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# **THE 5 th INTERNATIONAL AND CALL PAPER**

## **Legal Reconstruction in Indonesia Based on Human Rights**

**Imam As Syafei Building**

**Faculty of Law, Sultan Agung Islamic University**

**Jalan Raya Kaligawe, KM.4 Semarang, Indonesia**

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# The 5<sup>th</sup> PROCEEDING

## *“Legal Reconstruction in Indonesia Based on Human Right”*

**IMAM AS SYAFEI BUILDING**

Faculty of Law, Sultan Agung Islamic University  
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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*“Legal Reconstruction in Indonesia Based on Human Right”*

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## PREFACE

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnau, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

## PROCEEDINGS

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# Enforcement Of Criminal Law In False News (Hoax) Management According To Law No. 11 In 2008 That Has Been Amended To Be Law No.19 Of 2016 Concerning Electronic Information And Transactions In Islamic Law And Positive Laws

Yanto Irianto

## ABSTRACT

*The aim of the author is to find out how the arrangements related to false news or hoaxes and how the application of criminal sanctions against parties related to the spread of hoax according to Law Number 11 which has been changed to Act Number 19 of 2016 concerning Information and Electronic Transactions and several other provisions . By using the normative juridical research method, it is concluded: 1. The basis for regulating the spread of fake news or hoaxes that have been regulated in Law Number 11 Year 2008 which has been amended to become Law Number 19 Year 2016 article 28 paragraph 1 and 2. In addition regulations for spreading fake news or hoax are also spelled out in Law Number 1 of 1946 articles 14 and 15. More specifically, the perpetrators of spreading false news can be charged with other related articles namely article 311 and 378 of the Criminal Code, Article 27 paragraph 3 of the Law Number 19 of 2016 concerning Information and Electronic Transactions, Law No. 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination, and the perpetrators of spreading false news are also subject to articles related to hate speech. 2. With the increasingly rapid development of digital technology today, the more diverse new acts committed through this digital media, in this case the spread of false news (Hoax) that is rife. The current regulations regarding fake news regulate not only the fabrication of fake news that is given criminal sanctions but also for perpetrators who participate in sharing / transmitting (sharing / forward) such false news. In the perspective of Islamic thought, hoaks are public deception or dissemination of information that is misleading and even defames others. Hoaks are classified as a party that harms others and the hoaks they make are categorized as hadith ul ifki or hoaxes. Therefore, the spreaders were threatened with very severe torture. In a positive legal perspective, hoaks are false and misleading news content, content that creates hatred or hostility towards certain individuals and / or groups of people based on ethnicity, religion, race, and intergroup (SARA). Perpetrators can be sentenced to prison for a maximum of ten years.*

**Keywords:** Criminal Law Enforcement, Counterfeit News Repairs (Hoax), Information and Electronic Transactions, Islamic Stud

## 1.1. Introduction

The development of the internet in the world is very fast, including in Indonesia. Especially after the appearance of a smart phone (Smartphone). Users are also diverse, ranging

from adults to elementary school children. Also from various economic backgrounds.<sup>287</sup> Internet media is media that knows no boundaries. Both the boundaries of the territory and the boundaries of state<sup>4</sup>. This brings positive and negative impacts for its users. As is known, the rules of conduct adopted by each

<sup>287</sup> Asril Sitompul, *Hukum Internet Pengenalan Mengenai Masalah Hukum di Cyberspace*, (Bandung: PT. Citra Aditya Bakti, 2004), hlm.71

