

Reconstructing Legal Responsibility for the Dissemination of False News Containing Discrimination to Achieve Justice

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Abstract

Crimes within social media networks are highly susceptible to occur due to anonymity and ease of electronic communication. However, law enforcement against perpetrators of false news and discriminatory defamation in Indonesia faces significant legal uncertainty due to multiple interpretations of key provisions in the Electronic Information and Transactions (ITE) Law. This research addresses regulations on designating suspects who spread false news on social media, and the reconstruction of criminal liability for spreading hoaxes and discriminatory defamation through social media in Indonesia. Using a normative juridical method with comparative legal analysis which examining Indonesia's ITE Law alongside Malaysia's Communications and Multimedia Act 1998 and Singapore's Protection from Harassment Act, the results indicate that reconstructing legal responsibility is necessary when false, discriminatory content, including SARA-based speech, spreads. This should be achieved through measured sanctions providing a deterrent effect to maintain societal order. Without this, law enforcement against such acts is undermined. However, implementing the ITE Law faces challenges, including multiple interpretations, human rights concerns, and digital evidentiary constraints. Therefore, it is recommended to revise legal norms for clarity and promote digital literacy education so the public can identify accurate information. Fair, proportional law enforcement is crucial to balance freedom of expression with protection from discrimination.

Keywords: Defamation, Discrimination, False News, Reconstruction of Legal Responsibility.

1. Introduction

The development of communication technology, particularly the internet, has transformed the communication process that previously only occurred traditionally through face-to-face meetings and group communication into digital network-based communication. The internet as an international network of interconnected computers provides convenience for society in conducting activities, not only for communication but also for conducting business transactions effectively anytime and anywhere (Wahid & Labib, 2005). This major change is an impact of globalization that makes society increasingly dependent on technology, including social media.

Technological advancement has also brought significant social changes in community interaction (Soekanto, 1980). Communication that was previously conducted directly can now be carried out through digital platforms such as Facebook, Instagram, WhatsApp, and others. Social media then forms a new cyberspace as a venue for social interaction, data exchange, and information dissemination (A. Raharjo, 2002). However, behind this convenience, social media also opens opportunities for various digital behavioral deviations.

One of the biggest problems that has emerged is the proliferation of false news (hoax) distribution (Imaroh et al., 2023). Ease of access to information allows society to receive and



share information more quickly, but it is also increasingly exploited by irresponsible parties to spread false information. Data from the Ministry of Communication and Information Technology in 2020 recorded approximately 800,000 websites in Indonesia indicated to be spreading hoaxes, and DailySocial research shows that 44.19% of society is unable to detect false information.

The phenomenon of hoax dissemination, especially that containing elements of ethnicity, religion, race, and intergroup relations (SARA), has the potential to trigger social conflict, division, and even criminal actions (Kurniyanto et al., 2025). Therefore, the state through Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law) which has been updated with Law Number 19 of 2016 provides a legal basis for prosecuting perpetrators of spreading false information and SARA-based hate speech. Article 28 paragraph (2) of the ITE Law and Article 45A paragraph (2) regulate threats of imprisonment and fines for perpetrators.

In law enforcement practice, articles of the ITE Law have been used in various cases of hate speech, including the cases of Buni Yani, Ustad Sugi Nur, Jonru Ginting, and several other cases of religious blasphemy. This trend shows that the spread of SARA-based hoaxes on social media is a real threat to social order and community security (S. Raharjo, 2017). Therefore, research on law enforcement against perpetrators of spreading SARA-based hoaxes through social media becomes important to examine, in order to assess the effectiveness of criminal provisions in the ITE Law and provide understanding regarding criminal liability for perpetrators of spreading false information that disrupts social order.

Based on this background, the author feels it necessary to examine and research two main issues, namely: (1) how the provisions of regulations relate to the designation of suspects who spread false news on social media based on applicable laws and regulations; and (2) how the reconstruction of forms of criminal liability for the offense of spreading false news (hoax) and defamation containing elements of discrimination through social media in Indonesia based on existing positive law. This research has two main objectives, namely: (1) to analyze rules related to the designation of suspects who spread false news on social media based on applicable positive law; and (2) to analyze the form and reconstruction of criminal liability for the offense of spreading false news (hoax) and defamation containing discrimination in order to realize justice.

