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THE CRIMINAL ACT OF DISSEMINATION OF FALSE AND MISLEADING NEWS RESULTING IN CONSUMER LOSSES IN ELECTRONIC TRANSACTIONS (Study of Medan District Court Decision No. 2378/Pid.Sus/2023/PN Mdn)

Nusantara Tarigan Silangit[1], Muhammad Ridwan Lubis[2]
[1,2] Fakultas Hukum Universitas Muslim Nusantara Al Washliyah Medan
Email : nusantaratarigan24@gmail.com[1], muhammadridwanlubis76@gmail.com[2]

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ABSTRACT

Representative institutions are widely used in practice because they can facilitate the journey The incident of spreading fake news (hoaxes and misleading news that results in consumer losses in electronic transactions is very disturbing for the people of Indonesia, because many parties feel disadvantaged by the incident. The legal regulation of the crime of spreading fake and misleading news that results in consumer losses in electronic transactions is regulated in Article 28 paragraph (1) of the ITE Law. The crime of spreading false and misleading news that results in consumer losses in electronic transactions is an act of intentionally and without the right to spread false and misleading news and misuse of Electronic Information and Electronic Transactions that disrupt public order, and are contrary to the provisions of laws and regulations. The conclusion of the discussion is that criminal sanctions against perpetrators of the crime of spreading false and misleading news that results in consumer losses in electronic transactions can be subject to imprisonment and a fine, namely a maximum imprisonment of 6 (six) years and/or a maximum fine of IDR1,000,000,000.00 (one billion rupiah) and in the decision of the Medan District Court Number 2378/Pid.Sus/2023/PN Mdn.

1. Introduction

The convenience and efficiency offered by online media to its users make it a highly influential platform for disseminating information. Online media has not only transformed the way information is delivered but also the way society receives it.

In practice, information and news disseminated by individuals or groups whose veracity cannot be verified or are suspected of being hoaxes. A hoax is information or news that is uncertain or that is not truly factual. The media for spreading hoaxes are currently very diverse. In addition to websites, several applications serve as platforms for spreading hoaxes, including chat apps like WhatsApp, Line, Telegram, Instagram, Facebook, Twitter, and various others.

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The spread of fake news (hoaxes) is very disturbing for Indonesians, as many parties feel disadvantaged by these events. Along with technological advances, people have increasingly accessed information from various social media applications, including Instagram, Line, and WhatsApp. However, it has also become increasingly easy for irresponsible parties to spread hoaxes. As part of information technology innovation, social media provides a space for individuals to express opinions and voice thoughts that may have previously been impossible due to limited channels. Social media has also become a new avenue of expression for the global community in recent years.

The widespread spread of fake news has had a significant impact, coupled with the easy and rapid dissemination of information. One crime frequently encountered in society is fraud via social media, which results in losses for victims.

The government has enacted positive laws governing the criminal act of spreading hoax information in Indonesia, including Articles 14 and 15 of Law Number 1 of 1946 concerning the Criminal Code (hereinafter referred to as the Criminal Code) and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (hereinafter referred to as the ITE Law).

Criminal threats for those who spread hoaxes include Article 28 Paragraph (1) of the ITE Law which states "Any person who intentionally and without the right to spread false and misleading news which results in consumer losses in Electronic Transactions", Article 28 Paragraph (2) of the ITE Law which states "Any person who intentionally and without the right to spread information which is intended to cause hatred or hostility towards individuals and/or certain community groups based on ethnicity, religion, race and inter-group relations (SARA).

2. Research Method

This research is normative juridical. A normative juridical approach and a case approach were used to analyze laws and regulations and the Medan District Court decision No. 2378/Pid.Sus/2023/PN Mdn.

The research conducted comprises normative legal research and empirical research. Normative legal research examines legal principles. This research is descriptive and analytical, meaning it merely describes the circumstances of an object or event without the intention of drawing generally applicable conclusions.

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Data collection used library research methods. Data were obtained through various literature sources, including scientific books, laws and regulations, and other documentation such as magazines, the internet, journals, and other theoretical sources related to the issues raised in this thesis.

The collected data will be thoroughly analyzed using qualitative analysis or described in sentences. Qualitative analysis is an analysis based on the paradigm of the dynamic relationship between theory, concepts and data which is a constant feedback or modification of theory and concepts based on the data collected.

3. Results And Discussion

Results

A search of the legislation does not reveal the word "hoax" which would then be classified as a criminal offense. However, a clear examination of the meaning of the term reveals that, as an act, it has the potential to result in violations of legal interests, including: individual legal interests and collective legal interests (society or the state). Currently, the dissemination of hoax news is predominantly through electronic media. However, print media is also possible.

Law enforcement officials must carefully consider the act of spreading hoax news, using sound legal reasoning before taking action against the perpetrators. Not all disseminated false news violates legal interests, whether individual or collective legal interests.

