

Disengagement of Hoax and Hate Speech from Social Context: Analysis of Intersection Between Criminal Law and the Influence of the Linguistic

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ABSTRACT

Digital Age 4.0 is only considered as a digitalization era that focuses on the progress of humanity. However, the digitalization process legitimizes the reduction of wealth in meaningful experiences of human life (ausdrück) with all the intuitive traits contained in humans. This trait that makes a person fully human becomes lost as what has been applied in Criminal Law so far. Finally, written and oral languages are also analyzed based on logical atomistic logic through the mechanism of decomposition of elements in the article. This study uses a normative juridical method based on secondary data through library research. However, this study also uses several approach methods, namely empirical approaches, conceptual approaches, philosophical approaches, pragmatic approaches, case approaches, and critical approaches. The results of this study indicate that the social context that has an effect on the creation of speech and writing is not considered in the process of proof through Criminal Law.

Keywords: *Criminal Law, communication, law, parole, social media*

1. INTRODUCTION

The dynamics of law in Indonesia lately has been felt so fast, in line with the rapid increase in population and social development. At the same time, various social ills arise that encourage and require the law to function as a social controller to be the front guard in creating an orderly, developed, and prosperous society. As a result, a variety of new and unique legal products, as a sign of the development of the law itself [1]. It is as if the emergence of new laws and regulations or their amendments are trying to respond to the social reality that occurs.

But in reality, there will always appear distortion and distinction between the facts of reality and legal norms. That is because, in the content of laws and regulations, there will always be natural defects and artificial defects. Both of these defects are logical consequences of the form of the written law. Meanwhile, the written law itself has a weakness that is limited in scope. Thus, the legislation process - whether the formation of new legal norms or amendments, is in essence, just a mere moment of influence outside the field of law itself. As a result, written law will always be out of date when faced with social dynamics in society [2].

The emergence of various facts of the social disease, also resulted from a postulate that is almost impossible to be refuted as a "notoir feiten", namely digitalization in the context of globalization. Almost all aspects of human life become dependent on computerization and digitalization, to break into private areas and even in the form of communication. Advances

in information technology have made interactions between individuals no longer just unidirectional, but have entered the two-way dimension. In the current era, the community is no longer a connoisseur of content from the information media but also contributes to the content of the media.

Internet - as one of the icons in the era of digitization, emerges and develops by bringing new ways of communication in society, through the application of online social media. Social media is present and change the paradigm of communication in today's society. Communication is unlimited in distance, time, space. Online communication can occur anywhere, anytime, without even having to face to face. Social media can negate social status, which is often a barrier to communication. With the presence of Twitter, Facebook, Google+ and the like, people without having to meet, can interact with each other. Social media causes distance to be no longer a problem in establishing communication. The length of time the last meeting was also no longer a problem. Based on the online system, a friend who has not met for a long time can find and re-establish communication with one another. The advantages of social media applications, because of the ease of use, so that anyone can access and use social media [3].

According to Roswita Oktavianti and Riris Loisa [4], Indonesia is one of the countries with the most attractive social media users in the world. Often various domestic issues become trending topics on social media Twitter or viral (fast-spreading and popular) on other social networking sites. Furthermore, Roswita Oktavianti and Riris Loisa cite data from We Are Social on world digital statistics released in January 2016,

Indonesia has 88.1 million active internet users, an increase of 15% in the last twelve months. Likewise, a survey conducted by Kompas Research and Development in June 2015 in fifteen cities (outside Jakarta) with 6,000 respondents showed four out of ten respondents claimed to have a smartphone. Around 85% of them actively access the internet via cellphones. And more than 61% of respondents also claimed to have more access to social media. This fact shows that social media has become a new public space for social and political discussion.

This research wants to show that language has a negative impact when used in binary opposition. The use of language, especially in written form, affects the pattern of reasoning and legal argumentation patterns by Law Enforcement Officials. As every Law Scholar understands that the process of proving a crime is limited by the fulfillment of subjective and objective elements in articles that are allegedly violated by someone suspected of being a criminal offense. Law Enforcement Officials unconsciously carry out a matching (subsumptive) process between the sound of the text to the act as concrete facts.

In conducting this research, we continue to move from the norm in legal research to use normative juridical research methods based on secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials through library research. However, the advantages of normative juridical research methods can use several approaches, so we use a philosophical approach, a language approach, a conceptual approach, and a critical approach. Especially regarding the critical approach, it is used to analyze law enforcement officers who move based on their power and authority.

