



LAW ENFORCEMENT AGAINST PERPETRATORS WHO DISTRIBUTE FALSE INFORMATION CAUSING DISTRICT BETWEEN RELIGIOUS CONGREGATIONS IS REVIEWED FROM LAW NUMBER 1 OF 2024 ELECTRONIC INFORMATION AND TRANSACTIONS

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ABSTRACT

Social media has recently been abuzz with the presence of naughty social networking account users who post blasphemy against religion. Based on the research results, it is understood that the criminal regulation of the dissemination of information that causes division between religious communities is regulated in Articles 156 and 156a of the Criminal Code. and specifically blasphemy committed on social networking sites is regulated in Article 28 paragraph (2) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, while the criminal provisions are regulated in Article 45 paragraph (2). Accountability for the dissemination of information that causes division between religious communities can be requested if it fulfills the elements stated in Article 28 paragraph (2) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions

1. Introduction

The state of social media in Indonesia has recently become increasingly concerning. Various groups are slandering each other, spreading hoaxes, and even leading to persecution. Social media is widely used by people around the world, especially in Indonesia. We can find it on internet platforms like Google, Mozilla Firefox, and others. However, the most popular among social media users are Facebook, Twitter, BBM, WhatsApp, Instagram, and many others.

Legal issues frequently encountered involve the electronic delivery of information, communication, and/or data, particularly regarding evidence





and matters related to legal actions carried out through electronic systems. As a result of these developments, information technology has gradually transformed the behavior of people throughout human civilization globally.

Technological developments do not only provide positive impacts, but also negative impacts, criminal acts of insults or hate speech (hate speech) and/or insults, as well as the dissemination of information on social media aimed at inciting hatred or hostility between individuals and/or certain community groups based on ethnicity, religion, race and intergroup (SARA). These crimes, in addition to causing negative impacts, can also harm victims in terms of defamation, with the modus operandi of insulting victims by using insulting words or images and words with hate speech. Therefore, in this case, there needs to be firmness in these crimes, so that there are no misunderstandings that ultimately harm society.

Cases of information dissemination that result in criminal reports are often carried out by those who feel disadvantaged by haters (social network followers but with comments that are demeaning or even insulting) by using the articles in Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions, hereinafter referred to as the ITE Law and the Criminal Code.

The ITE Law, especially Article 28 paragraph (2), has an important element, namely "causing feelings of hatred or hostility towards individuals and/or certain community groups based on ethnicity, religion, race and inter-group relations (SARA) and this article is the strongest article for the crime of spreading hatred in cyberspace compared to other criminal articles

2. Research Method

The nature of this research uses descriptive analysis with a normative juridical approach, namely research into legal principles. The research was conducted by analyzing the spread of information that causes division between religious communities. This is done to see the application of the law to dissemination of data that causes divisions between religious communities that occurs in society.

This type of research uses a normative juridical approach, namely an approach carried out by collecting secondary data in the form of legislation and materials relevant to the problems in this thesis and analyzing a decision/case that has binding legal force



3. Results And Discussion

The position of religion in the legal system in Indonesia is given the most honorable place. Religious life in Pancasila by the Indonesian nation is placed at the first rank of the first principle, namely Belief in the One Almighty God. The regulation of respect for religious freedom from the Constitution to other laws and regulations as well as restrictions on criminal acts against religious freedom can be seen in Article 28 D paragraph (1), Article 28 E paragraphs (1 and 2), Article 28 i paragraph (1), Article 29 paragraph (2) in the 1945 Constitution.

Article 28 D paragraph (1): "Every person has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law." Article 28 E Paragraph (1 and 2):

- (1) Everyone is free to embrace a religion and worship according to their religion, choose education and teaching, choose a job, choose citizenship, choose a place to live in the country and leave it, and has the right to return.
- (2) Everyone has the right to freedom of belief, to express thoughts and attitudes, in accordance with their conscience.

