

Application of Criminal Delegation to Hate Speech on Consumer Complaints through Social Media

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Abstract—Hate Speech is one of the cases that is being happened lately. This case usually stems from the submission of an opinion through social media and it is considered to have violated the law and thus leads to reporting and or prosecution. No exception for consumers who complain about the poor service from service providers. Although the voice of consumers in demanding their rights is protected by law, the existence of the Electronic Information and Transaction law has provided space for anyone who feels uncomfortable with the consumer complaint, can report it to law enforcement officials. The rise of legal cases that ensnare consumers who voice injustice through social media is interesting to be careful. Why can a consumer who is delivering his criticism to the provider of goods and services be criminalized? What should be done so that the flake case is not repeated? Using the normative juridical approach method that is an approach related to legal rules based on legislation and also by conducting a literature review into several literacies related to research topics. The purpose of this research was to find out how the reality of the practice of applying criminal offenses against hate speech through social media and how this criminal offense of hate speech should be carried out prospectively. The results of the study show that reporting or prosecution of consumers who submit claims for their rights occurs as a result of the conflict between one law and the other in this case the consumer protection law and the Electronic Information and Transaction law.

Keywords—*hate speech; criminal offense; consumer protection*

I. INTRODUCTION

Lately the case of utterances of hatred has become very prevalent. This case usually starts from the use of social media as a means of conveying consumer complaints which are then misinterpreted. Therefore, many people are entangled in this case by using Law Number 11 of 2008 concerning Information on Electronic Transactions, especially Article 27 paragraph 3 which states that: "Everyone intentionally and without rights distributes and or transmits and or makes accessible Transaction Information Electronics and / or Electronic Documents that have content of insult and / or defamation [1]. "Examples of cases that can be raised to support this research are feuds by Prita Mulyasari against Omni International Hospital and Komika Acho against the developer of the Green Scout Apartment. Prita and Acho are both located as consumers. Both Prita and Acho feel they have suffered losses

as a result of not getting the service properly, and when both Prita Mulyasari and Acho vent their disappointments as consumers and hope that rights are fulfilled by service providers they are considered to have defamed so that instead of immediately fulfilling consumer rights, these service providers actually complain about Prita and Acho both criminal and civil. their rights and protections are regulated in the Consumer Protection Act. In the case of Prita and Acho their consumers' position here seems to be invisible because they are ensnared in Article 27 paragraph 3 of the ITE Law [2]. Then what is the role of consumer protection itself that already has laws but as invisible and these consumers remain entangled in cases of hate speech. Prita and Acho are considered defamatory. The Prita case is quite long until the Acho Review and Case process ends with Mediation. How can this Prita case reach the Judicial Review stage, there are irregularities here that must be examined. When Prita's Judicial Review is considered free. However, when Prita's first court is considered guilty. Prita Mulyasari was charged with criminal and civil matters, the Prita case here was released but in the Pidana Prita case it was decided to be blamed.

That is why Prita continues to conduct a Judicial Review to prove the existence of errors in the judicial process and finally declared free in criminal cases. Because basically if a person is snared in 2 cases, criminal and civil. If in one of the cases it is considered innocent, the other case follows. But not with the Prita case. This makes the writer conduct a research on the Prita Mulyasari case, is there a mistake in the Judge in giving a verdict or is the police who are too reactive in handling this case that Prita is easily found guilty. And what about the UUPK that aims to protect consumers? Did the UUPK not play a role in the case of Prita and Acho. This phenomenon becomes a problem that deserves to be examined in order to find a solution or solution in understanding the application of criminal offenses against hate speech, so that there are no more problems regarding the delivery of opinions which are mistaken for speeches of hatred.

II. RESEARCH METHODS

A. *Type of Research*

The research method takes a normative juridical method whereby the source is based on the law and legal material

relating to the research title "Application of Criminal Delegation to Hate Speech on Consumer Complaints through Social Media" [3].

B. Data and Data Sources

In preparing this scientific work using secondary data which includes the Criminal Code, Consumer Protection Law, Electronic Information and Transaction Law Article 27 paragraph 3 as well as from the scholars' opinion books, and reading from the internet regarding cases in Indonesia.

C. Method of Collecting Data

The data collection method used in this study is library research. Where the author reads or dissects the book to find a solution and make it a benchmark in this problem. The purpose of this library research is to obtain secondary data which includes legislation, books, magazines, newspapers, internet sites and other reading related to this thesis.

D. Data Analysis

Data was obtained from library research that will be analyzed qualitatively [4]. This means that in this study as much as possible using existing materials based on the understanding and sources of existing law, principles and draw conclusions from existing materials.

III. DISCUSSION

A. The Reality of Practices for the Application of Hate Speech Orders in Indonesia

1) *Application of hate speech test qualifications*: The case of Prita Mulyasari, which was prosecuted both criminal and civil by service providers, in this case the International OMNI Hospital and / or Acho case which the apartment developer Acho reportedly lived in was a clear example of the application of qualifications for hate speech as stipulated in article 27 of the ITE Law [1].