This research contributes to the development of criminal law scholarship on false news and discriminatory defamation, particularly within Indonesia's electronic information framework. It offers practical benefits by providing reference material for law enforcement officials in investigating, prosecuting, and adjudicating such cases, while also informing government evaluations of existing regulations. The novelty of this research lies in its comparative analysis of Indonesia's ITE Law with Malaysian and Singaporean legal frameworks, offering reconstruction of criminal liability that balances freedom of expression with protection from discrimination, an approach previously underexplored in Indonesian legal scholarship.

2. Literature Review

2.1. Theory of the Rule of Law (Grand Theory)

The idea of the rule of law has come a long way since Plato first floated it, with Aristotle later giving it real backbone. Plato argued that good governance needs rules, while Aristotle believed the ideal state runs on a constitution where law itself holds power. Renaissance thinkers like John Locke added that government authority has natural limits and requires

popular consent. Montesquieu then introduced the separation of powers, dividing government into legislative, executive, and judicial branches to prevent any group from dominating. The rule of law and separation of powers are deeply connected. Without institutional checks and balances, the rule of law cannot function. This progression from Aristotle through Locke to Montesquieu established a core modern principle: no person or institution, including the state, stands above the law.

According to Logemann, the definition of the state is a community organization that, under international law as codified in the Montevideo Convention on the Rights and Duties of States (1933), possesses defined territory, permanent population, government, and capacity to enter relations with other states, and with its power aims to regulate and manage a particular society. The understanding of “state” is more complex than “law” because the state is a phenomenon with many aspects: juridical, historical, economic, political, and so forth (Rahardjo, 2014), with the juridical aspect grounded in the Montevideo Convention’s four criteria for statehood that remain the foundational standard in international legal doctrine. Generally, the rule of law is defined as a state based on law, so that the actions of government and citizens must be in accordance with law. This principle is intended to prevent arbitrary actions by the government as well as extra-legal actions by society. Differences in the understanding of the rule of law in various countries are caused by differences in the principles of the rule of law adopted, characteristics of society, and the temporal context when the concept was formulated.

The concepts of *Rechtsstaat* (continental) and The Rule of Law (Anglo-Saxon) are two main approaches to the rule of law. A.V. Dicey stated that the Rule of Law is characterized by: (1) supremacy of law without arbitrariness; (2) equality before the law; and (3) guarantee of protection of individual rights through laws and court decisions. Meanwhile, E.C.S. Wade added that governance must be carried out in accordance with law, prioritizing order, and based on statutory regulations (Gunakaya, 2019). The distinction between these systems becomes critical when addressing false information. In *Rechtsstaat* systems like Indonesia, legal responsibility emphasizes codified statutory provisions, where perpetrators of false news are prosecuted based on detailed legislative prescriptions, prioritizing legal certainty over judicial discretion. Conversely, Anglo-Saxon Rule of Law systems rely more on judicial precedent and procedural fairness, allowing courts greater flexibility to balance freedom of expression against harm in each case. Consequently, civil law jurisdictions tend toward stricter, rule-based liability for false information, while common law systems adopt a more contextual, case-by-case approach that weighs competing rights through judicial interpretation.

Jimly Asshiddiqie formulated 12 main principles of the rule of law, including supremacy of law, equality before the law, the principle of legality, limitation and separation of powers, independence of executive institutions, free and impartial judiciary, existence of Administrative Courts and Constitutional Courts, protection of human rights, democracy, the function of law as a means of achieving state objectives, as well as transparency and social control. In the Indonesian context, Soepomo interpreted the rule of law as a state that guarantees legal order in society through legal protection and reciprocal relations between law and power. Joeniarto emphasized that the principle of the rule of law means state administration must be based on law, not the will of the ruler, to protect the interests of society and prevent arbitrary actions by the government (Harahap, 2003).

