

Obstacles to Criminal Law Enforcers in Overcoming the Hoax-Spreading Crime



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Abstract: This study discusses efforts to tackle the crime of spreading hoaxes in cyberspace through criminal law and reveals the obstacles law enforcers have in tackling these crimes. The writing method used was a normative juridical approach, analytical descriptive. The results of this study are that law enforcers should be qualified, organized, structured to unite communities specializing in handling all types of cyber actions, given certain tools and facilities such as educated and skilled human workers, good organization, adequate equipment, sufficient finances for tackling cybercrime, especially the spread of false information/fake news (hoax).

KEYWORDS: criminal law enforcement, cybercrime, fake news/hoax

PRELIMINARY

The progress of science and technology development has made the world enters the era of the industrial revolution 4.0. The expansion of the world of technology in all human activities has resulted in human being inseparable from the need for digitalization. With the sophistication of science and technology, it provides easy access in various fields such as information. Before the rapid era of digitalization, accessing information from one country to another was very difficult. But advances in science and technology that are always developed by humans provide tangible results, one of which is in the field of information. Now, someone who has never even left the house and only relies on his smartphone can find out the latest information that is happening in his country and even information that is abroad. It can be said that the existence of digitalization makes borderless countries' relations.¹

Digitization not only makes it easy to access information but also shares and disseminates information, even if the information can become high-value news and commercial. Digitization has become a culture/practice in modern society because in carrying out their activities both in thinking, acting, innovating, or creating wherever and whenever they are inseparable from digitalization assistance.² Behind all the conveniences provided in the era of digitalization, some challenges and problems arise regarding cybercrime, one of which is filtering true information from hoaxes.

Fake news (hoax) is very detrimental to individuals or groups covered in it. With the ease of accessing information, accessing fake news (hoax) will be easier and faster to spread. This innovation also provides a platform for the wider community to express opinions and thoughts. The culture/practice of modern society that is increasingly attached to digital provides a problem as well as ethics in disseminating information which if the information is false (hoax) can cause division and loss.

The increasing need for digitalization in Indonesia itself has resulted in this country having to provide legal protection to its people from cybercrimes. The seriousness of the state in protecting its people from cyberspace crimes has been stated in the Criminal Code, but it is not enough to end there. In 2008, Indonesia took a stand by issuing a special law on digitization, namely Law Number 11 of 2008 concerning Information and Electronic Transactions. In addition to making a special law regarding cyberspace, to tackle cybercrime, it is also necessary to have harmonization of both material/substance harmonization and external (international/global) harmonization.³ In fact, until now the crimes that have occurred in cyberspace are increasingly widespread, especially with the occurrence of the COVID-19 pandemic which has given new nuances to all human activities in the world. The regulations that have been set by the state are in fact still not sufficient to provide a sense of justice and security from cybercrimes,

¹ Putra Jaya, Nyoman Serikat, *Hukum dan Hukum Pidana di Bidang Ekonomi*. Badan Penerbit Universitas Diponegoro. (Semarang: 2018), hal. 140

² HENDY SUMADI, 'Kendala Dalam Menanggulangi Tindak Pidana Penipuan Transaksi Elektronik Di Indonesia', *Jurnal Wawasan Yuridika*, 33.2 (2015), 175–203.

³ Senze Verrel, Rasso Nathaniel, and Lembong Roy Ronny, 'Upaya Kriminalisasi Dalam Hal Penanggulangan Kejahatan Cyber Crime', *Lex Administratum*, IX.4 (2021), 252–63.

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especially in the dissemination of false information/fake news (hoax). One of the obstacles faced by law enforcement is the difficulty in controlling criminal acts in cybercrimes, especially in the dissemination of false information/fake news (hoax).

