1) or paragraph (2) shall be sentenced to imprisonment for a maximum of 6 (six) years and / or a maximum fine of IDR 1,000,000,000.00 (One Billion Rupiah).

Below are some examples of cases of Hate Speech on social media:

1. Ki Gendeng Pamungkas, the ultimate paranormal ki Gendeng, made a 54-second video containing elements of racial hatred. The video was made on May 2, 2017. In addition to the video, Ki Gendeng also produces attributes such as shirts, stickers, jackets, to plastic bags containing hatred of ethnicity, religion, race, and groups (SARA). In fact, Ki Gendeng shared the attributes of SARA's content with the people in his environment. To the police, he admitted that he had harbored hatred against certain ethnicities for a long time.
2. Siti Sundari Daranila, just days away from becoming TNI commander, marshal Hadi Tjahjanto has become the target of hoax spreaders. Investigators Direktorat Cybercrime Crime Criminal Investigation Police arrested the owner of the Facebook account Gusti Sikumbang whose real name is Siti Sundari Daranilla (51). Sundari works as a doctor every day. He was arrested on December 15, 2017 for spreading hoax content stating that Hadi Tjahjato's wife was of Chinese ethnicity. The day after being arrested, Sundari was detained at the Police Criminal Investigation Detention Center.

The following is the hoax sentence he uploaded:

¹Bambang Waluyo, *Crime and Criminalization*, Sinar Grafika, Jakarta, 2004, p. 01.

²Abdul Wahid, Mohammad Labib, *Cyber crime*, Aditama, Bandung, 2010.Hlm.1

³<https://hatespeechgroup.wordpress.com/pengentukhatespeech/>, accessed on 19 February 2018, at 21.00.

⁴Legality Team, *Law on Information and Electronic Transactions, (ITE)*, LEGALITY, Yogyakarta, 2017, p. 28.

WE PRIVATE MEETING THE LINE ... THE NEW ARMY COMMANDER MARSEKAL HADI TJAHJANTO WITH WIFE * LIMSIOK LAN * WITH 2 FOOT CHILDREN ... CHILDREN AND MANTU ARE SAME SAME TO AIR RELEASE ...

The sentence is a caption of a photo featuring Hadi Tjahjanto and his family. After being checked, his personal account also found a number of uploads offending SARA.

Sundari is subject to Law Number 19 of 2016 concerning Electronic Transaction Information and Law 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination. He faces a prison sentence of 6 (six) years.⁵

The above incident is an example of a case that falls into hate speech which leads to criminal reporting, which is often carried out by those who feel aggrieved by haters (followers of social networks but with comments that drop or even insult) by using the articles in the Information Law. and Electronic Transactions (ITE) and the Criminal Code (KUHP). ICJR (Institute for Criminal Justice Reform) encourages the use of article 28 paragraph (2) in conjunction with article 45 of the Electronic Information and Transaction Law (ITE) in a more accurate manner in the current situation the use of these articles must be precise and precise, so that it can effectively provide a sense of justice for the public but on the other hand also does not kill citizens' freedom of expression.

So far, Hate Speech has had an impact on minor to severe human rights violations, always initially only words, both on social media and via telegram, but the effect is able to move the masses to trigger conflict and bloodshed. Therefore, it is necessary to have an action from the apparatus and law enforcers, especially the police, to prevent and take preventive and repressive actions in handling cases of hate speech. If it is not handled effectively efficiently and in accordance with statutory provisions, it will have the potential to cause widespread social conflict. In Indonesia, the articles governing Hate Speech are regulated in article 156, article 157, article 310, article 311 of the Criminal Code (KUHP), then article 28 jis.⁶

From the description above, the author is interested in writing with the title: "**CLEAR HATE IN THE MEDIA (FACEBOOK) ACCORDING TO LAW NUMBER 19 OF 2016 CONCERNING ELECTRONIC INFORMATION AND TRANSACTIONS** "

Problem

Based on what the author has stated in the previous background, the problems are:

1. What are the forms of hate speech on social media (Facebook)?
2. What is the government's authority for the administration of electronic systems that violate the law?

