

CIVIL LAW AND CRIMINAL LAW ASPECTS OF HOAX NEWS IN ELECTRONIC MEDIA

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Abstract

The advancement of information technology (internet) and all forms of benefits in it brings its own negative consequences which are increasingly troubling the community. The abuse that occurs in this cyber space is what is then known as cyber crime or Information Technology and Electronic other regulators use the term computer crime. The formulation of the problem in this study is how the aspects of Civil Law and Criminal Law of Hoax news Electronic Media How Efforts in Identifying the Spread of Fake / Hoax News as a Form of Cyber Crime in Indonesia. The research method in this writing uses Normative Juridical, the nature of this research is prescriptive research. The results of the discussion in this study are aspects of civil law and criminal law Electronic Media Hoax News In Article 1372 of the Civil Code states that civil suits regarding defamation are aimed at obtaining compensation and restoration of honor and good name. The measure used to determine whether a person's actions have offended honor is very broad. The difference between the regulation of fake news in Law Number 1 of 1946 concerning Criminal Law Regulations and the regulation of fake news regulated in Law Number 11 of 2008 and Law Number 19 of 2016 concerning Information and Electronic Transactions is that Articles 14 and 15 do not mention what kind of fake news, while the Information and Technology Law is more detailed in mentioning fake news in the context of electronic transactions and speech that causes hatred. Efforts to Identify the Spread of Hoaxes as a Form of Cyber Crime in Indonesia The Chairperson of the Indonesian Anti-Hoax Society, Septiaji Eko Nugroho provides 5 simple steps that can help in identifying hoaxes and which are real news, the following explanation Be careful with provocative titles, Look at the site address, Check the facts, Check the authenticity of photos Participate in anti-hoax discussion groups.

I. Introduction

The advancement of internet technology has led to new crimes in the

electronic field, namely defamation crimes, data manipulation crimes, espionage, sabotage, provocation, and various others. Even crimes through the internet (cybercrime) are not followed by the government's ability to compensate, making it difficult to control them (Suhariyanto, 2014).

In a further development, the presence of advanced computer technology with internet networks has brought great benefits to humans. Its utilization is not only in the government, and private/corporate world, but has reached all sectors of life including all household (personal) needs. Computers have been able to open new horizons in human life both in the context of communication and information facilities that promise to penetrate national boundaries as well as the dissemination and exchange of knowledge and ideas among scientists around the world.

However, the advancement of information technology (internet) and all forms of benefits in it brings its own negative consequences which are increasingly troubling the community. The abuse that occurs in this cyberspace is then known as cybercrime or Information Technology and Electronic other terms used as computer crime (Penyitaan & Pengadilan, n.d.).

Insults and/or defamation, we often see in the aspect of Criminal law. and Electronic and Information Technology Law Number 11 of 2008, proves that the criminal offense of Electronic and Information Technology Article 27 Paragraph (3) is a special (*lex specialis*) of insult (*beleediging*)(Chazawi & Ferdian, 2015).

Regarding the term "insult", it must be interpreted as an insult in the sense of genus, against any act that attacks the honor and good name of a person, an act that contains insulting characteristics in all forms of insult. According to the conception of Criminal Law, the term insult (*bleeding*) is the name (*qualification*) of a group of types of criminal acts based on the protection of the same legal interests (Purnomo & others, 2020).

The Criminal Code is detailed. The interpretation of Article 27 paragraph (3) of the Electronic Information Technology Law must refer to the defamation articles in the Criminal Code. The Electronic Information Technology Law does not contain any definition of defamation. By referring to Article 310 paragraph (1) of the Criminal Code, it is defined as an act of attacking the honor or good name of a person by alleging something with the intention of making it publicly known.

Article 27 paragraph (3) which reads: "Every person intentionally and without right transmits and/or makes accessible electronic information and/or electronic documents that contain insults and/or defamation". Article 45 paragraph (1) and Article 27 paragraph (3) of Electronic Information and Transactions which reads: "any person who fulfills the elements referred to in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be punished with imprisonment of 6 (six) years and / or a maximum fine of Rp. 1,000,000.00 (one billion rupiah)"(Syamsuddin, 2011).

Defamation is a complaint offense. Because a person who feels that his/her good name has been defamed or polluted due to the negative treatment of others can file a claim to the civil court and if the reporting party wins, he/she can ask for compensation and get it, a prison sentence can also be imposed on the party who

committed the defamation.

A statement that contains information that is not factual and usually tends to demean a person and the statement can harm that person is slander. Defamation is divided into two main types, namely: defamation, is said to be defamation if the statement is not factual and can harm a person and the statement is made in a permanent form, such as writing, radio or television news. Gossip, said to be gossip if the statement spread is not permanent, such as a lecture / speech. Usually, cases of defamation in newspapers can lead to action against the writer, editor, publisher and distributor. Judges must also be able to determine whether the words used are defamatory or not (Bland et al., 2001).