2.2. Theory of Justice (Middle Theory)

Justice is a fundamental principle in social institutions. Rawls (2004) stated that law and institutions cannot be maintained if they are unjust, just as an elegant theory cannot be

maintained if it is not true. Every individual has dignity based on the principle of justice so they cannot be sacrificed for the interests of society as a whole. Aristotle (1997) distinguished justice into two main forms:

- 1) Distributive justice, which relates to the distribution of rights, obligations, and social goods proportionally based on individual merit or contribution.
- 2) Corrective justice, which aims to restore balance when violations or errors occur, through compensation or restoration for the injured party. Distributive justice falls within the domain of legislators, while corrective justice falls within the domain of the judiciary.

The purpose of justice in law is to create order, achieve general welfare, provide protection of human interests, realize legal certainty and guarantees, and build a safe and peaceful social condition. Rawls offers the concept of justice as fairness through two main principles which are (1) Everyone has equal rights to the most extensive basic liberties; and (2) Social and economic inequalities can be justified only if they provide the greatest benefit to the least advantaged group (difference principle) and positions and offices must be open to all people (fair equality of opportunity). Thus, social justice must be realized through institutions and policies that improve the conditions of vulnerable groups.

Achmad Ali (2010) views justice as a value concept that continues to develop and never reaches a perfect form; justice can only be achieved to a certain degree. Assessment of justice is subjective; something is considered just not because it is absolutely so, but because it is assessed as just by individuals or society in a particular context.

2.3. Relevance of the Theory of the Rule of Law and Theory of Justice

The theory of the rule of law emphasizes the supremacy of law and prevention of abuse of power, while the theory of justice emphasizes the ultimate goal of law, namely balance and protection of individual rights. In addressing false information and discriminatory defamation on social media, these theories work together. The rule of law provides the framework for legal certainty, setting clear procedures for identifying suspects, gathering evidence, and applying sanctions to prevent arbitrary enforcement. However, rule of law principles alone can be too rigid and may suppress legitimate expression. Justice theory adds the necessary balance, requiring that law enforcement consider proportionality, protect victims' dignity, and ensure that sanctions genuinely serve societal harmony rather than simply punish offenders. Together, they require that legal responsibility for spreading false news be both procedurally sound and substantively fair, balancing freedom of expression with protection from discrimination through measured, context-sensitive enforcement.

3. Methods

This research was conducted by collecting, compiling, and interpreting data in accordance with applicable provisions. The method used is normative legal research, which is research based on legal rules applicable in Indonesia or positive law. According to Soerjono Soekanto, normative legal research is research on library materials or secondary data (Soekanto & Mamudji, 2007). This is in line with Abdulkadir Muhammad who stated that normative legal research examines law as a norm or rule that applies in society (Muhammad, 2004). In this research, the main reference is Law Number 11 of 2008 concerning Electronic Information and Transactions.

3.1. Data Sources

Data sources in this research consist of primary data and secondary data. Primary data is data obtained directly from research subjects through interviews with law enforcers and social media users, including perpetrators and victims. Secondary data is data obtained through library studies, which include primary legal materials such as the 1945 Constitution of the Republic of Indonesia, Law Number 11 of 2008 concerning Electronic Information and Transactions in conjunction with Law Number 19 of 2016, the Criminal Code, Law Number 40 of 2008 concerning Elimination of Racial and Ethnic Discrimination, and Police Chief Circular Letter Number SE/06/X/2015 concerning Hate Speech. In addition, secondary legal materials are used to complement the study, in the form of journals, books/literature, articles, and relevant interviews with the research object. Tertiary legal materials in the form of legal dictionaries, the Indonesian Dictionary, and encyclopedias are used to clarify primary and secondary legal materials.

