

The Reality of Spreading Hoaxes on Social Media: A Sociolegal Approach

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Abstract— This study aims to examine how the legal review of the spread of hoaxes in Indonesian positive law? and how does the impact of the hoax spread in the community as a sociological study? This research is qualitative research, with a socio-legal approach. This approach was chosen because researchers want to see the law not only textually but also from other sides involving the context and society. The results of the study indicate that Indonesia positive law regulates the 'hoax' contained in Article 311 paragraph (1), Article 378, Article 390 of the Criminal Code; Article 14 and 15 of Act Number 1 of 1946 concerning Criminal Law Regulations; Article 28 and Article 45 A of Law Number 19 Year 2016 concerning Amendments to Law Number 11 Year 2008 concerning Information and Electronic Transactions; and Law Number 40 of 2008 concerning the Elimination of Race and Ethnic Discrimination. The formulation of legal instruments concerning hoaxes is an effort by Indonesia as a legal and democratic country in protecting the entire Indonesian nation as mandated by the Preamble of the 1945 Constitution to spread hoaxes. The progress of communication and information technology not only has a positive impact on the community but also a negative impact that is quite widespread, which can be used to commit acts against the law or attack other people and even the country. The very fast delivery of information through cyberspace is often inaccurate or lie which can lead to hate speeches. This of course will undermine the spirit of freedom of expression in a democratic system, which can lead to the division of nations and countries.

Keywords— sociolegal study, hoaxes, social media

I. INTRODUCTION

In the development of democracy, the protection of human rights is an important element. An important part of human rights is freedom of expression. Freedom of expression can be a tool for people to develop themselves. Recognition of the protection of freedom of expression is universally contained in the Universal Declaration on Human Rights. According to the Universal Declaration of Human Rights, everyone has the right to freedom of opinion and expression. This right includes freedom to give opinions without interference and to seek, receive and share information and ideas through any media without regard to their limits (Article 19).

Freedom of expression and freedom of information are complementary. The right to know fits readily into the whole system of freedom of expression. Not everyone agrees on the extent in which freedom of expression would cover freedom of information. BARENDT163 for example, argues that the right to privacy is a much better legal basis for upholding positive information rights [1]. However, it seems that the positive information is starting to decrease, and even tends to lead to fake information (hoax) which can lead to hate speech.

Hoax is a form of Cyber Crime that seems simple, easy to do but has a huge impact on social lives. [2] In the Indonesian politics, hoaxes began to emerge at the 2014 presidential election. At that time the *Obor Rakyat* tabloid was discredited Joko Widodo as a presidential candidate. Another case is the *Saracens* group. This group uses thousands of

social media accounts to spread hated related to ethnicity, religion, race and intergroup.[3]

Hoax on social media continues to grow to this day, especially during the election.

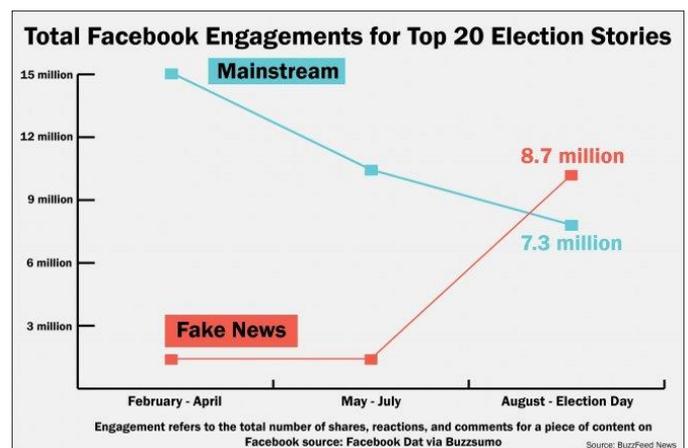


Figure 1. Fake news thrives on social media

The figure 1 shows the development of news in normal on Facebook inferior to fake news, fake news ahead of the election has increased sharply from the months before the election, which is 8.7 million.

Various Social Media Online is a tool or media for a person or various parties to convey the aspirations of their thoughts, opinions or as a place to convey various information.

Actually, if the online media is used for positive things, then there is no problem to worry about. Unfortunately social media is often used to convey various negative things by a person or certain parties for various interests, both personal interests or the interests of other parties.

