

**PROVEN CRIMINAL ACTION OF SPREADING HOAX NEWS
THROUGH SOCIAL MEDIA REGARDING COVID-19**

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ABSTRACT: The spread of Corona Virus Disease 2019 (COVID-19) in Indonesia, is used by irresponsible people to spread fake news (hoaxes) that can disturb the public. The ITE Law in it has regulated the crime of hoaxes, the perpetrators can be subject to criminal sanctions, however, the sanctions in the ITE Law do not prevent people from spreading false news through social media, many cases occur in the community regarding these crimes, but problems arise in proving the hoax crime case, where it is not the ITE Law that is used as the basis for convicting the perpetrator but using Article 14 of Law no. 1 of 1946, namely spreading false news conventionally without any element of electronic means, this is because the Criminal Procedure Code does not regulate digital evidence.

Keywords: Evidence, the crime of spreading hoaxes, social media, covid 19

INTRODUCTION

The development of information technology has resulted in everyone being able to express and freely express opinions, criticisms, or suggestions through their social networks. The use of social media if done inappropriately can have a negative impact. The development of computer and internet technology that is not appropriate in its use needs to be regulated in law so that the perpetrators can be subject to criminal sanctions. One of the negative impacts of using the internet is the rise of criminal acts of insult or hate speech, as well as the spread of false information (hoax) on social media.

The spread of Corona Virus Disease 2019 (COVID-19) in Indonesia is currently increasing and expanding across regions and countries accompanied by the number of cases and/or the number of deaths. This increase has an impact on the political, economic, social, cultural, defense and security aspects, as well as the welfare of the people in Indonesia, so it is necessary to accelerate the handling of Corona Virus Disease 2019 (COVID-19) to suppress the spread of Corona Virus Disease 2019 (COVID-19) expanding. Prompt diagnosis, isolation, and

treatment are the keys to success in COVID-19 (Early diagnosis, isolation, and prompt treatment is the key to success in COVID-19).¹

Important information about the coronavirus pandemic is a public need to prevent the spread of the coronavirus. Public information has become so important in terms of health, that the World Health Organization (WHO) has participated in the disclosure of public information, as stated in its commitment, namely:

“The World Health Organization (WHO) is committed to making information about its activities available to the public. WHO considers public access to information a key component of effective engagement with all stakeholders, including WHO's the Member States and the public, in the fulfillment of its mandate. Public access to WHO information facilitates transparency and accountability and enhances trust in WHO's activities to further public health”.²

Important information about the coronavirus pandemic that must be accessible and known to the public, is used by irresponsible people to spread false news related to the coronavirus.

The Ministry of Communication and Information (Kominfo) revealed that hoaxes related to the Coronavirus (COVID-19) are still spreading in the internet world. From January 2020 to November 25, 2021, Kominfo has detected various hoaxes and disinformation related to Corona. "A total of 1,999 hoax issues have been found in 5,162 social media uploads, with the most distribution on the Facebook platform being 4,463 uploads. Now, access has been cut off for 5031 COVID-19 hoax uploads and 131 other uploads are in the process of being followed up," said the Ministry Spokesman Kominfo Dedy Permadi in his written statement.³

Uploads regarding this hoax can be subject to Criminal Law Regulations (Law No. 1 of 1946), Law No.19 of 2016 concerning Amendments to Law No.11 of 2008 concerning Information and Electronic Transactions, (ITE), and Law No.40 of 2008 concerning Elimination of Racial and Ethnic Discrimination, as well as actions when uttering hatred, has led to social conflict, depending on which elements of the crime are proven case by case.

One of the articles that are often applied in cases of hoaxes spread through the internet is Article 28 paragraph 2 which prohibits any person who intentionally and without rights disseminates information aimed at causing hatred or hostility to certain individuals and/or community

¹ Shaila Rahman and Tamanna Bahar, 2020, COVID-19: The New Threat, International Journal of Infection, Vol. 7 (No. 1): e102184, p. 3, [doi: 10.5812/iji.102184](https://doi.org/10.5812/iji.102184).

² World Health Organization, 2017, Information Disclosure Policy, Geneva Switzerland: World Health Organization, pp. 3. (ebooks)

³ https://inet.detik.com/law-and-policy/d-5829006/hoax-covid-19-masih-terus-menyebar-di-medsos-facebook-paling-banyak?_ga=2.57890594.965741733.1638090276.1638090276.21-11-2021, diakses pada jumat 21-11-2021, accessed on Friday 21-11-2021.

groups based on ethnicity, religion, race, and inter-group (SARA)". - the news creates hatred, hostility, and causes disharmony in the community, the person concerned may be sentenced to imprisonment for six years and/or a fine of Rp. 1 billion.

