

Legal Analysis of the Spread of Fake News on Social Media Based on Pancasila Justice

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Abstract. *The crime of spreading fake news is a threat to society as social media users because of the large amount of news circulating online. Therefore, as a wise person in responding to this, the public must select every news that appears. The purpose of this study is to determine and analyze the legal construction of the spread of fake news on social media based on justice, to identify and analyze the weaknesses of the law against the spread of fake news on social media in Indonesia. This legal research is normative legal research. The spread of fake news on social media is increasingly widespread due to technological developments that are not balanced with digital literacy, thus triggering social unrest, conflict, and disintegration, while legal frameworks such as the Criminal Code and the ITE Law often cause problems due to their vague, overlapping definitions and the potential to silence expression. The Constitutional Court's decision emphasized the need for limited interpretation so that the articles on fake news are only applied to actions that pose a real risk. However, its effectiveness remains hampered by weaknesses in the law enforcement structure, minimal capacity of officers, lack of coordination, and a permissive and easily provoked community culture. To address this, Indonesia needs to learn from the German and Singaporean models, which emphasize the shared responsibility of the government, digital platforms, and the public through mechanisms for rapid content removal, public correction, and increased digital literacy. This ensures that handling hoaxes is not merely repressive but also creates a healthy, fair, and democratic digital space.*

Keywords: *Criminal; Justice; News; Spread.*

1. Introduction

Information is currently widely disseminated through online media. The ease of delivering information to the public, provided and disseminated online, makes it

difficult to properly filter information or news. No editorial team can be held responsible for the dissemination of information online, as anyone with access to online data transactions can disseminate information. The abundance of anonymous information contributes to the rapid spread of hoaxes online.¹

The spread of fake news or hoaxes can be defined as information that is not necessarily factual, as information is a collection of factual data. The spread of fake news or hoaxes is a serious problem that can trigger panic, social conflict, and even material and immaterial losses. The Indonesian government has regulated sanctions for those who spread hoaxes through various laws and regulations, particularly regarding: The Electronic Information and Transactions Law (ITE Law), the Criminal Code (KUHP), and the Law on the Press.²

Hoax is false or misleading information spread with the aim of influencing public opinion. Hoaxes often take the form of: Disinformation: Fake news intentionally created to mislead. Misinformation: Information that is false but spread without malice. Mal information: Information that is true but spread with the intention of harming a particular party.³

The crime of spreading fake news poses a threat to society as social media users, given the sheer volume of news circulating online. Therefore, as a wise person, we must carefully evaluate every news item that emerges. Sometimes, if someone doesn't understand the current situation and conditions online, they are vulnerable to harm, including the increasingly widespread hoaxes spread by irresponsible parties.⁴

Therefore, technology and law are interconnected and can influence society. Therefore, every effort is being made to create legal frameworks that are in line with technological developments, which will become a non-negotiable issue. The government, specifically the Ministry of Communication and Information, has issued regulations restricting the use of social media due to the numerous criminal cases where perpetrators use social media to trap their victims. These crimes include copyright infringement, online pornography, fraud, hate speech, and hoaxes.

¹Rahmadhany, Anissa, Anggi Aldila Safitri, and Irwansyah Irwansyah. "The phenomenon of the spread of hoaxes and hate speech on social media." *Journal of Technology and Business Information Systems* 3, no. 1 (2021): pp. 30-43.

²Aditia, Ilham Maulana, Dinie Anggraeni Dewi, and Yayang Furi Furnamasari. "The collapse of the values of national unity and integrity due to the proliferation of hoaxes." *Tambusai Education Journal* 5, no. 3 (2021): pp. 8995-9003.

³Maaliki, Naavi'U. Emal, and Eko Soponyono. "Criminal law policy in tackling the crime of fake news." *Journal of Indonesian Legal Development* 3, no. 1 (2021): pp. 59-69.