Prita Mulyasari is considered to have defamed the OMNI International Hospital and / or medical staff. Therefore, Prita was prosecuted both criminal and civil. Although in the end after going through a very long process and inviting empathy for national and even international communities with marked birth of #oino for women and #savepritamulyasari finally Prita was found not guilty by the cassation assembly but of course the case has caused good physical, moral and material damage for Prita Mulyasari and family.

In contrast to Acho's case, even though Acho had previously been named a suspect but in the judicial process ended with peace because it was resolved in non-litigation (outside the court) again Acho had suffered losses as a result of efforts to fight for his rights as a consumer through social media. The cases experienced by Prita Mulyasari and Acho actually do not necessarily occur if there is no Electronic Information and Transaction law [5].

B. Application of Prospective Hate Speech Delights

1) *Normative interpretation of Law ITE article 27 paragraph 3 and 28 paragraph 1*: The following is a form of interpretation of article 27 paragraph 3 and 28 paragraph 1 which regulates the provisions of Hate Speech on social media [1].

Article 27 paragraph 3:

"Everyone intentionally and without rights distributes and / or transmits and / or makes accessible Electronic Information and / or Electronic Documents that have content of insult and / or defamation."

Article 28 paragraph 1:

"Everyone intentionally and without rights spreads false and misleading news that results in consumer losses in Electronic Transactions."

The interpretation of article 27 paragraph 3 is a provision that refers to the provisions of defamation and / or slander which are actually regulated in the Criminal Code (KUHP), namely article 311 [6].

While the interpretation of article 28 paragraph 1 is a provision that refers to false news that results in consumer losses.

From these two interpretations, it can be qualified that the implementation of the hate speech offense in this prospective can actually be broken by the existence of law number 8 of 1999 concerning Consumer Protection. In article 4, especially paragraphs d and g, it is said: (d) the right to be heard opinions and complaints on the goods and / or services used; (g) The right to be treated and served correctly and honestly and not discriminatory [2].

Thus, what is actually done by Prita Mulyasari and Acho is in an effort to get their rights as consumers who are of course protected by law so that it should not be a mistake that can be prosecuted as a non-criminal principle without error.

Because if you only see the offense element of the complaint, then anyone who gives or makes a writing, then someone who feels aggrieved can immediately report this matter and be processed in court due to seeing article 27 paragraph 3 and 28 paragraph 1 of the ITE Law [2].

2) *The perspective of the application of the hate test in the future*: Reflecting on the number of consumer complaints that led to reporting / prosecution, the enactment of the ITE Law is actually very urgent to be revised again as many are voiced by experts. Referring to the opinion of the Professor of the University of Indonesia, Seno Aji Indriyatno who said that the actions that did not include the first defamation were not included defamation if based on facts [1].

Speaking of the prospective issue of the use of defamation delicts, it is necessary to revise the ITE Law, especially article 27 because what is not described in the description of defamation? so of course that has the potential to become a rubber article that can be interpreted according to the tastes of interested parties (read; those who have power.

This ITE Law has actually been revised in 2016, where there have been several changes in the new ITE Law, but even though it has been revised, this article is still fierce because there are still many victims entangled by Article 27 of the ITE Law or Hate Speech Law.

In the opinion of Prof. Bambang Poernomo, that criminal law here aims at the interests of mutual order not only for the aggrieved party or just the individual but for all, both the perpetrator and the victim.

And when we talk about the problem of applying a hate speech offense prospectively, in addition to the need to review the law on ITE law, before it can be implemented, at least wisdom is needed from the legal authorities, namely the police, prosecutors, courts and other law enforcers, so that in giving a court ruling or determining someone to be a suspect in the investigation process.

IV. CONCLUSION AND SUGGESTION

A. Conclusion

- The reality of the practice of implementing criminal offenses of hate speech on consumer complaints such as in the cases of Prita Mulyasari and Komika Acho is proof of the ferocity of the ITE Law which defeated the Consumer Protection Law, as well as evidence of overlapping laws and regulations in Indonesia so Prita Mulyasari and Acho was a victim of the lack of synchronization of laws and regulations.
- Consumers who submit complaints about non-fulfillment of services as what should be done by service providers are an effort to demand rights protected by law so that they should not be prosecuted both criminal and civil. Of course, this requires the wisdom and maturity of law enforcers in interpreting the purpose of the establishment of the law, namely to

create public order rather than on the contrary it causes unrest in the community

B. Suggestion

In order for a similar case not to occur, the suggestions should be noted as follows:

- The President as the holder of the executive power can empower the National Law Development Agency to synchronize and harmonize all laws and regulations, and immediately amend the regulations that have the potential to create community noise.
- It is necessary to bring together a study until a joint agreement is made between the Chief of Police, Kajagung and the Minister of Law and Human Rights regarding the enactment of the ITE Law, especially the careful use of defamation articles.

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