This research will undoubtedly experience fundamental difficulties if it is only based on normative jurisdiction with library research, then our throwing (*gowerfen-sein*) is the only starting point of this writing. Therefore, reality does not appear in written form but the form of reason. Then an interview mechanism is an impossibility, because, according to Raymond Geuss [5], accusations against them will be denied verbally. Where is often a decision of the Law Enforcement Officials for a legal event, is not considered a form of law interpretation of the legislation. As if, the articles 'read' by themselves, without regard to the social reality that occurs.

Based on the previous description, it should be questioned and studied in-depth about how law enforcement officials should behave towards suspects/witnesses in the process of examining criminal cases relating to hoaxes and expressions of hatred?

2. BACKGROUND

Based on Letter c of Considering the Criminal Procedure Code emphasizes that the development of national law, in the context of the archipelago insight in the field of criminal procedure law, aims to make people fulfill their rights and obligations, and to improve fostering attitudes of law enforcement practitioners based on their respective functions and authorities towards law enforcement, justice and protection of human dignity and dignity, as well as order and legal certainty for the implementation of the rule of law with reference to the 1945 Constitution.

What's interesting is that when we look at the phrase "... to improve fostering attitude..." in the consideration. The meaning of "attitude" is as a form of evaluation or feeling reaction. More specifically, Thurstone explains the formulation of attitude as the degree of positive effects and negative effects on a psychological object. Likewise, Berkowitz explained the meaning of attitude is one's attitude towards an object is a feeling of supporting or impartial (favorable) or a feeling of not supporting or not taking sides (unfavorable) on the object [6].

Whereas GW. Allport [7] describes the attitude is a mental state and level of readiness, which is regulated through experience

that provides a dynamic or directed influence on individual responses to all objects and situations related to it.

In detail, Saifuddin Azwar [6] explains 3 (three) attitude components, as follows:

1. The cognitive component, is a representation of what is believed by the individual owner of the attitude, the cognitive component contains the type of stereo trust individuals have about something that can be equated handling (opinion), especially when it comes to issues or controversial issues;
2. The affective component is a feeling that involves emotional aspects. This emotional aspect is usually rooted deeply as a component of attitude and is the most enduring aspect of the effects that may be changing one's attitude the affective component is equated with the feeling someone has towards something; and
3. Behavioral component (conative), is an aspect of certain behavioral tendencies following the attitudes possessed by someone. And that contains trends or tendencies to act/react to something in specific ways. And concerning the object it faces, it is logical to expect that a person's attitude is reflected in the form of behavioral tendencies.

In the relation between 'attitude' and language, it seems that the affective component is a chain of links. The language itself has two main functions, namely referential function, and affective function. According to Linda Thomas and Shan Wareing [8], the referential function of language is related to what name is used to refer to objects and ideas and how to describe events while the affective role of language is related to who "may / has the right" to say what, which is closely related to power and social status.

Based on this, language is the first starting point, so according to Ferdinand de Saussure, it can lead to the value of elements in the system - or context, and not just to the physical existence of an entity complicated by the influence of the linguistic and cultural environment. Thus, the structure is a warning that nothing social or cultural (including individuals, of course) appears as a "positive" constituent that is outside and alienated from other elements [9]. That is, every Law Enforcement Apparatus should be aware that in conducting a review of legal norms and concrete facts will always experience a throw (*gowerfen-sein*) in a network of meaning structures that grow and develop around social texts that are created.

This was revealed by Saussure, basically, it was anticipated by the Considering the letter c of the Criminal Procedure Code. Thus, the Criminal Procedure Code overrides the principle of inquisitoir that were originally based on HIR and adopts the principle of accusatoir in the process of examining criminal cases. This principle of inquisitoir a legal principle in the examination of criminal cases which views the suspect and witness as objects in the examination, so that, in such a process, the 'confession' is evidence which is the main target.

Whereas in the Criminal Procedure Code, it no longer recognizes 'confession' as the primary evidence but uses the phrase "Defendant's Statement." That is, the suspect /witness/defendant can admit and can also refute. On the contrary, respect for human rights (HAM), the principle of inquisition has grown and developed in everyday life. This has turned into common sense in the process of examining criminal cases. So, in this position, we are dealing with the legal culture of the Polri Investigator's performance patterns.

Speech act, according to Abdul Chaer and Leonie Agustina [10], is a pragmatic element that involves speakers and listeners or writers and readers as well as matters discussed, of course, without prejudice to other contexts that accompany when the speech acts take place. When viewed from the speaker's

perspective, the language functions privately or privately (emotive function). That is, the speaker expresses his attitude towards what he is talking about. The speaker not only expresses emotions through language but also shows those emotions when delivering his speech. In this case, the listener can also guess whether the speaker is sad, angry, or happy. Thus, the speech-language becomes a monologue communication model that is unique to individuals, namely parole.