⁴Kaunang, Agnes Debora Elisabeth. "Spreading misleading false news resulting in consumer losses in electronic transactions is a criminal offense under the ITE Law (Supreme Court Decision Number 3905 K/Pid. Sus/2022)." *Lex Privatum* 13, no. 4 (2024). P. 21

The impact of spreading hoaxes is wide-ranging, including: Causing public unrest and mass panic. Fueling divisions in society, especially on political and religious issues. Damaging the reputation of individuals, organizations, or government institutions. Misleading public opinion, especially in emergency situations such as pandemics or elections.⁵

Indeed, social media provides users with the widest possible freedom to express themselves, their attitudes, their perspectives, their opinions, or perhaps simply to vent. This includes the freedom to use social media positively or negatively. We should be concerned about the current situation, where many people are using social media to spread hatred and provocation.

As one of the countries with the largest internet users in the world, social media use in Indonesia is often exploited by certain elites to achieve their political interests. Moreover, according to the Indonesian Internet Service Providers Association (APJII), the number of internet users in Indonesia in 2024 will reach 221,563,479 people out of a total population of 278,696,200 people in 2023. Based on the results of the 2024 Indonesian internet penetration survey released by APJII, Indonesia's internet penetration rate reached 79.5%. Compared to the previous period, there is an increase of 1.4%.⁶

On the one hand, this situation can be potentially beneficial, but on the other, it can be a threat or at least have negative consequences that can lead to division. Hoaxes are fabricated information designed to conceal the truth.⁷In other words, a hoax can also be defined as an attempt to distort facts using information that appears convincing but cannot be verified. The intentional goal of a hoax is to make the public feel unsafe, uncomfortable, and confused. Hoaxes are deliberately created to deceive readers or listeners into believing something and sway their opinions to follow the hoax creator's wishes.

Social media has been exploited to spread hoaxes, hate speech, and racial and intergroup sentiments. The spread of hoaxes through social media tends to disregard the impact on social harmony. The proliferation of hoaxes online can

⁵Andrian, Sri. "Digital Literacy in the Criminal Act of Spreading False and Misleading News Based on Law Number 19 of 2016 Concerning Electronic Information and Transactions." *Ameena Journal* 1, no. 4 (2023): pp. 340-350.

⁶APJII: Number of Indonesian Internet Users Reaches 221 Million People <https://apjii.or.id/berita/d/apjii-jumlah-pengguna-internet-indonesia-tembus-221-juta-orang> accessed August 20, 2025

⁷Kausar, Henry, Muhammad Hatta, and Hamdani Hamdani. "Criminal Liability of Perpetrators of Spreading Fake News (HOAX) on Social Media (Research Study at the Lhokseumawe District Court)." *Scientific Journal of Law Faculty Students, Malikussaleh University* 6, no. 2 (2023): p. 207.

even lead to real-world conflict. This is what then leads to increased unrest, as the conflict is horizontal within society.⁸

The spread of hoaxes uses a social engineering approach, which involves psychologically manipulating someone into taking action or revealing confidential information. Social engineering is typically carried out over the phone or the internet, and is most easily achieved through social media. Mechanisms such as the use of misleading headlines or photos, and the use of fake accounts with photos of attractive women or men with convincing profiles on social media, easily lead people to believe the accounts and the news they spread.⁹

One example of this incident occurred on the night of August 30, 2025, when the residence of House of Representatives member Uya Kuya in the Pondok Bambu area, Duren Sawit, East Jakarta, was raided by a mob who broke through the fence, damaged the doors and windows, and looted the items inside the house. In this incident, not only electronics and furniture were taken, but also his pet cat was looted, which then touched the public's sense of humanity because living creatures were involved. The police then followed up by securing seven people as the initial perpetrators, although the investigation is still ongoing to identify other perpetrators and a broader motive.

The main trigger for this looting was a viral narrative on social media, in which an old video of Uya Kuya dancing in the MPR RI building during the Annual Session was circulated, cropped in such a way that it appeared as if he was belittling the people's condition because he supported the salary/allowance increase for DPR members. He himself stated that the original video did show him dancing to music from the Indonesian Defense University (Unhan) choir, but the narrative was edited. Thus, the public framed him as an active participant in a situation that was insensitive to the people and sparked mass anger.

