



Critical Perspective Analysis in the Implementation of “Rubber Article” ITE Law Phenomenon in the Context of Spreading the Ferdy Sambo Case

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Abstract. Policy functions as a structural framework that has a role to maintain the form or process of communication in the community and aims to direct the community to stay focused on positive social communication, while regulation is a means of facilitating and avoiding the structural communication system from the risk of collision. Awareness of laws and regulations existence that have multiple interpretations, overlaps, and contradicts one another, one of which is The Law on Information and Electronic Transactions or ITE Law as one of the fruits of the communication policy perspective that regulates community social communication, becomes the primary motivation for the author by reviewing the application of the ITE Law, which is expected to be more effective by examining the problems in the case studies about the perspective of communication policies in the current digital era. This problem is the author’s basic motivation for reviewing the ITE Law application by resolving Habermas’ critical hermeneutic theory as an alternative approach to reflecting, evaluating, and making more effective by examining the problems in case studies in relation to the perspective of communication policies in the current digital era. The based competency curriculum cannot run optimally. This study aims to recommend Habermas’s Critical Theory as an alternative approach so that the implementation of a based competency curriculum can run effectively and sustainably.

Keywords: Policy · Regulation · ITE Law · Rubber Article · Critical Perspective

1 Introduction

The policy acts as a structural framework that functions to maintain the form or process of communication in the community so that it remains focused on the dynamics of positive community social communication, and regulation acts as a smooth communication system and avoids communication sub-systems from conflicts or collisions. Several aspects distinguish the variables of communication policy and regulation in addition to

the similarity of their roles as supporting factors for communication systems, briefly as follows.

Regulations have administrative characteristic and make sure that organization and department run properly, and help them achieve their goals. Regulations are made by the executive government, while policies are made by individuals, organizations, and even governments. Regulations set limits and penalties on people and business, while policies are unwritten and helping organizations achieving their long-term goals. In the context of the study of communication science, policy refers to legal aspects that tend to be boundaries or rules - space for communication interaction (authoritative), while regulations are more focus on the guidelines for rules that are compiled as directions for the communication flow, so that it can run according to applicable provisions (orientation).

In practice, each countries have their own communication patterns that run and process, then become a communication system. These functions and patterns include:

- a. Personal rights are the rights to be able to communicate with other people without spying
- b. Privacy rights are the rights to monitor access to information about a person’s personal life and data.

One of the policies and regulations in the context of the field of communication studies is The Law on Information and Electronic Transactions or ITE Law. The ITE Law is one type of communication policy facilitates communication for individuals as internet users. This is an axiom consequence of the ITE Law as a communication policy (Abrar 2008). Communication policy made after the existence of a legal communication system in a country, in this case, the ITE Law as a communication system. The purpose of the government’s the ITE Law ratification is to maintain so that the digital community continues behaving politely and courteously in the digital world. The ITE Law was born with the aim of keeping Indonesia’s digital space healthy and productive. However, in the course of the ITE Law, it is considered to cause a sense of injustice in its application by the community. Apart from being considered as a means for state authorities to limit freedom of expression in the digital realm, the ITE Law is also often applied and triggers new problems that harm the society – a phenomenon now known as the “Rubber Article”. The context of reporting to parties suspected of committing criminal acts of defamations, fake news, and hate speech through social media are easy to be ensnared by the ITE Law which contains these rubber articles.

From one of these cases, the author is interested in reviewing an article with a relevant theme entitled “Critical Perspectives Analysis on The Implementation Phenomenon of “Rubber Article” ITE Law in the Context of Spreading the Ferdy Sambo Case”. In this paper, the author wants to criticize the role of the ITE Law which is considered ineffective, triggers multiple interpretations, and tends to be used by stakeholders only as a “tool” to shackle freedom of expression and opinion in the community without paying attention to the main purpose of the formation and implementation of the ITE Law itself.

2 Method

In this paper, the author uses a qualitative approach with a qualitative descriptive method, namely the current process or event in the field as the object of research, then the data or information obtained and analyzed so then the problem-solving can be got. The author searched data through written sources to obtain informations about the object of this research. Data collection techniques are carried out with data or information material through scientific journals, reference books, and publication materials available in the library - collecting data or information through reading materials on the problems studied - as well as through the search for additional data collection techniques or supporters through technical assistance in the form of tools or search engines on the internet, such as Google which also supports authors in finding a file or data where the speed, completeness, and availability of data from various years are available, which can be done by searching, browsing, surfing or downloading data or references related to the theme or topic discussed.

