

## The Efforts to Prevent & Eradicate Criminal Acts of Spreading Fake News and Hate Speech

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Article	Abstract.
<p>Keywords: Fake; Hate; ITE; Prevention; Speech; Technology.</p> <p>Article History Received: 2022-02-02; Reviewed: 2022-03-21; Accepted: 2022-03-24; Published: 2022-03-24.</p> <p>DOI: <a href="http://dx.doi.org/10.30659/jdh.v5i1.20205">http://dx.doi.org/10.30659/jdh.v5i1.20205</a></p>	<p>The purpose of this study was to identify and analyze efforts to prevent and eradicate the crime of spreading fake news in the community and to identify and analyze law enforcement against Article 28 paragraph (1) of Act No. 19 of 2016 concerning Amendments to Act No. 11 of 2008 concerning Information and Electronic Transactions. Advances in technology have had many impacts on people's lives, including in terms of information and social interaction in society. The absence of boundaries in cyberspace often makes someone less wise in using social media on the internet. One of them can be seen in the issue of spreading fake news. The approach method used in this research is a sociological juridical approach. The results of this study indicate that efforts to prevent criminal acts of spreading fake news can be done through digital literacy and do not share or broadcast in cyberspace, unless the truth is known. Meanwhile, the repressive efforts made by the government against the crime of spreading fake news are the existence of the criminal provisions of Article 28 paragraph (1) of Act No. 19 of 2016 concerning Amendments to Act No. 11 of 2008 concerning Information and Electronic Transactions. The novelty of this study is for law enforcement against the crime of spreading fake news starting from investigation, prosecution, examination of court trials to court decisions.</p>
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### 1. Introduction

Today, the unity and integrity of the nation's life is being tested, hate speech is increasingly intruding on the integrity of the nation's unity. The reason is that the advancement of digital technology has made the spread of hate speech easy so that it can penetrate all levels of society. The lack of literacy culture and the community's ability to understand the spread of hate speech adds to the complexity of efforts to prevent cases of hate speech. In this context, in 2020 there were 443 cases of which 1448 accounts involved.<sup>1</sup>

<sup>1</sup><https://news.detik.com/berita/d-5308010/polda-metro-tangani-443-case-cyber-selama-2020-1448-akun-di-take-down>, accessed on 12 July 2021.

Several cases of criminal acts of spreading fake news or hate speech spread through digital media are cases of Sandy Hartono who was tried by the Pontianak District Court in 2011. Based on the Pontianak District Court Decision dated September 20, 2011 Number: 347/Pid.B/2011/PN.PTK he was proven to have created a fake Facebook account and included pictures and sentences containing insults to religion. Islam. He was sentenced to imprisonment for 6 (six) years and a fine of IDR 500,000,000.00 (five hundred million rupiah) for intentionally and without rights spreading information aimed at causing hatred or hostility to certain individuals and/or community groups based on ethnicity, religion, race and inter-group (SARA). Not only that, the case of Alexander Aan, which was tried in the Muaro Court of West Sumatra in 2012, based on decision No. 45 /PID.B/2012/PN.<sup>2</sup>

The case of I Wayan Hery Christian, Wayan was sentenced to seven months in prison for being proven guilty in the trial at the Palu District Court. The verdict stated that I Wayan Hery Christian was proven to have committed acts of blasphemy through technology information facilities in accordance with Article 28 paragraph (2) in conjunction with Article 45 Paragraph (2) of Act No. 11 of 2008 concerning Electronic Transactions and Information (ITE). I Wayan Hery Christian made an insulting status on social media because he was disturbed by the sound of takbir welcoming *Eid al-Adha*. The various cases that exist show how hate speech is currently developing.

The problem of the spread of hate speech cases should not actually happen in the Pancasila state. The Indonesian state with the ideology of Pancasila mandates the realization of a civilized human being, so that every human being must be able to respect and respect other people. In fact, Pancasila has not been radiated in the life of the state and nation optimally. Such a situation clearly makes all public actions not have clear moral signs, so that the law is not able to optimally deal with social morality issues. The issue of social morality continues to intrude on all issues of community and state life in various dimensions. This includes the spread of hate speech. The role of civilization is needed in building an anti-hate speech paradigm in society.

