



Islamic Criminal Law in Establishing Sanctions for Spreader of Hoaxes in Indonesia

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Abstract. Hoax news has become public consumption every second in this country, filling almost every virtual mass media timeline, spreading without constructive filters and nearly escaping the supervision of the authorities. Positive Law (applicable law) has stipulated criminal threats for spreaders of hoaxes as stated in Criminal Code Law no. 11 of 2008 concerning Information and Electronic Transactions (ITE), Law no. 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination, as well as actions when hate speech has caused social conflict. Meanwhile, according to Islamic Criminal Law, there is no certainty about the absolute appropriate punishment that can be used as a legal reference for those spreading hoaxes. The author raises the problem of the legitimacy of Islamic criminal threats according to *fuqaha* (scholars who are experts in jurisprudence) and *mujtahids* (Islamic law reformers) as well as alternative Islamic criminal threats for spreaders of hoaxes. This research uses a literacy method that examines classical books that explain their correlation with the threats of punishment in Islamic criminal law and deals with the problem of spreading hoaxes.

Keywords: Islamic Criminal Law, Crime of Hoax Perpetrators, Islamic Law, Indonesia

1. Introduction

Nowadays, hoaxes are a real threat to people's lives in the archipelago. This happens because almost all of them are exposed to media which, for the most part, spreads hoaxes in every corner of the information and communication space, especially in spaces connected via the internet (cyberspace).[1]

Information is an important part of human life, shaped by human needs in interacting in terms of ritual (worship), social matters, and science and technology. In the conventional world, information was obtained verbally and in writing. These conditions dominated pre-modern human life. This condition changed completely after humans discovered information technology, which began with the discovery of radio waves, telegraph, telephone, television, internet, and cellphones. The discovery of communication devices changed the world of conventional information into an information technology revolution, which changed the world of information into an information technology revolution and made it easier to obtain information.

The inevitability of the internet coming into contact with cyberspace is part of the technological revolution which can have double-edged impacts, both good and bad. Communication: The information technology revolution has radically changed human communication styles in the form of social media and has become the identity of today's communication. The presence of social media as a convergent media cannot be stopped because it is part of the communication revolution. Social media has become the identity of modern society which promises various conveniences in communicating, obtaining information, and various changes in technology, lifestyle, and social issues in society.

The hoax phenomenon that is rife in this millennium, especially on social media, has poisoned the mind and has had a negative impact on society. In addition, Indonesia is ranked sixth as the country with the largest internet users in the world, and, certainly, the majority of social media users and those affected by it are Muslims. because its negative impact is so massive on people's social lives, it attracts the author's attention to study hoaxes from an Islamic criminal law perspective.

I. Perspectives on Hoaxes

It cannot be denied, that as human civilization continues to develop, the need to meet human living standards will also increase, and the technology used will become increasingly sophisticated. With one goal, to facilitate all human activities.

Just like the sophistication of computer technology, it is realized that it has made things easier, especially in helping humans work. Apart from that, the development of computer technology has led to the emergence of new crimes, namely by using computers as a mode of operandi. Misuse of computers in development raises very complicated problems, especially concerning the criminal evidence process.

The use of computers as a medium to commit crimes has its own level of difficulty in proving it. This matter because computers as a medium have their own characteristics or are different from conventional crimes committed without computers.[2]

The advancement of information technology (the internet) and all forms of benefits therein have brought their negative consequences where it has become easier for criminals to carry out their actions which are increasingly worrying society. However, the need for computer network technology is increasing. Apart from being a media provider of information. It is also through the internet that commercial community activities become the largest part. and growing rapidly and penetrating various national borders. Even through this network, market activities in the world can be known 24 hours a day. Through the world of the internet also called Cyber Space, anything can be done. This positive aspect of cyberspace certainly adds to the trend of world technological development with all forms of human creativity.[3] However, negative impacts cannot be avoided. When pornography was rampant in internet media, people couldn't do much. Along with the development of Internet technology. Causing the emergence of crimes called Cyber Crimes or crimes via the Internet network.

The emergence of several Cyber Crime cases in Indonesia, such as credit card theft, hacking several sites, intercepting other people's data transmissions, and spreading news that is not necessarily true (Hoax).[4] So in computer crimes, it is possible to have formal offenses and material offenses. A formal offense is an act of someone entering another person's computer without permission, while a material offense is an act that results in a loss for other people.