According to Kridalaksana [11], pragmatics are as conditions that result in the harmonious use of language in communication; aspects of language use or context outside the language that contributes to the meaning of an utterance. Whereas what is meant by semantics, according to Giyoto [12], is more focused on how the sound system of a language gives rise to meaning, so this study has a very vital position in communication studies and language studies.

However, according to Satjipto Rahardjo [13], in this regard, it is emphasized that when a law is considered in the text as text, language is the person who takes a role in determining meaning. So what happens is language games, which results in the loss of the essence of the whole notion of law itself. The use of rigid grammatical interpretation methods will cause a very fundamental problem; namely, the failure of the purpose of the law is justice.

The term 'parole' is the manifestation or use of individual language or individual actions, not merely a form of autonomous creation. In other words, as a whole what people say, including the personal constructs that arise from the choice of speakers or pronunciation needed to produce constructs based on free choice. Speakers seem to choose some aspects of the public dictionary. Parole can be seen as a combination of individual actions selected and acculturated so that the subject (speaker) can use the discussion code to express his thoughts [14]. Aside from being a combination for the speaker to express his personal thoughts, according to Anthon F. Susanto [15], parole is also a psycho-physical mechanism that allows the speaker to display the combination. So it is not surprising when Foucault asserted that language became a tool to articulate power [16].

Concerning language with the affective function, it seems to be right when J.A. Pontier [17], explained that legal discovery is an act of a public authority (government action, *overheidshandelen*) and is a monopoly of public authority (*overheidsmonopolie*) so that it can get help using violence.

Based on the description above, the affective element of language gives a tremendous influence on Law Enforcement Officials in carrying out interpretations as the basis of their arguments. However, the convention on the legal paradigm also has a significant influence on the interpretation activities.

So, how is the relationship between language itself and the law? According to Aristotle, no human being has the same written or spoken language like the others. Language as a means of communication between individuals can also be meaningless insofar as one person speaks with another in a different language. Even the transfer of meaning from one language to another can also cause many problems. More difficulties will arise if humans communicate their ideas with one another in written language [18].

So, it can be concluded that 'language' is 'big house' for all knowledge. In the end, the law as science also moves in the corridor of paradigms that are influenced by language.

However, the use of language raises some weaknesses concerning expressions in philosophical activities, including vagueness, in explicitness, ambiguity, context-dependence, and misleadingness [19].

Thus, according to M. Khoyin [20], the problem of language is increasingly complex and difficult to understand by humans as

actors and interpreters of language. Human efforts to find the truth, clash with reason and knowledge, so that truth becomes parts that blame each other. Therefore, an epistemology is needed to answer the problems.

Along with the development of philosophy, claims also emerged over such patterns of thought. Where since Rene Descarte and August Comte proposed the proposition of thought of knowledge that is based on data and facts. Comte - the founder of the flow of positivism, explained that every knowledge must not go beyond facts, treat reality as something that exists and as objects that must be released from all kinds of other subjective metaphysical preconceptions [21].

The flow of Positivism then culminated in Neo-Positivism (Logical Positivism) or Logical Empiricism, also known as the Vienna Circle because a group of thinkers formed it from the University of Vienna in the early XX Century. According to this intellectual group, only real experience (facts) can be arranged in empirical propositions and can be explained by reason logically and can be proven mathematically. What can be thought but cannot be arranged in an empirical proposition cannot be explained logically and therefore, cannot be proven mathematically. In other words, only statements of empirical experience can be scientifically tested for truth. On the other hand, speculative statements in philosophy and theology cannot be scientifically verified according to the laws of logic and mathematics [22].

The intellectual community that joins the Vienna Circle believes that only empirical statements are real so they can be tested right or wrong. In other words, empirical propositions create meaning of knowledge (make sense), make sense. Another case with a metaphysical proposition does not give a definite meaning of knowledge because it is speculative and ambiguous (nonsense). The ability of the mind to consider empirical experience based on the laws of logic and prove it mathematically so that there is certainty about the truth claimed as knowledge. Because the laws of logic and mathematics are universal, they can be used to test the truth of knowledge from every repeated experience in human life with the same results [22].

One of the philosophers who greatly influenced the Vienna Circle was Ludwig Wittgenstein with his analytic philosophy known as Logical Atomistic Flow as stated in his work entitled *Tractatus Logico-Philosophicus* and also known as Wittgenstein I - although in his book titled *Philosophical Investigation* or also known by the name Wittgenstein II seems to refute what has been stated in the *Tractatus* (Wittgenstein I).