## 2. Research Methods

The approach method used in this research is a sociological juridical approach. The specification of this research uses analytical descriptive. The types and sources of data used in this study are primary data and secondary data. In this case, the primary data used in the study was taken through interviews with the Sentono Goes Group in Vill. Banjardowo, RT/RW: 01/04, Dist. Genuk, Semarang City. Then, secondary data was obtained from literature study through primary legal materials, secondary legal materials and tertiary legal materials. Then analyzed with qualitative data analysis.

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<sup>2</sup><https://icjr.or.id/tren-gunakan-pasal-28-ayat-2-ite-terkait-pembebar-kehatan-berbasis-sara-akan-meningkat/>, Retrieved 17 May 2021.

### 3. Results and Discussion

#### 3.1. Efforts for Prevention and Eradication of Criminal Acts of Spreading Fake news in the Community

The postruth era resulted in various life changes. One of the striking changes to the postruth era is the use of the cyber world as an inseparable part of society.<sup>3</sup> The progress of the cyber world certainly has positive and negative impacts. In this context, the positive effect given by technological advances is that it makes it easier for everyone to carry out the activities they are involved in. Meanwhile, the negative effect of technological progress is the misuse of technology so that it is necessary to regulate actions related to technology.

The development of the cyber world in Indonesia has in turn resulted in various actions that can actually harm society. One of the actions that are rampant in the community to date is the spread of false or fake news which can often mislead and harm the public. According to Budiman, fake news is news that is not true delivered from a news source from an official media. In line with that, Marino also stated that the form of fake news is divided into six parts, namely:<sup>4</sup>

- *fake fantasy*: fake news deliberately designed to entertain, such as the otherworldly story of the Bat Boy and Elvis sightings from Weekly Worlds News.
- *funny fakes*: fake news designed to entertain.
- *Fake Fony*: news designed to prank someone.
- *Fallacious fake and elite propaganda*: misleading news and only sensational seeking.
- *flat fake* or full power propaganda: news that pretends to be satire and gets people to click on the link.
- *Falshivka fake* or de Ruski's propaganda: fake news coming from Moscow.

Based on these forms, in principle, many people cannot distinguish between true and fake news. In this regard, in the end, many people deliberately broadcast while the parties who leaked the broadcast did not know about the truth. Not infrequently, the broadcast of fake news by many people results in losses for certain parties. The phenomenon of spreading fake news in Indonesia raises various problems. Even the Indonesian Press Council also considered that the spread of fake news had entered a serious stage.<sup>5</sup> Nationalita and Nugroho in this regard also stated that there were two important things that caused the spread of fake news to enter a serious stage, namely:<sup>6</sup>

- Information spread on the Internet varies, ranging from factual to fictitious information.

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<sup>3</sup>Anisa Rizki Sabrina, Literasi Digital Sebagai Upaya Preventif Menanggulangi Hoax, *Journal of Communication Studies*, Vol. 5, No. 2, 2018, p. 35.

<sup>4</sup>Arwendria & Ariska Oktavia, Upaya Pemerintah Indonesia Mengendalikan Berita Palsu, *Jurnal Dokumentasi & Informasi*, Vol. 40, No. 2, 2019, p. 197.

<sup>5</sup>Christiany Judhita, Interaksi Komunikasi Hoaz di Media Sosial serta Antisipasinya, *Jurnal Pekomnas*, Vol. 3, No. 1, 2018, p. 32.

<sup>6</sup>Novianto Puji Rahardjo & Bagus Winarko, Analisis Tingkat Literasi Digital Generasi Milenial Kota Surabaya dalam Menanggulangi Penyebaran Hoaks, *Jurnal Komunika: Jurnal Komunikasi, Media, & Informatika*, Vol. 10, No. 1, 2021, p. 34.

- Flexibility of information content creation that becomes the bargaining power of technology, information and communication.