In line with this rapid flow of information, the public is also required to be more discerning in receiving and processing news and information. They also need to verify all news and information from social media. This measure aims to address the many websites and social media accounts that publish fake news for personal gain, thus necessitating ethical media use.

Media ethics are especially important now, especially in these political years. Ethics play a crucial role in preventing hostility that could divide national unity. Advances in social media should be used to foster relationships and broaden knowledge, not to spread fake news, incitement, hate speech, or provocative messages that could unsettle the nation. Amidst the rapid flow of information, netizens are required to be more discerning in their reception of news and information. The public needs to verify or double-check every time they receive news and information from social media.

Media ethics are also crucial because many websites currently display hoaxes or fake news. Their goals vary, from chasing traffic to spreading hatred, to dividing unity. Therefore, even though people are free to express themselves through social media, ethical standards must still be upheld. All information received should be carefully considered, whether true or false, and not shared haphazardly. This is where media ethics come into play. Furthermore, this ethics is crucial because social media has now become a potentially powerful information giant in Indonesia.

In addition to the Criminal Code (KUHP), which contains provisions related to fraud, there are also regulations specifically governing cybercrime, namely Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008. This law discusses matters related to electronic information, electronic transactions, and also regulates prohibited activities related to cyberspace and the associated criminal penalties.

4. Discussion

Every trade or buying and selling activity is governed by the principle that the customer is king, meaning that consumers should receive the best. This principle also applies to the goods being transacted, where every consumer should have the right to clear and transparent information about the goods they intend to purchase. Based on this principle, sellers should strive to provide the best for consumers, but in reality, consumers often feel deceived. Therefore, consumers must be discerning when purchasing goods to avoid being scammed.

Advertising, as a marketing and information tool, plays a crucial role in the development of the Indonesian nation. As a means of information and marketing, advertising is a vital part of communication media for business development and must function to support development (Indonesian Advertising Code of Conduct and Procedures).

Lack of awareness among online shop operators regarding providing clear and complete product descriptions so consumers can clearly understand the products they are purchasing. Online shop operators are unaware of the consumer rights that must be fulfilled because the primary goal of online shop transactions is to generate substantial profits by deceiving consumers through promotions containing false information about the products offered. Businesses who implement standard contracts or ship ordered items that do not match the photos uploaded to their online shop Instagram accounts are understood to be failing to provide clear and complete information and fulfill consumer rights.

Criminal law is the law that regulates violations and crimes against the public interest. These violations and crimes are punishable by severe suffering or torture for those involved. A crime is a serious criminal act. The penalties can include fines, imprisonment, the death penalty, and sometimes even additional

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penalties such as confiscation of certain items, revocation of certain rights, and the announcement of a judge's decision.

A criminal case is determined by the offense. In this regard, there are two types of offenses commonly used: ordinary offenses and complaint offenses. Ordinary offenses, or offenses not based on complaints, are offenses that can be processed directly by investigators without the consent of the victim or injured party. In other words, even without a complaint or even if the victim has withdrawn their complaint, investigators are still obligated to continue the case process. Examples of ordinary crimes include murder, theft, embezzlement, fraud, and others.

Furthermore, a complaint offense is an act punishable by law. When examined legally or in the processing of a case, a complaint offense is an offense that can only be prosecuted if there is a complaint or report from the victim of the crime. In a complaint offense, prosecution for the offense is dependent on the consent of the injured party or victim. In a complaint offense, the victim of a crime can withdraw the complaint if a settlement has been reached between the victim and the defendant. This is explained in Article 75 of the Criminal Code, which states that the person filing the complaint has the right to withdraw their complaint within three months of filing it.

The criminal provisions in the Electronic Information and Transactions (ITE) Law serve as a means of preventing criminal acts by instilling fear with the threat of sanctions and providing a deterrent effect for violators of the law. The formulation of the ITE Law is crucial; the formulation of criminal sanctions classifies acts prohibited by the ITE Law as criminal offenses. Criminal law recognizes two principles in imposing criminal sanctions: ultimum remedium and primum remedium. Ultimum remedium is a principle contained in Indonesian criminal law, which states that criminal law should be used as a last resort in law enforcement, while primum remedium is the opposite principle of ultimum remedium, where criminal law is applied as the primary option.

Information technology will have a positive impact if used according to its function, and will have a negative impact if used according to its function but with deviant users. Deviant here means using a communication tool such as social media or instant messenger to create news as if it were true (hoax), a trend that is currently popular, making the information difficult to verify.

