

## **Imposing Criminal Sanctions for Spreading Fake News Which Result in Public Disorder in the Legal System in Indonesia**

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### **Abstract**

Reporting that is not in accordance with the actual facts when someone conveys it in public will cause that person to be categorized as spreading fake news. Fake news that causes the public to become noisy and influenced due to believing the news results in the perpetrator being subject to criminal sanctions. Hoax is a term to describe fake news, slander, or the like that can cause unrest in society. To prevent the spread of fake news (hoaxes) in online media, strict criminal sanctions are required to be imposed on the perpetrators. Criminal provisions for perpetrators of criminal acts of spreading fake news (hoax) based on the principle of *lex specialis derogat legi generali* refer to the provisions of Article 28 paragraph (1) jis. Article 45A paragraph (1) Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE). In the process of proving the criminal act of spreading fake news (hoaxes) in online media, there is additional evidence. The evidence referred to in Article 5 of the ITE Law is Electronic Information and Electronic Documents and/or their printouts.

**Keywords :** Crime, Fake News, Sanctions

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### **INTRODUCTION**

If today's advances in technology and information are not responded to with positive values, society will become victims of misuse of these two advancements. With advances in information technology in terms of dissemination of information in minutes, it can be spread to all corners of the world, as a result, news that is not in accordance with real conditions on the ground can very easily provoke the situation and condition of society.

Along with the development of society's needs in the world, Information Technology plays an important role, both now and in the future. Information Technology brings great benefits and interests to countries in the world. There are at least two things that make Information Technology considered important in spurring world economic growth, namely: 1) Information Technology drives demand for Information Technology products themselves, such as computers, modems, facilities for building internet networks and so on. 2) Facilitate business transactions, especially financial business as well as other businesses. (Flower Goddess, 2012)

Information is very easy to obtain in the internet era like today. Starting from small children to the elderly, they often use internet network services. Any information they need is very fast and easy to get. Just use the enter/click button and the information they want can be obtained on the Internet network. (Andi Hamzah, 1990) The very easy and cheap distribution of news on social media certainly makes it easy for social users to forward or spread news to other people. In the past, it took a matter of days, but now it only takes a matter of minutes or hours for the news to spread throughout the world. One way of spreading news is the rise of hoax news. The word Hoax comes from "hocus pocus" which is originally Latin "hoc et corpus", meaning "this is the body".

This word is usually used by magicians to claim that something is true, even though it is not necessarily true. There are also many hoaxes circulating in emails, mailing lists, BBM, etc. Hoax is also false news in an attempt to deceive or influence readers or distributors to believe something, even though the news source knows that the news conveyed is fake and has no basis at all. Hoax news containing vicious slander is becoming increasingly common, tending to get out of control, especially before the election. Hoax news is fake news that can be used to attack each other.

Various problems began to emerge due to the mismatch of expectations of technological progress for society, so that there was a need for Indonesian government policies or regulations regarding the media, namely the Broadcasting Law as a step to improve the political situation from post-reformation to the present, the Telecommunications Law which regulates operators of consumers of telecommunications networks and services, and the rapid development of the development of electronic communication technology in the form of the internet which has given rise to forms of cyber crime. (Reni Julani, 2017)

The character of internet technology which allows everyone (the public) to access information globally anytime and anywhere, allows crimes to occur related to statements by a person or party in public of feelings of hostility, hatred or betrayal towards the government of the Republic of Indonesia (Article 154 of the Criminal Code), by broadcasting, displaying or posting so that it is visible to the public, writing or images (Article 155 of the Criminal Code), feelings of hatred or insult towards something or several groups of the Republic of Indonesia (Article 156 of the Criminal Code), towards or between several groups of the Republic of Indonesia (Article 157 Criminal Code), inciting a person to commit a criminal act or resist public power with violence (Articles 160-161 of the Criminal Code). The enactment of the ITE Law has logical consequences for law enforcement institutions in Indonesia.