A hoax is a form of cyber attack that aims to change public perception by manipulating information. Proof that someone produces and spreads hoaxes (and of course other cyber attacks) requires a very special discipline, namely Digital Forensics. Digital Forensics is the last bastion to ensure that cybercrime investigations can be carried out to bring the perpetrators to justice. Digital Forensics is a science and expertise to identify, collect, analyze, and test digital evidence when handling a case that requires the handling and identification of digital evidence. The Digital Forensics process to obtain Digital Evidence is carried out after the computer, smartphone, or other electronic devices of the cybercriminal can be found. The process of finding the perpetrator's device usually requires network forensic analysis techniques first through investigation. The increasingly sophisticated cybercrime requires law enforcement officials to always update their capabilities in cyber crime investigations.

PROBLEM

Problems that arise in the criminal justice system are related to investigations, and all of these investigations will lead to proving the case. related to the above, this paper discusses: How to prove the crime of spreading hoax news through social media regarding covid-19 reviewed from the criminal justice system?

DISCUSSION

Criminal Justice System

The criminal justice system is a successive tiered process with one another, is said to be a tiered process because to arrive at a certain process, a case must go through another process, and these processes are carried out by institutions that have their respective authorities. at each stage of the process.⁴ These institutions are the police, prosecutors, courts, correctional institutions, and legal advisors. The ability to conduct investigations, and prove both in preliminary examinations and in court trials is a variable that greatly affects the effectiveness of the criminal justice system.⁵

⁴ Tolib Effendi, 2013, *Sistem Peradilan Pidana Perbandingan Komponen dan Proses Sistem Peradilan Pidana di Beberapa Negara*, Yogyakarta: Pustaka Yustisia, p.166.

⁵ Muladi, 1995, *Kapita Selekta Sistem Peradilan Pidana*, Semarang: Diponegoro University, p. 25.

As a network, the criminal justice system operates criminal law as its main tool. In this case, it can be in the form of material criminal law, formal criminal law, and criminal law enforcement.⁶

According to Barda Nawawi Arief, the criminal justice system is essentially a system of power to enforce criminal law or a system of judicial power in the field of criminal law, which is implemented by investigative power, prosecution power, adjudicating power and making decisions, and implementing decisions. The four subsystems are an integral part of an integral criminal law enforcement system or often referred to as an integrated criminal justice system.⁷

Evidence in the Criminal Court Process

Evidence is a problem that plays a role in the examination process at trial. Through evidence, the fate of the defendant is determined. If the results of the evidence using the evidence provided by law are "insufficient" to prove the guilt of the accused, the defendant is "acquitted" of punishment. On the other hand, if the defendant's guilt can be proven using evidence as stated in Article 184 of the Criminal Procedure Code, then the defendant is declared "guilty", and he is sentenced.

Article 184 paragraph (1) of the Criminal Procedure Code has determined in a limited way the legal evidence according to the law, which includes: evidence of witness testimony, expert testimony, letters, instructions, and statements of the defendant. Apart from this evidence, it is not justified to use it to prove the guilt of the defendant. Evidence using evidence other than the types of evidence referred to in Article 184 paragraph (1) of the Criminal Procedure Code, has no value and does not have binding evidence.

The evidence system adopted by the Criminal Procedure Code is a negative evidence system according to law.⁸ According to M. Yahya Harahap, based on the negative legal evidence system, there are two components to determine whether a person is wrong or not:⁹

1. Evidence must be carried out according to the method and with valid evidence according to the law;
2. The judge's conviction must also be based on methods and with valid evidence according to the law.

Evidence

To find the material truth of a criminal act, evidence are needed in the trial process, evidence is goods or objects related to crime. The goods or objects can be categorized as *corpus delicti* which means the goods or objects that are the object of the offense and the goods with which the offense is committed are the tools used to commit the crime. There is also evidence that includes items that are categorized as *instrumental delicti* which means goods or objects resulting from crime, goods or objects that are directly related to criminal acts.¹⁰

⁶ Ibid, p. 22 .

⁷ Barda Nawawi Arief, 2005, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, Bandung: PT Citra Aditya Bakti, p.40.