The crime of defamation and the crime of insult are regulated in Chapter XVI of the Criminal Code on defamation. At first glance, defamation and insult are almost similar. Both have textual similarities. Both are criminal offenses that are subjective and public, meaning that there is an activity of offending or being offended against a person's dignity and good name without being publicly known (Rocky Marbun & others, 2011).

Hoax as a phenomenon that is booming in the current information age, its existence causes chaos and has a major impact in various aspects. Hoax is not a new product of the digital age, we can flash back in human history starting from the Prophet Adam AS as the first human being to undergo the consequences of fake news from his actions. At that time, Adam US received false news from the devil so that he had to be expelled from heaven. News or information that is hoax does not stop at the time of the Prophet Adam AS alone, but continues until the time of the Prophet Muhammad SAW, even in the lives of Muslims at the end of this era is very rampant. Like a virus, hoaxes become viral and famous with the support of sophisticated technological devices so that without realizing it, many people participate in spreading the news, like a snowball rolling without knowing the starting point.

The story above is one of many hoaxes that have accompanied the journey of humanity, starting with the first humans, until the next generation, including the current global era. This means that in the situation and development of telematics, communication issues dominate the contemporary world (Al Walidah, 2017).

In this era, the internet plays a role in providing space for many people to gather related to the same interests and narratives through social media. Social media allows content to spread quickly throughout the network until it goes viral. Not only that, social media also provides a quick way to convey one-sided information or opinions without the ability to verify the authenticity of the news conveyed (Prita et al., 2019)

The high number of social media users such as Facebook, Instagram, Twitter to WhatsApp makes the information validation process increasingly neglected. Moreover, the trend of interest in the news read by social media users is only adjusted to the tastes of each individual, making the truth of the information consumed by the public increasingly misleading. This phenomenon is evidenced by the circulation of fake news (Hoax) in the community spread through social media.

In substance, the spread of fake news (Hoax) is not bound by the dimensions

of space and time. The space dimension in the sense that the distribution of social networks is local in nature that affects certain areas only, but allows information technology and electronics to be received also in other areas. Meanwhile, the time dimension refers to old news that is re-distributed with different titles for one purpose.

Therefore, the Hoax phenomenon that has spread in recent times has even been deliberately created for various interests, such as black campaigns to bring down the good name of individuals, groups of organizations, and companies due to business competition. The most obvious thing is that the spread of hoaxes is used for black campaigns in political interests (Masril & Lubis, 2020).

Cyber Crime can be defined as illegal activities with computer intermediaries that can be carried out through global electronic networks. On computer networks such as the internet, the problem of criminality is increasingly complex due to its broad scope. Internet criminality or cyber crime is basically a criminal offense related to cyber space, either attacking public facilities in cyber space or private property.

Various crimes can arise in internet "games" such as fraud, insults, pornography, even crimes against state security, such as leaking state secrets. Money laundering and terrorism can also be committed through the internet, especially with participation and criminal conspiracy. In connection with this, the principle of the applicability of criminal law, especially the principle of universality, should be extended to some of these new forms of offense.

Crimes on the internet can be divided into four parts, namely offense, access, data theft, and dissemination of information for crimes such as committing insults via the internet (Prita et al., 2019).

The number of internet users from year to year is always increasing, it also increases the increase in the spread of hoaxes, the growth of internet users from year to year has always increased quite significantly, this has an impact on the events of fake news or hoaxes that are increasingly being discussed by netizens in Indonesia. The party spreading hoax news has a purpose, one of which is to lead public opinion and then form a wrong perception of the actual information. (Biantoro, 2016) states that there are four dangers caused by hoax news, namely hoaxes waste time and money, hoaxes become issue diversion, hoaxes become a means of public deception, and hoaxes become public panic. In spreading hoax news, usually irresponsible parties commit a lie and spread false information consciously (Marwan & Ahyad, 2016). The goal of hoax makers and spreaders is to lead public opinion and then form a wrong perception of actual information.

Hoax is information that is engineered to cover up the real information, in other words, Hoax is defined as an effort to distort facts using information that is convincing but cannot be verified, it can also be interpreted as the act of changing the actual information, by flooding a media with wrong messages in order to cover up the correct information.

Based on the background description of the problem above, the formulation of this problem is to analyze How the aspects of Civil Law and Criminal Law of Hoax in

Electronic media and Efforts in Identifying the Spread of Fake News / Hoax as a Form of Cyber Crime in Indonesia

II. Methods

The type of research conducted in this study is normative juridical research, namely research that is focused on examining the application of positive legal rules or norms and this research only focuses on Hoax. Judging from the nature of this research is prescriptive research, which is determining what is wrong and what is right. In other words, normative studies examine the law in books. Normative studies are *das sollen* (what should be) (Ali, 1998).