The large number of hoax (fake) news circulating on social media (social media), has a big impact because almost everyone sees and reads various news every day, one example is the Jokowi underCover case, where Bambang Tri Mulyono, author of the book Jokowi underCover, spread fake news. which was conveyed in a video on his Facebook page. 6 Likewise, news about the spread of hoaxes about child kidnapping was spread by Angga Permana in the West Bandung area. Electronic Transactions which reads: 8 "Everyone who intentionally and without right spreads false and misleading news which results in consumer losses in electronic transactions." imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of IDR 1,000,000,000.00 (one billion rupiah)."

The first ITE crime was formulated materially. The criminal act is completely completed when the consequences of the action have occurred. The act of spreading false and misleading news has resulted in consumer losses in electronic transactions. In relation to other elements, intentionally means that the creator intends to spread false and misleading news, and wants or at least is aware of the consequences of consumer losses in electronic transactions. The creator also understands that what he is doing is not justified (the nature of being against the subjective law), and provides news that contains lies and understands that this will result in losses for consumers of electronic transactions.

Electronic transactions are legal acts carried out using computers and/or other electronic media. 22 The nature of unlawfulness is formulated in the phrase "without rights" which has two characteristics; objective and subjective. The objective feature is that the nature of the act is always based on the lies and misleading content of the news that is distributed, while the subjective feature lies in the content maker's awareness of the disgrace of such an act in society which is formalized in law. (Christiany Juditha, 2018)

When viewed from the perspective of the reprehensible nature of the actions included in the content of the news and the consequences for consumer users of electronic transactions, then including the element "without rights" is considered excessive because it is impossible for there to be people who spread false news that misleads consumers about the permissible loss of electronic transactions. Maybe this is because the formation of the ITE Law assumes that "no rights" are placed on creators who "don't own" the electronic system facilities they use? For example, sending an email using someone else's email address without permission from the owner. If that is what is meant, the phrase "without rights" should not be used in the formulation, but rather "without permission". However, even this opinion becomes weak, if seen from the act of carrying out electronic transactions using an electronic system. (Joshua Sitompul, 2012)

For those who spread hoaxes, they can be threatened with Article 28 paragraph 1 of the Information and Electronic Transactions Law or the ITE Law (UU ITE) which states "Every person intentionally and without right spreads false and misleading news which results in consumer losses in electronic transactions that May be subject to criminal penalties based on Article 45A paragraph (1) of Law 19/2016, namely being punished with imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of IDR 1 billion

## METHOD

The normative legal research method is a method or method which in this case is used in legal research which can be carried out by examining library materials in the field of law seen from the point of view of their binding strength which in this case can be divided into three groups, namely materials. primary law, secondary legal materials, and tertiary legal materials (Soerjono Soekanto and Sri Mamudji 2010:13). This normative legal research is also called doctrinal legal research and is conceptualized as what has been written in a statutory

regulation (law in books) or as a rule or norm which is a benchmark for human behavior that is considered very appropriate.

In this case, normative legal research also seeks to study and look for an answer regarding what, in this case, should be for each existing problem. (Amiruddin and Zainal Asikin 2004:118-119). According to Amiruddin and Zainal Asikin (2004:14), normative legal research also includes several parts, namely:

1. Research into legal principles
2. Research on legal systematics
3. Research on the level of vertical and horizontal synchronization
4. Comparative law
5. Legal history

In carrying out legal research, the researcher in this case uses a type of normative legal research which is carried out in a way that includes, in this case, various methods of normative legal research, therefore there are several things, namely as follows:

1. According to Soerjono Soekanto and Sri Mamudji (2010: 70), research on legal systematics, which in this case means that researchers must explore various kinds of problems that exist in existing legal provisions, and starting from the legal community, legal relations, legal subjects, rights and obligations.

According to Soerjono Soekanto and Sri Mamudji (2010: 74), research on a level of vertical and horizontal synchronization, in this case the researcher is carrying out research with the aim of uncovering various kinds of reality to what extent a statutory regulation is equivalent about the same thing.