3.2. Data Collection Techniques

Primary data collection techniques were carried out through interviews with parties who have the capacity and knowledge related to research problems. Secondary data collection techniques were carried out through library studies by examining journals, legal research results, and relevant literature to be processed and presented in writing. In addition, document studies were conducted on written information about law that is published publicly or with limited access. Collection of legal materials in this research was carried out through document studies (library studies) (Marzuki, 2017) using content analysis techniques on legal documents such as legislation, archives, reports, and other written materials.

3.3. Research Approach

This research uses a case approach, statutory approach, and conceptual approach. The case approach is used to study the application of norms or legal principles in legal practice, particularly by examining jurisprudence from cases relevant to the research object (Dewata & Achmad, 2010). The statutory approach is used to examine primary legal materials in the form of legislation as the main basis for analysis. The conceptual approach is used to provide a conceptual perspective in analyzing problems based on values and legal concepts that form the basis for establishing a norm.

3.4. Data Analysis

The data analysis used in this research is descriptive qualitative analysis, which reveals facts, phenomena, and conditions during the research to develop theory. Referring to Peter Mahmud Marzuki who quotes Philipus M. Hadjon (2017), the analysis is conducted using the deduction method based on Aristotelian syllogism, starting from the major premise (general in nature) then the minor premise (specific in nature) to produce a conclusion (Marzuki, 2017). This research uses deductive logic by drawing conclusions from a general statement toward a more specific conclusion.

The analysis was conducted by examining cases that have been decided by courts and have permanent legal force, as well as inventorying relevant legislation. The analysis continued with the process of interpreting the law, which was presented through grammatical and systematic interpretation. Grammatical interpretation is carried out by understanding the meaning of language and terms according to everyday usage habits, including the use of dictionaries and the views of language experts when needed. Meanwhile, systematic interpretation is carried out by connecting a provision in a law with other provisions, because a law does not stand alone and is part of the overall legislative system.

3.5. Conclusion Drawing Technique

The conclusion drawing technique is carried out deductively, namely drawing conclusions from general propositions to more specific results. Research conclusions are answers to the problem formulation and are compiled based on descriptive analysis and discussion of research results in the previous chapter, while remaining focused on the boundaries of the problem formulation that has been established.

4. Results and Discussion

4.1. Positive law regulating criminal liability and false news

4.1.1. Offense in defamation crime

The crime of defamation or slander in the Indonesian criminal law system is specifically regulated in Chapter XVI of the Criminal Code Articles 310-321. Defamation is an act that attacks someone's honor and good name so as to cause shame, different from actions that attack the physical body which are classified as crimes against decency. The formulation of defamation offenses can be understood through Article 310 paragraphs (1) and (2), and Article 315 of the Criminal Code, which explain the basic elements and qualification of forms of defamation. The Criminal Code also recognizes several categories of defamation based on its object, including defamation against the President and Vice President (Article 137), against friendly kings/heads of state (Article 144), against public authorities (Articles 207-208), against individuals (Articles 310 and 315), and defamation against deceased persons (Article 321). In addition, the offense of spreading false news is defined as the dissemination of information that is not based on facts and is rumor-based, causing harm to others. This offense is closely related to defamation because its purpose is to attack the honor or good name of certain parties.

Defamation is a complaint offense, so prosecution can only be carried out if the victim files a complaint within the time limit specified in Article 74 of the Criminal Code. In the aspect of punishment, the purpose of punishment according to penal policy is to protect society, prevent crime, resolve conflicts, and restore social balance (Halim, 2009). Theories of punishment are divided into two, namely absolute theory (retribution) and relative theory (purpose). Absolute theory emphasizes proportionate retaliation against perpetrators, while relative theory emphasizes preventive and social rehabilitation functions. Each has weaknesses, so the application of modern criminal law tends toward a more humanistic approach by considering human rights, utility values, and balance of interests in society. According to relative theory, criminal law must consider social, cultural, and anthropological aspects in society. In addition, there is the principle of *Ultimum Remidium* which emphasizes that criminal law is the last resort in criminalizing an act, so over-criminalization needs to be avoided.