Based on that fact, in order to minimize and prevent the spread of such fake news, in the end the government gave various policies against the spread of fake news. Among the policies taken by the government to prevent this from happening are to take the following steps:<sup>7</sup>

- Blocking problematic sites.
- Establishing a National Cyber Agency as an umbrella/regulator for all activities in the cyber world.
- Collaborating with the Press Council to verify media and ensure media companies work professionally.
- Collaborating with social media companies to improve news filtering to reduce the spread of fake news.

In line with that, in a repressive manner in 2008 the Government also adopted a repressive legal policy with the stipulation of Act No. 11 of 2008 concerning Information and Electronic Transactions. Furthermore, in 2016 it was later revised to become Act No. 19 of 2016 concerning Amendments to Act No. 11 of 2008 concerning Information and Electronic Transactions. In more detail, the regulation of the crime of spreading lies is also regulated in Article 28 paragraph (1). in the article it is explained that every person intentionally and without rights spreads false and misleading news that results in consumer losses in electronic transactions. then the criminal provisions are regulated in Article 45 A paragraph (1) which states that anyone who intentionally and without rights spreads false and misleading news that results in consumer losses in electronic transactions as referred to in Article 28 paragraph (1) shall be punished with imprisonment for a maximum of 6 (six) years and/or a maximum fine of IDR 1.000.000.000,00 (one billion rupiah).<sup>8</sup>

In connection with the existence of this policy, of course in an effort to prevent and eradicate the crime of spreading fake news, it is necessary to make other efforts that can be done to minimize the occurrence of the crime of spreading fake news. Therefore, one of the important things that the government needs to do in tackling the crime of spreading fake news is digital literacy. According to Paul Gilster, digital literacy is the ability to understand and use information in a wide variety of sources that are accessed through media.<sup>9</sup>In line with that, Douglas AJ Belshaw, also explained that there are eight things that need to be strengthened in building digital literacy. are as follows:<sup>10</sup> Cultural by providing an understanding of the various contexts of users of the digital world; Cognitive in the form of thinking power in assessing content; Constructive in the form of creating something that

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<sup>7</sup>Kurniawan Hari Siswoko, Kebijakan Pemerintah Menangkal Penyebaran Berita Palsu atau Hoax, *Jurnal Muara Ilmu Sosial, Humaniora, & Seni*, Vol. 1, No. 1, 2017, p. 18.

<sup>8</sup>Bella Alberta & Jeslin Eka Putri, Analisis Yuridis Penegakan Hukum Pidana terhadap Penyebaran Berita Bohong Hoax Covid-19 Melalui Media Sosial, *Muhammadiyah Law Review*, Vol. 5, No. 1, 2021, p. 10.

<sup>9</sup>Karsoni Berta Dinata, Literasi Digital dalam Pembelajaran Daring, *Jurnal Ekspone*, Vol. 1, No. 1, 2021, p. 24

<sup>10</sup>Hana Silvana, Pendidikan Literasi Digital di Kalangan Usia Muda di Kota Bandung, *Pedagogia: Jurnal Ilmu Pendidikan*, Vol. 16, No. 2, 2018, p. 150.

is expert and actual; Communicative, namely understanding the performance of networks and communications in the digital world; Responsible self-confidence; Be creative by doing new things in new ways; Critical in addressing content and digital literacy as life skills; and Socially responsible.

In addition to efforts to tackle the crime of spreading fake news, it can be done by strengthening digital literacy, efforts to prevent the spread of fake news can also be done by not sharing or broadcasting through the digital world, unless the truth is known. This is because the homepage in the virtual world page is part of the public, so that the effort that can be done so as not to get caught in the spread of fraudulent crimes is to share or broadcast to cyberspace.

Based on this discussion, efforts to prevent criminal acts of spreading fake news can be carried out through digital literacy and not sharing or broadcasting in cyberspace, unless the truth is known. The prevention efforts taken by the government are by blocking problematic sites and forming a National Cyber Agency. Meanwhile, the repressive efforts made by the government against the spread of fake news are the existence of the criminal provisions of Article 28 paragraph (1) of Act No. 19 of 2016 concerning Amendments to Act No. 11 of 2008 concerning Information and Electronic Transactions.