Globalization is essentially the process of penetration of world culture advanced industry (west) to non-industrial parts of the world, including the Islamic world. As a result, the relationship between the West and Islam becomes unbalanced, because the West is a producer who controls science and technology and gives birth to culture, while on the other hand, Islam is a consumer who is the target of cultural penetration.

The characteristic of globalization is smooth communication and transportation, as well as the smooth flow of information so that regional and cultural barriers become blurred due to advances in science and technology. Therefore, in this era information technology has a very significant role.

One phenomenon that is currently occurring is the abundance hoax (fake) news circulating on social media (social media). This has a big impact because almost everyone sees and reads various news every day, one example is the undercover Jokowi case. Where Bambang Tri Mulyono, author of the book Jokowi Undercover, spreads fake news conveyed in a video on his Facebook page.[5]

Islamic teachings also prohibit spreading bad news to a certain person or group (*ghibah*). Moreover, spreading news that is not proven to be true (slander).

Islam emerged as a religion that called humanity to do good and truth, and always abandon evil. Therefore, Islam, as a religion of monotheism, is also a juridical religion. Islam always constructs a certain framework of values and norms for its followers, so that they always behave based on the agreed legal order. The legal system in Islam is the legal provisions obtained from the Qur'an and Hadith which are called shar'i.[6]

In general, the aim of shar'i in enacting its laws is to realize human benefit by guaranteeing basic needs (*dharuri*) for humans, fulfillment of needs (*hajiyyah*) and human goodness (*tahsiniyah*).[7]

In the end, the target to be obtained from these various regulations is the creation of a just, safe and peaceful life order in accordance with the concept of *maqasid al-shari'ah*. [8] Therefore, in Islam there are various legal rules that regulate all aspects of life in the form of strict sanctions which are one of the repressive and preventive steps in realizing the objectives of the Sharia.

With the existence of strict sanctions for violators of the Sharia, it is hoped that someone will not easily and will not commit wrongdoing. The hope of implementing threats and laws for perpetrators of this is to realize the benefit of the people. Thus, the aim of Islamic law is to protect five things called *maslahah dharuri*, namely *din* (for the protection of religion), *nafs* (soul), *nasl* (offspring), *'aql* (reason), and *maal* (property).

In this case, Allah says:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنْ جَاءَكُمْ فَاسِقٌ بِنَبَأٍ فَتَبَيَّنُوا أَنْ تُصِيبُوا قَوْمًا بِجَهَالَةٍ فَتُصْبِحُوا عَلَىٰ مَا فَعَلْتُمْ نَادِمِينَ

"O you who believe, if a wicked person comes to you bringing news, then examine it carefully so that you do not cause a disaster to a people without knowing the circumstances that will cause you to regret your actions." [9]

In this verse, Allah forbids his believing servants from going along with the rumors. Allah ordered the believers to ensure the veracity of the news that reached them. Not all the news that is excerpted is true, and not all the news that is said is in accordance with the facts.

II. Hoaxes in Justification of The Koran and Hadith

The Koran mentions hoaxes, including the following:

- *Hadith al-Ifki* (Fake News). For example, it is found in Al-Nur (24) verses 11-12, as follows: "Indeed, those who bring false news are from your group too. Don't think that fake news is bad for you, in fact, it is good for you. And (why not) say: "This is an outright fake news." [10]
- *Faahisyah* (Abominable News), something that is very heinous it can be said to be a big sin. For example, it is found in Al-Nur (24) verse 19: "Indeed, those who want (news of) extremely heinous acts to spread among the believers, for them will be a painful punishment in this world and the hereafter. And Allah knows, but you do not know." [11]
- *Qaul al-Zuur* (Lying Words). For example, the Word of Allah SWT in Al-Hajj (22) verse 30, where in this verse Allah combines two prohibitions; "..... then shun (the worship of) unclean idols and shun false speech." [12]

Apart from being found in the Qur'an, the threat caused by spreading hoaxes was also stated by the Prophet Sallallahu Alaihi Wasallam, for example as depicted in several hadith histories as follows:

- Hadith of Al-Bukhari juz 21, p. 238; "What is categorized as a major sin? The Prophet replied, "Associating partners with Allah, disobedience to one's parents, and lying (false) words (testimony)." [13]
- Hadith of Imam Muslim juz 9, p. 109; "Indeed, Allah is pleased with you in three things and hates you in three things. He wishes you to worship Him and not associate anything with Him, that you hold fast to the rope of Allah, and that you do not become divided. And he hates you for saying such this and like this, asking many questions, and wasting wealth." [14]

Among the sentences above, there is one term that may need a separate explanation. For this reason, several scholars provide special information about this term in the hadith. Imam Al-Nawawi in his book, "*Syarh Sahih Muslim*" defines it as follows; interfering in other people's news, conveying information that one does not know oneself, and telling everything one hears without clarification first. Technically, the term can be interpreted as reporting information without verification or spreading vague rumors. At the end of his explanation, Imam Al-Nawawi added a warning from the hadith as follows: "It is enough for someone to be called a liar when he tells everything he hears (without clarification)."

