

RECONCEPTUALIZATION OF HATE SPEECH OFFENSES IN INDONESIA

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Abstract

Hate speech in current society is similar to the expression and incitement of hatred towards other people and communities in aspects such as religion, sexual orientation, disability, gender, race, skin color, and country. When not handled in an effective, efficient, and law-abiding manner, it could create community conflict, increase discrimination, and cause violence and death. This would result in a dangerously negative impact on victims. Therefore, this study aimed to propose two options for dealing with hate speech, such as the law on protecting victims and criminal sanctions for perpetrators. It contributed to creating a law that protects victims of hate speech and makes them feel safe because the act is considered a crime. Any unlawful intentional, or unintentional activity should be considered an act that violates the constitution and punishable by imprisonment or a fine.

Keywords: hate speech, legal sanctions, criminalization

INTRODUCTION

In recent years, Indonesia has experienced many events and actions related to opinions, ideas, products, or the results of someone's thoughts. These actions could be considered offensive to a person, group, or other sensitive matters in society, such as ethnicity, religion, race, and inter-group (SARA) (Irawan, 2018). Data on the CSIS National hate speech dashboard showed that the trend of hate speech on Twitter media from 1 January 2019 to 31 July 2021 was 51.35%. Specifically, 9,545 tweets indicated were hate speech against Ahmadiyah, Shia, and Chinese descendants, while 48.65% or 9,043 tweets were not. According to Kidi (2018), the rapid development of science and technology has significantly benefited the progress of human civilization. Many hate speech incidents occur through information technology, including social media, making them viral to attract attention and being legally processed as violations. Wahidin (2000) stated that the press has become a significant commodity controlled using high technology due to the rapid development of information media. The press is a technological and commercial sector that interacts with the larger social side through its operations. According to Suradji (2018), the technology significantly affects the user. Technology is beneficial because it is increasingly open and allows the transmission of information and knowledge worldwide (Linn & Eylon, 2011) across geographic and time boundaries. Furthermore, the current globalization era has weakened barriers between worlds due to the ease of access to information. This shocks awareness of the need for superior human resources. The negative result is a shift in life values, norms, rules, and morals instead

of social values, norms, rules, and morals. Therefore, technology minimizes the negative impacts and becomes a human vehicle for achieving life goals.

The alleged blasphemy by the inactive Jakarta Governor Basuki Tjahaja Purnama, also known as Ahok, has drawn reactions among Muslims. This issue began on Tuesday, 27 September 2016, when Ahok talked with the residents of Seribu Island and read a verse from the Qur'an. Ahok's comments were widely circulated on the internet, causing reactions from Muslims in Indonesia (www.bbc.com). On 6 October 2016, a group of lawyers known as Advokat Cinta Tanah Air (ACTA) reported Ahok for blasphemy. The report was made in response to Ahok's statement, "Hence, do not believe other people. You probably know enough in your heart that you did not vote for me because you are tricked into taking advantage of Surah Al Maidah verse 51", broadcast on YouTube. On 11 October 2016, the Indonesian Ulema Council (MUI) issued a Fatwa stating that Ahok had openly insulted Islam by citing the translation of Surah Al Maidah verse 51. According to MUI, Ahok insulted the Qur'an and intellectuals. Furthermore, MUI urged the government to take firm action against blasphemy violators. The police were also urged to enforce the law firmly, quickly, proactively, and professionally while paying attention to community justice. Muslims responded to the MUI fatwa by holding a demonstration demanding that the police take action against Ahok. The legal process has also dragged Buni Yani as the editor of Ahok's speech. This has caused a widespread community perception regarding Ahok's hostility towards Islam. Consequently, the case triggered the development of hate speech with identity politics in Indonesia (Mayasari, 2017).