It must be recognized that social media is a fertile place for the information that is defamatory, incitement, hoaxes, and so on. According to the results of the Mastel survey in Marwan (2017) that the spread of news or information containing the highest hoax content comes from social media in the form of: Facebook 92.40%; Chat applications 62.62%; and Website 34.40%. [4]

From the description above illustrates that hoaxes on social media seem to be a phenomenon that is troubling community because it has a huge impact also for society and the country. The problem is how Indonesia's positive law regulates the spread of hoaxes on social media that is increasingly widespread. This question can be answered by examining how the Indonesian State regulates the spread of hoaxes on social media through relevant laws and regulations, and examines the impact of hoax development on social media with a socio-legal approach so that it can really give a concrete description of the impact of hoaxes in the media social towards the community.

There are several studies that also discuss the hoax, but it is different from the research conducted by the author. The previous research from Nur Aisyah Siddiq with the title "Criminal Law Enforcement in Counterfeit News (Hoax) According to Law No.11 of 2008 which has been Amended to Act No.19 of 2016 concerning Information and Electronic Transactions". The research emphasizes the aspect of criminal law enforcement in the spread of hoaxes in the Information and Electronic Transactions Law, where not only the fake news makers are given criminal sanctions but also for perpetrators who participate in sharing/ transmitting the hoax. [5]

The other previous research by Dewi Ayu Pranesti and Ridwan Arifin with the title "Protection of Victims in the Case of Hoax News Spread on Social Media in Indonesia" also discusses hoaxes on social media, but this research emphasizes the protection of victims from perpetrators of hoax spreading on social media through Government Regulation Number. 44 of 2008 concerning Provision of Compensation, Restitution and Assistance to witnesses and victims, and Law Number 13 of 2006 concerning Protection of Witnesses and Victims. [6]

Despite similar topics about the spread of hoaxes through social media, this study focuses on how Indonesia's positive laws regulate the spread of hoaxes on social media, then what impacts arising from the spread of hoaxes on social media for people and countries by socio-legal study. The structure of this paper is as follows: In Section 1 will be explained about the introduction. After that, Part 2 will first discuss what is a hoax? in order to equate equations. Then, Section 3 will discuss Indonesia's positive legal arrangements regarding the spread of hoaxes on social media. Next, Section 4 will discuss the impacts caused by the spread of hoaxes on social media by socio-legal analysis. Section 5 will explain the conclusion.

II. WHAT IS HOAX?

The word of hoax has become a popular word to fabricated, false, or fake events, especially in cyber media texts: A hoaxes not just a form of news or opinion, but also includes data, photos, and images. In the context of cyber media, hoaxes can be interpreted as text used as false news or deceptive efforts spread through cyber media to the reader to trust everything. [7]

Hoax in the Oxford dictionary (2017) is interpreted as a form of fraud whose purpose is to make humor or bring danger. Hoax in Indonesian means false news, false information, or false news. Meanwhile, according to the English dictionary, hoax means banter, lies, lies and deceptive alias deceptive. Walsh (2006) in his book entitled "Sins Against Science, The Scientific Media Hoaxes of Poe, Twain, and Others" writes that the term hoax has been around since the early 1800s of the era of the industrial revolution in England. The origin of the word hoax is believed to have existed for hundreds of years before, namely 'hocus' from the spell 'hocus pocus', a phrase often referred to by magicians, similar to '*sim salabim*'. Even Boese (2002) in his book "Museum of Hoaxes" wrote that long before that, the term hoax was first published through almanacs or false dates made by Isaac Bickerstaff in 1709 to predict the death of astrologer John Partridge. [8]

Hoax spreading is one of the popular social media strategies adopted by various advocacy groups. Hoaxes refer to "deceptive alerts designed to undermine the public's confidence in an organization, product, service, or person". Hoaxes are generally associated with powerful individuals or groups who are suspected of secretly plotting to accomplish some unjust goal. [9]

Hoax aims to create public opinion, lead public opinion, form perceptions as well as having fun that tests the intelligence and accuracy of internet and social media users. The purpose of spreading hoaxes varies, but in general hoaxes are spread as a joke or just for fun, dropping competitors (black campaigns), promotion with fraud, or invitations to do good deeds - actually there is no clear argument in it. However, this caused many recipients of hoaxes to immediately spread to their peers so that eventually the hoax was quickly spread. [10]

There are three types of hoaxes according to Victor Grech in the paper entitled "Write a Scientific Paper (WASP): Academic hoaxes and fraud": [11]

1. The "genuine hoax" is done with the intention of its nature to never be revealed or exposed as a sham. This may be done for "financial, ideological, or emotional gain".
2. The "entrapment hoax" is made with the intention to "prank" a professional group or community (such as an academic group, a publisher, or a literary community).
3. The "mock hoaxes" are openly acknowledged as inauthentic by their creators from the outset. These are done to "play conscious tricks with the very notion of authorship [in order] to create voice which is neither quite theirs nor someone else's".