From a socio-legal perspective, this case illustrates how the spread of hoaxes or social media content that discredits public figures can trigger mass actions that exceed legal boundaries, even entering the criminal realm, such as looting and vandalism. Uya Kuya himself urged the public to be more discerning in viewing social media content and not be easily swayed by unverified narratives. From a law enforcement perspective, although arrests have been made, a thorough examination of the social media provocation factors, coordination with security forces, and victim recovery are still needed to ensure that mob violence does not set a bad precedent for public security and order.

⁸Hamana, Alife Dwily, Eskandar Eskandar, and Raja Harianto Suka. "Eradicating Human Trafficking Through Social Media: The Case of Exploitation of Indonesian Citizens in Cambodia." *Aufklärung: Journal of Education, Social and Humanities* 3, no. 1 (2023): pp. 75-80.

⁹Nur, Fuad. "Criminal Responsibility for Perpetrators of Online Fraud Using Social Engineering Method." *Innovative: Journal of Social Science Research* 5, no. 4 (2025): pp. 342-355.

Therefore, preventing hoaxes on social media is becoming increasingly important to maintain social harmony amidst the nation's diversity. This deserves attention because the massive dissemination of hoaxes can cause tension in society, incite hatred, and even lead to violent communal conflict. This substance will be discussed further, so that preventing hoaxes on social media can support the maintenance of social harmony.¹⁰

In the Islamic religion itself, the ethics of communication are found in the holy book of the Koran, Al-Hujurat verse 6: "O you who believe, if a wicked person comes to you bringing news, then examine it carefully so that you do not afflict your people with undesirable things because of your ignorance (regarding it) so that you regret what you have done."

In this verse, we are commanded to re-check the truth of a news item with the word "Tabayyun" which linguistically means seeking clarity about a news item until the situation is clear.

Adnan Buyung Nasution's statement that "a half-truth is more evil than the crime itself" illustrates the danger of manipulating facts or concealing part of the truth. Half-truths are often disguised as the full truth, but in fact, they are misleading and create greater injustice by distorting reality. While real crimes can be readily identified and acted upon, half-truths are even more dangerous because they cloak lies in a veil of morality or false honesty, thus subtly undermining public trust and the order of justice. In the context of law and ethics, this statement serves as a reminder that integrity and total honesty are the primary foundations for upholding justice and public trust in the law.

2. Research Methods

This legal research is normative legal research, that is, research that focuses on legal rules or regulations. Normative legal research examines legal rules or regulations as a system structure related to a legal event. This research is conducted with the aim of providing legal arguments as a basis for determining whether an event is right or wrong and how the event should be handled according to law.¹¹

3. Research Results and Discussion

3.1. Legal Construction of the Spread of Fake News on Social Media Based on Pancasila Justice

¹⁰Muarifillah, Ach Syamsul, Yulia Qur'aini, and Fitri Saswani. "Strengthening Information Literacy; Forms of Hoax News Prevention in the Use of Information and Communication Technology." *Multidisciplinary Journal of Academic Sciences* 1, no. 4 (2024): pp. 61-71.

¹¹Mukti Fajar and Yulianto Achmad, *Dualism of Normative and Empirical Legal Research*, Fourth Edition, (Yogyakarta: Pustaka Pelajar 2017) p. 36

The spread of fake news (hoaxes) is currently experiencing rapid growth, fueled by advances in information technology.¹² Current technological developments are not accompanied by literacy readiness among its users. Indonesia, as a developing country where technology, especially information technology, is a foundation for development in various sectors, is not immune to hoaxes. The hoax phenomenon occurs in the current technological era, where people have easy access to various types of information through various media. Technological developments are becoming increasingly sophisticated every year, resulting in many positive and negative effects as a result of this development itself. The wide variety of information accessed actually makes people easily deceived by rumors, also known as hoaxes, which are now quite difficult to distinguish between real and fake.¹³

Fake news, or hoaxes, is currently a phenomenon, raising concerns in all circles. The numerous effects resulting from these hoaxes have led to public unrest. Numerous factors contributing to the spread of hoaxes have exacerbated the extent of the hoaxes received by the public. As a result, hoaxes make people suspicious and even hate certain groups, cause distress or even physical harm to innocent people, and misinform policymakers. Belief in hoaxes then makes people less discerning in accepting news without first verifying its veracity. The goal of hoax spreaders is to create chaos, anxiety, hatred, and even fear among their readers. The impact of hoaxes can be extraordinary, including social, economic, political, and security impacts, and, more importantly, they can threaten the integrity of the state.