4.1.2. Hoax in the ITE Law (Law No. 11 of 2008)

Article 28 of the ITE Law regulates two forms of criminal offenses related to hoax dissemination. Paragraph (1) emphasizes the spread of false and misleading news that harms consumers in electronic transactions, while paragraph (2) emphasizes the spread of information intended to incite hatred or hostility based on SARA (Ethnic, Religious, Racial, and Intergroup Issues). The elements in paragraph (1) include the element of intent, without right, the act of spreading, the object in the form of false and misleading news, and the consequence in the form of consumer harm. Meanwhile, paragraph (2) has elements of intent, without right, the act of spreading, the object in the form of information, and the purpose of

inciting hatred/hostility based on *SARA*. The criminal offense in paragraph (1) is a material offense, meaning it is completed if the consequence of consumer harm actually occurs. While paragraph (2) has two views: first, it is considered a formal offense (the crime is completed merely with the act of spreading, without having to cause consequences), second considers it a material offense (must be proven to incite hatred/hostility) (Chazawi & Ferdian, 2022). Both forms equally require the elements of intent, without right, and the intention to create negative impacts on society.

4.1.3. Hoax in the criminal code and other criminal regulations

In addition to the ITE Law, hoax dissemination is also regulated in the Criminal Code (Asmara et al., 2018):

- 1) Article 311 on defamation/slander
- 2) Article 378 on fraud
- 3) Article 390 on broadcasting false news that affects the price of goods or securities

In Soesilo's explanation, Article 390 affirms that the perpetrator must know that the news being broadcast is false and intends to benefit themselves or others (Soesilo, 1995). The prohibition on hoax dissemination is also more firmly regulated in Law No. 1 of 1946, specifically Articles XIV and XV which criminalize the broadcasting of false news or notifications that create or potentially create unrest in society. This provision then became the basis for formulating similar criminal offenses in the Draft Criminal Code (RKUHP) in Article 309 paragraphs (1) and (2) and Article 310.

The provisions of the Criminal Code, Law 1/1946, and RKUHP all contain three core elements, but the element of truth of information becomes an important point because news can only be criminalized if proven false or reasonably suspected to be false. In the context of social media, the boundary between public and private space becomes blurred, so content initially sent only to individuals can quickly spread to the wider public and cause social impacts.

Legislation in Indonesia consistently criminalizes hoax dissemination because it is considered to cause dangerous impacts in the form of consumer harm, public unrest, disturbances, and potential social conflicts. The ITE Law regulates hoaxes in the context of electronic transactions and hate speech, while the Criminal Code, Law 1/1946, and RKUHP emphasize hoaxes as criminal offenses that threaten public order. The elements of intent, without right, and social impact are the main components in evidence.

4.2. Law enforcement against criminal offenses of false news containing discrimination according to positive law in Indonesia

This criminal offense is understood as an action that attacks someone's honor and good name so as to cause shame to the attacked party. The honor in question is honor attached to good name, not related to physical aspects. If the attack is carried out on physical aspects, the act is not categorized as defamation, but rather falls under crimes against decency as regulated in Articles 281 to 303 of the Criminal Code. In the context of criminal law, the term defamation includes several elements as implied in Article 310 paragraph (1), Article 310 paragraph (2), and Article 315 of the Criminal Code, which describe the basic and additional elements related to this offense.

The regulation regarding defamation in the Criminal Code covers several forms differentiated based on the targeted object. In general, Article 310 of the Criminal Code states that defamation is an act of attacking someone's good name by accusing them of something to be publicly known, either orally or in writing. The target of defamation can be individuals,

groups, or institutions. Therefore, the Criminal Code groups defamation offenses into several categories, including defamation against the President and Vice President, defamation against friendly heads of state or foreign state representatives, defamation against public authorities, defamation against individuals, and defamation against deceased persons.

In addition to defamation, criminal law also regulates the offense of spreading false news. This offense refers to the act of providing or spreading information without clarity of true facts and only based on rumors or one-sided information, which ultimately causes harm and public unrest. The element of intent becomes important in defamation and spreading false news offenses, because such acts must be carried out with the purpose of attacking someone's honor or good name. Both of these offenses are complaint offenses, so legal proceedings are only possible if there is a complaint from the victim party.