## **RESULTS AND DISCUSSION**

### **1. Regulation of the Criminal Act of Spreading Fake News in the Legal System in Indonesia**

Along with the development of various new technologies, this is also in line with the development of new methods used by someone in criminal acts, and related to this research, the criminal act in question is the act of spreading hoaxes through electronic media. The progress and variety of communication media owned by society causes society and the state to face the effects of hoax news as a result of jammed communication that occurs in society. Jammed communication is caused by developments in communication technology that can no longer be controlled, because communication traffic is very complicated causing hoax news to become an act of social construction. simple, but becomes an enemy of society and the state because it appears very easily in electronic media (Juditha, 2018)

Hoax is information that is engineered to cover up real information, in other words hoax is defined as an attempt to distort facts using information that is convincing but cannot be verified, it can also be interpreted as an act of obscuring real information, by flooding a media with false messages in order to cover correct information. Hoax or fake news is a form of cyber crime that seems simple, easy to commit but has a huge impact on people's social life.

Regarding law enforcement for perpetrators of criminal acts of spreading fake news (hoaxes), written legal regulations are certainly needed so that they can guarantee legal certainty for all parties, both for perpetrators of criminal acts and for the people who are harmed.

The basic reason for conveying information in the form of fake news has the same meaning as an act of fraud because there is an inducement for another person to benefit himself or another person by breaking the law and persuading by using a false name or false situation based on cunning. to carry out deception or fabricate false speech. Online media is a medium for conveying information which in this case has been widely misused by irresponsible elements of society to convey information, one of which is fake news, so in this case the Government of the Unitary State of the Republic of Indonesia has made a regulation Strict law in regulating violations through social media in the form of fake news can be seen from the provisions regulated in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Transaction and Electronic Information.

In the legal regulation of a criminal offense in the form of misuse of the delivery of false news information which can harm other people as recipients/consumers of the delivery of said information, in this case the provisions of criminal sanctions are also regulated in the Criminal Code ( Criminal Code). This legal regulation is contained in Article 310 Paragraph (1) jo. Article 311 Paragraph (1) jo. Article 317 Paragraph (1) jo. Article 318 Paragraph (1) jo. Article 378 of the Criminal Code (KUHP). Article 310 Paragraph (1) of the Criminal Code, which reads: "Anyone who deliberately damages a person's honor or good name by accusing him of

committing an act with the clear intention that the accusation will be published, shall be punished for defamation, with a maximum imprisonment of nine month or a fine of up to Rp. 4500,-.”

In Law no. 19 of 2016 concerning Amendments to Law no. 11 of 2008 concerning Information and Electronic Transactions. It has been regulated regarding matters in the form of computer crimes and internet crimes which are the result of human creation, one of the internet crimes is the spread of fake news. The criminal act of spreading fake news is an act carried out by someone intentionally, and already has the intention to convey by means of disseminating news that is false or the truth of which is uncertain, to all people from various parts of the world via electronic media, this is done to provide wrong views and understanding of the news. The crime of spreading fake news is increasing every day.

From April 2018 to April 2019, the total number of criminal acts of spreading fake news that were identified, verified and validated was 1,731 criminal acts of spreading fake news on social media. In August 2018 there were 25 criminal cases of spreading fake news identified, then the number of cases increased in September 2018 to 27 cases. While in October to November 2018 each increased to 53 to 63 cases, in December the number increased again to reach 73 criminal acts of spreading fake news. A very significant increase in the amount of hoax content occurred in January and February 2019. (Hasaziduhu Moho, 2019)

A total of 175 contents of criminal acts of spreading fake news were successfully verified. This figure doubled in February 2019 to 353 cases. This figure continues to rise to 453 cases of criminal acts of spreading fake news during March 2019.<sup>1</sup> The criminal act of spreading fake news has been regulated in several laws and regulations including Article 390 of the Criminal Code (KUHP), and Article 28 paragraph (1) and (2) Law Number. 11 of 2008 concerning Information and Electronic Transactions

Article 390 Reads:

Any person who with the intention of benefiting himself or another person by violating the right to lower or increase the price of merchandise, funds or money securities by broadcasting false news, shall be sentenced to a maximum imprisonment of two years and eight months.