Hoax news content typically contains negative content that is provocative and slanderous. Hoaxes will target public emotions and create negative opinions, resulting in national disintegration. Hoaxes also provide negative provocation and agitation, namely igniting hatred, anger, incitement to the masses (to cause riots, rebellion, and so on), usually carried out by political figures or activists, fiery speeches to influence the masses. Hoaxes are also negative propaganda, where a deliberate and systematic effort to shape perceptions, manipulate the mind or cognition, and directly influence behavior to provide the desired response by the propagandist.

The phenomenon of spreading fake news on social media has grown in line with the increasing use of the internet as a primary source of information. The rapid flow of information has blurred the line between fact and manipulation, necessitating a legal framework capable of protecting the public without stifling

¹²Stella, Helen, Gunardi Lie, and Moody Rizqy Syailendra. "The criminal act of spreading fake news based on the ITE Law on the impact of people's freedom of expression on social media (Criminalization of the Jerinx case)." *Multilingual: Journal of Universal Studies* 3, no. 4 (2023): pp. 472-478.

¹³Mubarak, Ridho, and Wessy Trisna. "A legal analysis of victims of the spread of fake news (hoaxes) on social media." *Scientific Journal of Law Enforcement* 8, no. 1 (2021): pp. 67-73.

freedom of expression. In this context, law is not simply defined as written regulations, but as an instrument that shapes a healthy digital communication landscape.¹⁴

Supporting factors contribute to the worsening prevalence of hoax news among the public. Belief in hoax news then makes people less discerning in accepting news without first verifying its veracity. According to psychology, one factor that contributes to the public's easy belief and widespread dissemination of hoax news is that people naturally tend to believe news that aligns with their existing opinions or attitudes.

People who spread false information or hoaxes online will be subject to positive law. Positive law refers to applicable law. Therefore, hoax spreaders will be subject to the Criminal Code, Law No. 1 of 2024 concerning Electronic Information and Transactions (ITE), Law No. 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination, and action taken when hate speech has caused social conflict. In accordance with the aforementioned articles, the government is taking firm action to punish anyone who spreads false news (hoaxes). Many government programs have been implemented to minimize hoax news. Furthermore, non-governmental programs carried out by individuals or organizations are also easily found.

The development of digital technology has brought about significant changes in people's communication patterns. Platforms like Facebook, X, Instagram, and TikTok allow anyone to produce and distribute information without adequate filtering. In this situation, fake news easily spreads beyond the private sphere and into the public sphere, potentially influencing opinions, behavior, and even social stability. Legal frameworks must be able to anticipate these dynamics while respecting democratic principles.¹⁵

From a criminal law perspective, fake news is viewed as an act that can cause harm, unrest, and even conflict. However, law enforcement cannot be carried out haphazardly, as it must consider the element of intent, the consequences, and the relationship between the perpetrator and the resulting impact. The applicable legal framework must clearly define actions that can be categorized as spreading false information.

Regulations in Indonesia regarding fake news are outlined in several regulations, including the Criminal Code (KUHP), the Electronic Information and Transactions

¹⁴Wulandari, Charisma Dina, Munadhil Abdul Muqsith, and Fitria Ayuningtyas. "The Buzzer Phenomenon on Social Media Ahead of the 2024 Elections from a Political Communication Perspective." *Avant Garde* 11, no. 1 (2023): p. 134.

¹⁵Aryanda, Basrief. "The Criminal Act of Broadcasting Fake News in the Decision of the South Jakarta District Court Number 203/Pid. Sus/2019/Pn. Jkt. Sel." *Locus Journal of Academic Literature Review* 3, no. 4 (2024): pp. 336-348.

(ITE) Law, and a number of derivative regulations. However, these regulations often lead to varying interpretations because they have not fully adapted to the characteristics of the digital space. Therefore, justice demands clear harmonization between these regulations to avoid conflicting norms.¹⁶

The ITE Law, in particular, plays a crucial role in addressing fake news on social media. Certain articles impose criminal penalties on anyone who intentionally spreads false information, causing harm. However, criticism has arisen because the application of these regulations is deemed too broad and potentially ensnaring protected expression. This has led to calls for a more proportionate interpretation of the law.