Regarding criminal sanctions, the discussion of defamation and spreading false news cannot be separated from theories of punishment. Penal policy aims to protect society by preventing crime and resolving conflicts that arise so that peace is created in society. In its development, theories of punishment are divided into two major groups, namely absolute theory (retribution) and relative theory (purpose). Absolute theory starts from the view that perpetrators deserve punishment because of their fault, while relative theory places punishment as a means to create utility through prevention and restoration. Both theories have their respective advantages and disadvantages, so legal formulation ultimately aims to balance various interests, especially in relation to human rights protection.

Modern legal development shows an increase in respect for freedom of expression and guarantees of human rights. Therefore, punishment must consider social and anthropological aspects, and refer to the doctrine of *Ultimum Remedium* which affirms that criminal law is a last resort in determining an act as a criminal offense. This principle is important to prevent over-criminalization that can harm society and civil liberties.

Several cases of application of Article 28 paragraph (2) of the ITE Law show how provisions regarding hate speech are used against expressions in digital space. The first case is Dandhy Dwi Laksono, a journalist and activist who was reported to the East Java Regional Police on September 6, 2017 for a Facebook post deemed to insult Megawati Soekarnoputri and President Jokowi. Dandhy's status addressed Megawati's leadership and issues of violence against the people, as well as statements regarding arrests of Papuan citizens. Although not addressing SARA issues, his statement was considered to incite hatred based on group affiliation, in this case the government group.

The second case is Robertus Robet, an academic and human rights activist who became a suspect after a video of his speech at Kamisan Action circulated widely and was deemed to insult the TNI and criticize efforts to revive the TNI's dual function. He was charged with Article 45A paragraph (2) in conjunction with Article 28 paragraph (2) of the ITE Law, as well as provisions on defamation and false news in Law No. 1 of 1946 and Article 207 of the Criminal Code. In handling this case, the TNI was positioned as a group, and the case is still in the investigation stage.

The third case is Ahmad Dhani, a famous musician active in expressing political views through Twitter. In February-March 2017, he sent several provocative sentences attacking supporters of Basuki Tjahaja Purnama (Ahok), such as "*Anyone who supports blasphemers is a bastard who needs to have their face spat on.*" The tweet triggered a criminal report by BTP Network because it was deemed to incite hatred and division in society. Ahmad Dhani was ultimately found guilty and sentenced to 1 year 6 months imprisonment based on Article 45A paragraph (2) in conjunction with Article 28 paragraph (2) of the ITE Law.

The fourth case is Faisol Abod Batis, admin of the Instagram account @reaksirakyat1, who was arrested on July 10, 2019 for posting content deemed to insult President Jokowi and the Police and contain SARA and hate speech. Faisol linked the President to agrarian conflicts and criticized the Police in the May 21-22, 2019 riots. He was charged with several articles including Article 28 paragraph (2) of the ITE Law and provisions on spreading false news and racial discrimination, even though most of the data presented was sourced from KPA research. In this case, the President and Police were positioned as protected groups.

The fifth case is Bambang Tri Mulyono, author of the book Jokowi Undercover who was arrested on December 31, 2016 for spreading hatred information against President Jokowi. The book contained allegations of identity falsification by Jokowi and unfounded narratives regarding Jokowi's relationship with the PKI, as well as calling mass media actors who deceive the people. Because the writing was not accompanied by supporting documents and was deemed misleading, Bambang was charged with Article 16 of Law No. 40 of 2008 concerning Elimination of Racial and Ethnic Discrimination and Article 28 paragraph (2) of the ITE Law. This case has obtained a court decision.