Writing purpose

1. To find out forms of hate speech on social media (Facebook)
2. This is to find out the government's authority for the operation of electronic systems that violate the law

Scope

The scope of this research is mainly focused on tracing hate speech on social media (Facebook), but it does not rule out other things that are related to the subject matter in this paper, which are formulated in the problem.

Methodology

In line with the objectives and benefits of the study, the research on the above problems is normative legal research, namely research that uses descriptive data that describes and systematically describes all problems, so it does not intend to test hypotheses.

Sources of data used in this study are secondary data, namely data obtained from literature related to this study in the form of primary legal materials, namely legislation and secondary legal materials in the form of books. The data obtained was analyzed, then conclusions were drawn.

⁵ Ambaranie Nadia Kemala Movanita, "The case of Hate Speech and Hoax that stood out during 2017", <http://nasional.kompas.com/read/2017/12/24/23245851/11-kasus-ujaran-kebenci-dan-hoaks-yang-menunjuk-selama-2017?page=all> accessed on February 19, 2018 at 21:24

⁶ Chief of the Indonesian National Police, Chief of Police Circular NUMBER SE / 06 / X / 2015 Handling Hate Speech.

Theoretical basis

Definition of Hate Speech (Hate Speech) and its forms

The meaning of Hate Speech itself is an act of communication carried out by an individual or group in the form of provocation, incitement, or insults to other individuals or groups in various aspects such as race, color, gender, disability, sexual orientation, citizenship, religion and others. In the legal sense, Hate Speech is prohibited words, behavior, writings, or performances because they can trigger acts of violence and prejudice either from the perpetrator of the statement or the victim of the action. The website that uses or implements the Hate Speech is called the (Hate Site). Most of these sites use Internet and News Forums to reinforce a certain point of view.

Hate Speech Definition According to Experts:

- a. *Kent Greenwalt* : insults or nicknames for Race, Religion, Ethnicity, or Sexual Reference which can cause serious problems for democratic theory and practice.
- b. *Jonh k roth* : criminal acts and offensive remarks directed at an individual because of race, ethnicity, religion, sexual orientation of other affiliated groups.
- c. *Kathelen Mahoney* : Hate Speech into several types, namely Regilios Hate speech, defamation, economic defamation and Eccentance or genocide, speech speech has the characteristic of stating that a religion is dangerous to religion has the characteristic of stating that another religion is thus promoting destruction, for example attack or the destruction of places of worship.
- d. *Margaret Brown I-sica and Jeffrey Beal*: manifest in many actions, such as insulting, hurting, or degrading certain minority groups, with various causes, whether based on Race, Gender, Ethnicity, Disability, Nationality, Religion, Sexual Orientation, or other characteristics.

Almost all countries around the world have laws governing hate speech, in Indonesia the articles that regulate Hate Speech against a person, group or institution are based on a Circular of the Chief of Police NO: SE / 06 / X / 2015 is contained in Article 156, Article 157, Article 310, Article 311, then Article 28 jis. Article 45 paragraph (2) of Law 11 of 2008 concerning Information and Electronic Transactions and Article 16 of Law No. 40 of 2008 concerning Elimination of Racial and Ethnic Discrimination.

Article 156 of the Criminal Code is better known as the expression of feelings of hostility, hatred or insult. An act of expressing feelings of hostility (*vijanschap*), is an act of declaring with an *uccapan* the content of which is viewed by the public as hostile to a group of the Indonesian population. Actions of expressing hatred (*haat*), are in the form of acts of expressing in words the content is viewed or judged by the public as hating a group of the Indonesian population. Likewise, the act of expressing utterances whose content is seen by the public as insulting, degrading or insulting a group of the Indonesian population. These three actions reflect the same nature of feeling, namely the feeling of being unhappy or unfriendly, the feeling of unequal position between fellow groups.⁷

In the Chief of Police Circular NUMBER SE / 06 / X / 2015 concerning Hate Speech, it is explained that the meaning of Hate Speech can be in the form of a criminal act regulated in the Criminal Code and other criminal provisions outside the Criminal Code, which include:⁸

- a. Insult
- b. Defamation
- c. Offender
- d. Unpleasant acts
- e. Provoke
- f. Instigate
- g. Spread fake news

All of the above actions have the purpose or can have an impact on acts of discrimination, violence, loss of life and / or social conflicts. furthermore in the Circular (SE) in letter (h) it is stated, Hate Speech as referred to above can be carried out through various media, including:

- a. In the campaign activity oration
- b. Banner or hunner
- c. Social media networks
- d. Expression of opinions in public (demonstration)
- e. Religious lectures

⁷Adam Chazawi, Positive Defamation Criminal Law, Revised Edition II Edition, Media Nusa Creative, Malang, (hereinafter abbreviated as Adami Chazawi I), November 2016, p. 199.