### **3.2. Law Enforcement against the Crime of Spreading Fake news in the Electronic Information and Transaction Law**

Van Hamel explained that criminal law is a special suffering that has been imposed by the competent authority to impose a crime on behalf of the state as the person in charge of public law order for a violator, namely simply because that person has violated a legal regulation that must be enforced. enforced by the state.<sup>11</sup>Meanwhile, according to Pompe, a criminal act is a violation of norms (disruption to the rule of law) that has been intentionally carried out by an actor, where the imposition of punishment is necessary for the maintenance of law and order and the guarantee of the public interest.<sup>12</sup>Based on this explanation, criminal law regulates actions.

Efforts to prevent the occurrence of criminal acts of spreading fake news are to regulate the criminal provisions for spreading fake news as regulated in Article 28 paragraph (1) of Act No. 19 of 2016 concerning Amendments to Act No. 11 of 2008 concerning Information and Electronic Transactions. In the article, it is explained that everyone intentionally and without rights spreads false and misleading news that results in consumer losses in electronic transactions. then the criminal provisions are regulated in Article 45 A paragraph (1) which states that anyone who intentionally and without rights spreads false and misleading news that results in consumer losses in electronic transactions as referred

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<sup>11</sup>Mukhlis R, Tindak Pidana di Bidang Pertanahan di Kota Pekanbaru, *Jurnal Ilmu Hukum*, Vol. 4, No. 1, 2012, p. 202.

<sup>12</sup>Juara Munthe, Pidana terhadap Pelaku Tindak Pidana yang Disebabkan Pengaruh Minimum Keras yang Terjadi Di Kabupaten Sleman, *Jurnal Fakultas Hukum Universitas Atma Jaya*, 2014, p. 4

to in Article 28 paragraph (1) shall be punished with imprisonment for a maximum of 6 (six) years and/or a maximum fine of IDR 1.000.000.000,00 (one billion rupiah).<sup>13</sup>

In this regard, as explained above, criminal law is the law that regulates actions. An act can be categorized as a criminal act, when it fulfills all the elements in an article that regulates a criminal act. In this context, the elements of the criminal act of spreading fake news in Article 28 paragraph (1) of Act No. 19 of 2016 concerning Amendments to Act No. 11 of 2008 concerning Information and Electronic Transactions are as follows:

- Everyone: Article 1 paragraph (21) of Act No. 19 of 2016 concerning Amendments to Act No. 11 of 2008 concerning Information and Electronic Transactions, persons are individuals, whether Indonesian citizens, foreign nationals, or legal entities. Based on such discussion, what is meant by each person in the article is an individual, both Indonesian citizens and foreign nationals as well as legal entities.
- Intentionally and without rights; intentional intention in Dutch is called *dolus*. Vos once stated that the Criminal Code does not formulate a definition of intentional. According to the history of the formation of the Criminal Code (*Memorie van Toelating*) in the Twee de Kammer (Dutch Parliament) as quoted by Pompe, the condition for intentionality is *willens en wittens* or wills and knows (*In die zen kan men opzettelijkaanduiden als willen en wetens (aldus ook de Memorie van Toelating)*, Smidt I blz.77)). Both conditions are absolute. That is, a person is said to have committed an act intentionally if the act was done knowingly and willingly. It's just that the perpetrator who commits a criminal act is definitely aware that the consequences of the act can be in accordance with his will or purpose. or not in accordance with the will or purpose. Deliberate can be punished even though the will or purpose is not achieved (*Avvectus punitur ricet non scuator effectus*).<sup>14</sup> In connection with the conditions of intentionality, which contain will and know, then in the science of criminal law there are two theories, namely:<sup>15</sup>
  - The will theory (*wilstheorie*) was put forward by Von Hippel (*die grenze von vorsatz und fahrlässigkeit*, 1903). Deliberation is the will, the will to make an action and the will to cause a result because of that action. In other words, intentional is when the result is the true intention of the action taken.
  - The theory of imagination (*voorstelling-theorie*), this theory was put forward by Frank in "Festschrift Gieszen 1907" by Ueber and Aubuf des schuld-begriffs. According to Frank, based on psychological reasons, it is impossible for an action to result in an action, humans cannot want an effect. Frank's formula reads: it is intentional when an effect (caused by an action) is imagined as an intention (that action), and therefore the action concerned is carried out in accordance with the previously created image.