The data analysis technique used by the author is a qualitative approach, so it takes a step-by-step technique to analyze the obtained data. The obtained data are then arranged in the form of narratives, so that they form a series of meaningful information about the research problem. Then the author will analyze and interpret the essence points of the problem under study in the form of a critical perspective. The conclusion be represented by the author by summarizing the analysis points of the case studies raised, and the absolute resolution presentation of the research problem in the last part of this paper.

3 Result and Discussion

One of the cases that the author wants to raise as material to be analyzed and criticized is on the topic “Violation of ITE Regulations article (2) Verse (26) and KUHP Law Verse (207) for Reposting Content Containing Ferdy Sambo Involvement On Online Gambling Consortium”. As quoted in the *Tribun Jateng* edition on Friday, August 26, 2022 and *Tribun Pontianak Youtube Channel* with title “Seorang Warga Ditangkap Gara-gara Buat Kontek Tiktok Kasus Ferdy Sambo” on Thursday, August 25, 2022, there was an issue about the arrest of a person named Masril (54 years old).

Masril was arrested after re-uploading viral content on social media containing the words “Ferdy Sambo’s Chosen People”. The content contains allegations of gambling activities involving police officers, which also alludes the Kapolda Metro Jaya, Inspector General Fadil Imran. The content was reposted by Masril from the Twitter account @opposite6890 through his Tiktok social media account with the username @Aniesriau by adding the hashtag #BerantasJudiOnline.

Even though Masril is not the creator of the content, the post is considered a criminal case. Masril was arrested at his home in Pekanbaru and named a suspect two days after reporting him. The case is included in the police report number LP/A/846/VII/2022/SPKT/Polda Metro Jaya. For his actions, Masril was charged with Article 26 paragraph (2) of the ITE Law and Article 207 of KUHP Law. Masril was finally released after almost being detained for one month at the Polda Metro Jaya through restorative justice. The regulation that ensnared Masril is the ITE Law Article 26 paragraph 2 which sound:

1. Unless otherwise provided by law, the use of any information through electronic media relating to a person’s personal data shall be made with the consent of the person concerned.
2. Any person who violated his right as referred to in Sect. 1 may bring a suit for damages incurred under this act.

Criticizing the case that has been raised in this paper, the author uses the concept of Habermas’ critical theory as a means of implementation and application to analyze and criticize the context of the case raised by the author. In applying critical hermeneutics, Habermas adopts Freud’s psychoanalytic concept and adopts the concept of Marx’s ideological critique to overcome the problem of indoctrination. Critical hermeneutics aims to find motives that are not realized by the sender of information. With Freud’s psychoanalysis, Habermas theorized that corrupted (abnormal) texts could be reconstructed. Texts that are considered lacking, in contrast, are then reconstructed, collaborated, and produced in a more complete framework of thought and delivered coherently and understandably (Hardiman 2015). So, only through this critical hermeneutic can the sender of the message as a source of information be invited to reflect.

Indoctrination is a monologue and dominating, making it difficult to achieve an ideal understanding. Marx’s ideological critique is liberating rationalization from the nature of this one-way indoctrination. But this does not mean that thought is free as freely as possible. In this case, self-reflection can play a role, whether a thought is proportional or not. In short, Habermas’s Critical Theory aims to free thought and action from the binding system, and the monological nature of communication. Through Critical Theory, knowledge can be understood as something authentic in the context of the thinker’s subject, not as a bound thought that is passed on from generation to generation (Siregar 2021). Starting from Habermas’ critical hermeneutic theory above, the author formulates critical thinking in the context of the case raised, namely as follows. Responding to the existence of the ITE Law Article 26 paragraph (2) which was imposed on the suspect in this case became one of the contexts that intersect with the phenomenon of the “rubber article”, where the article is considered less relevant if examined from several aspects, both from the aspect of disseminating content and information. or the content itself. In terms of content distribution, Masril’s role as a suspect is to re-upload existing content that has been widely spread on social media.

The suspect is not the creator of the original content as well as the first party to disseminate the content. When viewed from an objective point of view, the article contrasts more with the original content creator as well as the first party to disseminate content, namely the owner of the Twitter account @opposite6890 who is still anonymous. Meanwhile, in terms of content, the author’s analytical orientation tends to the ITE Law article 26 paragraphs 1 and 2 which state that information that is prohibited from being disseminated is personal. In the context of this case, the information dissemination activities carried out by the perpetrators are not personal information because they are private (confidential).

Thus, the implementation of the article, in this case, is irrelevant and triggers new problems, one of which is the multi-interpretative nature which should be an aspect that should be avoided from the function or role of the law and related articles. The attitude of law enforcement officials that confirms that the content being disseminated is “personal

information” that alludes to Ferdy Sambo and Inspector General of Police Fadil Imran is a factual interpretation of the existence of the rubber article in the ITE Law.