III. ARRANGEMENT OF HOAXES IN INDONESIA POSITIVE LAW

The term hoax is not well known in Indonesian law, but there are several regulations which set up this hoax with other terms that have the same meaning as the term hoax. Here are some brief descriptions related to the articles in the law about hoax or hoax news:

1. Criminal Code

At the Indonesian Criminal Code, the term hoax is not known, but there are three articles that can be the legal basis in dealing with the spread of hoax, including:

- a. Article 311 of the Criminal Code concerning defamation. Article 311 of the Criminal Code: "If the person committing criminal defamation or written defamation is permitted to prove that the accusation is true, does not prove it, and the accusation is carried out contrary to what is known, then he is threatened with defamation with imprisonment for a maximum of four years."
 - b. Article 378 of the Criminal Code: "anyone with the intention to benefit oneself or another person unlawfully, using a false name or false dignity, with deception, or a series of lies, moves others to hand over something to him, or to give debt or write off receivables are threatened because of fraud with a maximum imprisonment of four years".
 - c. Article 390 also regulates the same thing, although with a slightly different formula, namely the use of the phrase "broadcast false news". Article 390 of the Criminal Code reads as follows: "Anyone with the intention to benefit themselves or others by opposing the right to reduce or increase the price of merchandise, funds or money securities by broadcasting false news, is sentenced to imprisonment for two years and eight months".
2. Law Number 1 of 1946 concerning Criminal Law Regulations
- The term hoax in this law is interpreted as "hoax news" and/or "uncertain news". The following articles are organized as follows:

- a. Article 14 paragraph (1) and paragraph (2).
Article 14 Paragraph (1) regulates: "Whoever, by broadcasting false news or notifications, intentionally issues uproar among the people, is sentenced to a maximum prison sentence of ten years."
Article 14 Paragraph (2) regulates: "Whoever broadcasts a news or issues a notice that can issue a disturbance among the people, while he should be able to think that the news or notification is a hoax, sentenced to prison with a maximum imprisonment of three years."
- b. Article 15 regulates: "Anyone who spreads uncertain news or excessive or incomplete news, while he understands at least should be able to suspect that such news will or has been able to issue confusion among the people, is punished with a maximum prison sentence - two years high.

3. Law Number 19 of 2016 concerning Information and Electronic Transactions.

- a. Article 27 paragraph (3) regulates: "every person intentionally, and without the right to distribute and/or transmit and/or make access to Electronic Information and/or Electronic Documents that have content of defamation and/or defamation."
- b. Article 28 paragraph (1) and paragraph (2).
Article 28 paragraph (1) regulates: "any person who intentionally and without the right to spread false and misleading news that results in consumer losses in electronic transactions."

Article 28 paragraph (2) regulates: "Everyone intentionally and without the right to disseminate information that is intended to incite hatred or hostility of certain individuals and / or groups of people based on ethnicity, religion, race, and between groups. There are two forms of criminal acts in Information and Electronic Transactions in Article 28, each of which is formulated in paragraph (1) and paragraph (2), if the said act results in consumer losses in electronic transactions. However, if the act does not result in consumer harm, it can be prosecuted according to the Information and Electronic Transactions Law depending on the content of the distributed content such as:

- 1) If false news contains decency, criminal charges can be charged according to Article 27 paragraph (1) of the Information and Electronic Transactions Law;
- 2) If gambling is charged, it can be convicted based on Article 27 paragraph (2) of the Information and Electronic Transactions Law;
- 3) If charged with defamation and / or defamation of a criminal offense is based on Article 27 paragraph (3) of the Information and Electronic Transactions Law;
- 4) If charged with extortion and / or threat is punished according to Article 27 paragraph (4) of the the Information and Electronic Transactions Law;
- 5) If it is charged with causing hatred based on SARA, it is criminalized under Article 28 paragraph (2) of the the Information and Electronic Transactions Law;
- 6) If charged with the threat of violence or intimidation directed at the person is convicted under Article 29 of the Information and Electronic Transactions Law.