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<sup>13</sup>Bella Alberta and Jeslin Eka Putri, Op.cit, p. 10.

<sup>14</sup>Edy O.S. Hiariej, *Prinsip-prinsip Hukum Pidana*, Universitas Atmajaya, Yogyakarta, 2016, p. 169-170

<sup>15</sup>Dwidja Priyatno, *Sistem Pertanggungjawaban Pidana Korporasi dalam Kebijakan Legislasi*, Kencana, Jakarta, 2017, p. 41.

According to Vos in his leerboek, there are three forms of intentionality, namely intentional as an intention, intentional as a certainty or necessity, and intentional with an awareness of the magnitude of the possibility.

- Spreading false and misleading news; According to the Big Indonesian Dictionary, fake news or hoaxes are news that has no source. According to Silverman: Hoax is fake news that contains information that misleads people and has a specific political agenda.
- Which results in consumer losses in electronic transactions; Article 1 paragraph (2) of Act No. 8 of 1999 concerning Consumer Protection states that consumers are every person who uses goods and/or services available in the community, both for the benefit of themselves, their families, other people, and other living creatures and not for trading. Meanwhile, the meaning of Electronic Transactions according to Article 1 paragraph (2) of Act No. 19 of 2016 concerning Amendments to Act No. 11 of 2008 concerning Information and Electronic Transactions are legal acts carried out using computers, computer networks, and/or other electronic media. Based on this, then this element must appear consumer losses in electronic transactions.

An act can be called committing an act of spreading fake news if it fulfills all the formulations of a criminal act as stated above.

In line with that, the implementation of the criminal act of Act No. 19 of 2016 concerning Amendments to Act No. 11 of 2008 concerning Information and Electronic Transactions is also regulated in the Attachment to the Joint Decree of the Minister of Communication and Information of the Republic of Indonesia, the Attorney General of the Republic of Indonesia and the State Police of the Republic of Indonesia No. 228 of 2001, No. 154 of 2021, No. KB/2/VI/2021 concerning Guidelines for the Implementation of certain Articles in Act No. 11 of 2008 concerning Information and Electronic Transactions as Amended by Act No. 19 of 2016 concerning Information and Electronic Transactions. The provisions that specifically regulate the crime of spreading fake news are as follows:

- The criminal offense in Article 28 paragraph (1) of the ITE Law is not a criminal offense against the act of spreading fake news (hoaks) in general, but rather the act of spreading fake news in the context of electronic transactions such as online trading transactions.
- fake news or information sent or uploaded through messaging application services, online broadcasting, social sites/media, market places, advertisements, and/or other transaction services through electronic systems.
- The form of an electronic transaction can be in the form of an engagement between a business actor/seller and a consumer or buyer.
- Article 28 paragraph (1) of the ITE Law cannot be imposed on parties who default and/or experience force majeure.
- Article 28 paragraph (1) of the ITE Law is a material offense, so that consumer losses as a result of fake news must be calculated and the value determined.
- The definition of consumers in Article 28 paragraph (1) of the ITE Law refers to Act No. 8 of 1999 concerning Consumer Protection.

