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RESPONSIBILITY AND LEGAL PROOF OF THE CRIME HATE SPEECH ON SOCIAL MEDIA

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ABSTRACT

Indonesia is a country that operates a democratic system. A democratic government system is characterized by freedom of each individual to express his opinion in any way that is protected by the state constitution. The rules discussing freedom of opinion are in Article 1 paragraph (1) in Law Number 9 of 1998 concerning Freedom to Express Opinions in Public. In the provisions of this law, every citizen has the right to voice their ideas orally, in writing and through other means without any obstacles, while still carrying out their responsibilities in accordance with the provisions of the applicable laws and regulations. This law acts as an implementation in Article 28 of 1945 Constitution Republic Indonesia which states: "Freedom of association and assembly, expressing thoughts verbally and in writing and so on is determined by law. The legal provisions governing legally proven crimes of hate speech involve several articles in statutory regulations. These articles include Article 156, Article 157, Article 310, and Article 311 of the Criminal Code, Article 28 paragraph (2) juncto. Article 45A paragraph (2) in Law Number 19 of 2016 concerning Information and Electronic Transactions, and Article 16 in Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination. The legal principle used is *lex specialis derogat legi generali* which will accommodate accountability for every violation of hate speech on social media, with reference to Article 28 paragraph (2) juncto. Article 45A paragraph (2) of the ITE Law stipulates that the length of imprisonment is 6 years and/or a maximum fine of one billion Rupiah.

KEY WORDS

Legal proof, hate speech, social media.

Indonesia is a country that operates a democratic system. A democratic government system is characterized by freedom of each individual to express his opinion in any way that is protected by the state constitution. The rules discussing freedom of opinion are in Article 1 paragraph (1) in Law Number 9 of 1998 concerning Freedom to Express Opinions in Public. In the provisions of this law, every citizen has the right to voice their ideas orally, in writing and through other means without any obstacles, while still carrying out their responsibilities in accordance with the provisions of the applicable laws and regulations. This law acts as an implementation in Article 28 of 1945 Constitution Republic Indonesia which states: "Freedom of association and assembly, expressing thoughts verbally and in writing and so on is determined by law" (Nafatilopa & Michael, 2023).

Various conveniences in conveying each individual's opinion are one of the things that are inevitable from the increasingly advanced technology in conveying information. Advances in information technology have reached extraordinary levels of sophistication, speed and convenience, making it part of the lifestyle in global society, including in Indonesia which is influenced by developments in information technology in the era of globalization. One way to utilize information technology is through various social networking platforms that have emerged and are popular among various levels of society, from children, students, housewives, to various other community groups. (Pane & Situmeang, 2021) These social networking sites can be used at any time to support each individual's needs. The impact is that every individual can express themselves and feel free to convey opinions, criticism or suggestions via the social networking platform they choose. This widespread use of social media can be likened to two sides of a coin. In one aspect, this may have a positive impact in



various sectors such as social, educational, political, economic and others. However, from another point of view, this could also give rise to the emergence of new types of crime. (Garg, 2022)

Technology and internet users are increasingly improving. The internet and technology are something that cannot be separated from each other. This makes technology able to have a positive impact with existence of social media which makes it easier for humans to obtain and disseminate information. With existence of social media and the internet, all forms of information can be easily obtained, utilized and disseminated and their reach is not limited. In particular, the development of computer and internet technology has had a significant impact on the creation and formulation of regulations in the cyber environment and cyber law, and is related to the growth of crime in cyberspace. The bad impact that often arises in line with ease communication and exchange of information between users via social media is the spread of opinions containing insults, defamation or hate speech that can be accessed by various groups (Andriani, 2022; Royani, 2018).

Hate speech crimes are one of the crimes that is in the spotlight in parts of the world as a crime that tramples human rights. Social media are the main means that facilitate the emergence of criminal acts of hate speech. Hate speech on social media is carried out as a form of effort to divide individuals or groups which are often linked to SARA issues with the aim of a certain political agenda. Justification for the issuance of Circular Letter Number SE/06/X/2015 concerning Handling Hate Speech which was signed by National Police Chief Badrodin Haiti. In this regulation, every violation of hate speech is a type of crime that is treated seriously, considering the characteristics hate speech and the complexity of how it is spread, as well as the impact that can harm the integrity of nation and state.

Legal regulations regarding hate speech in Indonesia have not been specifically regulated like other countries. However, several contents in Human Rights (HAM) and the Law are able to provide a foundation for regulations. Currently, it can be assumed that the majority of people use social media more to live their social lives. (Febriansyah & Purwinarto, 2020) The role of social media for every individual has quite large significance. It enables interaction between people, facilitates the formation of new social relationships, and establishes communication between countries with its time efficiency and ease of access. Apart from that, social media also allows activities such as playing games, selling (especially for entrepreneurs), and getting various information more easily and efficiently.