Article 28 i paragraph (1): The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of retroactive law are human rights that cannot be reduced under any circumstances. Article 29 paragraph (2): The state guarantees the freedom of every citizen to embrace their respective religion and to worship according to their religion and beliefs.

The issue of blasphemy is increasingly gaining attention from the public and law enforcement officials, both nationally and internationally, along with increasing concern for the protection of human rights (HAM), that hate speech has an impact that degrades human dignity and humanity. Hate speech can encourage collective hatred, exclusion, incitement, discrimination, violence, and even at the most horrific level, ethnic cleansing. against cultural, ethnic, racial, and religious groups that are the targets of hate speech.

Hate speech can be a criminal act regulated in the Criminal Code (KUHP) and other criminal provisions outside the KUHP, which include:

1. Insult
2. Defamation
3. Blasphemy
4. Unpleasant acts
5. Provoke
6. Incite



7. Spread of fake news

The above actions have the aim of or could result in discrimination, violence, loss of life, and/or social conflict. The hate speech referred to above aims to incite and incite hatred against individuals and/or groups in various communities, distinguished by the following aspects:

1. Ethnic group
2. Religion
3. Religious sect
4. Belief/trust
5. Race
6. Inter-group
7. Skin color
8. Ethnicity
9. Gender
10. People with disabilities (handicapped)
11. Sexual orientation.

Making it a bond between cultures in a diverse pattern of societal behavior, that hate speech as referred to above can be carried out through various media, including:

1. In the campaign activity speech
2. Banner or banner
3. Social media networks
4. Expressing opinions in public (demonstrations)
5. Religious lectures
6. Print and electronic media
7. Pamphlet.

The Indonesian National Police Chief has issued Circular Letter (SE) Number SE/6/X/2015 concerning Handling Hate Speech. The letter was issued on October 8, 2015. The circular letter is an affirmation of the Criminal Code regarding the handling of cases involving hate speech. Badrodin said, basically the Circular Letter is normative because it refers to the Criminal Code (KUHP). The Circular Letter is an affirmation of what is already regulated in the Criminal Code regarding the handling of cases involving hate speech.

The Chief of Police's Circular, as a variant of the policy regulation, is only intended to ensure compliance with police actions in handling hate speech as referred to in various laws and regulations that serve as references for the Chief of Police's Circular. The Police remain bound to comply with various legal procedures contained in general administrative law norms (the Government



Administration Law) and sectoral administrative law norms that regulate various categories of actions categorized as hate speech in the Circular.

In exercising its authority to handle various forms of hate speech as regulated in the Chief of Police's Circular Letter, the Indonesian National Police must also adhere to the general principles of good governance, such as being careful and cautious in taking action, not abusing authority, and so on.

The National Police Chief's circular states that if hate speech is not handled effectively, efficiently, and in accordance with statutory provisions, it has the potential to trigger widespread social conflict and potentially lead to discrimination, violence, and/or loss of life. The circular also regulates procedures for handling hate speech to prevent discrimination, violence, loss of life, and/or widespread social conflict.

The handling procedures by members of the Indonesian National Police are regulated in several stages, namely:

1. Every Polri personnel is expected to have an understanding and knowledge regarding forms of hatred.
2. Police personnel are expected to be more responsive or sensitive to symptoms in society that have the potential to lead to criminal acts.
3. Every Polri (Indonesian National Police) personnel conducts analysis or studies of the situation and conditions in their environment, particularly those related to hate speech. Fourth, each Polri personnel reports to their respective superiors regarding the situation and conditions in their environment, particularly those related to hate speech.
4. Every member of the Indonesian National Police must report to their respective leaders the situation and conditions in their environment, especially those related to hate speech.
5. To the Regional Police Chiefs to carry out the following activities:
 - a. To make intelligence functions more effective and prioritize them to understand the real conditions in conflict-prone areas, especially those caused by incitement or provocation, and to carry out mapping as part of early warning and early detection.
 - b. Prioritize the functions of community policing and community policing to provide information or outreach to the community regarding hate speech and the negative impacts that may occur.
 - c. Prioritize the function of community policing to carry out constructive cooperation with religious leaders, community leaders, youth leaders, and academics to optimize repressive actions against hate speech.