The crime of spreading false and misleading news is specifically regulated in the ITE Law, which uses the phrase "spreading false news." The same provision is found in Article 390 of the Criminal Code, with a slightly different formulation, namely "broadcasting false news." According to the Criminal Code, defendants can only be punished under Article 390 of the Criminal Code if the news

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broadcast is false. What is meant by false news is not only providing empty news but also telling an untrue story about an event. This explanation also applies to Article 28 paragraph (1) of the ITE Law. News that tells an untrue story about an event is also considered false news.

One crime that can be committed online is spreading false news (hoax). Hoaxes aim to shape public opinion, sway opinions, shape perceptions, and even provide entertainment that tests the intelligence and accuracy of internet and social media users. Hoaxes represent a negative excess of freedom of speech and opinion online. Hoaxes are categorized as unlawful acts.

Currently, unlawful acts in cyberspace are a highly worrying phenomenon, given that carding, hacking, fraud, terrorism, and hoaxes have become the activities of cybercriminals. This contrasts sharply with the lack of regulations governing the use of information and communication technology in various sectors.

In connection with the criminal act of spreading false and misleading news that results in consumer losses in electronic transactions, the criminal sanctions for those who commit unauthorized acts by transmitting electronic documents containing false news, as stipulated in Article 45A paragraph (1) in conjunction with Article 28 paragraph (1) of Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning the Electronic Information and Transactions (ITE), have been met. Therefore, the Defendant must be declared legally and convincingly proven to have committed the crime as stated in the first indictment.

Based on the facts obtained during the trial in this case, the Panel of Judges found no justification or excuse to exonerate the defendant from criminal responsibility. Therefore, the Panel of Judges concluded that the defendant committed the act consciously and with normal mental and intellectual functions. Therefore, the defendant is deemed capable of being held responsible.

It should be noted that judges are mandated by law to receive, examine, decide, and resolve cases and are always required to render the most truthful and just decisions. In carrying out their functions, judges are granted freedom and independence. Judges exercise this freedom and independence, particularly when rendering decisions in criminal cases.

In making decisions and imposing criminal sanctions, judges must consider legal considerations, including the Public Prosecutor's indictment, the defendant's testimony, witness testimony, evidence, and articles of criminal law. Non-legal considerations also include the background of the defendant's actions, the consequences of the actions, and the defendant's condition at the time of the actions.

Based on the panel of judges' decision, the basis for the judge's decision based on the ITE Law was because the perpetrator was legally and convincingly proven guilty of committing the crime of spreading false and misleading news that resulted in consumer losses in electronic transactions as in the first charge, namely the perpetrator's actions violated Article 45A paragraph (1) in conjunction with Article 28 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning ITE.

A sentence that is too light will clearly not have a deterrent effect on the perpetrator. The perpetrator should be given a heavier sentence referring to the provisions of Article 45A paragraph (1) of the ITE Law which states: "Any person who intentionally and without the right to spread false and misleading news that results in consumer losses in Electronic Transactions as referred to in Article 28 paragraph (1) shall be punished with imprisonment of up to 6 (six) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah)."

Based on the ITE Law, perpetrators of the crime of spreading false and misleading news that results in consumer losses in electronic transactions should be subject to severe penalties because such actions disturb the public. Therefore, perpetrators of the crime of spreading false and misleading news that results in consumer losses in electronic transactions must be subject to the severest penalties possible to create a deterrent effect on the perpetrators and can prevent perpetrators who want to commit the crime of spreading false and misleading news that results in consumer losses in electronic transactions.

5. Conclusion

The legal provisions for the crime of spreading false and misleading news that results in consumer losses in electronic transactions are regulated in Article 28 paragraph (1) of the ITE Law. The crime of spreading false and misleading news that results in consumer losses in electronic transactions is an act of intentionally and without authority to spread false and misleading news and misuse of Electronic Information and Electronic Transactions that disrupts public order, and is contrary to the provisions of laws and regulations.

Criminal sanctions against perpetrators of the crime of spreading false and misleading news that results in consumer losses in electronic transactions can be subject to imprisonment and a fine, namely a maximum imprisonment of 6 (six) years and/or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah) and in the decision of the Medan District Court Number 2378/Pid.Sus/2023/PN Mdn, the defendant was given a sanction in the form of imprisonment of 2 (two) years, a fine of IDR 30,000,000.00 (thirty million rupiah) if the fine is not paid, replaced with imprisonment for 1 (one) month.

The judge's legal considerations in the decision of the Medan District Court Number 2378/Pid.Sus/2023/PN Mdn were that the judge in deciding the case applied the provisions contained in the ITE Law with the consideration that the perpetrator of the crime of spreading false and misleading news that resulted in consumer losses in electronic transactions had fulfilled the elements of Article 45 paragraph (1) Jo. Article 28 paragraph (1) of the ITE Law and the Panel of Judges did not find anything that could eliminate criminal responsibility, either as a justification or excuse, so that the defendant must be held responsible for his actions.

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