If used wisely, social media provides many benefits. Social networks can be used in every activity to convey opinions, ideas and thoughts. However, this freedom will become a conflict if someone uses their freedom too much in social media, which will certainly have bad impacts. One of the negative impacts of social networking is the rise of hate speech and untrue news which is conveyed massively and deceives many people. (Effendi, 2020)

The following are the problem formulation of this research, namely how are legal regulations and accountability in Indonesia applied to perpetrators criminal acts of hate speech? And what is the legal proof in criminal acts of hate speech on social media?

This research use normative method (Susanti, 2022).

Indonesia is a country with a democratic system, which allows its citizens to express opinions and express themselves as long as they comply with applicable legal provisions. However, currently many people do not understand the boundaries of expressing opinions, so they don't realize the difference between expressing an opinion and speaking hateful words. (Royani, 2018)

In the normative juridical context, based on the National Police Chief's Circular Number: SE/6/X/2015 concerning Handling Hate Speech, Number 2 letter (f) states that "hate speech can take the form criminal acts regulated in the Criminal Code and criminal provisions others outside the Criminal Code, such as: insults; defamation; defamation; unpleasant acts; provoking; inciting; spreading false news.

Hate speech on social media is carried out as a form of effort to divide individuals or groups which are often linked to SARA issues with the aim of a certain political agenda. Based on data from POLRI in the period April 2020 to July 2021, there were 937 cases of hate speech recorded on social media. The highest number of reported cases hate speech is



provocative and hate speech, reaching around 473 cases. Followed by online fraud cases with 259 cases, and pornographic content with 82 cases.

Law enforcement handling of hate speech crimes is regulated in the National Police Chief's Circular Number SE/06/X/2015 concerning Hate Speech, referring to Article 156, Article 157, Article 310 and Article 311 of the Criminal Code. Apart from that, it also refers to Article 28 paragraph (2) Juncto Article 45 paragraph (2) Law Number 11 of 2008 concerning Information and Electronic Transactions, as well as Article 16 Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination.

Perpetrators of criminal acts of hate speech on social media can be held criminally responsible based on the principle of *lex specialis derogat legi generali*, following Article 28 paragraph (2) Juncto Article 45A paragraph (2) Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions.

Evidence is a crucial element to prove the occurrence of a legal event. In accordance with Article 42 of the ITE Law, investigations into every criminal act related to the ITE Law are carried out by referring to the Criminal Procedure Code (KUHAP) and also referring to the ITE Law itself.

As per Article 184 of the Criminal Procedure Code, several valid pieces of evidence are recognized, namely statements from experts and defendants, letters and instructions. In the context of criminal acts on social media or cyberspace, the evidence required in the ITE Law is defined more broadly than in Article 184 of the Criminal Procedure Code. Article 5 paragraph (1) of the ITE Law states that the scope of evidence, namely electronic information and/or electronic documents and their printouts, is valid evidence. Article 5 paragraph (2) defines that this provision is an expansion of the scope evidence that is valid and recognized in Indonesia.

As defined in Article 1 Number 1 and Number 4 of the ITE Law, Electronic Information and Electronic Documents have the same characteristics as documentary evidence. Thus, it can be concluded that the phrase "is an expansion" in Article 5 paragraph (1) is interpreted as an expansion of evidence that is considered valid in accordance with the procedural law in force in Indonesia, which can be interpreted as an expansion of evidence in the form letters.

Based on this information, it can be concluded that in proving criminal cases of hate speech, any evidence based on electronic information sources and printed results is valid evidence. However, the use of all evidence sourced from electronic documents requires a review of the authenticity and authenticity each piece of evidence, content, substance, and correlation one piece of evidence with other evidence.

Conclusion. The legal provisions governing legally proven crimes of hate speech involve several articles in statutory regulations. These articles include Article 156, Article 157, Article 310, and Article 311 of the Criminal Code, Article 28 paragraph (2) juncto. Article 45A paragraph (2) in Law Number 19 of 2016 concerning Information and Electronic Transactions, and Article 16 in Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination. The legal principle used is *lex specialis derogat legi generali* which will accommodate accountability for every violation of hate speech on social media, with reference to Article 28 paragraph (2) juncto. Article 45A paragraph (2) of the ITE Law stipulates that the length of imprisonment is 6 years and/or a maximum fine of one billion Rupiah.

The expansion of evidence that is considered valid is in accordance with the procedural law in force in Indonesia, which can be interpreted as the expansion of evidence in the form of letters. In this context, any evidence from electronic documents and their printouts has the same status as documentary evidence. Therefore, this evidence is not considered as separate or different evidence from the evidence regulated in Article 184 of the Criminal Procedure Code. Its function is equivalent to documentary evidence and can be used as indicative evidence in legal proceedings.

Based on discussion regarding formulation the problem, the author suggests that the government determine that it's necessary for the government to re-regulate criminal liability for every perpetrator of hate speech who is proven to have legally committed it to be



reviewed by referring to laws with special characteristics. Even though this criminal act is included in scope of the ITE Law, considering the rapid development of technology and increasingly advanced times, that it's hoped the government can make more detailed regulations so that law enforcement does not have multiple interpretations.

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