In practice, if an act is found that has the potential to lead to a crime of hate speech, every member of the Indonesian National Police is obliged to take the following actions:

1. Monitor and detect as early as possible the emergence of seeds of conflict in society.
2. Approaching parties suspected of making hate speech.
3. Bringing together parties suspected of committing hate speech with victims of hate speech.
4. Seeking a peaceful solution between the conflicting parties, and
5. Provide an understanding of the impacts that will arise from hate speech in society.

Religion is a system that regulates the system of faith (belief) and worship to Almighty God as well as the rules related to human relationships and human beings and their environment. According to the author, religion is also a reflection of a person's personal attitude to do things that the person thinks are good for him and his surroundings, as well as control of the mind over the fruits of human behavior to fulfill the state of the soul, spirituality and intensity of attitudes or control of society that are personal in nature.

According to Presidential Decree (Penpres) Number 1/PNPS/1965 in conjunction with Law Number 5 of 1969 concerning the Prevention of Abuse and Blasphemy of Religion, in its explanation, article by article, it is explained that the religions embraced by the majority of the Indonesian population are: Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism. However, this does not mean that other religions and beliefs cannot grow and develop in Indonesia, but these six religions are the only ones that have been established and recognized by all levels of society in Indonesia.

The world, especially Indonesia, is currently abuzz with discussions about blasphemy. Basuki Tjahaja Purnama, also known as Ahok, has officially been named a suspect in the alleged blasphemy case. The conclusion of the police investigation team's case title was announced by the Head of the Criminal Investigation Unit of the Indonesian National Police, Commissioner General Ari Dono Sukmanto, in a press conference at around 10:00 a.m. WIB at the National Police Headquarters in Jakarta on Wednesday (11/16/2016). Ahok is suspected of committing blasphemy in a video circulating and going viral on social media, there is a statement from Ahok that reads: "I want this story to encourage you, ladies and gentlemen. So don't think, 'ah... if I don't get elected, Ahok's program will be disbanded', No, I'm here until October 2017. So don't believe people, it could be that in your heart you can't vote for me, right? You're being lied to using Al-Maidah 51, all sorts of things. That's your right, so you feel like you



can't vote, 'because I'm afraid of going to hell', being fooled like that. It's okay, because this is your personal call. This program (providing capital for grouper cultivation) just goes ahead. So you don't have to feel bad because your conscience can't vote for Ahok."

The statement was made when Ahok was speaking with residents in the Thousand Islands on Tuesday, September 27, 2016. Previously, Ahok also often disturbed religious activities, especially Islam, such as the ban on routine dhikr at the National Monument (Monas), prohibiting takbir keliling, insulting the Prophet of Islam regarding prostitution that cannot be eliminated by giving the example that in the time of the Prophet of Islam there was also prostitution, insulting holy verses to submit to the constitution, supporting the removal of religion on ID cards, the discourse of eliminating joint leave on Eid al-Fitr, even the alleged destruction of mosques. This case finally Ahok was named a suspect in a blasphemy case. Ahok quoted the verse of the Quran, Al-Maidah, verse 51. Ahok's statement was disseminated on social media. Ahok was first reported by a group of lawyers calling themselves Advocates for Love of the Homeland (ACTA) on October 6, 2016, on charges of blasphemy.

Following ACTA, several community elements followed suit. According to police records, the Criminal Investigation Agency (Bareskrim) received 14 reports and one complaint letter regarding Ahok's alleged blasphemy against Al Maidah 51. The National Police have questioned 29 witnesses, including both the complainant and the accused, and other parties with relevant information on the case. They also interviewed 39 experts from seven fields: criminal law, Indonesian language, religious studies, psychology, anthropology, digital forensics, and legal drafting.

