

# Hoax as a Crime in Electronic Transmission (Case of Information and Hate Speeches)

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**Abstract.** Social media has been growing in popularity. Now it is not only an information media but also a necessity of human life, especially Millennial generation. Behind the worldwide information, it turns out that social media can also plunge society into criminal acts. One of them is lying, or popular news called a hoax. News that cannot be accounted for can be spread so widely without being identified where the source of the news came from. This paper highlights the actions of netizens in the dynamics of electronic transactions, which, in reality, are often proven criminal acts that end in court decisions. The act of electronic transactions that is currently dominant is the spread of hoax news, which has implications for personal relationships between one community group with other community groups. A review of the application of netizen behavior laws in the virtual public space will be applied in the public space following applicable laws. The problem is how to act against hoaxes to know what sanctions are imposed on the perpetrators. It used a descriptive research method with a normative approach. It is expected that the perpetrators can be deterred, and the public is more intelligent in receiving information. This writing focuses on electronic transactions between netizens by using the term electronic transmission as an act of sending messages or news contained in the Information and Electronic Transactions Law.

**Keywords:** *hoax, hate speech, criminal acts, sanctions, electronic transmission*

## INTRODUCTION

Electronic Social Media is now the most popular media to convey messages to the public and has a significant influence on creating opinions about the things conveyed in electronic social media. The use of electronic social media no longer recognizes age. At the beginning of the emergence of electronic social media, it was mainly used by millennial communities. However, the need for such media has penetrated the

general public, both in rural and urban areas, who have access to convey messages through electronic media.

Carr and Hayers states that social media is an internet-based media that allows its users to have opportunity to interact and present themselves, either immediately or delayed with a wide audience or not that encourages the value of user-generated content and the perception of interaction with others [1].

The use of electronic media is developing not just to convey messages but has penetrated other fields such as the economic sector, tourism, government, seminars, meetings, information, and so on, all through electronic media, better known as online media [2].

The ease of information obtained and used to communicate in various activities has an impact on the delivery of messages by provoking, lying news, fraud in transactions, incorrect information, changing the contents of information, and so forth that cause harm to the public who know, read and see the information conveyed.

Submission of information through social media in cyberspace, which is carried out by the public or called netizens, often leads to actions that are contrary to the law, namely acts by conveying hoaxes news or called hoaxes [3], with the intention only to increase popularity in public or usually referred to as social-climbing. As a result, these actions cause unrest and discomfort in the community. The government is also confused by the public's information, which has no basis conveyed through social media.

Just mention the news about COVID 19, this worldwide pandemic has added to people's unrest and left the government helpless because of misguided information conveyed through social media by netizens.

Quoting the news, the Minister of Communication and Information Johnny G Plate, said that there were 554 hoax issues spread across 1,209 platforms, be it Facebook, Instagram, Twitter or YouTube and 893 were followed up, consisting of 681 Facebook, 4 Instagram, 204 on Twitter, and 4 on YouTube. There are 89 suspects related to COVID 19 cases, and 14 of them have been arrested while 75 are being processed [4].

The hoax spread in various media by the public adds psychological burden not only to the community but also to the government. Indeed, the government also bears the burden of having to counter the issue so as not to upset the public.

To prevent or minimize the spread of hoaxes, it is necessary to make a legal rule in the form of a law. In Indonesia, the legal rules relating to false news are contained in Law No. 11 of 2008 concerning ITE and its amendments in Law No. 19 of 2016. The act includes information on ethnicity, religion, race, class (*suku agama ras antar golongan/sara*), hate speech, false information, online fraud and defamation, and criminal sanctions given to people who commit violations.

This paper aims to analyze criminal sanctions in preventing false news acts, and explain the causal relationships that occur in people who spread false news.

The purpose of this paper is to be able to provide input and recommendations that are useful for the development of the law so that the provisions that have been regulated regarding false news can be effective in accordance with the objective of preventing false news from being carried out again and giving peace to the community.