In addition to the articles mentioned above, hoax news disseminators may also be subject to articles related to hate speech stipulated in the Criminal Code and other laws outside the Criminal Code, namely: Article 156, Article 157, Article 310, Article 311, then Articles in Law Number 11 of 2008 which have been amended by Law Number 19 of 2016 concerning Information and Electronic Transactions, and Handbill Number SE/6/X/2015 concerning Handling of Hate Speech issued Republic of Indonesia police and Article 16 of Law Number 40 of 2008 concerning the elimination of Racial and Ethnic Discrimination.

One of the countries in Southeast Asia that has regulated the Hoax as a criminal offense is Singapore. This is regulated in five laws in Singapore, namely: Section 45 of the Telecommunications Act (CHAPTER 323); Regulation 8 (1) of the United Nations (Anti-Terrorism Measures) Regulations; Section 499 of the Penal Code (CHAPTER 224); Section 26

of the Internal Security Act (CHAPTER 143), and Section 4 (1) of the Sedition Act (CHAPTER 290).

The hoax arrangement in Singapore that distinguishes it from the regulation in Indonesia is the spread of hoaxes about terrorism. This is regulated in Regulation 8 (1) of the United Nations (Anti-Terrorism Measures) Regulations. The elements are everyone, spreading false news about terrorism, while he knows that the news is wrong. Regulations in Indonesia do not specifically regulate this matter even though the issue of terrorism is an issue that can cause unrest many people.

In addition to spreading hoaxes about terrorism, Singapore has also arranged for spreading hoaxes which has caused public alarms. This is regulated in Section 26 of the Internal Security Act. The element is that everyone makes false reports or lies, resulting in public alarms. In Indonesia, there is no specific regulation regarding this matter.

the impact hoaxes spread on social media in a sociolegal study

Michael Hauben in 1993 predicted the world through his writing on "Common Sense; *The Net and Netizens; The Impact the Net Has on People's Lives*":^[12]

"Welcome to 21st century, You are a Netizen (a Net Citizen) and you exist as citizen of the world, thanks to the global connectivity that the Net makes possible. You consider everyone as your compatriot. You physically live in one country but you are in contact with much of the world via the global computer network. Virtually, you live next door to every other single Netizen in the world. Geographically separation is replaced by existence in the same virtual place (M. Hauben, 1993)"

Years ago, the prediction written by Michael Hauben about community interaction in carrying out his social life has become a reality. The use of internet media has become a primary need of every individual community. The development of telephone devices with the Android system validates the behaviour of "net-digital minded" people in carrying out social, economic, political, educational and cultural activities. This forms a diversion or change in the perspective of the individual in carrying out all social activities in society. Aron Mefford and Ronda Hauben called it a form of "paradigm shift" from the city community (Citizen) towards a pattern of network community interaction (Netizens).^[12]

According to Herbert Spencer, society is a biological organism. Just like the evolution of living things, society evolved from simple organisms to complex organisms. The phenomenon of hoaxes that occur in society shows that the development of society changes from a simple pattern to an increasingly complex condition of modernity.^[13]

The emergence of social media that benefits humans as a media for the rapid dissemination of information, a space for socializing with others without barriers and borders, as well as a space for expressing opinions also has implications in the form of negative impacts with the spread of hoax information such as hoaxes that have a large impact on society.

Discussions on the impact of the spread of hoaxes on social media will be described in a sociolegal study. The author understands that the problem of hoaxes in the midst of

society is not easily explained only in normative studies through existing positive laws. More than that, the spread of hoaxes and their impact problems are complex problems that occur in society today.

Many problems in society are quite complex and cannot be answered textually with mono-discipline. In this situation a more basic and enlightening explanation can be obtained interdisciplinary. Therefore, a legal approach is needed that can explain the relationship between law and society. Law can be studied both from a legal or social science perspective, as well as a combination of the two. Sociolegal study is a study of law using the approach of law and social sciences.^[14]

In this section, the authors use social science studies to complete the explanation of the spread of hoaxes and their impact on society. This was done to explain the phenomenon and the impact of the spread of hoax on social media felt by the people in Indonesia.