The form of indirect affirmation that the parties considered victims, in this case, are involved in the practice of online gambling mafia is in line with the interpretation of the content that can be used as evidence in this case it is a multi-interpretation which is the weakness of the article that is charged to the suspect. It means the role of enforcers becomes ineffective and tends to use this article as a “tool” for certain interests – an indication of the use of the ITE Law as a means of protection for those in power for personal or collective interests – as well as a trigger for the birth of new problems, in which the public should be an object protected by law is thwarted by the law itself (UU ITE).

Responding to the existence of the ITE Law Article 26 paragraph (2) which was imposed on the suspect in this case, became one of the contexts that intersects with the “rubber article” phenomenon, where the article is considered not relevant if viewed from several aspects, both from the aspect of disseminating content and information, or the content itself. In the terms of content distribution, Masril’s role as a suspect is re-uploading existing content that has been spread widely on social media. The suspect is not the creator of the original content as well as the first one to disseminate the content. When viewed from an objective point of view, the article contrasts more with the original content creator as well as the first account to disseminate content, namely the owner twitter account @opposite6890 who is still anonymous.

Meanwhile, in the term of content, the author’s analytical orientation tends to the ITE Law article 26 paragraphs 1 and 2 which states that the prohibited information from being disseminated is personal information. In the context of this case, the information dissemination activities carried out by the perpetrators are not personal information because personal information mean private (confidential) and done by the person. Thus, the article implementation in this case is irrelevant and triggers new problem, one of the problem is the multi-interpretative which should be an avoided aspect from the function or role of the law and related articles. The law enforcement officials attitude who confirms that the disseminated content alludes to Ferdy Sambo and Inspector General of Police Fadil Imran is “personal information”, is a factual interpretation of the existence of the rubber article in the ITE Law. That thing is an indirect affirmation to the parties considered victims in this case are involved in the practice of online gambling mafia is in line with the interpretation of the content that can be used as evidence in this case, in fact it is a multi interpretation which make it as the article weakness charged to the suspect.

It means the enforcers role become ineffective and tend to use this article as a “tool” for certain interests – an indication of ITE Law use as a mean of protection for those who have power for personal or collective interests – as well as a trigger for the birth of new problem, in which the public should being an object protected by law is actually thwarted by the law itself (UU ITE). The police as law enforcers are considered having less observant and seem ignoring the procedures for ITE Law handling cases as stated in Circular No. SE/2/II/2021 and Telegram Letter No. ST/339/II/RES.1.1.1/2021 that has been circulated relates to restorative justice options in handling violations of cases of the ITE Law.

4 Conclusion

Policy can be defined as a set of concepts and principles which being guideline and basis for plans work implementation, management, and operating procedures. Regulation can be interpreted as a set of abstract tools that combined into a single unit for guiding people actions or behavior towards something. Policy functions maintaining communication form and process in the community to be keep focuses on the positive social communication dynamics, while regulation functions to facilitate the communication systems and prevent communication sub-systems from conflicts or collisions.

One form of policy and regulation in the field of communication studies context is the ITE Law. The ITE Law is one type of communication policy that functions to facilitate the communication system for individuals using the internet. The purpose of ITE Law ratification by the government is maintain and keep the digital community behave politely and courteously in the digital world. However, in the course of the ITE Law, it is considered to cause a sense of injustice in its application by the community. In addition to being considered as a means of state authorities to limit freedom of expression in the digital realm, the ITE Law is also often misapplied and triggers new problems that are detrimental to society. The consequences of this problem was triggering the emergence of “rubber articles” phenomenon in the ITE Law.

Habermas’s Critical Theory Implementation in the Context of “The Case of Violation of the ITE Law Article 26 Paragraph (2) of the ITE Law and Article 207 of the Criminal Code by Masril (54) for Re-uploading Ferdy Sambo Content” gave birth several constructive and persuasive thoughts: reconstructing (1) the meaning and the main functions of the articles contained in the ITE Law, and; (2) the main role of law enforcement as an actor that determines the function of the ITE Law as a supporting “tool” in order to achieve the goal of prospering the community, as well as persuading the parties involved in the formation and application of state regulations to be more critical by reflecting on social phenomena, so that they are able to create regulations which in essence is not a “tool” of the state authority that shackles the people’s freedom of expression, but as a form of the community protection from spreading hatred acts, both against individuals and community groups. Thus, the ITE Law as a policy which regulates communication systems in the digital era in its development, also needs to be studied and revised more deeply in order to strengthen its basic orientation or essence as a credible cyber legal umbrella; as well as a factual implementation form of this critical reflection results.

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