Definite direction, guidance, and regulations are needed, so that Muslims and the Indonesian people are smart in using social media, especially receiving and spreading news or information from sources whose credibility is unclear. Muslims need to be encouraged to get used to clarifying all news or information. [15] Moreover, if the information comes from *fasiq* people, it is mandatory to clarify and review the accuracy and validity of the news. Allah reminds us in His word, Q.S. Al-Hujurat (49) verse 6, as follows: "O you who believe, if a wicked person comes to you bringing news, then examine it carefully so that you do not cause a disaster to a people without knowing the situation which causes you to regret it. your actions."

III. Threats Against Hoax Perpetrators According to The Views of Ulama

Hoax as a form of lying to the public is an act that is not permitted in Islam. All types of lies, whether lies directed at individuals or lies against institutions, organizations, or groups of people intending to form public opinion or political propositions and interests.

Making hoaxes is classified as an act that harms other people and is subject to hudud punishment, namely condemnation as a spreader of slander, which in Islamic criminal law is termed *al-qazf*. The classification of hoax acts as *al-qazf* acts because *al-qazf* is false reporting by someone to another person. This can be seen in the linguistic meaning of *al-qazf*, which comes from Arabic (*al-qazf*) meaning throwing, accusing, and hurting with words, *al-qazf* is also called *al-iftira* (making up news) or *al-kazb* (lie). [16]

In terms of the term *al-qazf*, fiqh scholars associate it more with cases of accusations of adultery, as stated by fiqh scholars that what is meant by *qazf* is, "giving a child of Adam to another man due to adultery," or "severing the offspring of a Muslim." If someone says to another, "You are an adulterer." "You are the child of adultery," or "You are not your mother's child," then all these expressions are called *al-qazf*. [17]

However, *al-qazf* can be understood as other forms of accusations that do not contain an element of truth. *Al-qazf* can also apply to the crime of *ta'zir*, namely to all forms of accusations that are forbidden for every Muslim, for example, accusing another person of committing theft, accusing another person of drinking alcohol, or making false news against another person, either an individual or an institution.

Based on the definition of *qazf* put forward by fiqh scholars. then they agreed to state that the elements of *qazf* are:[18]

- Accusations of committing adultery or expressions that deny a person's lineage or other accusations that are false and defame the good name of a person or institution.
- There is an intention to work on *al-qazf*. The scholars of the Shafi'i School and the Hambali School say that if an expression of satire is accompanied by a *qazf* intention, it is considered *qazf*, but if it is not accompanied by an intention, it is not considered *qazf*.
- The person or institution accused is an independent person or institution and is protected from what is accused according to 'uruf (according to most people).
- The accusation was made with criminal intent. That is, the person accusing someone knows that the accusation is prohibited work.

If *al-qazf* is equated with a hoax then an act is only considered a hoax if it has the requirements as contained in *al-qazf*, namely reporting based on lies, the person or institution being reported is strongly suspected of being clean from the nature of the report, the hoax is carried out deliberately or has an intention to there, and the perpetrator of the hoax realized that his actions were a criminal act.

Some of the terms of a *qazf* criminal act concern the person making the accusation, some concern the material of the accusation, and some concern the object of the accusation. These conditions in their entirety are as follows:[19]