The elements of Article 390 of the Criminal Code are as follows:

Whoever: Whoever refers to the legal subject as the perpetrator of a criminal act, namely every person who is deemed capable of being responsible for his or her actions according to the law. With the aim of: Lowering or increasing the price of merchandise, funds or securities. Raising or lowering the prices of these goods by broadcasting false news is done with the intention of benefiting oneself or others.

Broadcasting: Broadcasting fake news. The news that is broadcast is fake news. What is considered fake news is not only telling empty news, but also telling false stories about an event.

Article 28 paragraph (1) Law no. 11 of 2008 concerning Information and Electronic Transactions reads:

*Every person intentionally and without right spreads false and misleading news which results in consumer losses in electronic transactions.*

Unsur from article 28 paragraph (1) of Law no. 11 of 2008 concerning Information and Electronic Transactions.

*Everyone: Everyone refers to legal subjects as perpetrators of a criminal act. Intentionally and without right: Intentionally and without right, it must first be examined whether there is any evil intention in the act. And also whether the act was indeed done without rights. Spreading: Spreading false and misleading news. The news broadcast is fake news. What is considered fake news is not only telling empty news, but also telling false stories about an event. Spreading regulated false news is the act, while regulated misleading words are the result of consumer losses in electronic transactions. (Princess Yashila Rahimah Athifahputih, 2022)*

Therefore, there is a special regulation regulated in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Transaction and Electronic Information, which in this case specifically regulates an act of cybercrime ( cybercrime), so that with the existence of a regulation that specifically regulates this, law enforcers prioritize in every regulation and also law enforcement by using Law Number 19 of 2016 concerning Amendments to

Regarding Law Number 11 of 2008 concerning Transaction and Electronic Information, so that the use of these Legislative Regulations which are specifically regulated does not override the principle which reads Lex Specialis Derogat Lex Generalis, which means that specific laws override laws. of a general nature. (Juliswara, Vibriza, 2017)



In the provisions of this Regulation, a criminal act is committed intentionally and without rights in spreading false news, which will certainly have a negative impact which can result in and also cause harm to consumers towards recipients of electronic transactions and also disseminating information to cause feelings of hatred or hostility, which in this case are described and explained in Article 28 Paragraph (1) of Law Number 11 of 2008 concerning Information and Electronic Transactions, jo. Article 45 A Paragraph (1) Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Transaction and Electronic Information.

In a criminal act committed via social media in the form of spreading and transmitting fake news, a person who is guilty of his actions in spreading and transmitting fake news can be subject to criminal sanctions based on the existence of accurate and concrete evidence. In this case, an indictment brought by the Public Prosecutor regarding a crime committed via social media in the form of spreading and transmitting false news must be based on:

- a. Which actions are considered to have been legally proven guilty according to the trial examination.
- b. Whether in the commission of a criminal offense it has been proven that the defendant is guilty of the acts for which he is charged.
- c. What criminal acts were committed in connection with these actions? d. What punishment is appropriate and what should be imposed on the defendant in this case is not an easy task.

## **2. Law Enforcement of the Crime of Spreading Fake News (Hoax) which Resulted in Public Disorder**

The state provides regulations regarding the use of electronic information because it is feared that it will damage the common sense and mentality of the Indonesian people, especially active internet users, because hoaxes themselves have content in the form of propaganda and tend to lead to SARA (tribe, religion and race). People who are still unfamiliar with using cellphones are more easily fooled by fake news circulating on the internet due to a lack of literacy about cyberspace. Moreover, the case that the author raises is about the misuse of information technology by distributing pornography online. Pornography itself is also something that is very dangerous for the nation's next generation, namely children and teenagers, where the internet nowadays is very easy to access because it is relatively cheap. The Ministry of Communication and Information will always be aggressive in handling and eradicating various kinds of pornographic content on the internet. However, it's not as easy as just turning your palm. (C Nasution, 2020)

