

Rehabilitation Concept of Legal Protection for Citizen in Hoax Defamation

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Abstract - The worst consequence of the hoax deed is that it is divided into the nation's integrity. The spread of hoaxes is difficult to overcome both by the government and the community, even though preventive and repressive efforts have been carried out by every party, but to this day hoaxes appear and directly attack citizens so their rights are tyrannized. Every hoax offender must be given sanctions that are appropriate and regulated by the laws and every victim has the right to receive legal protection provided by the state to him. Rehabilitation of the reputation of a citizen is a right that must be fulfilled by the state against its citizens. At the implementation level, it was found that not all citizens obtain and/or request rehabilitation as legal protection. this article discusses how a citizen can be a victim of the spread of hoaxes, what form of legal protection citizens can have as their rights, and how rehabilitation can be a solution to justice for a victim of a hoax.

Keywords: rehabilitation, legal protection, criminal policy, hoax

I. INTRODUCTION

Legal protection for victims of crime is an issue that needs attention from the international community. The United Nations declaration of the fundamental rights of crime victims from 1985 give definition victims means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that violate criminal laws operative within Member States, including those laws proscribing criminal abuse of power. The relationship between victims of crime and criminals is causal. Since hundreds of years ago, the concept of crime has been investigated by researchers in criminal law, criminology, and victimology, every citizen can be a victim of a crime.

Indonesian law regulates the protection of victims in Law No. 13 of 2006 concerning the protection of witnesses and victims. this law is concrete evidence that the state guarantees citizens' rights related to victimization. The witness and victim protection law means that a citizen who is a victim is someone who suffers physical, mental, and/or economic loss caused by a crime. The perpetrators and

victims of crime from time to time undergo a development process. At the beginning the discovery of criminology as a science that studies how criminals can commit a crime and how crime can occur and the discovery of victimization as a science that studies how a person can be a victim of crime. the two sciences agree that the relationship between victims and perpetrators of crime is inseparable.

The position of a crime victim is always in an unfavorable position. Aside from being a victim of a crime that suffers physical, material and mental losses, victims of crime sometimes become the spotlight and get the attention of the community. the attention given by the community can be in the form of positive or negative things so that sometimes victims experience discriminatory actions from the community. The culture of a society that has experienced symptoms of hyper-morality or the loss of norm values in society can injure the rights of other citizens. A hyper-morality is a human societal and individual anomaly in which one person to a large group of people experience righteous, pragmatic, biased, or otherwise bigoted hatred toward a person, action or event which was not warranted to the specific circumstances. Often resulting in the harm and defilement of a person's action or event, while the person to a large group of people acting in bigoted and unrationed hate actions are widely praised or forgotten about. And they view their actions as moral, righteous or ethical.

This situation is a social problem in Indonesian society today. Before during and after the 2019 presidential election, social phenomena emerged in which political hoax news was spread, that is, news that was untrue or untrue in the community to obscure and cause public hatred towards one of the presidential candidates.

The Ministry of Communication and Information of the Republic of Indonesia explained the discovery of hoax cases for April 2019. During that month, the Ministry of Communication and Information of the Republic of Indonesia identified 486 cases of hoaxes. The number of hoax cases is the highest since August 2018. There are 209 hoaxes in the political category. Thus, the total hoax of the political categories identified, verified and validated by the Ministry of Communication and Information became 620

hoaxes. For information, the contents of this political hoax include, in the form of hoaxes, attacking the pair of candidates for president and vice president, political parties participating in the election as well as election organizers[1].

A hoax can become a national problem when it touches national interests and results in the threat of national integrity and power. To some extent, hoaxes can create a national danger and cause fear, anarchist action to the division of a country. Lack of literacy and understanding of the law are the main reason people are easily deceived by hoax news. In certain circumstances, the hoax occurs to the wrong person, where the victim gets a loss for material and also defamation. How the law can be a means for resolving existing conflicts and what forms of legal protection can be given to victims, this will be discussed comprehensively in this article,

II. LITERATURE REVIEW

A. Legal Protection and Victim Rights

In the field of criminological and psycho-sociological studies of the deviance, when we are referring to interpretative patterns or schemes of analysis, we can believe that they are linked to a particular way of defining the man, the rule, the violation, and the social reaction. The different meanings, in accordance by the definition and the dealing of these terms, have different implications as far as the criminal policy is concerned, depending on the cultural-ideological orientation where they are included [2].