In April 2025, the Constitutional Court (MK) read out its decisions on two cases, namely 105/PUU-XXII/2024 and 115/PUU-XXII/2024. The applicant in case 105 challenged several phrases in Article 27A and 28 paragraph (2) of Law 1 of 2024 concerning ITE. Meanwhile, in case 115, the applicant challenged phrases in Article 310 paragraph (3) of the Criminal Code, 45 paragraphs (2) and (7), as well as Article 27 paragraph (1) and Article 45 paragraph (1) of the ITE Law, and requested that Article 28 paragraph (3) and Article 45A paragraph (3) of the ITE Law be unlawful.

The Constitutional Court's considerations regarding the phrase in the article were declared acceptable. Previously, through decision number 78/PUU-XXI/2023 concerning fake news in Law 1 of 1946, the Constitutional Court also declared this article to have no legal force and was null and void. According to the Constitutional Court, this article limits and violates the right to freedom of expression because anyone can easily be convicted using it. In this case, the fake news article was interpreted too broadly. Furthermore, the mechanism for testing whether news is fake or true is now easy for the public to verify because information is so readily available.¹⁷

The continued validity of Article 28 paragraph (3) of the ITE Law and the fake news article in the 2023 Criminal Code directly mandates law enforcement to be meticulous in interpreting these crimes. As we read in the Constitutional Court's considerations, one of the grounds for revising the interpretation of the phrase was to ensure it complies with human rights principles. In this context, the use of the fake news article should no longer be applied to cases closely related to public expression or opinion.

¹⁶Aryanda, Basrief. "The Criminal Act of Broadcasting Fake News in the Decision of the South Jakarta District Court Number 203/Pid. Sus/2019/Pn. Jkt. Sel." *Locus Journal of Academic Literature Review* 3, no. 4 (2024): pp. 336-348.

¹⁷Darmawan, Rio Suryo. "Analysis of the Constitutional Court Decision Number 78/PUU-XXI/2023 concerning the Elimination of the Ban on the Dissemination of Hoax News from a Civil Law Perspective." *Analysis of the Constitutional Court Decision Number 78/PUU-XXI/2023 concerning the Elimination of the Ban on the Dissemination of Hoax News from a Civil Law Perspective* 5, No. 2 (2024): pp. 1-16.

Article 28 paragraph (2) of the ITE Law, the Constitutional Court limits its validity to "only Electronic Information and/or Electronic Documents that substantively contain acts/dissemination of hatred based on a particular identity that are carried out intentionally and in public, which give rise to a real risk of discrimination, hostility, or violence." This interpretation has consequences on the need to look at the intentionality and also the consequences of the actions of people who are considered to have committed hate speech.

Despite emphasizing the intent of Article 28 paragraph (3), the Constitutional Court did not further clarify the subject of hate speech. The subject of hate speech must be based on the identity attached to a person or group of people. Based on Articles 242 and 243 of the 2023 Criminal Code and also in Article 28 paragraph (3) of the ITE Law, the speech must not only be intentional but also based on "race, nationality, ethnicity, skin color, gender, mental disability, or physical disability." The Constitutional Court's emphasis and also this subject must be a concern for law enforcement when examining criminal acts of hate speech.¹⁸

Beyond criminal aspects, the law must also consider human rights, particularly the constitutionally guaranteed freedom of expression. The line between criticism, opinion, and fake news is often difficult to define, and this distinction is key to building a just legal system. Therefore, the principle of justice plays a central role in ensuring that its handling does not lead to repressive public spaces.¹⁹

Fake news can have a wide-ranging impact on people's lives, ranging from panic and unrest to disruption of political and economic stability. However, not all misinformation should be punished. In this context, the law must distinguish between negligent errors and deliberate acts intended to create chaos. Justice is a crucial basis for this distinction.

Justice emphasizes that rules should not be applied rigidly. The law must consider the social context, the perpetrator's intent, the communication situation, and the resulting impact. This means that investigators, prosecutors, and judges must conduct a comprehensive assessment before determining an act as a crime of fake news. Overly formal assessments have the potential to lead to injustice.