country are different, so what can be done freely in one country will be considered a violation of the law in another country, and vice versa. While on the internet do not recognize national borders. For example an Indonesian internet user who enters a site is no different from users from other countries who enter the same site. In accordance with its name WWW, namely the World Wide Web, then this internet network is as wide as the world. Laws made to regulate the internet in one country will immediately and automatically enter the jurisdiction of other countries. Of course there will be contradictions, as said above, what is prohibited in Indonesia may be required in other countries.<sup>288</sup> The rise of hoax news circulating can be bad for the development of the Indonesian state. Hoax can cause debate until it is not impossible to break friendships. Moreover, the hoax that contains SARA which is very vulnerable invites friction between people to disturb the country's stability and diversity. Hoax in the context of the unclear reporting of the origin of the maker, it is not biased ensnared by the Press Act, because it is rather difficult to distinguish between the Mainstream Press and the Hoax Press. If in the New Order era it was rather easy, because the mainstream press was a licensed press, whereas at present the press is without a permit, because in Indonesia the obligation to have a SIUPP (Press Issuance Business License) has been abolished.<sup>289</sup> Today's society can create a story and write on a privately owned site or blog, or a social media account which if viewed from the material and substance can be better than news in the mainstream media. Lack of knowledge in the community and laziness to find out the truth of a news story makes hoaxes spread very quickly. In general, the community currently has very little interest in reading. For them it is enough to read the title and the first paragraph they have got the gist of the news. This is also supported by the online news format,

<sup>288</sup> Ibid.

<sup>289</sup> Asril Sitompul, *Op-Cit.* hlm. 73.

<sup>290</sup> Hasil Survey Mastel Tentang Wabah *Hoax* Nasional, *Op- Cit.*

<sup>291</sup> Undang-Undang Nomor 19 Tahun 2016 atas perubahan Undang-Undang No 11 Tahun 2008 Tentang Informasi dan Transaksi Elektronik.

where the most widely read news portals are news that only consists of a few paragraphs or paragraphs, and even the presentation tends to be incomplete.

Fake reporting is processed in such a way as to attract readers. Netizens participate in the comments column to discuss a story on the assumption that they can straighten out the news through their opinions. Though not necessarily what they convey can be understood by others, so that more and more people are participating both commenting on the news itself and other people's arguments. Therefore, hoax news is more popular, so it covers the existence of the original news. The hoax outbreak has become a national problem including divisions, political instability and security disturbances that have the potential to hamper national development.<sup>290</sup> The term hoax in the Koran can be identified from the meaning of the word *al-Ifk* which means reversal (like an earthquake that reverses a country), but what is meant here is a big lie, because a lie is a distortion of facts. While the emergence of hoaxes (a lie) is caused by dissidents.

In Law Number 19 Year 2016 concerning Amendments to Law Number 11 Year 2008 Regarding Information and Electronic Transactions, it is regulated regarding the dissemination of hoaxes for those who violate them may be subject to the following sanctions: Article 45 A paragraph (1), namely the charge of false news and misleading, Article 45 A paragraph (2), which is the content that causes hatred or hostility of certain individuals and / or groups of people based on ethnicity, religion, race, and between groups (SARA).<sup>291</sup>

The term hoax in the Koran can be identified from the meaning of the word *al-Ifk* which means reversal (like an earthquake that reverses a country), but what is meant here is a big lie, because a lie is a distortion of facts. While the emergence of

hoaks (a lie) is caused by dissidents.<sup>292</sup> word *al-ifk* in various forms 22 times it is mentioned in the Qur'an. The word *al-ifk* is used in the Qur'an for the following meanings:

- 1) Lying words, i.e. words that are not in accordance with reality. He is mentioned in the case of the wife of the Messenger of Allah., Aisha (may Allah be pleased with her). (Surat al-Nur / 24: 11).
- 2) The destruction of a country because its inhabitants do not justify the verses of Allah, for example QS. al-Tawbah (9): 70.
- 3) Turned away from the truth because they always lie, like QS. al-Ankabut (29): 61<sup>293</sup>

The hoax case that happened for example happened to a writer, blogger, and businessman who was known for the *kitchenbuku.com* self publishing business, Jonru Ginting. Jonru was proven to have violated Article 28 paragraph 2 Juncto Article 45A paragraph 2 of Law Number 19 of 2016 concerning Amendment to RI Law Number 11 of 2008 concerning Information and Electronic Transactions in conjunction with Article 65 paragraph 1 of the Criminal Code.