Therefore, it needs to be described concerning:

1. How do legal principles govern the transmission of electronic news containing hate speech and hoax information?
2. How is the implementation of government regulations on electronic transmissions in regulating and suppressing acts of hate speech and hoax information?

## METHOD

Previous research on hoaxes was conducted by Dedi Rianto Rahadi (2017), who wrote that the phenomenon of hoaxes in Indonesia raise doubts about information received and confuses the public, how to anticipate it, and hoaxes sent repeatedly will form an opinion that the news delivered is accurate [5]. The next researcher about hoax is Vibriza Juliswara (2017) that wrote the necessary to develop media literacy in analyzing fake news (hoaxes) and solutions delivered by looking at the type of social media and diversity in the resolution of hoax news [6]. In this article, the authors outline the reasons for the emergence of rampant lies made by the public and the sanctions against the perpetrators for spreading false news. This research method uses descriptive research with a normative approach.

## RESULT & DISCUSSION

A hoax is false information or news that can contain facts but has been twisted or engineered. However, hoax words are increasingly being used and embedded when responding to the news with no facts (fake news). The development of the word hoax from previous forms can be traced in the book "A Glossary: Or, Collection of Words, Phrases, Names and Allusions to Customs," written by Robert Nares published in 1822 [7]. In London where the word hoax began to be used in English in the 18th century. It is written that hoaxes come from the word "hocus," a Latin word that refers to *hocus pocus*. In the entry (word or phrase that is entered in the dictionary and a brief description) of the word hocus, Nares adds the meaning "to cheat

Cyberspace generates a lot of false information and news, or better known as "hoaxes," shared by many irresponsible people. So if there is no caution, even netizens are quickly consumed by the hoax and can even be indirectly involved in spreading false information, which will undoubtedly be very detrimental to the community. This is a new culture that we consume much news because we want to make sure we do not miss something important. This is a type of FOMO (fear of missing out), which is the "disease" of social media enthusiasts. FOMO is a term from a British scientist named Dr. Andrew K. Przybylski [8], and this term has even been listed in the Oxford English Dictionary since 2013. The characteristic of social media freak is very panicky if the phone is left at home. They will worry because they have not opened Twitter, Facebook, Snapchat, Path, BBM, Line, Email, and so on. Things like this often unwittingly bring someone into the perpetrators of hate speech and spreading false news.

Indonesia still upholds freedom of expression as outlined in the article 28E constitution (3) of the 1945 Constitution: "*Everyone has the right to freedom of association, assembly, and expression.*" as a form of respect for citizens' rights. However, it does not mean that everyone is immediately free to express his opinion. The provisions of the law and sanctions of some rules on opinion are strictly regulated in the law.

Law no. 11 of 2008 concerning Information and Electronic Transactions and amendments to Law no. 19 of 2016, and the Criminal Code (KUHP) contains rules that govern the prohibition of lying news. Permenkominfo No. 19/2014 concerning Handling of Negative Sites and Circular Letter of the Minister of Communication and Information No. 3/2016 about Dangerous Content. So, it must be recognized that the presence of laws and regulations relating to ITE (Information and Electronic Transactions) is a bastion

and the primary weapon of resistance in trapping the behavior of someone who is against the law in social media.

Although criminal sanctions have been given to obtain legal certainty (Rechtssicherheit), expediency (Zweckmassigkeit), and justice (Gerechtigkeit), there are still many people who commit acts of spreading false news, and so forth in the form of content on social media, the sanctions provided do not bring a deterrent effect on the community so that sanctions have not been effective for perpetrators of the spread of hoaxes [9],[10].

The provision of criminal sanctions against perpetrators of crimes, according to article 10 of the Criminal Code, consists of the main criminal and additional criminal penalties. Main crimes consist of the death penalty, imprisonment, confinement, fines, and cover. Meanwhile, additional crimes include revocation of certain rights, confiscation of goods, and the announcement of the judge's decision.

Hoax often uses provocative sensational titles, for example, by directly pointing fingers (blaming) at certain parties. The contents can also be taken from the official media news. It is just changed to cause the perception as desired by the hoax maker. Another thing that needs to be observed is the difference between news based on facts and opinions. Facts are events that occur with testimonies and evidence, while opinions are impressions of news writers and tend to be subjective [11].