4.3. Reconstruction of Legal Responsibility for Spreading False News and Defamation Containing Discrimination to Realize Justice

4.3.1. Handling Criminal Offenses of Hate Speech at West Kalimantan Regional Police

This section focuses on the reconstruction of legal responsibility for spreading false news and defamation containing discrimination (hate speech) as an effort to realize justice. The analysis is directed at investigators' mechanisms in determining whether or not there is a criminal offense of hate speech in two directorates at the West Kalimantan Regional Police, namely the General Criminal Investigation Directorate and the Special Criminal Investigation Directorate. Law enforcement prioritizes the principles of due process of law, presumption of innocence, sufficiency of evidence, and protection of freedom of opinion. Examination of witnesses, reporters, reported persons, and experts, as well as implementation of layered case presentations are conducted to ensure fulfillment of criminal offense elements without neglecting human rights protection.

4.3.2. The Cornelis Case of 2017

The first case that became the focus in this research is the Cornelis case in 2017. The reporter reported the Governor of West Kalimantan at that time on suspicion of criminal offense of hostility or hate speech based on Article 156 of the Criminal Code after a clip of Cornelis's speech video at the Naik Dango event spread through WhatsApp application. The video was claimed to offend the name of a certain figure. After the process of examining witnesses, the reporter, reported person, criminal expert, and language expert, and through three stages of case presentation, investigators concluded that the elements of criminal offense were not met. The video used as evidence was actually incomplete because it had been cut from the original duration of one hour to two minutes fifty-one seconds, so the context of the speech changed and did not reflect the entire statement. The reporter also did not witness the event directly, and there were no witnesses present at the event who felt offended or became victims. Language expert analysis showed that the speech was directed at a certain individual and not attacking a group, so it did not meet the elements of offense in Article 156 of the Criminal Code. Based on these findings, investigators stopped the investigation through the issuance of SP3.

4.3.3. Cases of Hate Speech through Social Media at Special Criminal Investigation Directorate

In addition to the Cornelis case, this research also examines the handling of various reports and findings from cyber patrol results related to hate speech and defamation through social media by the West Kalimantan Regional Police Special Criminal Investigation Directorate. Platforms most frequently used in such cases include Facebook, Instagram, and Twitter, with content of defamation, slander, and hate speech based on ethnicity, religion, race, and intergroup relations (SARA).

The investigation process was carried out through account tracing, digital identification, seizure of electronic evidence, and analysis of uploads suspected of violating the law. Losses experienced by victims are immaterial in nature, in the form of psychological pressure, disruption of social comfort, and reputation damage. In 2017, five cases were recorded, two of which were transferred to the Prosecutor's Office (P-21), one case was terminated (SP3), and two cases were still in the investigation process. In 2018, there were also five cases, all of which remained in the investigation process because they were still awaiting fulfillment of evidence and expert examination results.

4.3.4. Implications of Law Enforcement and Need for Reconstruction

The analysis results show that handling criminal offenses of hate speech requires clear evidentiary standards, careful language analysis, and understanding of social context and digital technology. Law enforcement officers must be able to distinguish between freedom of expression protected by law and hate speech that attacks the dignity and identity of certain groups. Therefore, reconstruction of legal responsibility is greatly needed so that law enforcement is not only oriented toward punishment, but also toward victim protection, prevention of criminalization of expression, and guarantee of legal certainty. A proportional legal approach is expected to increase law enforcement effectiveness while strengthening a sense of justice for society.

Criminal liability can only be imposed on perpetrators proven to have committed criminal offenses and have the ability to be legally responsible. In other words, someone can only be sentenced if their actions meet the elements of criminal offenses as regulated in legislation, and there are no grounds for eliminating fault. The ability to be responsible is based on the condition and mental capacity of the perpetrator. Doctrinally, criminal liability refers to a state where someone can be blamed for unlawful acts they have committed, so they can be sentenced. Criminal liability basically can only be imposed if four elements are met: there is an act by the perpetrator, the act meets the formulation of offense in the law, is unlawful in nature, and the perpetrator can be held accountable.