⁸ Chief of the National Police of the Republic of Indonesia, Circular of the Chief of Police SE / 06 / X / 2015, Handling Hate Speech, 2.

- f. Print or electronic mass media
- g. Pamphlet⁹

Definition of Crime and Criminal Liability

1. Definition of Crime

In Indonesia, the legislators use the term *Straafbaarfeit* to call it the name of a criminal act, but they do not describe in detail about the *Straafbaarfeit*. *Staarbaar feit* is the original Dutch term which is translated into Indonesian with various meanings including, criminal act, offense, criminal act, or a criminal event or a punishable act. The word *strafbaarfeit* consists of 3 (three) words, namely *straf*, *baar*, *feit*. Various terms are used as a translation of the *strafbaar feit*, it turns out that *straf* is translated as criminal and law. New words are translated as can and may, while for the word *feit* is translated as actions, events, violations and deeds.¹⁰ The meaning of the words *Starbaarfeit* according to experts, namely:

a. E. Utrecht

Translating *strafbaarfeit* with the term a criminal event which is often called an offense, because the incident is something *Handelen* and positive *doen* or a neglect-negative reason or its consequences (a condition caused by the act or neglecting it). A criminal event is a legal event (*rechtsfeit*), namely a social event that has consequences regulated by law.

The actions of all elements that are offended by a criminal provision are made an absolute element of a criminal act. Namely human behavior that is against the law (elements against the law), therefore a punishment can be imposed from the existence of a maker in the sense of the word responsible.¹¹

b. Simons

In the *strafbaarfeit* formula it is

"An unlawful act that has been carried out intentionally or unintentionally by someone who can be held accountable for his actions and by law has been declared an act that can be punished". The reason from Simons why *strafbaarfeit* should be formulated as above is because:¹²

- a. For the existence of a *strafbaarfeit*, it is required that there is an action that is prohibited or required by law where the violation of such prohibition or obligation has been declared an act that is punishable;
- b. In order for an act like that to be punished, that action must fulfill all the elements of the offense as defined in the law;
- c. Every *strafbaarfeit* as a violation of a prohibition or obligation according to that Law, is essentially an act against the law or an *onrechtmatige handdeling*.

So the nature of being against the law arises from the fact that human action is against the laws and regulations, so that basically this character is not an element of offense which has its own meaning as is the case with other elements.

c. Moeljatno

According to Moeljatno, a criminal act, which he defined as "an act prohibited by a prohibition law, is accompanied by a threat (sanction) in the form of a certain crime, for whoever violates the prohibition. The term criminal offense is more appropriate for the following reasons:

1. An act that is prohibited is an act (human action, that is, an event caused by a person's behavior), meaning that the prohibition is aimed at his actions. Meanwhile, the criminal threat is aimed at the person.
2. Between the prohibition (which is aimed at the act) and the threat of punishment (aimed at the person) is closely related, and therefore the act (in the form of a situation or event caused by that person, violates the prohibition) with the person who caused the act to be related which is close anyway.
3. And it is precisely to state that there is a close relationship that it is more appropriate to use the term criminal amendment, an abstract meaning that refers to two concrete conditions, namely:

⁹*Ibid*, 3.