Buni Yani edited Ahok's speech, causing a widespread community perception regarding hostility towards Islam. Petra (2016) stated that the Ahok case triggered the development of hate speech with identity politics in Indonesia. Hate speech cases are more related to political or public figures. In the case on behalf of Bambang Tri Mulyono, hate speech was perpetrated by writing a book entitled "Jokowi Undercover," explaining that President Joko Widodo was a child of the Indonesian Communist Party (PKI). Furthermore, other cases involve criticism or harassing, insulting, or satirical words. They are directed to emotional remarks made by anti-government figures who attract public attention, including Habib Rizieq, Habib Bahar bin Smith, and musician Ahmad Dani.

Astrika & Yuwanto (2019) stated that the political battle to get the most votes and win the General Election, Regional Head Election, or Governor Election occurred fiercely in early 2018. Although the goal was to make election participants adopt healthy ways to win their political contestation, not all competitors compete safely. Many people use underhanded tactics to win the election, such as hate speech, a perverted way of becoming a political strategy. Studies showed that various examples suspected of carrying religious hate speech include the remarks directed at the Ahmadiyah Congregation. In February 2008, a religious organization leader committed atrocities against the Ahmadiyah community during the Tabligh Akbar event in Banjar, Tasikmalaya, West Java. Furthermore, hate speech against the HKBP Philadelphia Congregation was perpetrated by an ustadz who led a demonstration against the church on 15 April 2012, in front of local government officials and the police.

Catlin in Asogwa & Onwuama (2021) stated that some people define hate speech as discrimination or violence against people or individuals based on hatred of country, race, or other irreversible attributes. The Saracen case is another form of hate speech because it is committed systematically and structurally to obtain certain material benefits. It was committed by several people organized and divided into groups spread across Riau (Pekanbaru), Jakarta, and West Java (Garut). There is a significant difference between the alleged acts or articles suspected by the Indonesian Police investigators and those proven and filed with a criminal charge by the Public Prosecutor and decided by a judge in court.

Law enforcement against hate speech cases deserves further study because it shows how an act is considered hate speech accompanied by violence before positive law and society. There are many polemics and disagreements in law enforcement tactics around what activity might qualify as a hate speech offense and how it turns out to have two opposing legally and socially. The legal process by law enforcement officers against hate speech also creates problems. Moreover, accusations of legal proceedings against the case or action contradict the principles of Human Rights (HAM) protection. These accusations are mainly from activists arguing that ideas, opinions, or thoughts are human rights of citizens entitled to state protection and should not be punished. The Electronic Information and Transactions (ITE) Law articles are considered rubber. This is because they are too broad, threaten the freedom of expression, and are easily contaminated by the ruling government's political interests. Therefore, there are problems regarding the reasons for criminalizing actions related to ideas, opinions, or thoughts to qualify as criminal acts.

Based on the ITE Law, hate speech blurs the boundaries between the criminalization process carried out by law enforcement officials and the state's obligation to protect its citizens' freedom of expression. This implies a fundamental problem regarding the concept of hate speech in Indonesia. The problem is the development of various conceptions regarding hate speech acts. Therefore, it is necessary to analyze criminalization and the qualifications of hate speech offenses.

METHOD

This study used a normative legal or doctrinal approach based on the existing legal materials. Soetandyo Wignjosoebroto (2002) stated that normative analyzes a positive norm of law as it is written in the books. The normative side examined is the provisions regarding hate speech in the laws and regulations. Another side investigated is the provisions governing the protection of human rights for freedom of expression guaranteed by the government for every citizen. Data were collected from legal documents related to study problems, including statutory regulations, legal theories and literature, and court decisions. Furthermore, interviews were conducted to support or clarify the rules or laws and regulations. The interviews were conducted with informants that handled hate speech or human rights cases.

No	PROFESSION	POSITION
1.	Prosecutor	Structural Officials as policymakers or PU that handled hate speech cases
2.	Judge	PN, PT, MA judges that handled hate speech cases
3.	Police	Structural Officials as policymakers, Investigators, or Auxiliary Investigators that handled hate speech cases
4.	Academics/ Expert	Lecturers or Teachers associated with or provided expert information in hate speech cases
6.	Advocate	Profession or Legal Advisor that handled hate speech cases
7.	NGO/Community Leader	Human rights observers, specifically freedom of expression

DISCUSSION

Indonesia experienced a riot in May 1998 which was initially caused by hate speech.