The prosecutor also said that a series of information which was said to cause hatred was uploaded by Jonru in his Facebook account. According to the prosecutor also, the aggravating things were that the defendant did not feel guilty and regretted his actions and this case attracted the attention of the public. While the mitigating thing is that the defendant is the backbone of the family and has never been convicted. Jonru is also subject to a layered article First, Article 28 paragraph (2) juncto Article 45A paragraph (2) of Law Number 19 of 2016 concerning Amendments to RI Law Number 11 of 2008 concern-

ing Information and Electronic Transactions (UU ITE). The second indictment for Jonru is Article 4 letter b number 1 juncto Article 16 of Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination. And the third indictment is Article 156 of the Criminal Code.<sup>294</sup> The next case is that of Buni Yani, a researcher from Leiden University, the Netherlands. Who uploaded the viral video of the speech of the former Jakarta governor, Basuki Tjahaja Purnama (Ahok). In the video the defendant removes the word "use" while what Ahok said uses the word "use", so as if Ahok said he was lying.

From the description above, the author is interested in writing an article with the title "Criminal Law Enforcement in Counterfeiting News or Hoax according to Law Number 11 of 2008 which has been amended by Law Number 19 of 2016 concerning Information and Electronic Transactions in Legal Studies Islam".

## 1.2. Formulation of the problem

1. What are the arrangements regarding fake news or hoaxes according to Islamic Law studies?
2. BHow is the application of criminal sanctions against parties related to the spread of hoax according to Law Number 11 which has been changed to Act Number 19 of 2016 concerning Information and Electronic Transactions and several other provisions?

## 1.3. RESEARCH METHOD

The method used by the author in writing this article is the method of literature or from secondary legal materials, existing literature, writings in the form of theses, journals, papers and other articles, also take from primary legal legal materials name-

<sup>292</sup> M. Quraish Shihab. "Tafsir Al-Misbah: Pesan, Kesan dan Keserasian Al-Quran, IX, (Jakarta: Lentera Hati, 2002), hal. 296.

<sup>293</sup> Fauzi Damrah, "Ifk" h. Dalam Sahabuddin et al (ed.), *Jurnal Ensiklopedia Al-Qur'an, I, (2007), hal. 342.*

<sup>294</sup> wartakota.tribunnews.com, "Buni Yani Sempat Mengaku Telah Memotong Kata "Pakai" dalam Transkrip Pidato Ahok". Artikel diakses pada 02 Juli 2018. <https://liputan6.com> > News > Peristiwa "Ini Postingan Jonru Ginting yang Berujung Tersangka."

ly the Law related, and the Criminal Code.

#### **1.4. Theoretical review**

In this day and age, many laws are colored and discussed with various topics, including the discussion on legal protection. In the discussion, it will indirectly link it with the law makers themselves. Talking about legal protection, this is one of the most important elements of a rule of law. It is considered important because in the formation of a country also will be formed laws that govern each of its citizens. It is common to know that a country will have a reciprocal relationship between its own citizens. In that case will give birth to a right and obligation to each other. Legal protection will be the right of every citizen.

But on the other hand it can also be felt that legal protection is an obligation for the country itself, therefore the state is obliged to provide legal protection to its citizens. After we know the importance of legal protection, then we also need to know about the meaning of legal protection itself. Legal protection is a protection given to legal subjects in the form of instruments both preventive and repressive, both oral and written. In other words it can be said that legal protection as a separate description of the function of the law itself, which has the concept that the law provides for justice, order, certainty, usefulness and peace. The above understanding invites several experts to express their opinions regarding the understanding of legal protection including:

- 1) According to Satjipto Raharjo, defining Legal Protection is to provide protection to human rights that are harmed by others and the protection is given to the community so that they can enjoy all the rights provided by law.
- 2) According to Philipus M. Hadjon argues that Legal Protection is the protection of dignity and dignity, as well as recognition of human rights owned by legal subjects based on the legal provisions of arbitrariness.

- 3) According to the CST Kansil Legal Protection is a variety of legal efforts that must be given by law enforcement officials to provide a sense of security, both mind and physical from interference and various threats from any party..
- 4) According to Philipus M. Hadjon, Legal Protection is a collection of rules or rules that will be able to protect one thing from another. With regard to consumers, the law provides protection of the customer's rights from something that results in the fulfillment of those rights.
- 5) According to Muktie, A. Fadjar Legal Protection is a narrowing of the meaning of protection, in this case only protection by law. Protection provided by law is also related to the existence of rights and obligations, in this case which are owned by humans as legal subjects in their interactions with fellow humans and their environment. As subjects of human law, they have the right and obligation to take legal action.

