



Handling Hate Speech Cases on Social Media in the Perspective of the ITE Law

Nimas Ayu Dyah Kirani^(✉) and Gayatri Dyah Suprobowati

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
nimasadk@student.uns.ac.id

Abstract. As a social being, man faces social interactions naturally during his lifetime. The role of human beings in social interaction is limited to the rights of every other human being. Therefore, in enforcing social order, several guidelines contain boundaries in behavior and activities that involve the public interest. Social norms become a social constraint for human behavior in social interactions to create an environment with a society full of expected social values. The high number of human rights violations today does not only occur directly but there are digital violations through hate speech on social media. The government with its handling efforts has limitations in the form of the ITE Law aimed at the digital security of the community. Through the qualitative method with a literature study approach to case findings and written data sources as references, the results of the study show some of the advantages and disadvantages of the ITE Law as a solution to handling hate speech crimes so that several efforts can be done collaboratively from the government and the public as social media users.

Keywords: hate speech · ITE Law · social media

1 Introduction

Hate speech on social media in today's digital era is a phenomenon of crime with the presence of perpetrators and victims. Content involving hateful messages varies from mocking each other's views to crimes of racism and discrimination. This becomes a crime that can target anyone regardless of their status, identity, location, and so on. Even when hate speech does not materialize into a hate-motivated crime, the harm of the victim's figure has fallen with the stigma for himself, being marginalized, and feeling inferior. The overall consequence of online hatred can be the dehumanization of individuals or groups of individuals. The need for the right strategy to address hate speech on social media is unquestionable. Efforts structured as solutions need to focus on the core to identify the center of the problem that has contributed to the formation of existing realities so that it can provide preventive efforts or follow-up solutions to a case that has occurred. To uncover the contributing factors, a holistic analysis of both international human rights principles regarding hate speech and the practical application of the standards is necessary. The existence of the ITE Law is studied regarding

its role as a solution to handling hate speech crimes as the protection provided to victims of hate speech that arises from the special nature of expression on social media. The distinctive characteristics of social media play a key role and provide an ideal place to target and reach a wide audience around the world. The characteristics of social media users are also *anonymous* or unidentified because in social media access each individual has the ease of hiding behind an unreal identity. The role that can be played by state or international institutions, is a binding regulation in applicable law and must be obeyed as a code of conduct for individuals in the environment of nation and state. The government, which is the main task of respecting, protecting, and fulfilling the human rights of each of its inhabitants, has unlimited opportunities to influence the process of regulating expression on social media. But the conditions of complications related to the technical infrastructure of social media platforms, applicable laws, and definitions of different concepts are some examples of factors that hinder the progress of human rights protection. Next, the reluctance of the state to collaborate is an additional factor contributing to the insufficiency of hate speech regulation on social media and it is questionable whether an issue can be addressed without a collective effort.

Freedom of expression still encounters various forms of violations. [1] This certainly hurts the concept of system democratic governance. Expecting and asking for public willingness and participation in the government process encounters threats when implemented. When there is an exchange of arguments by dissenting parties, there are often threats that end up silencing the opportunity for the right to an opinion. The tendency of violations encountered is the repressive actions of the authorities to a civil society with the threat of the ITE Law which until now is still considered as rubber law. The Southeast Asia Freedom of Expression Network (SafeNet) noted that around 375 netizens were subjected to the snare of the ITE Law from 2008 until now. The hard-to-believe fact is that the government failed to implement the democratic process because the majority of victims were journalists, activists, and critical citizens who exercised the right to opinion to voice criticism of power. The condition of the government with the main highlight of the attitude of leaders who are subject to truth and principled in the general welfare is an achievement that needs a strategy and this is needed by the public. In a democracy that is guided back to the truth, there is a pattern of reorganizing the existing conditions with the basic concept of a democratic system. The most important thing is the process of learning to listen to the voice of the people. Likewise, the arguments presented by the people must be based on relevant science, if they lead to the political system then they are conveyed politically with translation into a language that can be understood by the wider community. So that the things conveyed can get strength based on the ability of reason [2].

2 Research Method

The method chosen by observers in compiling this journal is a literature study method with a research approach through various available data and information sources. According to Danial and Warsiah (2009), Literature Study is a method of conducting research conducted using written sources. Both in the form of books, magazines, articles, and previous journals. Observers used data on the number of social media users and the number

of legal cases by social media users who intersected with the government. Other data mentioned in the journal have published written sources and can be accessed openly.