Table. Example Sentences Containing Hate Speech that made Riot in May 1998 in Indonesia

Contents of Hate Speech				
conglomerates in Indonesia generally people Chinese descent	Everyone Chinese is rich, they are make native poor	Material price rose tree: "This is because of" Chinese stock tree material let the price expensive"	Testimonials college student woman Send in Cengkareng one month before May's riot 1998 happened: "...next month also finished you"	Burn shop China, protect Indigenous ... Just rape... Chinese bastard!!!
His Hatred Threats Increase				

Palmadottir & Kalenikova (Astrika & Yuwanto, 2019) defined hate speech as spoken or written words that spread, incite, promote, or justify hatred based on intolerance or religion. It is a conscious and willful public statement intended to denigrate people (Delgado & Stefancic, 1995). The hate speech is disseminated through social media and could spread quickly, leading to ignorance and false prejudice. This is due to the country's slow response

by restricting the growth of information technology, particularly social media, a breeding ground for hate speech. In a state of law, the right to freedom of expression is part of human rights which protection is guaranteed by the state. This guarantee of freedom of expression is enshrined in Article 19 of the Universal Declaration of Human Rights (UDHR) (The United Nations General Assembly, 1949). Furthermore, the regulation is strengthened in Article 19 of the International Covenant on Civil and Political Rights (ICCPR). The two international instruments regulate matters that limit the freedom of expression.

Indonesia has ratified the ICCPR through Law Number 12 of 2005 concerning the International Covenant on Civil and Political Rights. The State 1945 Constitution and its amendments in Article 28 E paragraph (2) and Article 28 F of the 1945 Constitution of the 3rd Amendment guarantee freedom of expression. Therefore, it is a basic right of citizens that should be guaranteed by the state and regulated in the constitution, although there are limitations in using these rights. According to Siregar & Puri (2018), hate speech is dangerous and could threaten the pluralistic Indonesian society. It is made by people or groups intolerant of other groups.

Hate speech conveys that some groups are second-class citizens or sub-humans, harmful, and deserve to be treated equally by the state. It advocates restriction of speech that promotes plurality. Second, hate speech is associated with direct or indirect discrimination, antagonism, and violence. It also limits and prevents people from having opinions and expressions against democracy. Furthermore, hate speech is more public because it could disrupt public order and damage peace and tranquility. It is closely related to ITE Law because the facilities or methods currently used are mass media, electronic, or social media. Jan Remmelink (2017) in Suhariyono (2009) stated that an unlawful act should be charged to the violator to punish someone while fulfilling justice and humanity. The individual concerned should be someone held accountable (*toerekeningsvatbaar*).

The Chief of the National Police Circular Number SE/06/X/2015 stated that hate speech is a crime regulated in the Criminal Code and other provisions. It involves insults, defamation, blasphemy, unpleasant and provocative acts, incitement, and spreading false news. Platforms or websites used to implement or carry out hate speech are also affected. According to Mulyawati (2021), these are hate sites, most of which use internet forums and news to emphasize certain perspectives. Law enforcement officials may take steps to freeze or disable these hate sites. Criminal law in Indonesia regulates hate speech seen in several articles. Actions regarding Hate Speech against a person, group, or institution based on the Chief of Police Circular No: SE/06/X/2015 are regulated in Article 156, Article 157, Article 310, Article 311, Article 28jis, Article 45 paragraph (2) of Law Number 19 of 2016 concerning electronic information and transactions, and Article 16 of Law No. 40 of 2016 concerning the elimination of Racial and Ethnic Discrimination.