In carrying out and providing legal protection the need for a place or container in its implementation is often referred to as legal protection facilities. Means of legal protection are divided into two types which can be understood, as follows:

##### 1) Means of Preventive Legal Protection

In this preventive legal protection, legal subjects are given the opportunity to raise their objections or opinions before a government decision gets a definitive form. The aim is to prevent disputes. Preventive legal protection means a great deal of governmental action based on freedom of action because with preventive legal protection the government is driven to be careful in making decisions based on discretion. In Indonesia there are no specific arrangements re-

garding preventive legal protection.

## 2) Facilities for Repressive Legal Protection

Repressive legal protection aims to resolve disputes. The handling of legal protection by the General Courts and Administrative Courts in Indonesia falls into this category of legal protection. The principle of legal protection against government actions rests and comes from the concept of the recognition and protection of human rights because according to history from the west, the birth of the concepts of the recognition and protection of human rights is directed to the limitations and placement of community obligations and government. The second principle that underlies legal protection against governmental acts is the principle of the rule of law. Associated with the recognition and protection of human rights, the recognition and protection of human rights takes first place and can be linked to the goals of the rule of law.

## DISCUSSION

### 2.1. Arrangements Regarding Fake News or Hoax Provisions regarding news dissemination

A hoax or hoax that can issue confusion is regulated in two provisions through Law Number 1 of 1946 concerning Criminal Law. Article 14 of the Act a quo emphasizes: paragraph 1 “*barangsiapa, dengan menyiarkan berita atau pemberitahuan bohong, dengan sengaja menerbitkan keonaran dikalangan rakyat, dihukum dengan penjara setinggi-tingginya sepuluh tahun*”; ayat 2 “*barangsiapa mengeluarkan pemberitahuan yang dapat menerbitkan keonaran*

*dikalangan rakyat, sedangkan dia patut dapat menyangka bahwa berita atau pemberitahuan itu bohong, dihukum dengan penjara setinggi-tingginya tiga tahun*”.<sup>295</sup>

The distinguishing value of the two provisions above, namely in the first verse is the act of spreading false news will cause trouble because intentionally as an intention or certainty. This means that criminal offenders clearly have the will and knowledge that the act of spreading the news of lies will cause trouble. Whereas in the second verse, it is an act of intentional possibility, that to him it is worth knowing or it is appropriate to suspect that the act of spreading the news of lies will cause a stir. Concerning the obscurity of the meaning of what is meant by “chaos” in the a quo article, it has been explained further in its provisions that, disorder is greater than anxiety and shaking the hearts of the population which is not small in number.<sup>296</sup>

*With regard to this provision, presumably the actions of one citizen a few months ago which disseminated false information about rush money related to the demonstration action plan for November 25, 2016, is an act that can be qualified as a spreading of false news which will cause disturbance because it has caused resentment of the population, especially banking customers.*

Furthermore, the dissemination of hoax news that can cause hatred towards a group, the provisions are regulated in Article 28 paragraph 2 of the Law on Information and Electronic Transactions: “Everyone intentionally and without the right to spread information intended to incite hatred or hostility of individuals and / or certain community groups based on ethnicity, religion, race and intergroup (SARA), “This article actually does not contain the element of” acts of de-

295 Nur Aisyah Siddiq, “Penegakan Hukum Pidana Dalam Penanggulangan Berita Palsu (Hoaks) Menurut Undang-Undang No.11 Tahun 2008 Yang Telah Dirubah Menjadi Undang- Undang No.19 Tahun 2016 Tentang Informasi Dan Transaksi Elektronik” Dalam Jurnal Lex Et Societatis Vol. V/No. 10/Des/2017,hal. 27

296 PAF Lamintang, *Delik-delik Khusus*, (Bandung: Sinar Baru, 1984), hal. 12

ception. "It's just that, by returning to its legal events, often acts of intentionally spreading information intended to incite hatred, the information content distributed does not usually contain truth or nature as mere news of lies.