This study used a normative juridical analysis method with a qualitative descriptive approach, where the law was conceptualized as a rule or norm which is a benchmark for human behavior that is considered appropriate (Ishaq, 2017). This normative legal research was based on primary and secondary legal materials, namely research that refers to the norms contained in statutory regulations. In this legal research, several laws were used as primary legal materials, namely the Criminal Code and the 1945 Constitution, Law Number 11 of 2008 concerning Information and Electronic Transactions which was updated by Law Number 19 of 2016 concerning Amendments to previous laws and Government Regulations. In addition, the author also used secondary and tertiary legal materials, namely literature books, journals, research results, other scientific works related to this research, and language dictionaries that help explain primary and secondary legal materials in this research.⁴

This article focused its discussion on what are the characteristics or criteria for hoaxes, how to prevent the spread of hoaxes in cyberspace in Indonesia, and what are the obstacles that law enforcers have in tackling the crime of spreading fake news (hoaxes) in cyberspace.

DISCUSSION

1. False Information / Fake News (Hoax) Criteria

The hoax comes from "*hocus pocus*" which comes from the Latin "*hoc est corpus*" which means "this is the body". This word is used by magicians to say that something is true which is not necessarily true.⁵ Then the notion of fake news itself consists of two words, namely news, and fake. According to the Big Indonesian Dictionary, the news is a story or information about an actual incident or event that and a lie/fake is not in accordance with the real thing (conditions and so on). In the scope of social media, fake news is a story that is conveyed to the public through the media but does not match the truth or actual facts. Article 28 of Law Number 19 of 2016 concerning electronic information and transactions, states that anyone who intentionally and without rights spreads false and misleading news that can result in consumer losses in electronic transactions is threatened with criminal sanction and fines, and everyone intentionally and without rights spreading information that aims to cause a certain sense of hatred/hostility based on racism. In fact, hoaxes are not a new problem, but with advances in technology, some individuals or groups can use them to spread fake news (hoaxes) very quickly. Thus, the effect of these actions becomes greater and more dangerous. According to the Secretary-General of APJII, Indonesia's 2019-2020 internet users are estimated to be 196.7 million users, an increase of around 8.9% from the previous year. This allows easy access to information, including hoax information.⁶

Therefore, it is very important to distinguish and know-how information or news is categorized as a hoax. The following are some of the criteria or characteristics of information/fake news (hoax) that is spread through social media/internet:⁷

- a. Sources of information/news come from untrustworthy parties, where the information/news does not have an official link, from sites that are not clear and have no mention of the person in charge or who cover it either by individuals, institutions, or other groups. Or do not have the credibility or reputation of the information/news that is good enough;
- b. The pictures, photos/videos used are fabrications that don't even have anything to do with the information/news they cover. Usually, the reporter only takes from the original source and engineer it in an improvised manner;
- c. Using provocative sentences that are intended to make it easier for readers to be influenced by the information/news;
- d. Contains elements of politics and racism/discrimination where it is not stated explicitly the true meaning of the information or news.

From the explanation of the criteria for information/news that is included in the hoax category, it is necessary to have a filter and a credible series to reduce the ease with which a person/group spreads and accesses false news/information (hoax) because the ease with which it is spread and accessed affects thoughts, actions and social conditions of the readers.

2. Countermeasures the Spreading False News (Hoax) Crime in the Cyberspace in Indonesia through Criminal Law

Crime from a legal point of view is behavior or action that violates criminal law, where no matter how bad the act is if it is not prohibited by criminal law, it is still considered a non-crime act.⁸ With the rise of the phenomenon of crime that occurs in cyberspace itself, Indonesia should be a legal state under Article 1 paragraph (3) of the 1945 Constitution to provide legal

⁴ Ishaq, *Metode Penelitian Hukum Dan Penulisan Skripsi, Tesis, Serta Disertasi*, Alfabeta, (Bandung: 2017) hal. 27

⁵ Ari Kurniawan, 'Pertanggungjawaban Pidana Terhadap Penyebaran Berita Bohong Yang Menimbulkan Kegaduhan Di Dalam Hukum Positif Indonesia' (Universitas Islam Negeri Sulthan Thaha Saifuddin, 2020)., hal. 1

⁶ "Dirjen PPI: Survei Penetrasi Pengguna Internet Di Indonesia Bagian Penting Dari Transformasi Digital," KOMINFO, 2020, https://kominfo.go.id/index.php/content/detail/3415/Kominfo+%3A+Pengguna+Intern+et+di+Indonesia+63+Juta+Orang/0/berita_satker.