¹⁰Evi Hartanti, Second Edition of Corruption Crime, Sinar Grafika: Jakarta, May 2008, p. 05

¹¹*Ibid*, p. 06

¹²*Ibid*.

first, there is a certain event (action) and second, there is someone who did or caused the incident.¹³

This understanding can be understood that a criminal act is an act that is prohibited by a legal rule which has a criminal sanction. The word act in this sense implies a situation or event caused by the person who commits the action.

d. JE Jonkers

JE Jonkers, who formulated a criminal incident is, "an act that is against the law (wedderrechtelijk) which is related to wickedness or wrongdoing committed by a person who can be held accountable for it".

e. HJ Van Schravendijk

HJ Van Schravendijk, formulating an act that is punishable is "the behavior of a person who is so contrary to legal conviction that such behavior is punishable by punishment, as long as it is committed by someone who can therefore be blamed."¹⁴

Meanwhile Pompe provides a definition of criminal acts, namely, those that are theoretical and statutory in nature. According to Pompe, from a theoretical definition point of view, a criminal act is a violation of the normal / rule / legal system, which is held because of the offender's fault, and what must be given the punishment can maintain the legal order and save the general welfare.¹⁵

Furthermore, according to positive law, a criminal act is an event which is determined by law to contain an act and neglect or inaction. Abstinance is usually done in a number of circumstances which are part of an event. The description of the act of participating in that is called the description of the offense.

In clarifying a criminal act into its elements, what needs to be considered is whether the act has violated the law or not. Various kinds of criminal acts regulated in the Criminal Code (KUHP) can generally be clarified into elements consisting of subjective elements and objective elements. These subjective elements are elements that are inherent in the doer or related to the doer, and include everything that is contained in his heart.

a. The main elements of the Objective

1. Human actions which are included in the main objective elements are as follows:

- a) *Act* is an active action which is also called positive action, and
- b) *Omission*, is not actively doing and is also called negative action.

2. As a result of human action

It is closely related to causality. The intended effect is to endanger or eliminate interests that are defended by law, for example life, body, independence, property / property rights, or honor.

3. Circumstances

In general, these conditions are divided into:

- a. The state at which the action was performed; and
- b. The state after the action is done

4. Punishability and lawlessness

The punishable nature relates to the reasons that release the accused from punishment. The nature of being against the law is against the law, namely with regard to prohibitions or orders.

b. Subjective Main Elements

The main principle of the criminal law is "there is no punishment if there is no mistake. The mistakes referred to here are deliberate (intention / *dolus* / *opzet*) and negligent (negligent / *schuld*).

1) On purpose

According to experts, there are three forms of deliberation, namely:

- a. Purpose as intent
- b. Deliberate conscious certainty
- c. Deliberate conscious possibility (*dolus eventualis*).

2) negligence, is a form of error that is lighter than intentional. There are two forms of neglect, namely:

- a. Not careful; and.

¹³Adami Chazawi, Op.Cit, p. 15.

¹⁴*Ibid*, p. 15

¹⁵Zainal Adidin Farid, Criminal Law 1, First Edition, Sinar Grafika, Jakarta April 2010, p. 225.

b. Not guessing the consequences of that act.

e. Laws and regulations governing Hate Speech

Almost all countries around the world have laws that regulate hate speech (Hate Speech), in Indonesia the articles that regulate actions regarding hate speech (Hate Speech) against a person, group or institution are based on the Chief of Police Circular No: SE / 06 / X2015 contained in Article 156, Article 157, Article 310, Article 311, then Article 28 jls. Article 45 paragraph (2) of Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Electronic Information and Transaction (ITE) and Article 16 of Law Number 40 Year 2008 concerning the Elimination of Racial and Ethnic Discrimination. Following are some brief descriptions of the Articles in the Law concerning Hate Speech:

a. Criminal Code:

1. Article 156 of the Criminal Code:
Any person who publicly expresses feelings of hostility, hatred or contempt for one or several groups of the Indonesian people, shall be punished by a maximum imprisonment of four years or a maximum fine of four thousand rupiahs.
2. Article 157 paragraph (1) and (2) KUHP:
 1. Anyone who broadcasts, performs or posts writings or paintings in public, which contains statements of feelings of hostility, hatred or insults among or against groups of the Indonesian people, with the intention of making the contents known to the public, shall be punished by a maximum imprisonment of two years and six months. or a maximum fine of four thousand and five hundred rupiahs.
 2. If the guilty person commits the crime at the time of carrying out his search and at that time it has not passed five years since his sentence has become permanent due to such an offense, he may be prohibited from carrying out the search.
3. Article 310 paragraphs (1), (2), and (3) of the Criminal Code:
 1. Anyone who deliberately attacks someone's honor or reputation by accusing him of something, which means that it is clear that it is public knowledge, will be punished for defamation by a maximum imprisonment of nine months or a maximum fine of four thousand and five hundred rupiahs.
 2. If this is done in writing or depicting that is broadcast, broadcast or posted in public, then he will be punished for defamation with a maximum imprisonment of one year and four months or a maximum fine of four thousand and five hundred rupiahs.
 3. It does not constitute defamation or written defamation, if the act is clearly committed in the public interest or because it is compelled to defend oneself.
4. Article 311 of the Criminal Code paragraph (1):
If committing a crime of defamation or defamation, it is permissible to prove what is alleged to be true, does not prove it and the accusation is against what is known, then he will be threatened with slander with a maximum imprisonment of four years.