In combating hoaxes and preventing the widespread negative impact of hoaxes, the government basically has an adequate legal umbrella. Article 28 paragraphs 1 and 2, Article 27 paragraph 3, Law No. 11 of 2008 concerning Information and Electronic Transactions which have now been amended by the Law of the Republic of Indonesia, "RI Law No.1 of 1946 concerning Criminal Law Regulations", General Explanation, Article XIV No.19 of 2016, Articles 14 and 15 Law No. 1 of 1946, Articles 311 and 378 of the Criminal Code, as well as Law No. 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination are a number of legal products that can be used to combat the spread of hoaxes.

The following are some brief explanations related to the articles in the Law governing false news or hoaxes: Criminal Code Article 311 of the Criminal Code : *"If the person who commits a crime of pollution or written pollution is permitted to prove that the accusation is true, does not prove it, and the accusation is conducted contrary to what is known, then he is threatened with defamation with a maximum sentence of four years in prison."*<sup>297</sup> Article 378 of the Criminal Code: *"anyone who has the intention to benefit oneself or another person unlawfully, using a false name or false dignity, with deception, or a series of lies, moves others to hand over something to him, or to provide debt or write off receivables threatened with fraud with a maximum imprisonment of four years."* Law No. 1 of 1946 concerning Criminal Law Regulations Article 14 paragraph (1) and (2): Paragraph 1" *whoever, by broadcasting false news or notifications, with intentionally issues uproar among the people, sentenced to a maximum prison sentence of ten years.* "Paragraph 2" *whoever broadcasts*

<sup>297</sup> Moeljatno, Undang-Undang Hukum Pidana, (Jakarta: Bumi Aksara, 2006), hal. 42

<sup>298</sup> Republik Indonesia, "Undang-Undang RI No.1 Tahun 1946 tentang Peraturan Hukum Pidana", Penjelasan Umum, Pasal XIV.

*a news or issues a notice that can issue upheaval among the people, whereas he should be able to think that the news or notification is a hoax, punishable by maximum imprisonment is three years.* "Article 15: *Whoever spread the word of uncertain or exaggerated news or incomplete, while he understood at least should be able to surmise that such news would have been able to publish or confusion among the people, be punished with imprisonment maximum of two years.*"<sup>298</sup>

Whereas in the second verse, it is an act of intentional possibility, that to him it is worth knowing or it is appropriate to suspect that the act of spreading the news of lies will cause a stir. Concerning the obscurity of the meaning of what is meant by "chaos" in the a quo article, it has been explained further in its provisions that, disorder is greater than anxiety and shaking the hearts of the population which is not small in number.

Provisions regarding the spread of hoaxes or hoaxes that can cause disturbance are regulated in two provisions through Law Number 1 of 1946 concerning Criminal Law. Article 14 of the Law a quo states: paragraph 1 *"whoever, by broadcasting false news or notices, intentionally publishes disorder among the people, is sentenced to a maximum of ten years in prison"*; paragraph 2 *"whoever issues a notice can issue uproar among the people, whereas he should be able to think that the news or notification is a lie, sentenced to a maximum of three years imprisonment."* about fake news or hoaks:

- 1) Article 311 of the Criminal Code: *"If the person committing criminal pollution or written pollution is permitted to prove that the accusation is true, does not prove it, and the accusation is carried out contrary to what is known, then he is threatened with defamation with imprisonment for a maximum of four years."*



2) Article 378 of the Criminal Code: “anyone who has the intention to benefit oneself or another person unlawfully, using a false name or false dignity, with deception, or a series of lies, moves others to hand over something to him, or to provide debt or writing off receivables threatened with fraud with a maximum imprisonment of four years.”<sup>299</sup>

### **Law No.1 of 1946 concerning Criminal Law Regulations**

Article 14 Paragraphs (1) and (2): Paragraph 1 “Whoever, by broadcasting false news or notifications, intentionally publishes disturbance among the people, is sentenced to a maximum prison sentence of ten years.”