A victim in criminal law can be a person (*natuurlijke persoon*) in the sense of an individual or a group and can also be a legal entity (*rechtspersoon*). In the development of criminal law, in addition to private individuals as bearers of rights, there are also bodies (groups of people) which by law are given the status of "Persoon" who have rights and obligations like humans, which are called legal entities.

According to Arief Gosita, victims are: "Those who suffer physically and spiritually as a result of the actions of others who seek the fulfillment of self or others' interests that are contrary to the interests and rights of those who suffer". What they mean is a. Individual or individual victims (primary victimization); b. Victims who are not individuals, for example, a body, organization, or institution. The victims are impersonal, commercial, collective (secondary victimization) is public order, social harmony and the implementation of orders, for example, in violation of state rules and regulations (tertiary victimization) [3].

Article 1 paragraph (6) the law of witnesses and victims provides the meaning of legal protection is protection for all the needs of fulfilling rights and assistance to provide security for representatives and / or victims which must be carried out by the Witness Protection Agency and related institutions following the provisions of the law invite. It can be said that the definition of victim contains at least 3 (three) main

elements, namely:

1. There are people (both individuals and groups) who suffer;
2. Suffering that occurs in the form of physical, mental, economic loss and other forms of suffering;
3. The suffering arises because of violations of human rights caused by acts or acts that violate criminal law

The criminal justice system in Indonesia guarantees that every citizen who is a victim of unlawful activities receives legal protection. legal protection is the right of citizens, legal protection regulated in the witness and victim protection law covers the following scope: (1) obtains protection for personal, family, and property security, and is free from threats related to testimonies that are will, is, or has been given; (2). participate in the process of selecting and determining forms of protection and security support; (3). give information without pressure; (4). get a translator in the case experienced; (5). free from the questions that ensnared during the investigation, investigation until trial; (6). get information about the development of cases that occur; (7). get information about court decisions; (8). know if the convict is acquitted; (9). get a new identity if needed; (10). get a new residence; (11). obtain reimbursement of transportation costs as needed; (12). get legal advice; (13). receive temporary living expenses assistance until the protection deadline expires.

Rights are optional, meaning that they can be accepted by perpetrators or not, depending on conditions affecting victims both internally and externally. The current condition of the community requires guaranteeing the rights of victims of crime both in the form of legal assistance in the case process and psycho-social assistance because of not a few victims of crime experience social and psychological shocks (crime victims).

B. Hoaxes and Victimization

Hoax is a term used to refer to false news or attempt to deceive or outsmart the reader/listener to believe something that is usually used in social media, such as Facebook, tweeter, WhatsApp, blogs, Instagram, etc. There are at least four types of hoaxes that are often circulating in society through internet media. First, myths or stories set in the past that could have never happened but are considered true because they are told down and down. Second, glorification or demonization. Glorification is exaggerating something to look great, noble and perfect. On the other hand, demonization is to perceive something as bad as possible as if there is not the slightest good. The third hoax or information that is fabricated or does not contain the truth. Fourth, misguided information is information that is mixed, twisted and packaged in such a way that it seems as though it is true. In terms of communication science, it is often called the doctoral spin [4].

Republic of Indonesia regulations has governed the issue of hoaxes. Law No. 11 of 2008 concerning Information

and Electronic Transactions exists to be the legal basis for hoax law enforcement, especially in Article 28 paragraph (1) and (2) of the Information and Electronic Transaction Law Article 28 paragraph (1) of the Information and Information Act Electronic Transactions: "Everyone intentionally and without the right to spread false and misleading news that results in consumer harm in Electronic Transactions.", Article 28 paragraph (2) of the Information and Electronic Transaction Law, "Everyone intentionally and without the right to disseminate information intended to incite hatred or hostility of certain individuals and / or groups of people based on ethnicity, religion, race, and intergroup (SARA)"