3 Discussion

In its development, it is easy for people today to get information through social media. Social media is a medium on the internet that allows users to interact, share, communicate, and other forms of social bonding virtually. [3] Because of the ease of access that exists, many social media users are hiding behind anonymous accounts to spread hate speech, the spread of this hate speech can be done by anyone, any age range, and also wherever they are. Hate speech arises from the existence of a perception or point of view of each individual. Some are based on dislike some are due to judgments about something that will only be destructive [4].

Based on Kominfo data, the number of social media users in Indonesia is equal to 61.8 percent of the total population in January 2021. This figure is also an increase of 10 million, or about 6.3 percent compared to last year. It is proven that most of the public knows how to use social media. However, the number of incidents of lawlessness related to hate speech in particular has also increased in number. Various sides are opinionated differently, the assessment of the ITE Law in an act of hate speech is difficult to separate either the regulations within the limits of the crime of humiliation or as a technique of silencing critical opinions and criticism [5].

Hate speech or in English, namely hate speech, is an act carried out by an individual or group in the form of provocation, incitement, or insults to other individuals or groups in various aspects. [6] The point of “insulting” is “attacking one’s honor and good name”. Those affected by hate speech usually feel embarrassed. There are 6 kinds of insults to one individual, namely: 1). Verbal insults; 2). Insult with a letter/letter; 3). Defamation; 4). Mild contempt; 5). Slanderously complain, and 6). Accusations are defamatory. [7] Forms and types of hate speech that are often used on social media, namely insults, defamation, insults, provocations, incitement, and spread of fake news involving SARA elements delivered through campaign orations, religious speeches, and within the scope of comments on posts on social media [8].

The impacts that arise due to hate speech are very diverse, one of which has an effect in the long term, namely a person’s mental state that can be disturbed to the point of suicide [9] and the existence of a digital footprint that will be attached to the perpetrator of hate speech.

Efforts to provide optimal solutions through regulations in opinion and commenting are not achieved with the increasingly rampant spread of fake news and misuse of social media by its users, especially the findings of hate speech cases. One of the findings of the ITE Law legal entrapment case was experienced by a patient who complained about the hospital attendant to his friend. Then unexpectedly had a legal impact by being entangled in Law Number 11 of 2008 concerning Information and Electronic Transactions and resulting in having to carry out prison sentences. It can be known that the determination of criminal acts in this case and similar cases related to violations of the ITE Law have problems in determining hate speech or defamation with the opinion of a consumer which is the right of every human being [6].

Social media which is also used for the dissemination of information specifically from individuals to other individuals is a social media activity that is commonly to be an open interaction and feels close. [10] The existence of a comment column and active interaction of each social media platform makes the form of hate speech crime violations appear as a risk for every user. The role of the government as the implementer of the fulfillment of human rights for each population is realized through preventive and solutive measures of the application of binding laws. This step is considered more responsive and able to understand the needs of the community. Thus, social media in the context of criticism has two opposite sides, specifically for the community. Used as the fastest means of getting a response to communication activities, as well as a threat of legal entrapment hazards without knowing important differences or which steps constitute a crime.

As government officials, the people can provide a form of application of law to the rules of social use while still having to argue and convey criticisms that are useful for the progress of government. [11] It is also known that the president has asked the public to be more critical in making their criticisms of the government. The President in his request also conveyed the condition that it does not originate, so that the criticism is grounded and able to be accounted for. In addition, the polite delivery of criticism, far from rude speech, and accompanied by a solid foundation must also be followed by some techniques that some critics and even artists have carried out. Without mentioning the names of figures, agencies, and institutions and subtly conveying and tucking away in the work is a step chosen as a safe but creative and intelligent step. This submission was also followed by several communities in opinion so that the steps taken would be safe and able to be free from haunting legal threats.

Lex specialis derogate legi generali is one of the legal principles where in this case the ITE Law has a more special nature in regulating hate speech crimes through electronic media so that in the application of punishment, law enforcement officials use the ITE Law to handle hate speech cases carried out through electronic media. [12] The ITE Law defines electronic transactions as “legal acts carried out using computers, computer networks, and/or other electronic media”. From this understanding, it can be concluded that all information in any form that has entered the electronic system is electronic information. So from the above understanding, hate speech news is included in electronic information whose dissemination has entered into the type of electronic transaction and its legal provisions have been regulated in the Law [13].

Law enforcement pursued by the government against perpetrators of the spread of hate speech as regulated in Law No. 11 of 2008 as amended by Law No. 19 of 2016 concerning Electronic Information and Transactions (ITE Law), Article 28 paragraph 1 jo Article 45 of this Law contains criminal threats to everyone intentionally and without the right to spread false and misleading news that results in consumer losses in electronic transactions. This criminal act is formulated materially. This means that the criminal act is completed completely if the consequences of the act have arisen, namely the loss of consumers in electronic transactions. [14] An example of a case that occurred in Lubukbasung, Agam Regency, West Sumatra. Ropi Yatsman, 35 years old, was sentenced to 15 months in prison by a Panel of Judges of the Lubukbasung District Court on Monday, July 24, 2017. The panel of judges stated that the defendant violated Article 45

paragraph 2 jo Article 28 paragraph 2 of Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions because he edited Jokowi's photo on his Facebook account and contained hate speech [15].