Paragraph 2 “Whoever broadcasts a news or issues a notice that can cause trouble among the people, while he should be able to think that the news or notification is a hoax, sentenced to a maximum imprisonment of three years. “

Article 15: “Anyone who spreads news that is uncertain or that is excessive or incomplete, while he understands at least should be able to suspect that such news will or has been able to issue confusion among the people, is punishable by imprisonment of a maximum of two years. “

Law No. 19 of 2016 concerning Information and Electronic Transactions.

Article 27 paragraph (3): “Everyone intentionally, and without the right to distribute and / or transmit and / or make access to Electronic Information and / or Electronic Documents that have content of defamation and / or defamation.”

Article 28 Paragraphs (1) and (2): Paragraph 1 “Any person who intentionally and without the right to spread false and misleading news that results in consumer losses in electronic transactions.” Paragraph 2 “Everyone intentionally and without the

299 PAF Lamintang, *Delik-delik Khusus*, hal. 13

right to disseminate the information intended to incite hatred or hostility of certain individuals and / or groups of people based on ethnicity, religion, race, and between groups or false dignity, by deception, or a series of lies, moving others to hand over something to him, or to give debt or writing off receivables threatened with fraud with a maximum imprisonment of four years. “

So in accordance with the above explanation, the punishment of the perpetrators of hoaxes is not only imposed on the perpetrators who write or post the first time a hoax, but also on people who are just fadfully distributing (forward) / sharing.

The role of information and communication technology in the era of globalization has placed a very strategic position because it presents a world without borders, distance, space and time, which has an impact on increasing productivity and efficiency. The influence of globalization with the use of information and communication technology tools has changed people’s lifestyles, and has evolved in a new order of life and led to social, economic, cultural, defense, security, and law enforcement changes.<sup>300</sup>

Information and communication technology today, has been utilized in the social life of society, and has entered various sectors of life both the government sector, business sector, banking, education, health, and personal life. The benefits of information and communication technology in addition to having a positive impact are also realized to provide opportunities to be used as a means of committing new crimes (cyber crime) so protection efforts are needed. So that it can be said that information and communication technology is like a double-edged sword, in which in addition to making a positive contribution to improving the welfare of progress, and human civiliza-

300 Sunarso, Siswanto, *Hukum Informasi dan Transaksi Elektronik*, hal. 40

tion, it also becomes a potential and effective means to carry out acts against the law.<sup>301</sup>

Acts against the law in cyberspace is a very worrying phenomenon, considering acts of ceding, hcking, fraud, terrorism, and the dissemination of destructive information have become part of the activities of perpetrators of crime in cyberspace. This fact is so contrasted with the absence of regulations governing the use of information and communication technology in the various sectors concerned. Therefore, to guarantee legal certainty, the government is obliged to conduct regulations on various activities related to the use of information and communication technology.

RI Law Number 11 of 2008 which has been amended to Act Number 19 of 2016 concerning Information and Electronic Transactions is a form of responsibility that must be carried out by the State, to provide maximum protection for all activities in the utilization of information and communication technology in the country. to be well protected from potential crime and misuse of technology. In consideration of Law No. 11 of 2008 which was amended to Act No. 19 of 2016 concerning ITE, it was stated that the national development that had been implemented by the Indonesian government starting in the new order era until the current order, is an ongoing process that must always be responsive to various the dynamics that occur in society. The dynamics of people's lives, due to the influence of information globalization, have placed Indonesia as part of the information society and electronic transactions at the national level so that the development of information technology can be carried out optimally, evenly, and spread across all walks of life to educate the nation's life.<sup>302</sup>

Thus the rapid development and progress of information technology, which is one of the causes of changes in the activities of human life in various fields which have directly influenced the birth of new

forms of legal action. The use and use of information technology must continue to be developed to maintain, preserve, and strengthen national unity and integrity based on legislation in the national interest.

In addition, the use of information technology plays an important role in trade and national economic growth to realize public welfare.<sup>23</sup> Based on that, the government needs to support the development of information technology through legal infrastructure and its regulation, so that the utilization of information technology is carried out safely, to prevent its misuse by paying attention religious and social cultural values of Indonesian people.

The development and use of information, media and communication technology has changed both the behavior of people and human civilization globally. This development has given birth to a new legal regime, known as cyber law or telematics. Cyber law or cyber law is used internationally for legal terms related to the use of information and communication technology.