- The person who performs *al-qazf* must be mature and wise. Therefore, if the accusation comes from a crazy person or a small child, then the accuser is not subject to *qazf* punishment, because the actions of a small child or crazy person are not categorized as a criminal act.
- The accusations made cannot be proven.
- The person making the accusation is not the father of the person accused, nor the grandfather or grandmother and above.
- The person accused is a Muslim man or woman, mature, rational, independent, and free from the alleged act.
- The accusation is clear. If the accusation is through an expression of innuendo, then according to the scholars of the Shafi'i School and the Hambali School it must be accompanied by an intention, and according to the scholars of the Maliki School, there must be indicators that can support the expression of innuendo. However, scholars of the Hanafi School are of the opinion that expressions of satire cannot be categorized as accusations.
- The majority of ulama think that it is also required that the accusation be made in Islamic territory, not in the territory of the infidels or the territory of the rebels. However, the Shafi'i of Islam scholars are of the opinion that if the accusation is made in a rebel-controlled area then the accusation is considered *qazf*. [20]
- The charges are not linked to conditions or time. For example, expressions that say "if you enter this restaurant then you are committing adultery" or "if you don't come home until ten o'clock at night, then you are committing adultery." Expressions like this are invalid because there is doubt about these conditions.
- The person accused must directly submit the complaint to the judge and cannot be represented, because even though *qazf* is the right of Allah the Almighty, it also involves personal matters. Therefore, fiqh scholars have determined that specifically for this hudud crime, a direct complaint is required from the party accused of adultery to the judge. However, scholars from the Shafi'i School, the Hambali School, and some scholars from the Maliki School stated that individual rights are more dominant in *qazf*. So this right can be inherited. The consequence is that the right to sue can also be passed on to the heirs. However, according to the Maliki school, this is permissible if the accused person immediately dies. It is different for the Hanafi scholars, Allah's right in *qazf* criminal acts is more dominant, but a complaint to the judge is still necessary because in *qazf* there are personal rights that must be considered.

If the perpetrator of the *al-qazf* must be someone who is sensible and returns, there is evidence of the object of the *al-qazf*, there is no blood relationship, the *al-qazf* is not true, the *al-qazf* is clear, has a permanent jurisdiction, the time of the *al-qazf* is unlimited, and *al-qazf* is aimed directly at a certain object, then hoaxes also have these characteristics. Hoax perpetrators are usually adults and have a specific mission, hoaxes are aimed at certain people or institutions, hoax material contains lies, and the spread of hoaxes is clear in the mass media. Thus hoaxes are the same as *al-qazf* in a more general sense.

The punishment for perpetrators of hoaxes is the same as for perpetrators of *al-qazf*. As stated by fiqh scholars, there are two punishments for perpetrators of *qazf*, namely lashing 80 times and their testimony cannot be accepted. The legal basis that indicates this punishment is the word of Allah SWT in surah an-Nur (24) verse 4 which means: "And those who accuse good women (of committing adultery) and they do not bring four witnesses, then be punished." those who accuse it) eighty lashes, and you must not accept their testimony forever. This sentence of 80 lashes may not be reduced, increased, or changed. [21]

However, can the sentence of 80 lashes be forgiven by the person accused so that the convict is not subject to punishment? This issue is based on the placement of *qazf* rights themselves, whether *qazf* rights include the rights of Allah SWT or personal rights or the rights of Allah SWT as well as personal rights, but what is more dominant is the rights of Allah SWT as well as personal rights. Fiqh scholars agree that the criminal act of *qazf* combines the rights of Allah SWT and personal rights. However, as to whose right is dominant, there are differences of opinion among fiqh scholars.

Ulama from the Shafi'i Schoolar, the Hambali Schoolar, and some clerics from the Maliki Schoolar are of the opinion that what is more dominant is the rights of the individual accused. As a result of their opinion, the *qazf* sentence can be forgiven and annulled both before and after the lawsuit is submitted to the judge. Furthermore, according to them, this right can be inherited and can be negotiated with property compensation.[22]

In contrast to the groups of ulama above, the Hanafi scholars and some of the Maliki scholars,[23] hold that in *qazf* what is more dominant is the right of Allah and therefore, *qazf* cannot be forgiven or annulled after being submitted to a judge. According to them, this right cannot also be passed on to the heirs of the accused person if the accused person dies.

Another punishment imposed on perpetrators of *qazf* is the loss of the right to testify until they repent. This is in line with the words of Allah SWT in surah an-Nur verse 5 which means: "Except for those who repent after that and improve (themselves), then indeed Allah is Forgiving, Most Merciful.

IV. Conclusion

The widespread distribution of hoax news on social media is a very disturbing phenomenon in society. The emergence of hoax news has had a very significant negative impact, turning public opinion into lies, pitting Muslims against each other, creating provocative issues, and harming Muslims. Hoax news which is difficult to control currently requires religious intervention in its handling. Islam is very concerned with eradicating hoax news. If communication morals are built on the principles of sincerity, honesty, supervision, balance, and justice as taught by Islam, then the fight against hoax news will be won by the truth. Therefore, reviewing the verses of the Koran relating to hoaxes is a step toward tackling the circulation of hoaxes.

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