b. Law Number 11 of 2008 concerning Electronic Information and Transaction (ITE):

1. Article 28 paragraph (1) and (2):
 1. Every person knowingly and without rights spreads false and misleading news that results in consumer losses in Electronic Transactions.
 2. Every person knowingly and without right distributes information that is intended to cause hatred or enmity for certain individuals and / or community groups based on ethnicity, religion, race and intergroup (SARA).
2. Article 45 paragraph (2):
Every person who fulfills the elements as referred to in Article 28 paragraph (1) or paragraph (2) shall be sentenced to imprisonment for a maximum of 6 (six) years and / or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

c. Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination:

1. Article 16:
Anyone who deliberately shows hatred or hatred towards another person based on racial and ethnic discrimination as referred to in article 4 letter b number 1, number 2, or number 3, will

be sentenced to imprisonment of 5 (five) years and / or a fine. a maximum of Rp. 500,000,000.00 (five hundred million rupiah).¹⁶

d. Types of crimes in Electronic Information and Transactions

As a science, criminology has certain objects that become the focus of study as well as other sciences. The focus of the study of criminology is crime. Talking about true crime cannot be separated from the empirical world where social reality is different.

According to B. Simandjuntak the definition of crime can be seen from two perspectives:

1. Crime in a juridical perspective, crime is defined as an act which the state is given a penalty. The provision of this punishment is intended to restore the balance which was disturbed by the act. Acts and crimes like that in criminal law are called criminal acts (*strafbaarfeit*).
2. Crime in the sociological (criminological) sense (perspective) is an act which from the sociological side is a crime while from a juridical perspective (positive law) it is not a crime. This means that the state does not impose a criminal offense. This action in criminal law is called *strafwaardig*.¹⁷

Crimes that are closely related to the use of computer-based technology and telecommunications networks in some literature and practice are grouped into several forms, including:¹⁸

1. *unauthorized access to computer system and service*, namely crimes committed into a computer network system illegally, without the knowledge of the owner of the computer network system they are entering into. Usually the perpetrators of crime (hackers) do so with the intention of sabotage or theft of important and confidential information. Some examples related to this, among others.
 - a. In 1999, when the East Timor issue was being hotly discussed at the international level, several web sites belonging to the government of the Republic of Indonesia were damaged by hackers.
 - b. In 2000, hackers managed to break into the bases of an American company engaged in e-commerce that has a high level of confidentiality.
 - c. In 2004, the website of the general election commission (KPU) was hacked, which incidentally has a very high level of security.
2. *Illegal contents*, namely a crime by entering data or information on the internet about something that is untrue, unethical, and deemed to violate the law or disturb public order For example:
 - a. The posting of fake news or slander that will destroy the dignity or self-respect of other parties.
 - b. Loading things related to pornography
 - c. Loading information which constitutes state secrets, agitation, and propaganda against the legitimate government, and so on.
3. Data forgery, which is a crime by falsifying data on important documents stored as scriptless documents via the Internet. These crimes are usually shown on e-commerce documents by making it appear that a "typo" has occurred which will ultimately benefit the perpetrator.
4. *Ciber espionage*, that is, crimes that use the internet to carry out spying against other parties, by entering the target party's computer network system. These crimes are usually directed against business rivals whose important documents or data are stored in a computerized system.
5. *Cyber sabotage and extortion*, namely crimes committed by disturbing, destroying or destroying data, computer programs or computer network systems connected to the internet. Usually this crime is committed by inserting a logic bomb, computer virus or a certain program, so that data, computer programs or computer network systems cannot be used, do not run as they should, or run as the perpetrator wants. In several cases after this happened, the perpetrator of the crime offered himself to the victim to repair data, computer programs or computer network systems that had been sabotaged, of course for a certain fee.
6. *Offence against intellectual property*, namely property aimed at intellectual property rights owned by someone on the internet. For example, illegally imitating the web page display of

¹⁶Legality Team, Op. Cit., LEGALITY, Yogyakarta, 2017.