## **2.2. Hoaks in Perspective of Islamic Thought**

Hoaks as a form of lying to the public are acts that are not justified in Islam. All types of deception both lies intended for individuals and lies against institutions, organizations, or groups of people who aim to form public opinion or propocation and political interests are prohibited acts according to Islamic studies. Hoaks are classified as a party that harms others and the hoaks they make are categorized as hadith ul ifki or hoaxes. Pada ayat al-Quran Allah Swt explain:

*“Surely the people who brought the hoax were from your group too. do not suppose that false news is bad for you, even it is good for you. each one of them gets a reply from the sin he committed. and who among those*

<sup>301</sup> Sunarso, Siswanto, *Hukum Informasi dan Transaksi Elektronik*, hal. 41

<sup>302</sup> Budi Suhariyanto, *Tindak Pidana Informasi (cyber crime)*. (Depok: Raja Grafindo Persada, 2013), cet. II, hal. 30

who take up the largest portion in broadcasting false news is for him a great doom.”<sup>303</sup>

“Why when you hear the news that the believers and believers do not think well of themselves, and (why not) say:” This is a real hoax. “(QS. An-Nur 11-12).

Furthermore, the Koran also forbids the spread of hoaxes or hoaxes, such as the hadith of al-ifk, and Allah threatens that its spreaders will receive very painful punishment. This is how the Qur’an was released in the 19th verse of An-Nur verse:

“Verily those who want to make (the news of) such abominable acts spread among those who believe, for those who suffer the doom in the world and the hereafter. and Allah knows, while, you don’t know.” (Q.S. An-Nur: 19).

Thus, the information distributed by someone must be true and accurate. The accuracy of information in mass communication can also be seen from the extent to which the information has been carefully and thoroughly, so that the information presented has reached accuracy. Communicating information appropriately is a basic foundation not to cause the community of readers, listeners and viewers to experience errors. Errors caused by misguided information in the mass media, of course, can be estimated how much danger and loss suffered by many people.<sup>304</sup>

To achieve the accuracy of data and facts as information material that will be conveyed to the public, careful research is need-

303 Selengkapnya lihat Tafsir Alquran, Kementerian Agama, 2003 yang dijelaskan sebagai berikut: Berita bohong (hadits al-ifk) ini mengenai istri Rasulullah s.a.w. ‘Aisyah r.a. Ummul Mu’minin, sehabis perang dengan Bani Mushtaliq bulan Sya’ban 5 H. Perperangan ini diikuti oleh kaum munafik, dan turut pula ‘Aisyah dengan Nabi berdasarkan undian yang diadakan antara istri-istri beliau. dalam perjalanan mereka kembali dari peperangan, mereka berhenti pada suatu tempat. ‘Aisyah keluar dari sekedupnya untuk suatu keperluan, kemudian kembali. tiba-tiba Dia merasa kalungnya hilang, lalu Dia pergi lagi mencarinya. Sementara itu, rombongan berangkat dengan persangkaan bahwa ‘Aisyah masih ada dalam sekedup. setelah ‘Aisyah mengetahui, sekedupnya sudah berangkat Dia duduk di tempatnya dan mengaharapkan sekedup itu akan kembali menjemputnya. Kebetulan, lewat ditempat itu seorang sahabat Nabi, Shafwan Ibnu Mu’aththal, diketemukannya seseorang sedang tidur sendirian dan Dia terkejut seraya mengucapkan: “Inna lillahi wa inna ilaihi raji’un, isteri Rasul!” ‘Aisyah terbangun. lalu Dia dipersilahkan oleh Shafwan mengendarai untanya. Syafwan berjalan menuntun unta sampai mereka tiba di Madinah. orang-orang yang melihat mereka membicarakannya menurut Pendapat masing-masing. mulailah timbul desas-desus. kemudian kaum munafik membesar-besarkannya. Maka fitnah atas ‘Aisyah r.a. itupun bertambah luas, sehingga menimbulkan kegoncangan di kalangan kaum muslimin.