On the other hand, digital technology is evolving rapidly through interaction patterns, increasing the potential for misinformation. In this regard, the law should not be used as a tool for silencing, but rather as a means of education and

¹⁸Revisions to the 2024 ITE Law and the 2023 Criminal Code on Fake News, Insults, and Hate Speech Must Be Carried Out in Response to Various Constitutional Court Decisions on Freedom of Expression, <https://icjr.or.id/revisi-uu-ite-2024-dan-kuhp-2023-tentang-berita-bohong-penghinaan-dan-ujaran-kebencian-harus-dilakukan-merespons-berbagai-putusan-mk-tentang-kebebasan-berungkapkan/>

¹⁹Permana, Aulia Anastasya Putri, and Shafarina Intan Khomsah. "Restrictive Interpretation of Article 28 paragraph (2) of the ITE Law." *Yustika Journal: Media for Law and Justice* 24, no. 01 (2021): pp. 25-36.

social correction. In communication theory, the spread of fake news often occurs due to low digital literacy and low levels of public verification. Law cannot stand alone; it must be accompanied by public education programs on the importance of double-checking information before spreading it. Therefore, digital governance is built not only on regulations but also on social awareness.

Law enforcement against fake news requires a solid and responsive institutional structure. Law enforcement officers need to be equipped with a comprehensive understanding of the nature of digital information, verification techniques, and mapping of hoax distribution patterns. Without adequate capacity support, law enforcement is prone to misdirection and injustice.

Another aspect that needs to be considered is the speed of technological change which outpaces the speed of legal reform.²⁰ Phenomena such as algorithms, artificial intelligence, social bots, and micro-targeting make the spread of fake news more complex. Therefore, legal reforms must be adaptive and not only bind individual behavior but also consider the responsibilities of digital platforms.

In administering justice, a balance between legal certainty, expediency, and moral justice is essential. All three must be considered in every law enforcement process, from the investigation stage to the verdict. This balance will ensure the law protects the public without hindering the dynamics of digital democracy.

Justice in the spread of fake news is not only about protecting victims or the wider community, but also ensuring the rights of suspects or perpetrators. The law must not compromise the presumption of innocence or the right to a defense. These are fundamental foundations of a state governed by the rule of law.

It's also important to understand that not all motives for spreading fake news are the same. Some are motivated by political, economic, ideological, or even just joking interests. Legal frameworks must differentiate between these intensities and motives to determine proportionate forms of accountability. Justice cannot be achieved without understanding the social background of the act.²¹

In many cases, fake news is used as a tool to influence public opinion and divide society. In situations like this, the state must play a decisive role. However, this assertiveness must not stifle dialogue and criticism. Any legal action must adhere to the principles of transparency and respect for civil liberties.

²⁰Firdaus, Sunny Ummul, and Putri Anjelina Nataly Panjaitan. "Legal Reformulation to Realize an Adaptive and Responsive Legislative System." *Proceeding of APHTN-HAN 2*, no. 1 (2024): pp. 355-382.

²¹Aryanda, Basrief. "The Criminal Act of Broadcasting Fake News in the Decision of the South Jakarta District Court Number 203/Pid. Sus/2019/Pn. Jkt. Sel." *Locus Journal of Academic Literature Review* 3, no. 4 (2024): pp. 336-348.

An ideal legal framework positions social media not as a threat, but as a modern public space requiring governance. Law enforcement should be directed at strengthening the integrity of this public space through transparent and accountable mechanisms. This way, the public feels protected, not intimidated.

A just approach to handling fake news also requires collaboration between the state, society, academia, and digital platforms. The law cannot work alone to address a phenomenon involving millions of interactions every second. Furthermore, the public must be empowered as subjects with the capacity to respond to, assess, and report fake news. This empowerment is also part of strengthening digital democracy.²²

When analyzed using the Pancasila theory of justice, handling hoaxes must be based on the values of Divinity and Humanity, which demand civilized treatment of perpetrators while upholding human rights. Therefore, criminalization cannot be carried out arbitrarily. The principle of Indonesian Unity requires the law to function as a safeguard against the threat of disintegration caused by provocative hoaxes, so the state is obliged to act decisively against the spread of information that incites hatred. The principle of Social Justice demands the proportional application of the law that can distinguish between errors due to negligence and acts that intentionally cause chaos. Legal construction in line with Pancasila justice must be oriented towards protecting society while respecting human dignity.