⁷ Lusiana Monohevit, 'Stop HOAX!', *UI Lib.Berkala* (Depok, 2017), 6–11. Hal. 7

⁸ Saleh Muliadi, "Aspek Kriminologis Dalam Penanggulangan Kejahatan," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 6, no. 1 (2015): 6, <https://doi.org/10.25041/fiatjustisia.v6no1.346>.

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protection for its people. Efforts in dealing with a crime can be broadly divided into 2 (two), namely through the "penal" (criminal law) and "non-penal" (outside/not with criminal law). The application of criminal law is always related to the existence of criminal laws and regulations. According to Sudarto, quoted by Ginting, to realize criminal laws and regulations that match the situation/condition at a certain time, is by implementing the politics of criminal law. Legal policy using "penal" itself is a series of processes consisting of three stages, namely the stages of legislative/formulating policies, judicial/applicating policies, and executive/administrating policies. The means of these policies must pay attention to and lead to the achievement of the objectives of social policies, namely social welfare, and social defense.⁹

In tackling cybercrimes through criminal law nationally, there are several legal bases for overcoming criminal acts, including the Criminal Code, the Criminal Procedure Code, Law No. 14 of 2008 concerning Public Information Disclosure, Law no. 19 of 2016 concerning Information and Electronic Transactions on the amendment to the Law of the Republic of Indonesia No. 11 of 2008 concerning Information and Electronic Transactions, Law No. 36 of 1999 concerning Telecommunications, Law No. 32 of 2002 concerning Broadcasting, Law No. 40 of 1999 concerning the Press, Law No. 23 of 2002 concerning Child Protection, Law No. 44 of 2008 concerning Pornography, Law No. 31 of 1999 that was renewed by the Law No. 20 of 2001 concerning Eradication of Criminal Acts of Corruption, International Convention, Convention On Cyber Crime held in Budapest, 23.XI.2001.¹⁰

For an act to be classified as a crime, according to the A. S. Alam quoted by Wahyuni, seven main elements must be met and are interrelated:¹¹

- a. There is an act that results in a loss
- b. The loss has been regulated in the Criminal Code (principle of legality)
- c. There must be a criminal act
- d. There must be malicious intent (criminal intent = *mens rea*)
- e. There is a fusion between malicious intentions and malicious deeds
- f. There must be an update between the losses that have been regulated in the Criminal Code and actions
- g. There must be a criminal sanction that threatens the act

Concerning false information (hoax) circulating on social media/internet, it is classified as a crime and fulfills criminal elements. In fact, the state gives freedom to its people to process, seek and convey information by all means in accordance with Article 28 letter F of the 1945 Constitution which reads "Everyone has the right to communicate and obtain to develop personal information and his social environment, and has the right to seek, obtain, possess, store, process, and convey information by using all available channels," but as the times develop, it provides a new pattern/culture in social movements that exist in the society which cannot be separated from the existence of a crime. Quoted from kompas.com in 2019 there were 1,005 cases of spreading hoaxes during the 2019 election.¹² So, in addition to facilitating access to information, the digital world cannot be denied, it can also provide problems related to cybercrime, one of which is hoaxes.

Reviewing the state's promise to give the right to a sense of security and protection from all forms of loss, it is also stated in the 1945 Constitution Article 28G paragraph (1) which reads "everyone has the right to protect himself, his family, honor, dignity, and property under his control, and has the right to a sense of security and protection from the threat of fear to do or not do something which is a human right." In Law No. 19 of 2016 concerning Information and Electronic Transactions Article 28 paragraph (1) contains the spread of false information/fake news. The verse reads "everyone intentionally and without rights spreads false and misleading news that results in consumer losses in electronic transactions. The sanctions imposed on cases of spreading false news are contained in Article 45A which reads "(1) Any person who intentionally and without rights spreads false and misleading news that results in consumer losses in Electronic Transactions as referred to in Article 28 paragraph (1) shall be punished with imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah). (2) Any person who knowingly and without rights disseminates information aimed at creating feelings of hatred or hostility towards certain individuals and/or community groups based on ethnicity, religion, race, and inter-group (racism) as referred to in Article 28 paragraph (2) shall be sentenced to a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah)." Article 390 of the Criminal Code also contains the same thing although with a slightly different formulation, which reads "Anyone with the intention of benefiting himself or another person by fighting the right to lower or increase the price of merchandise, funds or money securities by broadcasting false news, sentenced to a maximum imprisonment of two years and eight months." Quoted from hukumonline, fake news that is spread through electronic media