In interactions through social media, many people easily criticize others just because they have different opinions. When discussing particular sciences, people become very stupid simply because of blasphemous and unhealthy arguments. The hoax has become so alarming and very dangerous for the survival of millennial generation. Although the progress and development of information technology cannot be avoided, we still cannot use it properly.

Social media is also one of the essential instruments in attracting the masses and public opinion. At present, the mainstream media are not very influential in shaping public opinion. The significant influence has been defeated by social media, which can lead a person into a massive attitude for a specific purpose. Sometimes, the hoaxes occur momentarily, temporarily, and are very short in duration. Oftentimes, the hoax messages sent by social media users are only for entertainment purposes or just to show their existence.

Social media plays a vital role in driving changes in the society so that its presence must be regulated in as much detail as possible to ensure the improvement of social life and minimize the emergence of harmful excesses. In essence, the media is a public case, and the scope of its work is always in the public sphere.

In view of legal realism or progressive legal thinking, it can be understood that law always runs behind society's development. So, the law must continue to race with human development and behavior. The law's presence is also expected to regulate government action in a preventive or repressive manner so that it is more comprehensive in regulating cyberspace. This is very helpful to the government's legitimacy in its efforts to curb social media, either through the refinement of the ITE Law or by formulating specific laws on social media.

Moreover, from the breakthrough of legal thinking, the more important thing is the dynamics between cyber communities and netizens to be more responsible in communicating in cyberspace. In the current era of digital technology, it is not only content in the form of a text manipulated, but also other content in the form of photos. There are times when fake newsmakers also edit photos to provoke readers [12],[13].

Professor of Criminal Law from Krisnadwipayana University, Indriyanto Seno Adji, said: "*The problem is not the ineffectiveness of the National Police's strict attitude in handling hate speech and hoaxes, but how law enforcement is carried out firmly and without exception. The hate speech and hoaxes violate the legal norms; they are not objective, not constructive, done roughly and politely, and creates public inconvenience and state institutions. Therefore, the State must be present to enforce the law*" [14].

Soerjono Soekanto said that the problem of law enforcement lies in the factors that influence it: (1) The legal factor itself, (2) Factors of law enforcement, (3) Factors of law enforcement facilities, and (4) Community Factors, Cultural factors [15].

## CONCLUSION

Social media is only a medium of communication. Violations that apply in the real world also apply on social media; even in some cases, sanctions for social media violations can be higher than in the real world. Law enforcement against violators and anonymous accounts on social media or who use anonymous accounts must also take legal action.

It was explained that the public was prohibited from making and disseminating information that was accusation, slander, or racial intolerance. Criminal sanctions and fines were given to make people deterrent and not to repeat their actions are contained in ITE Law No.19 of 2016. The implementation of norms that exist in the real world is enforced in the digital world or social media. Social media users must have corridors that cannot be violated.

Particularly in the discussion of the ITE Law that is implemented today, there is also a part of the study made by the Indonesian Digital Entrepreneurs

Association, which is about filtering content so that netizens do not upload anything hateful on social media. Then it needs to be developed and cultivated in digital ethics.

The spirit of applying existing laws and provisions in handling ITE criminal cases and getting benefits can contribute to netizens and law enforcement officials covering theoretical or academic benefits and practical benefits. Netizens will be more critical in responding to a message transmission and be selective about viral topics in cyberspace. It is expected that with an understanding of the norms and laws in electronic transmission, netizens will be wiser in managing electronic transmissions, especially when sending messages to the public so that it will not become a legal problem.

The hoax can be responded to by checking news links such as:

- a. the news content is false, fake, does not correspond to reality,
- b. the headline is fake, has nothing to do with content,
- c. the news content is real, but does not meet the rules of journalism, amateurs, such as posting vulgar photos of an actual event despite displaying the true identity of the sender,
- d. the source of the news is fake.

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