4 Conclusion

The delivery of criticism and suggestions becomes a sensitive matter when implemented without regard to the ethics of decency and applicable law. Criticism delivered virtually can more easily ensnare the perpetrators both legally and socially. Opinions and criticisms submitted openly through social media are written evidence that can be used as legal evidence if there are parties who are displeased or violate the ITE Law. However, the speed of response and wide reach is very helpful in solving the problems experienced by the community by the government. Thus, it is known that the influence of criticism and opinion through social media has a positive and negative influence on society.

The ITE Law as a regulation in using social media in particular should have clear and understandable restrictions on the categories of crimes regulated in it. So that the ITE Law can become a guideline and not a threat in criticism and opinion for a phenomenon that is wrong, for example in the service of public facilities. Smart people are expected to continue to evaluate themselves for behavior on social media so that an environment is achieved that is getting better and by the expectations of society at large.

References

1. Komnas HAM, "Komentar Umum tentang Kovenan Internasional tentang Hak-Hak Sipil dan Politik Hak-Hak Ekonomi Sosial dan Budaya," 2022, [Online]. Available: <https://www.komnasham.go.id/files/1480577941-umum-komentar-perjanjian-sipil>
2. Dewan Perwakilan Rakyat Republik Indonesia, "Kebebasan untuk Menyampaikan Pendapat di Depan Umum," 1998, [Online]. Available: <https://www.dpr.go.id/jdih/index/id/467>
3. Nisa Nurkarima, "Pengaruh Penggunaan Media Sosial Terhadap Akhlakul Karimah dan Akhlakul Madzmumah Siswa Di SMAN 1 Kauman Tahun Ajaran 2017/2018," UIN SATU, 2018.
4. Qureta, "Ujaran Kebencian dalam Media," *Qureta*, 2022. <https://www.quireta.com/post/ujaran-kebencian-dalam-media>
5. M. Nasution, "Hak Atas Kebebasan Berpendapat dan Berekspresi dalam Koridor Penerapan Pasal 310 dan 311 KUHP," *J. Hak Asasi Mns.*, vol. 11, no. 1, 2020.
6. S. Mawarti, "Fenomena Hate Speech Dampak Ujaran Kebencian," *J. Toler. Media Komun. Umat Beragama*, vol. 10, no. 1, 2018.
7. R. Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal*. Bogor: Politeia.
8. Litigasi, "Jeratan Hukum Ujaran Kebencian (Hate Speech)," *Litigasi.co.id*, 2022. <https://litigasi.co.id/posts/jeratan-hukum-ujaran-kebencian-hate-speech>
9. W. Putu Siska, "Ujaran Kebencian Timbulkan Dampak Negatif terhadap Psikologi Masyarakat," *kompasiana.com*, 2022. <https://www.kompasiana.com/putu46447/5fd1deb8ede481e66224ed2/ujaran-kebencian-timbulkan-dampak-negatif-terhadap-psikologi-masyarakat>
10. F. Raskasih, "Pembatasan Kebebasan Berekspresi Melalui Media Elektronik dalam Perspektif HAM Dikaitkan Dengan Tindak Pidana Menurut UU ITE," *J. Equitable*, vol. 5, no. 2, 2020.

11. K. A. Mawaza JF, “Permasalahan Sosial dan Kebijakan Publik di Indonesia (Studi Kasus UU ITE No. 19 Tahun 2016),” *J. Inov. Tata Kelola*, vol. 2, no. 1, 2020.
12. R. D. P. Henriko Parulian, “Pidana Ujaran Kebencian Melalui Media Sosial Ditinjau Dalam Perspektif Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik (UU ITE),” *J. Pendidik. dan Konseling*, vol. 4, no. 4, 2022
13. Fajrina Eka W, “HATE SPEECH DALAM PANDANGAN UU ITE DAN FATWA MUI,” *J. AHKAM*, vol. 5, no. 2, 2017.
14. Lidya Suryani W, “UJARAN KEBENCIAN: BATASAN PENGERTIAN DAN LARANGANNYA,” *Info Singk.*, vol. 10, no. 6, 2018.
15. J. Primus, “Hina Presiden di Facebook, Ropi Divonis 15 Bulan Penjara,” <http://amp.kompas.com/>, 2022.

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