⁹ Philemon Ginting, 'Kebijakan Penanggulangan Tindak Pidana Teknologi Informasi Melalui Hukum Pidana' (Universitas Diponegoro, 2008).hal. 15

¹⁰ Simon Nahak, "Hukum Tindak Pidana Mayantara (Cyber Crime) Dalam Perspektif Akademik," Jurnal Prasada 4, no. 1 (2017): 7, <https://doi.org/10.22225/jhp.4.1.161.1-11>.

¹¹ Wahyuni, 'Upaya Kepolisian Dalam Penanggulangan Kejahatan Penyebaran Hoax Di Kota Makassar' (Universitas Hasanuddin Makassar, 2019).hal. 9

¹² Fitria Chusna Farisa, 'Cyber Crime Polri: Ada 1.005 Kasus Penyebaran Hoaks Selama Pemilu 2019 L', 2019, p. 1.

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(social media) which does not aim to mislead consumers, can be punished according to the ITE Law depending on the content of the content being distributed, such as:

- a. If the fake news contains decency, it can be criminally charged under Article 27 paragraph (1) of the ITE Law;
- b. If it contains gambling, it can be punished based on Article 27 paragraph (2);
- c. If it contains insults and/or defamation, it will be punished according to Article 27 paragraph (3) of the ITE Law;
- d. If it contains extortion and/or threats, it will be punished based on Article 27 paragraph (4) of the ITE Law;
- e. If it is charged with causing hatred based on racism, it will be punished according to Article 28 paragraph (2) of the ITE Law;
- f. If it contains threats of violence or intimidation aimed at personally, it will be punished according to Article 29 of the ITE Law.

Law Number 1 of 1946 concerning the Regulation of Criminal Law, also contains fake news as contained in Articles 14 and 15 which reads, Article 14 "(1) Whoever, by broadcasting false news or notifications, intentionally publishes trouble among the people, sentenced to a maximum imprisonment of ten years, (2) Whoever broadcasts a news or issues a notification that can cause trouble among the people, while he should be able to think that the news or notification is a lie, is punished with a maximum imprisonment of three years." and Article 15 "Whoever broadcasts news that is uncertain or news that is excessive or incomplete, while he understands it should at least be able to suspect that such news will or has been able to cause trouble among the people, shall be punished with a maximum imprisonment of two years."

How serious the state is in upholding and protecting its people from the crime of spreading false news (hoax), so as a human being who is accompanied by a healthy mind before wanting to spread information, we should ensure that the information can be accounted for and true so that there will be no spread of false news (hoax).

3. Obstacles to Criminal Law Enforcers in Overcoming the Hoax-Spreading Crime

Arwendria explained that in 2019 the average number of hoaxes spread in a day reached 3,500 times and is predicted to increase as the simultaneous legislative and presidential elections are close in April next year.¹³ Data from the Ministry of Communication and Information stated that there were around 800,000 sites in Indonesia indicated as spreading false information in 2017.¹⁴ From these data, it is very clear that even though some laws and regulations regulate and provide criminal sanctions for the spread of fake news (hoax), there are still many events that occur around this. Controlling and eradicating fake news is carried out by the government such as carrying out literacy campaigns, fact-checking initiatives, and establishing punitive measures to prevent its spread.¹⁵