Criminal sanctions that can be applied to perpetrators are regulated in Article 45A paragraph (1) of the Information and Electronic Transaction Law: "Anyone who intentionally and without the right to spread false and misleading news that results in consumer harm in Electronic Transactions referred to in Article 28 paragraph (1) shall be sentenced to a maximum imprisonment of 6 (six) years and / or a maximum fine of Rp1,000,000,000.00 (one billion rupiah). "And Article 45 A paragraph (2) of the Information and Electronic Transaction Law: "Any person who intentionally and without the right to disseminate information intended to incite hatred or hostility of certain individuals and / or groups of people based on ethnicity, religion, race, and intergroup (SARA) as referred to in Article 28 paragraph (2) shall be liable with a maximum imprisonment of 6 (six) years and / or a maximum fine of Rp1,000,000,000.00 (one billion rupiah). "

Judging from the role of the victim in the occurrence of crime, Stephen Schafer said in principle there are 7 (seven) typologies of the victim, namely: [5]

1. Unrelated victims are people who have not done anything wrong but are still victims. For this type, the perpetrator is at fault.
2. Provocative victims, namely victims who have consciously or unconsciously done something that stimulates others to commit a crime. For this type, the victim declared to have a stake in the occurrence of crime so that the error lies with the perpetrators and victims.
3. Participating victims are essentially unwitting acts of victims that can encourage perpetrators of crime. For example, taking money in a bank in large quantities without escort, then wrapped in a plastic bag to encourage them to seize it. This aspect is the full responsibility of the perpetrators.
4. Biologically weak victims and socially weak victims, namely those who are biologically and socially potential victims. Children, the elderly, physically or mentally handicapped, the poor, minority groups and so on are the victims. Victims, in this case, cannot be blamed, but it is the people who have to take responsibility.
5. Social weak victims are victims who are not heeded by

the community concerned such as homeless people with weak social positions. For this reason, the responsibility lies with criminals or the public.

6. Self victimizing victims, namely victims because they are the perpetrators. This is what is said as a victimless crime. Prostitution, gambling, adultery, are some of the crimes that are classified as crimes without victims. The guilty party is the victim because he is also the perpetrator.
7. Political victims, namely victims because of their political opponents. Sociologically, this victim cannot be held liable unless there is a change in the political constellation.

III. METHOD

The normative law research method is the method used in this research. this method is used to research legal norms from an internal perspective with the object of research being the legal norm. Normative law research works to provide juridical arguments in the event of emptiness, ambiguity and conflict of norms [6]. the specification of this study is a descriptive-analytical approach that illustrates the applicable laws and regulations associated with legal theories and the practice of implementing positive laws regarding the issues to be studied [7].

This research was conducted in two stages, as follows:

1. Library Research

Library research is the research aimed at secondary data, regularly and systematically organizing the collection and processing of library materials to be presented in the form of services that are educative, informative, and creative to the community. this library research is to study and examine the literature on matters relating to the legal protection of handling hoax victims so that the data obtained are as follows:

- a. Primary Data, namely binding legal materials such as, the Constitution of the Republic of Indonesia, the Criminal Code, Law No. 13 of 2006 concerning Protection of Witnesses and Victims, news sourced from social media that contains on hoax cases, and articles in national and international journals.
- b. Secondary data, namely materials that are closely related to primary law and can help analyze and understand primary legal materials, such as judges' decisions, results of previous research and legal theories that support the research theme

2. Field Research

Field research is intended to support and supplement primary data, by conducting secondary data searches. Data analysis was carried out using qualitative jurisdictional methods, namely by compiling data qualitatively and systematically to achieve clarity of the problems discussed,

then the data that had been compiled were analyzed for conclusions.

IV. RESULTS AND DISCUSSION

A. The Form of Rehabilitation as Legal Protection in Hoax Cases

Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered [8].

Dikdik and Elisatris Gultom stated several general rights provided for victims or families of victims of crime, which include: [4]

1. The right to obtain compensation for the suffering he endured. The compensation can be provided by the perpetrators or other parties, such as a state or special institution established to handle the problem of compensation for victims of crime;
2. The right to refuse restitution for the benefit of the perpetrator (does not want to be given restitution because he does not need it);
3. The right to get restitution/compensation for his heirs if the victim dies due to the act;
4. The right to receive guidance and rehabilitation;
5. The right to obtain protection from perpetrators' threats;
6. Right to legal assistance;
7. The right to recover his property rights;
8. The right to gain access to medical services;
9. The right to be notified if the perpetrators of the crime will be removed from temporary detention, or if the perpetrators are wanted from detention;
10. The right to obtain information about police investigations relating to crimes befalling victims;
11. The right to personal freedom/privacy, such as withholding the telephone number or other victims' identities.
12. The right for a victim to use legal remedies (*rechtsmiddelen*).