According to Satjipto Rahardjo, law enforcement is an effort to turn ideas about justice, legal certainty, and social benefits into reality. The processes of realizing these ideas are the essence of law enforcement.<sup>16</sup> This law enforcement effort is aimed at increasing order and legal certainty, so as to create the desired justice.<sup>17</sup>

The process of law enforcement against the perpetrators of the crime of spreading fake news is carried out through a series of investigations, investigations, prosecutions, examinations of court proceedings, and court decisions. Article 1 paragraph (5) of the Criminal Procedure Code states that an investigation is a series of actions to seek and find an event that is suspected of being a criminal act in order to determine whether or not an investigation can be carried out according to the method regulated in this law.<sup>18</sup> The investigation is carried out to determine whether an act committed by a person is included in the scope of a criminal act or not. After finding sufficient preliminary evidence, an investigation can be carried out.

Article 1 paragraph (2) of the Criminal Procedure Code states that an investigation is a series of actions by an investigator in terms of and according to the method stipulated in this law to seek and collect evidence that occurred and to find the suspect.<sup>19</sup> The investigation of Article 28 paragraph (1) of Act No. 19 of 2016 concerning Amendments to Act No. 11 of 2008 concerning Information and Electronic Transactions, an effort will be carried out in terms of collecting evidence so that a case becomes clearer. In this context, for example, tracking of posts or comments related to the spread of fake news is carried out by the suspect, so that a case becomes clear. The evidence as described in Article 184 paragraph (1) of the Criminal Procedure Code which explains that the types of valid evidence are:<sup>20</sup> Witness testimony; Expert description; Letter; Instruction; and Defendant's statement.

Correspondingly, when if at least two pieces of evidence have been found, then the investigation process can be delegated to the prosecutor's office and a prosecution will be carried out for examination at a court hearing. Prosecution is the action of the public prosecutor to delegate a criminal case to the competent district court in terms of and according to the method regulated in the Criminal Procedure Code with a request that it be examined and decided by a judge in a court session.<sup>21</sup> After the process of delegating authority to the court is carried out, then the examination at the trial court is carried out

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<sup>16</sup>Imam Sukadi, Matinya Hukum dalam Proses Penegakan Hukum di Indonesia, *Risalah Hukum*, Vol. 7, No. 1, 2011, p. 40.

<sup>17</sup>Santoyo, Penegakan Hukum di Indonesia, *Jurnal Dinamika Hukum*, Vol. 8, No. 3, 2008, p. 199

<sup>18</sup>Marizal Afriado, Pelaksanaan Penyelidikan & Penyidikan Perkara Pidana oleh Kepolisian terhadap Laporan Masyarakat di Polisi Lima Puluh, *JOM Fakultas Hukum*, Vol. III, No. 2, 2016, p. 6.

<sup>19</sup>Armunanto Hutahaen & Erlin Indarti, Lembaga Penyidik Sistem Peradilan Pidana Terpadu di Indonesia, *Jurnal Legislasi Indonesia*, Vol. 16, No. 1, 2019, p. 31.

<sup>20</sup>Lores Werluka, Alat Bukti yang Sah dalam Pembuktian menurut Undang-Undang No. 8 Tahun 1981 tentang Hukum Acara Pidana (KUHP), *Jurnal Belo*, Vol. 4, No. 2, 2019, p. 230.

<sup>21</sup>Ericha Cahyo Maryono, Kendala yang Dihadapi Jaksa Penuntut Umum untuk Melakukan Pra Penuntutan dalam Rangka Proses Penuntutan Tindak Pidana Umum (Studi Kejaksan Negeri Kota Malang), *Jurnal Universitas Brawijaya*, Malang, 2014, p.10.



from the initial stage starting from the opening of the trial open to the public until the court decision.

Based on this, law enforcement against the crime of spreading fake news as referred to in Article 28 paragraph (1) of Act No. 19 of 2016 concerning Amendments to Act No. 11 of 2008 concerning Information and Electronic Transactions starting from investigations, investigations, prosecutions, examinations of court trials to court decisions.

#### 4. Conclusion

Efforts to prevent criminal acts of spreading fake news can be done through digital literacy and not sharing or broadcasting in cyberspace, unless the truth is known. The prevention efforts taken by the government are by blocking problematic sites and forming a National Cyber Agency. As for law enforcement against the crime of spreading fake news starting from investigation, prosecution, examination of court trials to court decisions.

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