304 Mafri Amir, Etika Komunikasi Massa, hal.91

305 Al-Quran dan Tafsir, Kementerian Agama Republik Indonesia, 2003.

ed by the Press, especially journalists. Islamic teachings accommodate the ethics of the accuracy of information through tabayyun. The word tabayyun is mentioned twice in Sura al-Nisa / 4: 94, and once in Sura al-Hujurat / 49: 6. “O you who believe, when you go (fight) in the way of Allah, then examine and do not say to those who say “greetings” to you: “You are not a believer” (then you kill him), with the intention of searching for material possessions of life in the world, because in Allah’s side there are many treasures. so were you first, then Allah bestowed His favor upon you, So examine. Surely Allah knows what you are doing. “(Q. An-Nisa ‘: 94).<sup>305</sup>

In Surat al-Hujurat / 49: 6, Allah says:

“Do you who believe, if the Pharisees come to you with a message, then be careful that you do not bring disaster upon a people without knowing the circumstances that make you regret your actions..” (Q.S. Al-Hujurat: 6).

In this verse, Allah gives a warning to the believers, if it comes to them a wicked person will bring news about anything, so that he will not be hasty in receiving the news before being examined and examined for its truth. Before careful research or confirmation or verification is carried out, do not be quick to believe the news of the wicked, because someone who does not care about his ungodliness will certainly not care about the lies of the news it conveys.

In this verse there are instructions in receiving someone’s information, it can

be accepted if he is fair, because the instructions in the verse to be careful when receiving news from people *facasiq*. Because *fasiq* people actually can't get the information. That information is trust, and wickedness is an indicator of loss of trust.

## **Conclusion**

The basis for regulating the spread of fake news or hoax that has been regulated in Law Number 11 Year 2008 which has been amended to become Law Number 19 Year 2016 article 28 paragraph 1 and 2. In addition, regulations for spreading fake news or hoax are also spelled out in Law Number 1 of 1946 articles 14 and 15. More specifically, the perpetrators of false news disseminators can be charged with other related articles namely articles 311 and 378 of the Criminal Code, Article 27 paragraph 3 of Law Number 19 of 2016 concerning Information and Electronic Transactions, Law -Number No. 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination, and the perpetrators of spreading false news are also subject to articles related to hate speech.

With the increasingly rapid development of digital technology today, the more diverse also new crimes committed through this digital media, in this case the spread of false news (Hoax) that is rife. The current regulations regarding fake news regulate not only the makers of the fake news who are given criminal sanctions but also for those who participate in sharing / transmitting the false news. In general, hoaks, which originate from English "hoaxes" or Latin "hoc est corpus" mean hoaxes or hoax information that can mislead other parties, can even cause confusion or hostility.

In the perspective of Positive Law, hoaks are irresponsible, irresponsible information that is intentionally and without right spread by the perpetrators intended to incite

hatred or hostility of certain individuals and / or groups of people based on ethnicity, religion, race and intergroup ( SARA), "The sentence is a maximum of ten years in prison.

In the perspective of Islamic studies, hoaks are categorized as false information that is spread with a specific purpose that can harm other parties. The hoaks in Islamic studies are identical with the blasphemous event of others such as the hadith *al-ifk* which occurred in the classical Islamic period which befell the companions of the Prophet Muhammad, especially Aisha, his beloved wife. The culprit was threatened with a very painful punishment in the hereafter.

## **Suggestion**

In Law Number 11 Year 2008 which has been amended by Law Number 19 Year 2016 concerning Information and Electronic Transactions, the focus of criminal action is only on the making and spreading false news (Hoax) alone, the focus of handling should mainly be social media service providers such as Facebook, Twitter, WhatsApp, YouTube and so on so that the spread of fake news (hoaxes) can be more controlled. The government should make companies providing social media services a legal subject in Indonesia where their rights and obligations are clear as media companies.

With the increasingly widespread spread of false news (hoaxes) that exist today can not be separated from the community itself in responding to false news. The community must be clever in responding to the information he receives. Therefore, the government must provide new media literacy education to the public so that the public as media consumers become aware of the media. facilitate ways of understanding the media, understanding the formation of the media, and understanding how the media construct reality.

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