⁸ Romli Atmasasmita, 1995. *Kapita Selekta Hukum Pidana dan Kriminologi*. Bandung: Forward Mandar. p. 106

⁹ M. Yahya Harahap, 2008. *Pembahasan Permasalahan dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Appeal, Cassation, and Review*. Second Edition. Graphic Ray. Jakarta, p. 279

¹⁰ Andi Hamzah, 1986. *Kamus Hukum*, Jakarta: Rajagrafindo Persada, p. 446

Evidence with evidence has a close relationship and is an inseparable series. In the trial, after all the evidence has been examined, then proceed with the examination of the evidence. Evidence in the process of Proof is usually obtained through confiscation. "With the confiscation, the investigator will look for the connection between the goods found and the crime committed."

Corona Virus 19

Corona virus or 2019 Novel Corona virus (2019-nCoV) is a type/latest mutation of Corona virus that infects the respiratory system. There are at least two types of Corona virus that are known to cause diseases that can cause severe symptoms such as Middle East Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome (SARS). Corona virus Disease 2019 (COVID-19) is a new type of disease that has never been previously identified in humans. The virus that causes COVID-19 is called Sars-CoV-2.¹¹ The spread of the corona virus is so fast and covers a large geographical area that the world health organization or the World Health Organization (WHO) has declared it a pandemic. Indonesia has declared Corona Virus Disease 2019 (COVID-19) as a non-natural disaster in the form of a disease outbreak that must be taken care of so that there is no increase in cases. The spread of Corona Virus Disease 2019 (COVID-19) in Indonesia is currently increasing and expanding across regions and countries accompanied by the number of cases and/or the number of deaths. This increase in the number of corona cases is used by some people who are not responsible for creating hoax content on social media.

Proof The Crime of Spreading Hoax News Through Social Media regarding Covid 19 Reviewed from the Criminal Justice System

One of the articles that are often applied in cases of hoaxes that are spread through social media via the internet is Article 28 paragraph 2 which prohibits, on purpose, spreading fake news that results in consumer losses in electronic transactions. If the news causes hatred, hostility, and causes disharmony in the community, the person concerned can be sentenced to imprisonment for six years and/or a fine of Rp. 1 billion.

Kominfo found 1,670 hoaxes related to COVID-19 based on the handling of the spread of hoax content from early 2020 to June 2021.¹² These hoaxes often take the form of questions about the origins of COVID-19, the impact and risks of COVID-19, food or elixir as a COVID-19 reliever, to the effects of COVID-19 vaccination.

One of the criminal acts that have been decided by the Court is: the case of Habib Rizieq who was sentenced to 4 years in prison, violating Article 14 paragraph (1) of Law Number 1 of 1946 concerning the Criminal Law Regulations Jo Article 55 paragraph (1) of the 1st Criminal Code, namely together with other actors committing acts of committing, ordering to do and participating in the act of submitting a statement/ notification aims to cover up health conditions Habib Rizieq who are reactive to Covid-19/Probable Covid-19 and they do this by submitting statements/notices via video and social media to clarify and counter videos and hoax/fake news circulating on social media about the health condition of the Defendant by saying the Defendant's health condition is in good health, even though the Defendant, based on the information Habib Rizieq reactive Covid-19 / Probable Covid-19. In this case, even though they made statements/notices via video and social media, they were not subject to the ITE Law,

¹¹ Directorate General of Disease Prevention and Control, (2020), Pedoman Pencegahan Dan Pengendalian Coronavirus Disease (COVID-19) 4th Revision, Jakarta: Ministry of Health of the Republic of Indonesia, p. 11.

¹² https://news.detik.com/berita/d-5674927/banyak-hoax-jual-corona-ini-step-antisipatif-yang-can-do?_ga=2.255430528.904408606.1640409951-25160539.1640409951

according to the author, because our Criminal Procedure Code does not recognize digital evidence. So that if forced to use the ITE Law, the evidence will be weak so that it can be refuted by the defendant's legal advisor. This is what the authors observe from several cases of hoax crimes that are more likely to use Article 14 paragraph (1) of Law Number 1 of 1946 to convict the perpetrators. For example, in the case of M. Yunus Wahyudi, who claimed to be an anti-mask activist, conveyed a statement in front of his colleague which was documented in a visual image or at least in video form stating that in Banyuwani there was no covid, against the perpetrator as well as Article 14 paragraph (1) of Law N0. 1 of 1946 and sentenced to 3 years in prison.