¹⁷Abdul Wahid & Mohammad Labib, Op. Cit., P. 37.

¹⁸Maskun, Cyber Crime, KENCANA, Jakarta, 2014. Pg. 51.

someone else's site, broadcasting information on the internet that turns out to be someone else's trade secret, and so on.

7. *Infringements of privacy*, namely crimes directed against someone's information which is very private and confidential. This crime is usually directed against a person's personal information stored on a personal data form that is stored on a computerized basis, which, if known by others, can harm people materially or immaterially, such as credit card numbers, ATM PIN numbers, information about hidden disabilities or diseases, etc.

The types of cyber crime are based on their motives, namely:

- a. *Cyber crime* as a pure crime
Where is the person who committed a crime that was committed on purpose. For example theft, anarchist action against an information system or computer system.
- b. *Cyber crime* as an act of gray crime
Where this incident is not clear whether it is a criminal crime or not, because the perpetrator did the burglary but did not damage, steal, or commit anarchic acts against the information system or computer system.
- c. *Cyber crime* that attacks the individual
Crimes committed against other people with the motive of revenge or for fun that aim to damage the good name, for example pornography, cyber stalking, and others.
- d. *Cyber crime* which is copyright (proprietary)
Crimes committed against someone's work with the motive of duplicating, marketing, modifying the purpose of personal / public interest or for material / non-material purposes.
- e. *Cyber crime* who attacked the government
Crimes committed against the government as an object with the motive of committing terror, hijacking or destroying security.

DISCUSSION

HATE SPEECH IN SOCIAL MEDIA (FACEBOOK)

A. Forms of Hate Speech on Social Media

The development of Information and Communication Technology has influenced many fundamental aspects of human life, especially in communicating and interacting. Technology has provided positive benefits for the wider community. Communication and transactions that are a human need today can be done from anywhere and at any time with the help of electronic media and the internet. In addition, communication and transactions are becoming faster and cheaper. Communication touches all aspects of life, and with communication we form mutual understanding, foster friendship, nurture love, spread knowledge and preserve tapping.

However, technology or media can also be misused, giving rise to various legal and ethical problems so that by communicating we also foster divisions, animate enmity, instill hatred, hinder and hinder thinking. Even Marshall McLuhan argued that although the media make information more widely accessible to more and more people, they also evoke aliens and lose form in many people.¹⁹

Based on the Chief of Police Circular Number: SE / 6 / X / 2015, section 2f, Hate Speech can be in the form of a criminal act regulated in the Criminal Code (KUHP) and other criminal provisions outside the Criminal Code, which take the following forms:²⁰

1. Insult
According to R. Soesilo, explaining that, insulting is attacking someone's honor and good name. Those who were attacked usually felt ashamed. The object of humiliation is in the form of a sense of self-respect or dignity regarding the honor and good name of a person, either individually or communally (in groups).²¹
2. Defamation
The definition of defamation in the Criminal Code, also known as defamation, is the act of defaming someone's good name or honor by stating something either verbally or in writing.
3. Blasphemy
Blasphemy 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 act, whereas according to article 310 paragraph (1) of the Criminal Code, defamation is an act committed by a way of accusing a person or group of having committed certain acts with the

¹⁹Marcel Danesi, Introduction to Understanding Media Semiotics, Yogyakarta, Jalasutra, 2010, p. 1.

²⁰Chief of the National Police of the Republic of Indonesia, Circular of the Chief of Police SE / 06 / X / 2015 handling Hate Speech, 2.

²¹R. Soesilo, Criminal Code and Complete Commentary Article by Article, Bogor, Politea; 1991, p. 225.

intention of making the accusation public or known to many people. Meanwhile, defamation by letter is regulated in Article 310 paragraph (2) of the Criminal Code. As explained, if the accusation is made in writing (letter) or a picture, then the crime is called insulting by letter.