Logical Positivism argues that philosophy must follow the same rigor as science. Therefore, logical positivism must be able to provide strict criteria to determine whether a statement is true, false, or has no meaning at all. A statement, according to logical positivism, can be called meaningful if and only that statement can be empirically verified based on its relationship with data or facts and can also be logically accepted [21]. Where according to Wittgenstein, all of our utterances contain one or more elementary propositions, meaning propositions that cannot be analyzed anymore. The elementary proposition has a logical form, not a concrete statement. An elementary proposition consists of names, and a name refers to an object in reality [23]. The meaning of this expression, Wittgenstein follows Russell that language has a match with reality. Thus, the logical structure of the meaning of language is a depiction of the logical structure of reality.

Legal studies grow and develop in the structure of language, so the Vienna Circle has a significant influence on the development of Law. As a result, the law is only a rule that governs people's lives in a concrete manner that is empirical. The law does not cover religious norms (religious law), moral norms (moral), and norms of decency [24]. That is the understanding of positivism that influences language and law has the same form that is to

rule out metaphysics and transcendental nature from within humans.

As stated by John Austin that in essence, the law is a positive law that is an order from a sovereign authority. John Austin's view is obvious that law is not based on good or bad values, but rather on the power of the sovereignty holder. The most important positive legal character is sanctioned. John Austin's conclusion on the essence of law is that positive law must fulfill the elements of orders, sanctions, obligations, and sovereignty. Beyond that, it's not law, but positive morals. Therefore, proper law is a logical, permanent, and closed system (closed logical system). Thus, legal certainty is the ultimate goal of Legal Positivism. Furthermore, John Austin explained that to achieve legal certainty must be separated from morals [21].

3. CONCLUSION

The data and facts above, which the researcher has described, are an undeniable postulate that the use of smartphones is no longer the dominance of the "the haves" only. Although the data above needs to be updated, but with the advent of the development of telecommunications technology that created smartphones for the lower middle class, the percentage should be expected to have a tendency to increase. As a result, all levels of society are able to access and utilize information on social media massively.

What is interesting is the expression of the Head of the Public Relations Division of the Indonesian National Police Inspector General Setyo Wasisto — relating to hoax news, that hoax news is made by smart people but spread by stupid good people (kumparan.com, 2018). The same thing was expressed by the Director of Cyber Crime of the Criminal Investigation Agency of the Indonesian National Police Brigadier General Fadil Imran asking the public to be wise and wise in managing and using social media (news.okezone.com, 2018). On this side, the Researcher can still justify what was stated by National Police officials. However, on the other hand, is that when social media as simulacra is able to change one's perceptions and change people's behavior in general that gives rise to ecstasy in communication, one's intuitive feelings and knowledge actually become illuminated.

The example is when Jubaida (48 years old) and Nurliana (43 years old) were involved in a fight as a result of Nurliana making a status on Facebook which discredited Jubaida. Alternatively, for example, is the alleged act of violence experienced by A originating from a quarrel due to mutual ridicule between A and high school students on social media. One student with the initials Ec aka NNA (17) admitted the fight started with him with A because of his resentment towards victims who often bullied him on social media (news.detik.com, 2019 news of hoaxes from a Housewife who posted via social media about the occurrence of child abduction, which turned out the news was untrue, and the story of a housewife in Malang City was called by the police because she posted news hoaxes about child abduction posts on her social media accounts (news.detik.com, 2018). What is interesting is that in the last two cases, it was revealed that there was a sense of concern from the two housewives, as a result of the widespread news of kidnapping children, towards the safety of their children. Another fact revealed in the examination was that the two housewives received news from people they trusted.

The above phenomena show that there is an inability of the community to communicate through social media; of course, the inability and ability to communicate through social media is strongly influenced by various aspects. In this case, of course, the researcher agrees that its social context strongly influences a language both oral and written.

The problem is how the National Police Investigator addresses these social phenomena as a legal phenomenon. The most

crucial thing, as a result of the influence of Logical Positivism on Law, is a model of legal interpretation with a grammatical-lexical model. Such a model of interpretation, by following the verification pattern from Logical Positivism, makes Police Investigators work based on the fulfillment of article elements based on data and facts empirically. That is, only based on the compatibility between data and facts with elements of criminal acts. So, the element of education, the element of emotion (both negative and positive), and the social element become neglected. Referring to the descriptions above, the Criminal Law in Indonesia which is subject to the civil law system has reduced the integrity of a person as a multidimensional human being. The paradigm used by the Criminal Law - as a result of the influence of the flow of Logical Positivism, is limited to the fulfillment of the elements in the article to the fact of reality. Thus, the transcendental element in human beings that is realized in written language follows the method of verification in terms of language, which is a match with the fact of reality. Knowledge of the social context that follows the logical structure of written language is not intended to be directed at the disappearance of his criminal responsibility. However, understanding is useful for finding other models of sanctions other than criminal sanctions that are more beneficial to harmonious people's lives. So, law enforcement officials should abandon the old paradigm model that glorifies the grammatical-lexical interpretation. Therefore, the current social conditions have a very significant difference when the legal positivism paradigm arises.