Likewise, the Saiful Amri case intentionally and without rights spread false and misleading news that resulted in consumer losses in electronic transactions, which was carried out by posting a sentence in the form of "The corona virus has entered the Singkawang area. It is hoped that when traveling, don't forget to wear a mask" accompanied by posting a Circular Letter. from the Director of the Regional General Hospital Abdul Azis Singkawang on the perpetrator's WhatsApp status so that it can be seen by others and circulated on other social media, where based on the statement from RSUD dr. Abdul Aziz Singkawang on Saturday 01 February 2020, No referrals from patients who were suspected of having Corona Virus Disease (Covid-19) received either from the Singkawang Selatan Health Center in Singkawang City or from other *Puskemas* and Hospitals and also stated that the information was not true. The defendant is subject to Article 14 paragraph (2) of Law Number 1 of 1946 and is sentenced to 3 months in prison.

According to Article 44 of the ITE Law, evidence for the investigation, prosecution, and examination in court includes evidence as referred to in the statutory provisions, and other evidence in the form of electronic information and/or electronic documents as referred to in Article 1 point 1 and number 1 4 and Article 5 paragraphs (1), (2) and (3).

Electronic Information Evidence and/or Electronic Documents that meet the formal requirements and material requirements regulated in the ITE Law Evidence can be said to be digital evidence because it is in the form of Electronic Information and/or Electronic Documents by the criteria in Article 1 point 1 and number 4 of the Law -Law No. 11 of 2008 which includes writing, sound, pictures, maps, designs, photographs, electronic data interchange (EDI), electronic mail (electronic mail), telegram, telex, telecopy or the like, letters, signs, numbers, access codes, symbols, or processed perforations that have meaning or can be understood by people who can understand them and analog, digital, electromagnetic, optical, or similar forms, which can be seen, displayed, and/or heard through a Computer or Electronic System.

According to Article 5 (1) Electronic Information and/or Electronic Documents and/or their printed results are valid legal evidence. (2) Electronic Information and/or Electronic Documents and/or their printed results as referred to in paragraph (1) is an extension of valid evidence by the applicable procedural law in Indonesia, (3) Electronic Information and/or Electronic Documents are declared valid when using the Electronic System by the provisions stipulated in this Law. In this case, the defendant should be subject to the ITE Law, but in reality, it is only subject to Article 14 of Law no. 1 of 1946, namely "broadcasting false notices intentionally causing trouble among the public", where the maximum penalty is 10 years in prison.

One of the obstacles to why the case is not subject to law according to the author is the problem of evidence and proof. Currently, the criminal law evidence system in Indonesia as regulated in Article 184 of the Criminal Procedure Code does not yet recognize the term electronic/digital evidence as legal evidence according to law. There is still a lot of debate, especially between academics and practitioners regarding electronic evidence. The proof of Article 14 of Law No.1 of 1946 is considered easier because the elements of a criminal act in the article do not require the element of using electronic transactions, the crime of spreading false news in the article is only associated with the element of deliberately publishing trouble among the public.

Other difficulties related to proving hoax criminal cases in general (besides this case) are:

1. Generally, perpetrators have many accounts and these accounts are fake or fictitious created to launch their actions involving violations of the ITE Law so that the Police find it difficult to track them.
2. Victim witnesses who are outside the region or even abroad make it difficult for investigators to examine witnesses and file investigation results.
3. This law has a range of jurisdiction not only for legal actions that apply in Indonesia and/or carried out by Indonesian citizens but also applies to legal actions that are carried out outside the legal area (jurisdiction) of Indonesia, both by Indonesian citizens (WNI)) as well as foreign citizens (WNA) or Indonesian legal entities or foreign legal entities that have legal consequences in Indonesia, considering that the use of information technology for information and electronic transactions can be cross-territorial or universal. What is meant by "harming the interests of Indonesia" is including but is not limited to harming the interests of the national economy, protection of strategic data, national dignity, defense and security of the state, state sovereignty, citizens, and Indonesian legal entities.

CONCLUSION

Based on the description above, it can be concluded that: proof the crime of spreading hoax news through social media during the covid pandemic still uses Law no. 1 of 1946, has not used the ITE Law, considering that our criminal procedure law still uses the Criminal Procedure Code which does not yet recognize digital evidence, as evidence contained in Article 184 of the Criminal Procedure Code. Difficulties in proving hoax cases in the criminal justice system also occur during the process of investigation and investigation related to legal acts carried out outside the jurisdiction that have legal consequences in Indonesia, considering that the use of information technology for information and electronic transactions can be cross-territorial or universal.

Suggestion

Considering that this hoax crime can occur across territories and globally, the Code of Criminal Procedure Code which was a masterpiece at the time it was published in 1981, needs to be reviewed for changes to be made so that it can keep up with the times.

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