4. Unpleasant acts.

A treatment that offends other people. Whereas in the Criminal Code, unpleasant acts are regulated in Article 335 paragraph (1). Article 335 paragraph (1):

By a maximum imprisonment of one year or a maximum fine of four thousand and five hundred rupiahs is punished.

1. Anyone who violates the law forces other people to do, not do or allow something, by using violence, another act or unpleasant treatment, or using threats of violence, any other act or unpleasant treatment, both for himself and others.
2. Whoever forces other people to do, not do or allow something with the threat of defamation or written defamation.

5. Provoke

An action that is done to arouse anger by inciting, provoking anger, irritation and making the agitated person have negative thoughts and emotions.

6. Instigate

According to R. Soesilo, inciting means encouraging, inviting, arousing or inciting people's enthusiasm to do something. In the word "inciting" character is knotted "on purpose". Instigating is more violent than "enticing" or "cajoling" but not coercing. Criminal law that regulates forestry or incitement is regulated in article 160 of the Criminal Code.

7. Spread fake news.

According to R. Soesilo spreading fake news, namely broadcasting news or news where it turned out that the news broadcast was fake news. What is seen as fake news not only tells empty news, it will also incorrectly tell an incident.

Hate speech is something that has become the concentration of the police on the kinds of cases that occurred in the time after the issuance of SE / 06 / X / 2015, because hate speech is not something that can be underestimated by some people, especially regarding the world of work which requires a name that is clean. Defamation either in cyberspace or the internet can be done at any time by people who have an interest in a limited period of time and a multiplier effect (chilling effect) rolls on without control (snowball), so that it can be known by many people and it is possible to share or distribute. widely to other people or social media users.²²

Meanwhile, the dissemination of hate speech both in content and in context always has the objective, among others, to incite and incite hatred against individuals and / or groups of people in various communities. What is distinguished from the aspects:²³

1. Tribe
2. Religion
3. Religious sect
4. Trust confidence
5. Race
6. Between groups
7. Skin color
8. Ethnicity
9. Gender
10. People with disabilities (disabilities)
11. Sexual orientation

And various kinds of Hate Speech are also carried out through several parties, in this case the media has also been mentioned in the Circular Letter SE / 06 / X / 2015 concerning the handling of Hate Speech as follows:

1. In the campaign activity oration
2. Banner or banner
3. Social media networks
4. Presentation of opinions in public (Demonstration)
5. Religious lectures
6. Print and electronic media
7. Pamphlet.²⁴

²² Teguh Arifiyadi, Gadgetmu Harimaumu (tips on legal literacy on social media) p. 31

²³ Indonesian National Police, Chief of Police Circular SE / 06 / X / 2015, Handling Hate Speech, 3.

²⁴ *Ibid.*

The scope of hate speech crimes (Hate Speech) is classified as a criminal offense against honor, another term that is commonly used for crimes against honor is a criminal act of defamation. From the point of view of the target or object of delicacy, which is the purpose or objective of the article, namely protecting honor, then criminal offenses against honor are more appropriate.

The euphoria of freedom and speech of hatred has been seen since the time of President Soeharto, which was rampant and endemic in the country. The outbreak is most evident on cyberspace and social media. From the points above, the biggest potential source of Hate Speech is through the media twitter and facebook, as well as independent blogs. Social media, Twitter and Facebook, are the biggest innovations in the early 21st century, because not only as a medium for connecting and sharing, social media is able to make big changes and become an effective media for political campaigns.

B. Government authority for the operation of Electronic Systems that violate the law

Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE), since enacted and enacted in 2008, is known to have claimed several "victims" as a result of multiple interpretations. According to data from SAFEnet, from 2008 to November 2015, there were 118 netizens who were victims of the Electronic Information and Transactions Law. And in 2015, the ELSAM Institute recorded that there were around 47 victims who were caught in the Law on Information and Electronic Transactions. And according to Remotivi's data for the period 28 August 2008 to 23 August 2016, from a total of 126 reports related to the Law on Information and Electronic Transactions (ITE), 50 cases of which were reported by those who are state officials, such as regional heads, members Legislative at the regional level,²⁵

Based on this, several civil society organizations have tried to urge the Government and the DPR to revise the Law on Electronic Information and Transactions. And efforts to revise the Law were finally carried out by the government and the DPR by approving amendments to a number of articles in the Law on 27 October 2016. Through the ratification of the revised ITE Law, there are at least seven important points of amendment that make the new ITE Law different. from the previous.