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REFERENCES

- [1] Koloay, Renny N.S. (2016). Perkembangan Hukum Indonesia Berkenaan dengan Teknologi Informasi dan Komunikasi. *Jurnal Hukum Unsrat* 22(5): 16-27.
- [2] Ridwan, (2014). *Diskresi & Tanggung Jawab Pemerintah*, Yogyakarta: FH UII Press, p. 5.
- [3] E.D.S Watie, (2011). *Komunikasi dan Media Sosial*, *Jurnal MESSENGER*, III(1): 69
- [4] R. Oktavianti & R. Loisa, (2017). *Penggunaan Media Sosial Sesuai Nilai Luhur Budaya di Kalangan Siswa SMA*, *Jurnal Pengabdian Kepada Masyarakat*, 3(1): 87.
- [5] R. Geuss. (2004). *Ide Teori Kritis. Habermas & Mazhab Frankfurt*, Magelang. Panta Rhei Books, pp. 106.
- [6] S. Azwar, (1995). *Sikap Manusia. Teori dan Pengukurannya*. Yogyakarta: Pustaka Pelajar, pp. 4-5.
- [7] GW. Allport, (1935). *Attitudes. In Handbook of Social Psychology*. Worcester, MA: Clark Univ. Press, pp. 10.
- [8] L. Thomas & S. Wareing, (2007). *Bahasa, Masyarakat & Kekuasaan*, Yogyakarta: Pustaka Pelajar, pp. 14.
- [9] J. Lechte, (2001). *50 Filsuf Kontemporer Dari Strukturalisme sampai Postmodernitas*. Yogyakarta: Kanisius, pp. 237.
- [10] A. Chaer dan L. Agustina, (2010). *Sosiolinguistik: Perkenalan Awal*, Jakarta: Rineka Cipta, pp. 15.
- [11] Kridalaksana, (1993). *Kamus Linguistik*, Jakarta: Gramedia, pp. 177.
- [12] Giyoto, (2003). *Modul Analisis Semantik. Suatu Pengantar*. Surakarta: IAIN Surakarta, pp. 2.

- [13] S. Rahardjo, (2010). *Penegakan Hukum Progresif*. Jakarta: Penerbit Kompas, pp. 10.
- [14] R. Gora, (2014). *Hermeneutika Komunikasi*. Yogyakarta: Deepublish, pp. 24.
- [15] A.F. Susanto, (2005). *Semiotika Hukum. Dari Dekonstruksi Teks Menuju Progresivitas Makna*. Bandung: Refika Aditama, pp. 33.
- [16] J.A. Pontier, (2008). *Rechtsvinding (Penemuan Hukum)*. Bandung: Jendela Mas Pustaka, pp. 8.
- [17] Haryatmoko, (2016). *Membongkar Rezim Kepastian. Pemikiran Kritis Post-Strukturalis*. Yogyakarta: Kanisius, pp. 17.
- [18] E. Sumaryono, (1999). *Hermeneutik. Sebuah Metode Filsafat*, Yogyakarta: Kanisius, pp. 24.
- [19] W.P. Alston, (1964). *Philosophy of Language*. New Jersey: Prentice Hall Inc, pp. 6.
- [20] M. Khoyin, (2013). *Filsafat Bahasa*. Bandung: Pustaka Setia, pp. 16.
- [21] W.D. Putro, (2011). *Kritik Terhadap Paradigma Positivisme Hukum*. Yogyakarta: Genta Publishing, pp. 14.
- [22] A. Seran, (2014). *Masa Depan Filsafat dalam Era Positivisme Logis*, *Jurnal Respons* 19(1), pp. 111-144.
- [23] K. Bertens, (1990). *Filsafat Barat Abad XX. Inggris – Jerman*. Jakarta: Gramedia, pp. 43.
- [24] L. Rasjidi, & B.A. Sidharta, (1994). *Filsafat Hukum: Mahzab dan Refleksinya*, Bandung: Remaja Rosdakarya, pp. 23.