4.4. Forms of Criminal Liability for Criminal Offenses of Spreading False News and Defamation Containing Discrimination

In the context of criminal offenses of spreading false news and defamation containing discrimination through online media, the form of criminal liability refers to several provisions. First, Article 390 of the Criminal Code ensnares perpetrators who intentionally spread false news to benefit themselves or others unlawfully until causing rises and falls in the price of goods, securities, or funds; the criminal threat is a maximum of two years eight months. Second, Law Number 1 of 1946, specifically Article 14 paragraphs (1) and (2) and Article 15, regulates liability for perpetrators who cause unrest in society through spreading false news. If unrest is caused by false news consciously by the perpetrator, the maximum criminal threat is ten years; if the perpetrator does not realize the news is false, the threat is three years; and

if the perpetrator broadcasts uncertain news but knows the potential for unrest, the maximum sentence is two years.

In addition, the Law on Electronic Information and Transactions (ITE Law) specifically regulates hoax dissemination and defamation containing discrimination through electronic media. Article 28 paragraph (1) of the ITE Law threatens perpetrators who intentionally and unlawfully spread false news that harms electronic transactions, and based on the principle of *lex specialis derogat legi generali*, this provision becomes the main basis for criminal liability for hoax dissemination through online media, with criminal threats as affirmed in Article 45A paragraph (1) of the ITE Law. Thus, perpetrators of spreading false news and defamation containing discrimination in digital media can be subject to criminal liability as long as they meet the elements of criminal offense and there are no grounds for forgiveness that eliminate fault.

5. Conclusion

Legal regulations regarding the spread of false news and defamation containing discrimination are basically already available in Indonesia, both in the Criminal Code, ITE Law, and Law on Elimination of Racial and Ethnic Discrimination. However, the effectiveness of their implementation still faces obstacles because there is no firm and specific explanation regarding the elements of false news and elements of defamation containing discrimination, resulting in ambiguity of meaning in the law enforcement process. Some articles, such as Article 28 paragraph (1) of the ITE Law which requires “consumer harm” and Articles 14 and 15 of Law No. 1 of 1946 which require the element of “unrest,” do not always meet the conditions of occurring cases. Amid the development of digital technology, hoax dissemination is often used to form opinions, divide society, create hostility, and attack someone’s dignity. This has the potential to cause social disturbances, tension, and division in society, so strengthening regulations and supervision systems is needed, including restrictions and account verification to prevent free space for anonymous and irresponsible accounts in spreading hoaxes and discriminatory speech.

Legal responsibility for perpetrators of spreading false news and defamation containing discrimination must be firmly enforced based on the principle of *lex specialis derogat legi generali*, referring to Article 28 in conjunction with Article 45A of the Law on Electronic Information and Transactions which regulates maximum criminal threats of six years imprisonment and/or fines up to one billion rupiah. This liability applies not only to the first spreader, but also to parties who help or continue distributing such content. Because it is a complaint offense, victims have the obligation to report so that legal proceedings can take place. Evidence can be based on electronic evidence as regulated in Article 5 of the ITE Law, so electronic documents can function as valid evidence. The spread of false news and defamation containing discrimination has serious impacts, such as harm to individuals and institutions, public panic and riots, decreased productivity of the younger generation, increased intolerance, and loss of public trust in facts. Therefore, consistent law enforcement must be accompanied by efforts to raise public awareness about the importance of maintaining national unity and humanitarian values, so that the balance between protection of personal rights and societal rights is maintained.

Legal regulations regarding the spread of false news and defamation containing discrimination are basically already available in Indonesia through the Criminal Code, ITE Law, and Law on Elimination of Racial and Ethnic Discrimination, but the effectiveness of their implementation is still hampered because there is no firm and specific explanation

regarding the elements of false news and elements of defamation containing discrimination, resulting in ambiguity of meaning in the law enforcement process. Several articles, such as Article 28 paragraph (1) of the ITE Law which requires “consumer harm” and Articles 14 and 15 of Law No. 1 of 1946 which require the element of “unrest,” are not always relevant to all cases, while the development of digital technology increasingly expands the space for hoax dissemination to form opinions, divide society, create hostility, and attack someone’s dignity, which ultimately triggers social disturbances and division so that strengthening regulations and supervision systems is needed including restrictions and verification of anonymous accounts.

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