Hoax itself aims to deceive readers and listeners by conveying news, but the perpetrator creates news that seems to be very true so that viewers can easily believe it. Because it does not rule out the possibility that someone who spreads fake news is someone who hates something or a certain object and thus uses means in the form of cyberspace to facilitate their actions to achieve their vile personal interests. (Johan Silalahi, 2021)

Law enforcement is the process of making efforts to enforce or function real legal norms as a guide for actors in traffic or legal relations in social and state life. Law enforcement is an effort to make ideas and legal concepts that the people hope for come true. Enforcement of criminal law related to the spread of hoax news is regulated in the Criminal Code, Law Number 1 of 1956 concerning Criminal Law Regulations, and most recently Law Number 11 2008 concerning electronic information and transactions (ITE) which was passed on April 21 2008. As time goes by and society develops, there are changes in this ITE law to become Law Number 19 of 2016 and is in effect today. The following are articles related to fake news (Hoax):

Criminal Code:

Article 390 of the Criminal Code: Any person who, with the intention of unlawfully benefiting himself or another person, broadcasts false news which causes the price of merchandise, funds or securities to fall or rise, is threatened with imprisonment for a maximum of two years and eight month

Article 311 of the Criminal Code: if the person who commits a crime of defamation or written defamation is allowed to prove that what is alleged is true, does not prove it, and the accusation is made contrary to what is known, then he is threatened with defamation with a maximum prison sentence of four years.

Article 378 of the Criminal Code: Any person with the intention of unlawfully benefiting himself or another person. by using a false name or false dignity, by deception, or a series of lies, inducing another person to hand over something to him. or to give a debt or write off a receivable is threatened with fraud with a maximum prison sentence of four years.

Law Number 19 of 2016 (hoax)

Article 28 paragraph (1): Every person intentionally and without right spreads false and misleading news which results in consumer losses in electronic transactions.

Article 28 paragraph (2): Every person intentionally and without right disseminates information aimed at creating feelings of hatred or enmity towards certain individuals and/or groups of people based on ethnicity, religion, race and between groups (SARA).

Article 45A paragraph 1 which reads: Every person who deliberately and without right spreads false and misleading news which results in consumer losses in electronic transactions as intended in Article 28 paragraph (1) shall be punished with imprisonment for a maximum of 6 years and/or a fine of a maximum Rp. 1,000,000,000.00 (one billion rupiah).

Based on the principle of *lex specialis derogat legi generali*, which means that specific rules override general rules, criminal liability for perpetrators who spread fake news (hoaxes) on social media refers to the provisions of Article 28 paragraph (1) of the ITE Law. There are also elements that must be fulfilled in Article 28 paragraph (1) of the ITE Law, namely: (a) Every person, meaning the perpetrator who spreads fake news (hoax); (b) Mistakes committed intentionally, namely deliberately and without right spreading false news (hoax); (c) Without rights or against the law, that is, spreading fake news (hoax) is an act that is against the law and contrary to a person's rights; (d) Action, namely someone has spread news that is not in accordance with the facts; (e) Object, namely fake news (hoax); (f) Constitutive consequences, namely causing consumer losses in electronic transactions. 6 If someone is proven to fulfill the elements of a criminal offense in Article 28 paragraph (1) based on Article 45A paragraph (1) of the ITE Law, it will result in a maximum prison sentence of 6 years and/or a maximum fine of IDR 1 billion. (Franciskus Sebastian Situmorang, 2017)

According to Aristotle, "Justice is fairness in human action. Feasibility is defined as the midpoint between the two extremes of too much and too little. Both extreme ends involve 2 (two) people or objects. If 2 (two) people have the same size in terms of what has been determined, then each person must get the same object or result. If it is not the same, then there will be a violation of this proportion, which means injustice." There are several foreign terms used for comparative law, namely Comparative Law, Comparative Jurisprudence, Foreign Law (English term), *Droit Compare* (French term), *Rechtsgelijking* (Dutch term) and *Rechtsvergleichung* or *Vergleichende Rechtlehre* (German term). According to Barda Nawawi Arief in his book he quotes several opinions of legal experts regarding the term comparative law.