Law Number 11 of 2008 concerning Information and Electronic Transactions was formed and made several changes promulgated by Law Number 19 of 2016 concerning Electronic

Information and Transactions. In the ITE Law, criminal acts included in hate speech are regulated in Article 28 paragraph (1). It states that everyone intentionally and without rights spreads false and misleading news that results in consumer losses in Electronic Transactions. Additionally, paragraph (2) states that everyone intentionally and without rights disseminates information to cause hatred or hostility to certain individuals or people based on ethnicity, religion, race, and inter-group (SARA). The ITE Law also penalizes violators of Article 45 paragraph (2), which states that everyone fulfilling the elements in Article 28 paragraph (1) or (2) would be punished with imprisonment for six years or a fine of IDR 1,000,000,000.00. This Law also regulates spreading content that contains things that cause hatred. It is regulated in Article 27 paragraph (3) that everyone intentionally and without rights distributes, transmits, or makes accessible Electronic Information and Documents that contain insults or defamation.

Criminalization is not always associated with imprisonment because various other sanctions are regulated in criminal provisions, such as fines, confinement, and the revocation of certain rights. However, imprisonment is considered the harshest sanction because it involves the harsh treatment of detainees. It also has the most serious impact involving lifelong stigmatization for the person concerned. The criminalization process occurs in the legislative body constitutionally mandated to form laws. The criminalization process also occurs when the criminal provisions in the laws and regulations in abstracts are applied in concrete to a real social problem. Furthermore, criminal law enforcement is a form of criminalization, and this second form would be the object of this study. Criminalization protects social interests containing certain values. Therefore, its sanctions should be commensurate with the need to protect and safeguard these interests. Criminal sanctions are only justified when there is an urgency and benefit to the community. They are not justified and are dangerous when the community does not need them. Therefore, the values contained and to be protected should be clear first before assessing the need for criminalization.

The basic theory of criminal imposition includes the just desert theory developed by Andrew von Hirsch (1990) and continued by Andrew Ashworth & Andrew von Hirsch (1993). The theory states that the first justification for punishment is the inherent factor between desert or reward. The second justification is punishment, where the desert is an integral part of the daily assessment conducted by the community against an act. In this case, the community praises or blames, while state punishment institutionalizes this criticism function. The core of this theory is proportionality, where the punishment imposed on criminals is intended to change their behavior for the better.

Handoko & Hak (2019) stated that criminal law politics could be separated into various branches and scopes, such as the criminalization policy. The policy is essentially legal politics that establish criminal acts or other forms of criminal formation in drafting laws, such as writing bills. The Criminal Code or Special Crimes includes policies related to converting previously criminal acts according to law into non-criminal acts through decriminalization. Criminalization, as regulated in Article 112 of the UUHC, is not pure because the substance

is regulated in Article 72 Paragraphs (6), (7), and (8) of Law Number 19 of 2002 concerning Copyright. Indonesia's law enforcement shows that hate speech actions are blasphemy of religion, defamation, and actions. They are also words that insult, demean, harass, ridicule, insinuate, hurt self-esteem, dignity, or the honor of certain people. The words contain ethnicity, religion, race, and inter-group (SARA), or special or innate characteristics in a person or group.

CONCLUSION

Acts that qualify as hate speech include blasphemy of religion, defamation, and actions. Others include words that insult, demean, harass, ridicule, insinuate, injure self-esteem, dignity, or honor of a person or group. Such words contain elements of ethnicity, religion, race, and inter-group (SARA) or special or innate characteristics in a certain person or group. Hate speech has the potential to disrupt public order and damage peace and tranquility among people. Furthermore, it is closely related to the ITE Law because the facilities or methods currently used are mass media, electronic, or social media.

Spreading hoax news in the form of hate speech is a criminal act punishable by Law Number 11 of 2008 and its revision based on Law Number 19 of 2016. The two laws limit the circulation of false news and impose severe penalties for the perpetrators, as demonstrated in many examples of hate speech. Also, the spread of hate speech is prohibited by the MUI Fatwa Number 24 of 2017.

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