This research uses a qualitative analysis method which is a data analysis that does not use numbers, calculations or statistics (quantitative analytics), but rather provides a description (description) and description in words of the findings and prioritizes the quality / quality of the data and not quantity.

Data Management Techniques: Organizing, is a systematic process of collecting, recording, and presenting facts for research purposes. Editing, is an activity of editing the correctness and accuracy of data and re-examining all data obtained by selecting and selecting these data from various aspects which include suitability and harmony with one another, authenticity, clarity and relevance to the problem. This technique is used in research to check the completeness of the data that has been obtained. And the analysis technique is to provide further analysis of the results of editing and organizing data obtained from research sources, using theories and other arguments, so that conclusions are obtained (dalam Sugiyono, 2017).

III. Results and Discussion

Legal aspects of defamation from civil and criminal law aspects

Hoax is news, information, fake or false news. Hoax news is distributed via email or social media because the effect is greater, contains a message that makes the reader anxious, and panic, and ends with an appeal for the reader to immediately forward the warning to a wider forum (Mufid & Hariandja, 2019). Hoaxes take advantage of the goodwill of the reader, so that the reader of this email without first researching the truth of the news, immediately immediately spreads it to a wider forum. As a result, data circulation traffic on the internet is increasingly dense with untrue news, usually the initial sender of this hoax is unknown (Husein et al., 2022).

Article 1372 of the Civil Code states that civil claims on the subject of defamation are aimed at obtaining compensation and restoration of honor and good name. The measure used to determine whether a person's actions have offended honor is very broad.

Article 1365 of the Civil Code states that *'every unlawful act which causes damage to another obliges the person through whose fault the damage is caused to compensate for the damage'*. Article 1372 of the Civil Code states that *'civil claims in the case of defamation are aimed at obtaining compensation and restoration of honor and good name'*.

Both articles address tort and the payment of damages. A claim for damages based on defamation (Article 1372 of the Civil Code) is a variant of a claim for damages based on common law tort (Article 1365 of the Civil Code). What the two articles have in common is that the basis of the claim is the existence of an unlawful act. Satrio provides examples of court decisions relating to the use of these two articles. However, in the conclusion he writes that in principle one cannot not only claim damages under Article 1372 but also claim damages under Article 1365 of the Civil Code.

There are several differences in the form of crime between Article 28 paragraph (1) and paragraph (2) of Law Number 9/2016 on the Amendment to Law Number 11/2008 on Electronic Information and Technology. Article 28 paragraph (1) of the crime is spreading false and misleading news to consumers, while Article 28 paragraph (2) of the crime is spreading information (speech) that causes hatred or hate speech.

Article 28 paragraph (1) has similarities with Article 390 of the Criminal Code, it can be seen that both regulations dominantly regulate buying and selling or business transactions. Both articles mention the price of goods, funds, and securities, which means that both articles regulate fake news in business transactions. The difference lies in the media conveyed, Article 390 of the Criminal Code does not regulate the media used to spread false news so that it can also be interpreted that the spread is carried out by electronic media, oral, written, and so on. Whereas in Article 28 of the Electronic and Information Technology Law paragraph (1) it is stated "In electronic transactions" so that the dissemination of false news is carried out through electronic media.

Article 14 paragraphs (1) and (2) in Law Number 1 Year 1946 concerning Criminal Law Regulations have little in common with Article 15, namely in this case the perpetrator knows that the news or notification disseminated can cause chaos in the community.

The difference between the regulation of fake news in Law Number 1 of 1946 concerning Criminal Law Regulations and the regulation of fake news regulated in Law Number 11 of 2008 and Law Number 19 of 2016 concerning Electronic Information and Transactions is that Articles 14 and 15 do not mention what kind of fake news, while the Information and Technology Law more specifically mentions fake news in the context of electronic transactions and speech that causes hatred.

To be criminalized a perpetrator of spreading false news. Then he must fulfill all the elements contained in the above law. If the elements are not fulfilled, then he cannot be subject to punishment. Based on the explanation above, the forms of the criminal offense of spreading false news (hoax) according to the provisions that regulate it include:

1. Imprisonment

- a) Imprisonment in Article 45A paragraph (1) and paragraph (2) of Law Number 19 the Year 2016 on the Amendment to Law Number 11 Year 2008 on Electronic Information and Transactions: punishable by imprisonment for a maximum of 6 (six) years.
- b) Imprisonment under Article 390 of Kitab Undang-Undang Hukum P: punishable by a maximum imprisonment of 2 (two) years and 8 (eight) months.
- c) Imprisonment under Article 14 paragraph (1) of Law Number 1 Year 1946 on Criminal Law Regulation: punishable by a maximum imprisonment of 10 (ten) years.
- d) Imprisonment under Article 14 paragraph (2) of Law Number 1 Year 1946 on

Criminal Law Regulation: shall be punishable by a maximum imprisonment of 3 (three) years.