The spread of information that causes division between religious communities through this social network, to hold him accountable, it must first be seen whether his actions are in accordance with the formulation of the crime contained in Article 28 paragraph (2) of the ITE Law, namely intentionally spreading information to cause feelings of hatred or hostility towards certain individuals and/or groups based on ethnicity, religion, race and inter-group relations (SARA).

The formulation of the offense contained in Article 28 paragraph (2) of the ITE Law is:

1. Each person;
2. Intentionally and without right;
3. Disseminating information intended to incite hatred or hostility towards certain individuals and/or groups based on ethnicity, religion, race and inter-group relations (SARA).





Criminal threat Article 28 paragraph (2) of the ITE Law contained in Article 45 paragraph (2) which reads: "Any person who fulfills the elements as referred to in Article 28 paragraph (1) and paragraph (2) shall be punished with imprisonment for a maximum of 6 (six) years and/or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah)."

Elements of Article 28 paragraph (2) ITE Law as follows:

1. Error: intentionally.
2. Unlawful: without rights.
3. Action: spreading.
4. Object: information.
5. Objective: to create feelings of hatred or hostility towards individuals and/or certain community groups based on ethnicity, religion, race and inter-group relations (SARA).

The elements contained in Article 28 paragraph (2) ITE Law:

1. Each person;
Every person here, besides being interpreted as an individual, is also a legal entity that is a legal entity in accordance with the provisions of applicable laws and regulations.
2. Subjective elements in the form of elements of error
The word "intentionally", law enforcement must be able to prove that the perpetrator committed the act of spreading information in the form of hatred or hostility in cyberspace. That, according to doctrine (science), intention is a subjective element, aimed at an act. This means that the perpetrator is fully aware that the words written in the account (Facebook) can cause hatred and hostility of certain individuals and/or groups of people based on SARA for those who read the writing on the wall/wall of the account (Facebook). The perpetrator intentionally carried out the act of spreading hatred or hostility with the intention of insulting (*animus injuriandi*).
3. Unlawful elements
Each element of a crime does not stand alone; it always has a relationship with other elements. From a normative perspective, a crime is understood as a concept of the relationship between the complexity of these elements.
4. Behavioral elements.
In this case, what is meant is an act that is prohibited and is the object of Article 28 paragraph (2) ITE Law namely spreading information that causes hatred or hostility towards individuals/or certain groups of people based on ethnicity, religion, race, and inter-group relations (SARA). The definition of spreading information is interpreted as collecting, preparing, storing, processing, announcing, analyzing and distributing one or a set of electronic



data, including but not limited to writing, sound, images, maps, designs, photos, electronic data interchange, electronic mail, telegrams, telex, telecopy, or the like, letters, signs, numbers, access codes, symbols, or perforations that have been processed and have meaning

4. Conclusion

The crime of spreading information that causes division between religious communities is regulated in Article 156 and 156a of the Criminal Code. This article is located in Book II and Chapter V concerning public order and specifically blasphemy committed on social networking sites is regulated in Article 28 paragraph (2) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions while the criminal provisions are regulated in Article 45 paragraph (2) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions.

Accountability for those who spread information that causes division between religious communities can be requested if they have fulfilled the requirements to be able to realize (understand) the meaning of their actions in crime, can realize that their actions are seen as inappropriate in social interaction (there is a mistake), are able to determine their intentions or desires regarding the actions. In addition to fulfilling the requirements to be held criminally responsible, the perpetrator must also fulfill the elements stated in Article 28 paragraph (2) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, namely that every person, intentionally and without rights, disseminates information intended to cause hatred or hostility towards certain individuals and/or groups based on ethnicity, religion, race and inter-group relations (SARA).

Sanctions against perpetrators of spreading information that causes division between religious communities In the Criminal Code, he is charged with the article on provocation and incitement and in the ITE Law he is threatened with Article 45 of the ITE Law, namely that anyone who intentionally and without the right to disseminate information aimed at causing hatred or hostility towards individuals and/or certain community groups based on ethnicity, religion, race and intergroup relations (SARA) shall be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of IDR 1,000,000,000 (one billion rupiah).



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