The recent spread of hoaxes on social media is an interesting social phenomenon to be studied. Understanding this phenomenon is important not only so that we are not trapped into false news consumers but also anticipate the potential problems and impacts that arise in the future. For example, conflicts between supporters of presidential candidates or regional head candidates and the fragmentation of the Republic of Indonesia. Symptoms in this society appear very intense after the existence of a digital platform for information distribution. The hoax phenomenon is a social phenomenon that is trending.

The following is the impact of the spread of hoax on social media felt by the people of Indonesia: *a)* triggering national divisions. One type of misinformation spread rapidly in public spaces (especially on the internet) is information or news that questions the Indonesian people's memories of their nation, religions, ethnic groups, or history. Many such hoaxes have been accused of damaging and disturbing the institutional memory of the Indonesian people's unity. Hoaxes are considered to cause, and are accused of causing, various conflicts, divisions, and even fights in various parts of Indonesia^[15] *b)* lowering the reputation of the injured party. In this case hoax news will be detrimental to certain parties, because people's perceptions that read hoax news will be affected, for example in general election contestation, those who are reported lying will be harmed through perceptions that are formed and ultimately disadvantaged in the results of votes obtained from their voters. This happens because hoaxes can cause such hatred towards certain parties. Psychologically this will affect the views, attitudes and behaviour towards others which in turn is dangerous because it threatens national unity; *c)* benefit certain parties: The case of the Saracen professional news group is a clear proof that the hoax business is tempting. Reporting from merdeka.com, Head of Operational Sub-Division of the Cyber Patrol Task Force of the Indonesian Police Criminal Investigation Agency, AKBP Susatyo Purnomo said that the nominal received by this group could reach Rp. 100 million per project ^[16] Besides being economically profitable, in the case of political contestation such as the General Election, the spread of hoax news will benefit certain candidates to get votes from their voters. *d)* Hoax news has psychological impact on its readers: Rena Masri, adult clinical psychologist from Q Consulting, said that

hoaxes will cause psychological trauma directly or indirectly, for example, hoax news that mostly exposes violence or accidents will make people uneasy, afraid, and excessive anxiety [17]; e) hoax news makes it hard for people to believe the facts. A survey published early in 2018 found that seven out of 10 people were afraid of hoaxes being used as 'weapons', and more than 60% of respondents did not feel they could know the difference between hoaxes and facts [18] This situation is complicated by the rapid spread of hoax information on social media. According to the explanation of Walter Quattrociocchi, researchers from the IMT Institute for Advanced Studies, Italy, said that the confirmation bias is the trigger for spreading misinformation [19] The confirmation bias referred to is the act of seeking justification to confirm belief. Someone tends to look for information that confirms his beliefs and ignores other information that is contrary to his beliefs, even though they may have truth values.

In addition, the spread of hoaxes and confirmation bias is in line with Freud's psychological theory which states that humans do tend to like things that are full of prejudice, suspicion, possibility, in addition to actual facts [20]. This is a theoretical explanation of why humans are more easily grasping negative content, traits, and behaviour than vice versa. Meanwhile, hoaxes spread well about this trend.

IV. CONCLUSION

Based on the results of the discussion that has been presented, the author can draw the conclusion that positive legal arrangements regarding the spread of hoaxes in Indonesia are contained in various regulations, including in the Criminal Code (KUHP); Law Number 1 of 1946 concerning Criminal Law Regulations; Law Number 19 of 2016 concerning Information and Electronic Transactions; Law Number 11 of 2008 which was amended by Law Number 19 of 2016 concerning Information and Electronic Transactions; Handbill Number: SE/6/X/2015 concerning Handling Hate Speech issued by the Police of the Republic of Indonesia; and Law Number 40 of 2008 concerning the elimination of Racial and Ethnic Discrimination.

Handling of hoax cases in cyberspace must be done optimally because the impact caused by the spread of hoaxes was not small. The phenomenon of hoax as a social phenomenon has the following negative effects: (1) triggering national divisions; (2) reduce the reputation of the injured party; (3) on the contrary it benefits certain parties; (4) has a psychological impact on people who read it; and (5) makes it difficult for people to believe the facts.

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