As previously stated, the prevention of cybercrime cannot be separated from the policy of overcoming crime/criminal politics. In this case, the formation of laws around cyberspace cannot be separated from the purpose of criminal politics, namely as an effort to provide social welfare and for the protection of society (social defense). Therefore, there is a need for a critical evaluation of the weaknesses in cybercrime law enforcement, especially the spread of hoaxes. According to Barda Nawawi Arif as quoted by Hendy, evaluation needs to be carried out because of the existence of a link between the policy formulation of legislation (legislative policy) with law enforcement policies and policies for eradicating crime (criminal policy).¹⁶ Criminal policy which is part of the law enforcement policy must have the ability to place the components of the legal system in a conducive and applicable manner to tackle any crime. The criminal policy must be implemented with rational and comprehensive planning as a response to a crime (a rational total of the responses to crime).¹⁷

The general obstacle possessed by Indonesia is that it cannot be separated from the ability of law enforcement to enforce existing laws and regulations. This is motivated by the lack of law enforcement officers who understand the ins and outs of information technology (internet), limited facilities and infrastructure, and the lack of legal awareness of the community in efforts to overcome information technology crimes. In addition, law enforcement officers in the regions have not been able to fully anticipate the rise of crime in the spread of hoaxes or other cybercrimes. In addition, not all law enforcement officers master digitalization techniques or there are still technological stutterers because not all institutions, especially regional ones, have internet networks. In addition, police officers have limited tools and knowledge about cybercrime, especially at the regional level.

For this reason, to overcome crime in cyberspace, at least the following things must be fulfilled:¹⁸

- a. Fulfilling the need for qualified, organized, structured law enforcement to unite communities that specialize in handling all types of cyber actions;

¹³ Arwendria Arwendria and Ariska Oktavia, "Upaya Pemerintah Indonesia Mengendalikan Berita Palsu," *Baca: Jurnal Dokumentasi Dan Informasi* 40, no.2 (2019) : 195, <https://doi.org/10.14203/j.baca.v40i2.484>.

¹⁴ Ayu Yuliani, 'Ada 800.000 Situs Penyebar Hoax Di Indonesia' (KOMINFO, 2017), p. 1.

¹⁵ Ricky Firmansyah, 'Web Klarifikasi Berita Untuk Meminimalisir Penyebaran Berita Hoax', *JURNAL INFORMATIKA*, 4.2 (2017), 230–35.

¹⁶ Sumadi. *Jurnal Wawasan Yuridika* 33, 2 (2016) : 185.

¹⁷ Mahmud Mulyadi, "Pendekatan Integratif Dalam Penanggulangan Tindak Pidana Korupsi," *Jurnal Hukum Samudra Keadilan* 13, no. 1 (2018): 4.

¹⁸ Sumadi. *Jurnal Wawasan Yuridika* 33, 2 (2016) :196.

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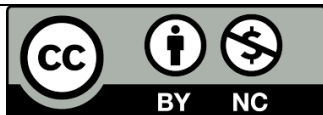
- b. The existence of certain tools and facilities such as educated and skilled human resources, good organization, adequate equipment, and sufficient finances;
- c. Public awareness of the ethics of information so as not to spread the news that is not certain to be true.

CONCLUSION

The development of science and technology has made it easy to access all kinds of information. This convenience certainly has problems and challenges for humans themselves, such as the emergence of cybercrime, one of which is the crime of spreading false information/fake news (hoax). Various efforts had been made by the Government of Indonesia in order to create legal certainty and law enforcement to tackle the crime of spreading false information/fake news (hoax). Various legal bases were formed by the state as stated in the Criminal Code, the ITE Law, the Law on Criminal Law which contains sanctions for disseminators of information/fake news (hoax). However, it is undeniable that the need for an evaluation is carried out because of the link between the policy formulation of legislation (legislative policy) with law enforcement policies and policies for eradicating crime (criminal policy). Obstacles in eradicating cyber crime also need to be overcome to create social welfare and social protection. Regarding the problem of law enforcement in enforcing the regulations that have been set to eradicate the crime of spreading hoax information, then they should be capable, organized, structured to unite communities specializing in handling all types of cyber actions, given certain facilities and facilities such as educated human resources. and skilled, good organization, adequate equipment, sufficient finances to tackle cybercrime, especially the dissemination of false information/fake news (hoax).

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