Any individual or group can easily spread news that is not true, and recipients of the news are often considered uncritical in digesting the news whether the news is true or not. The spread of hoaxes on social media and online media does not just happen without an underlying interest. There are interests behind it, both political power, economics (industry and business hoaxes), ideological, personal sentiment and fad. Furthermore, based on the results of research conducted by Mastel (Indonesian Telematics Society), the results show that political and SARA issues are the things most often raised as material for hoax content. The dynamics of cybercrime are quite complicated. Because, it does not recognize national and regional boundaries. Apart from that, the time of the crime is difficult to determine. The Cybercrime phenomenon is complete to be ranked as the biggest potential crime in the future.

One part of national development is development in the legal sector, which is known as legal reform. (Haryadi, Lilik., & Suteki, 2017) National legal reform as part of a series of national development is carried out in a comprehensive and integrated manner both in law criminal law, civil law and administrative law, and also includes formal law and material law. Society demands that the media represent freedom of opinion, realize the public's rights to obtain information, the right to education, the right to entertainment, and the right to exercise social control. It contains the right to participate in monitoring power, including overseeing law enforcement processes. To ensure the fulfillment of public rights, even though in this reform era the government (power) no longer intervenes in the administration of mass media as during the New Order, media life is still regulated through legal instruments.

Currently, there are many hoaxes circulating on internet sites which are uploaded by irresponsible people which can damage the life of the nation and state in Indonesia. The government as a regulator also continues to make efforts to monitor every electronic transaction that occurs, especially on social media. In this case, the Government's attitude towards perpetrators who spread Hoaxes is addressed in the Criminal Code and the ITE

Law, which means that perpetrators who spread Hoaxes can be subject to multiple penalties so that there is a deterrent effect for perpetrators who spread Hoax content and don't forget, that the perpetrators do not rule out the possibility of being charged with hate speech. If the perpetrator spreads a hoax, there are a number of slanderous slanders and accompanied by verbal abuse.

So there is a need for law enforcement for perpetrators and not just blocking Hoax sites so that at least Hoax sites can be reduced, and Netizens will also be less safe when using social media.

### CONCLUSION

Law enforcement can be interpreted as the efforts of certain law enforcement officials to be able to guarantee and ensure that legal regulations operate as regulated in the regulations. Law enforcement of criminal acts related to fake news (hoaxes) is regulated in Article 28 paragraph (1)(2) and Article 45A of Law Number 19 of 2016, Criminal Code articles 390, 311 and 378. Examples of legal enforcement related to fake news (hoaxes) can be seen from the case when the demonstration incident which ended in chaos in Papua and West Papua sparked a lot of attention (2019). A legal product is said to be effective if the legal product has been carried out or implemented in practice. The theory of legal effectiveness according to Soerjono Soekanto is that whether a law works or not can be determined by 5 main factors, namely: 1) the legal factor itself 2) law enforcement factor 3) facility factor 4) community factor 5) cultural factor. The government's efforts to combat fake news (hoaxes) on social media are by approaching the public through groups on social media, then socializing about the criminal act of spreading fake news as explained in the Information and Electronic Transactions Law Number 19 of 2016 regarding changes to Law Number 11 of 2008 concerning the spread of fake news (hoaxes) on Social Media. The government also collaborates with several related agencies such as Information Technology Experts, the police and universities, in this case experts working in the field of Technology. Criminal liability relating to criminal acts of information or fake news (hoax) applies to various kinds of responsibilities, namely social responsibility towards society and responsibility towards the law.

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