- e) Imprisonment under Article 15 of Law Number 1 Year 1946 on Criminal Law Regulation: shall be punishable by a maximum imprisonment of 2 (two) years.

2. Criminal Fines

Criminal fines in Article 45 paragraphs (1) and (2) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions are threatened with a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

Criminalization is the stage where the perpetrator is sanctioned. Criminalization is a form of punishment for a criminal and has positive consequences for the perpetrator, victim, and society. This theory is then called consequentialism theory. So that the real purpose of punishment is so that someone does not commit another crime after being punished and can prevent others from doing the same thing. With strict sanctions, people will have at least a fear of violating, so that punishment and/or fines are needed as a threat of sanctions against the perpetrators of criminal acts (Kurniawati, 2020).

Lately, the virtual world has been shocked by fake news or hoaxes by a number of irresponsible people, one of which is Saracen. If there is no caution, people are easily influenced by the hoax news that is spread and even participate in spreading this hoax news again. (Putra et al., 2018)

Efforts to Identify the Spread of Hoaxes as a Form of Cyber Crime in Indonesia

Septiaji Eko Nugroho, Chairman of the Indonesian Anti-Hoax Society, provides 5 simple steps that can help in identifying hoaxes and real news (Simarmata et al., 2019).

a. Be careful with provocative titles

Hoax news often uses provocative sensational titles, for example by directly pointing the finger at a particular party. The content can also be taken from official media news, only altered to create the perception desired by the hoax maker. Therefore, if you encounter news with provocative titles, you should look for references in the form of similar news from official online sites, then compare the contents, whether they are the same or different. This way, at least you as a reader can get a more balanced conclusion.

b. Look at the website address

For information obtained from the Information Technology and Electronics website or including a link, check the URL address of the site in question. If it comes from a site that has not been verified as an official press institution - for example, using a blog domain, then the information is dubious. According to Press Council records, there are around 43,000 websites in Indonesia that claim to be news portals. Of these, less than 300 have been verified as official news sites, meaning that there are at least tens of thousands of sites that have the potential to spread fake news on the internet that must be watched out for.

c. Fact-check

Pay attention to where the news comes from and who is the source? Is it from an official institution such as the KPK or the National Police? You should not be quick to believe if the information comes from activists of mass organizations, political figures, or

observers. Pay attention to the balance of news sources. If there is only one source, readers cannot get a complete picture.

Another thing that needs to be observed is the difference between news based on facts and opinions. Facts are events that happened with testimonies and evidence, while opinions are the opinions and impressions of the news writer and thus have a tendency to be subjective.

d. Check the authenticity of photos

In the current era of digital technology, it is not only text content that can be manipulated but also other content in the form of photos or videos. Sometimes fake news creators also edit photos to provoke readers. To check the authenticity of a photo, you can use Google's search engine by dragging and dropping it into the Google Images search field. The search results will present similar images found on the internet so that they can be compared.

e. Participate in anti-hoax discussion groups

Facebook has a number of anti-hoax fan pages and discussion groups, such as Forum Anti Fitnah, Hasut, and Hoax (FAFHH), Fanpage & Group Indonesian Hoax Buster, Fanpage Indonesian Hoaxes, and Group Sekoci. In these discussion groups, netizens can ask whether the information is a hoax or not, as well as see clarifications that have been given by others. All members can contribute so that the group functions like crowdsourcing that utilizes the power of many people.

The act of spreading hoaxes or false news, in the future, if it is to be regulated in a new provision, the legislator should make an inventory of what news containing lies can harm the legal interests of an individual or can harm the legal interests of a group.

Because not all acts of lies can be punished, therefore the author really wants objective law enforcement in combating the spread of hoax news so that no misunderstandings arise that can divide the harmony of the State. And so that there are no more groups like Saracen who receive hoax news services to spread hoax news through electronic media (Herwanto, 2019).

IV. Conclusion

The number of Internet users from year to year is always increasing, it also increases the increase in the spread of hoaxes, the growth of Internet users from year to year has always increased quite significantly, it has an impact on the events of fake news or hoaxes that are increasingly being discussed by netizens in Indonesia. Article 1372 of the Civil Code states that civil claims regarding defamation are aimed at obtaining compensation and restoration of honor and good name. The measure used to determine whether a person's actions have offended honor is very broad. The difference between the regulation of fake news in Law Number 1 of 1946 concerning Criminal Law Regulations with the regulation of fake news regulated in Law Number 11 of 2008 and Law Number 19 of 2016 concerning Information and Electronic Transactions is that in Articles 14 and 15 there is no mention of what kind of fake news, while the Information and Technology Law is more detailed in mentioning fake news in the context of electronic transactions and speech that causes hatred.

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