3.2. Legal Weaknesses Against the Spread of Fake News on Social Media in Indonesia

The spread of fake news on social media in Indonesia represents a serious challenge for the legal system, which must manage the rapidly evolving dynamics of the digital space. Within the context of Lawrence M. Friedman's legal system theory, this problem can only be fully understood by examining the weaknesses inherent in the three main elements of law: substance, structure, and culture. These three interact and determine how the law operates in a constantly changing social reality.²³

In terms of legal substance, the first weakness is evident in the unclear definition of fake news in applicable regulations. Although the Criminal Code and the Electronic Information and Transactions Law contain provisions regarding the dissemination of false information, these norms remain overly broad and lead to

²²Candra, Muhammad, and Muhammad Ruhly Kesuma Dinata. "Law Enforcement against the Criminal Act of Spreading Hoax News through Social Media." *Arus Jurnal Sosial Dan Humaniora* 5, no. 2 (2025): pp. 1577-1586.

²³Stella, Helen, Gunardi Lie, and Moody Rizqy Syailendra. "The criminal act of spreading fake news based on the ITE Law on the impact of people's freedom of expression on social media (Criminalization of the Jerinx case)." *Multilingual: Journal of Universal Studies* 3, no. 4 (2023): pp. 472-478.

ambiguity in interpretation. The breadth of the regulations leaves law enforcement officials with a high degree of subjectivity, thus increasing the potential for errors in assessing information as false.²⁴

The legal substance surrounding fake news also fails to adequately differentiate between misinformation caused by ignorance and information intentionally spread to cause harm. This distinction is crucial because the digital space is often filled with content born of low literacy, not malicious intent. The inability of legal norms to capture this complexity makes the law potentially repressive and disproportionate.

The element of "false notification" is also still present in Article 28 paragraph (3) of the ITE Law. This paragraph reads, "Any person who intentionally disseminates electronic information and/or electronic documents that he knows contain false notifications that cause unrest in society." In the explanation, "unrest" is defined as a condition that disturbs public order in a physical space.

The weakness of Article 28 Paragraph (3) of Law 1 of 2024 concerning the Electronic Information and Transactions (ITE) regarding defamation arises because its formulation is too broad, so that the line between "fake news" and "personal opinion" becomes blurred. When information is deemed untrue, a person can immediately be perceived as committing a violation even if he or she is simply conveying an experience, criticism, or unverified information. This situation creates a large loophole for certain parties to exploit the article as a tool to silence criticism or retaliate against personal displeasure. As a result, a person risks being punished simply for conveying a story that turns out to be inaccurate or because of a difference in perception, not because of an intention to damage another person's good name.

The next problem lies in the overlapping regulations between various laws and regulations. The Criminal Code, the Electronic Information and Transactions Law, the Broadcasting Law, and other policy labels have boundaries that are not always aligned. This disharmony leads to inconsistent legal enforcement in practice. When the substance of the law is not clear, legal certainty becomes unclear and creates public unrest.

In legal terms, criminal provisions used to combat fake news often emphasize a retributive approach rather than an educational one. Severe criminal sanctions are not always accompanied by remedial mechanisms or digital development for perpetrators or the wider community. Yet, the phenomenon of hoaxes is not solely

²⁴Andrian, Sri. "Digital Literacy in the Criminal Act of Spreading False and Misleading News Based on Law Number 19 of 2016 Concerning Electronic Information and Transactions." *Ameena Journal* 1, no. 4 (2023): pp. 340-350.

an individual act, but also a social phenomenon that requires multidisciplinary action.

Substantive law has also failed to anticipate the rapid development of information technology. The emergence of algorithms, bots, artificial intelligence, and new digital manipulation techniques has made the spread of fake news increasingly sophisticated and widespread. Existing regulations lag far behind, making them ineffective in addressing modern phenomena like deepfakes or AI-based visual manipulation.