Rehabilitation is the right of a person to obtain restoration of his rights in the ability, position and dignity given at the level of investigation, prosecution or trial for being arrested, detained, prosecuted or tried without reason based on the law or because of errors regarding the person or the law applied [9].

law No. 8 of 1981 concerning Criminal Procedure Law Article 1 number 23 states that rehabilitation is: "The right of a person to obtain restoration of his rights in the ability, position and dignity, and dignity given at the level of

investigation, prosecution or trial for being arrested, detained, prosecuted or tried without reason based on the law or because of errors regarding the person or the law applied according to the way regulated in this law."

Furthermore, the provisions regarding rehabilitation can be found in Article 97 of the Criminal Procedure Code which states:

1. A person has the right to obtain rehabilitation if the court has been acquitted or has been acquitted of all lawsuits whose decisions have permanent legal force;
2. The rehabilitation is given and included at the same time in the court decision referred to in paragraph (1);
3. Requests for rehabilitation by a suspect for arrest or detention without a reason based on the law or a mistake regarding the person or law applied as referred to in Article 95 paragraph (1) whose case is not submitted to a district court is decided by the pretrial judge referred to in Article 77.

From the above arrangement, it appears that the reason for being able to submit for rehabilitation can be for a case that has been submitted to a court because in Article 97 paragraph (1) above shows that if someone who by a court decision is declared free or free from all legal claims, then that person entitled to get rehabilitation. That is, the rehabilitation case was given because of a court decision.

V. CONCLUSION

Rehabilitation concepts in hoax cases related to legal protection for victims can be applied in each case. Rehabilitation is the right of every victim who gets a loss, especially if there is an act of wrongful arrest. rehabilitation needs to be applied in all judges' decisions as a form of legal protection for victims of crime.

The ruling of the Court regarding Rehabilitation reads: "Restoring the defendant's rights in his ability, position, and character as well as his dignity". Likewise, the pre-trial decision for rehabilitation concerning rehabilitation reads: "Restoring the defendant's rights in his ability, position and dignity, and dignity".

REFERENCES

- [1] Kementerian Komunikasi dan Informasi Republik Indonesia, "temuan kominfo hoax paling banyak beredar di april 2019," 2019. [Online]. Available: https://kominfo.go.id/content/detail/18440/temuan-kominfo-hoax-paling-banyak-beredar-di-april-2019/0/sorotan_media.
- [2] R. Sette, *Cases on technologies for teaching criminology and victimology: Methodologies and practices*. 2009.
- [3] Arief Gosita, *Masalah Korban Kejahatan (Kumpulan Karangan)*. Jakarta: PT. Bhuana Ilmu Populer, 2004.
- [4] Mauludi Sahrul, *Seri Cerdas Hukum : Awas Hoax! Cerdas Menghadapi Pencemaran Nama Baik, Ujaran Kebencian & Hoax*. Jakarta: T Elex

Media Komputindo Kompas Media,2018.

- [5] Dikdik M Arief Mansur, *Urgensi Perlindungan korban kejahatan Antara Norma Dan Realita*. Jakarta: PT. Raja Grafindo Persada, 2004.
- [6] I. M. P. Diantha, *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*. Jakarta: Prenada Media Grup, 2016.
- [7] Ronny Hanitjo Soemitro, *etodologi Penelitian Hukum dan Jurumetri*. Semarang: halia Indonesia, 1998.
- [8] D. R. Sutherland, E. H., & Cressey, *Principes de criminologie*. Cujas, 1966.
- [9] S. Walklate, J. M. Maher, J. McCulloch, K. Fitz-Gibbon, and K. Beavis, "Victim stories and victim policy: Is there a case for a narrative victimology?," *Crime, Media, Cult.*, 2019, doi: 10.1177/174165901876010