The revision of the law strengthens the role and authority of the government, the following is the revision: First, to avoid multiple interpretations of the provisions on the prohibition of distributing, transmitting and / or making access to electronic information containing insults and / or defamation in the provisions of article 27 paragraph (3) , carried out 3 (three) changes as follows:

- a. Add an explanation for the term "distributing, transmitting and / or making electronic information accessible."
- b. To emphasize that the provision is a complaint offense not a general offense.
- c. To emphasize that the criminal element in the provision refers to the provisions of defamation and slander which are regulated in the Criminal Code.

Second, lowering the criminal threat on 2 (two) provisions as follows:

- a. The threat of criminal defamation and / or defamation is lowered from imprisonment of a maximum of 6 (six) years to a maximum of 4 (years) and / or a maximum fine of Rp. 1 billion to a maximum of Rp. 750 Million
- b. The criminal threat of sending Electronic Information contains threats of violence or frightening, from imprisonment of a maximum of 12 (twelve) years to a maximum of 4 (four) years and / or a maximum fine of Rp. 2 billion to Rp. 750 million.

Third, to implement the decision of the Constitutional Court on 2 (two) provisions as follows:

- a. Amending the provisions of Article 31 paragraph (4) which originally mandated the regulation of interception or wiretapping procedures in government regulations into law.
- b. Add an explanation to the provisions of article 5 paragraph (1) and paragraph 2 regarding the existence of Electronic Information and / or Electronic Documents as valid legal evidence.

Fourth, synchronizing the procedural law provisions in Article 43 paragraph (5) and paragraph (6) with the procedural law provisions in the Criminal Procedure Code, as follows:

- a. Exploration and / or confiscation, which originally had to be approved by the local District Court, is readjusted to the provisions of the Criminal Procedure Code.
- b. Initial detention must request the appointment of the head of the local court within 1x24 hours, shall be adjusted back to the provisions of the Criminal Procedure Code.

²⁵<https://elsam.or.id/2016/11/revisi-uu-ite-still-berp-potential-mengancam-keberdekaan-berekspresi/>, accessed on 10 March 2018 at 21:10.

Fifth, strengthen the role of Civil Service Investigators (PPNS) and the Electronic Information Law in the provisions of article 432 paragraph (5):

- a. The authority to limit or cut off access related to Information Technology crimes
- b. Authority to request information from electronic system administrators related to information technology crimes.

Sixth, adding provisions regarding "right to be forgotten" in the provisions of article 26, as follows:

- a. Every Electronic System operator is obliged to delete non-eleven Electronic Information under its control at the request of the person concerned based on a court order.
- b. Every Electronic System administrator is obliged to provide a mechanism for deleting Electronic Information that is no longer relevant.

Seventh, strengthen the role of the Government in providing protection from all kinds of disturbances due to misuse of Information and Electronic Transactions by inserting additional authority in the provisions of article 40:

- a. The government is obliged to prevent the dissemination of Electronic Information which has prohibited contents;
- b. The government has the authority to terminate access and / or order the Electronic System operators to terminate access to Electronic Information that has contents that violate the law.

In the material resulting from the revision of the Law on Electronic Information and Transactions in article 40, there are new rules related to the government's authority to terminate access to prohibited internet content, including giving orders to internet Service Providers to disconnect. Granting absolute authority to the government to cut access is politically dangerous, given the large potential for abuse of power.

CONCLUSION

Based on the description above, especially those related to the problem, the following conclusions are drawn:

1. Forms of Hate Speech on social media (Facebook), namely: Insult, Defamation, Defamation, Unhappy Deeds, Provoking, Inciting, Spreading fake news.
2. Government authorities in the operation of Electronic Systems that violate the law, namely: The government has the authority to terminate access to prohibited internet content, including giving orders to Internet Service Providers to disconnect. Granting absolute authority to the government to cut access is politically dangerous, given the large potential for abuse of power.

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