Moving on to the legal structure, weaknesses are evident in the capacity of law enforcement officials, who do not yet fully understand the nature of digital communication. Investigating hoax cases requires specialized technical expertise, including digital forensics, information flow analysis, and mapping distribution networks. However, limited human resources and facilities prevent the law enforcement process from running optimally.

The law enforcement structure also faces challenges in the form of minimal coordination between institutions. Cases related to fake news involve numerous actors, from the police, prosecutors, courts, and relevant ministries. When coordination is lacking, case handling becomes slow and unintegrated, diminishing the effectiveness of preventing the spread of hoaxes.

At the court level, the variation in decisions regarding fake news cases demonstrates the lack of consistent standards of judgment. Sharp differences in interpretation between judges indicate a lack of uniformity in interpreting the normative elements associated with hoaxes. This lack of standards reinforces the impression that the legal system is not yet operating stably.

The institutional structure addressing digital literacy also remains weak. Although various anti-hoax campaigns have been conducted by various ministries and agencies, these programs are often disconnected from law enforcement processes. This gap between educational institutions and law enforcement agencies prevents systematic control of fake news.

The legal system's unpreparedness is also evident in its heavy reliance on public reports. Many cases of fake news are only prosecuted upon complaints, even though the spread of hoaxes often has broader public impact and is not always linked to personal interests. This reactive legal structure makes handling of fake news sporadic.

Within the legal culture element, low digital literacy in society is a fundamental issue. People are easily provoked by sensational information without verifying it, creating a fertile social space for the proliferation of fake news. This culture renders law enforcement efforts ineffective because the public itself lacks the habit of producing and consuming information responsibly.

The legal culture among law enforcement officials also continues to face challenges. In some cases, law enforcement against the spread of hoaxes is often influenced by political pressure or public opinion. This situation indicates that a culture of professionalism has not yet fully taken root, giving rise to the impression of selectivity and unfairness.

Furthermore, Indonesia's permissive legal culture toward the spread of unclear information often leads to hoaxes being considered normal. The spread of false news is often disguised as jokes, criticism, or spontaneous expression, even though it has the potential to result in legal consequences. This lack of awareness of legal boundaries demonstrates the weak internalization of norms at the societal level.

In the context of legal culture, the fast-paced digital space makes people less reflective in sharing information. The culture of clicking and sharing without thorough reading creates a cycle of hoax reproduction that is difficult to break with formal law alone. The power of this culture is often greater than written regulations.

A political culture that utilizes social media as an arena for opinion battles also contributes to the proliferation of fake news. Hoaxes are often produced to strengthen certain political positions, especially in the run-up to elections. When hoaxes become a tool of political struggle, law enforcement becomes complicated because they intersect with powerful interests.

Another aspect of legal culture is evident in the distrust some people feel toward state institutions. This distrust encourages the public to more readily believe unverified alternative narratives. In such circumstances, eradicating hoaxes is not only a matter of law enforcement, but also of building public trust in the state.

The fact that people are more likely to believe emotional information than factual information demonstrates that Indonesia's legal culture still faces significant literacy challenges. Emotions often trump logic, resulting in delayed clarification from the government or official institutions.

The unsupportive legal culture is also reflected in the limited public practice of using legal mechanisms when victims of hoaxes. Many individuals choose to remain silent or retaliate online rather than report the incident officially. This results in legal structures lacking support within the public culture.

Law enforcement against the spread of fake news in various countries generally combines criminal, administrative, and educational mechanisms. In Germany, misinformation is primarily handled through the *Netzwerkdurchsetzungsgesetz*

(NetzDG),²⁵A regulation requiring social media platforms to remove illegal content, including harmful hoaxes, within 24 hours of being reported. Failure by platforms to comply with this obligation can result in substantial fines. Germany's primary focus is not simply on punishing individuals but also on holding platforms accountable for the spread of harmful content. This approach combines legal certainty with an oversight system involving the state, technology companies, and the public.

In contrast to Germany, Singapore implements strict regulations through the Protection from Online Falsehoods and Manipulation Act (POFMA).²⁶This law authorizes the government to order corrections, take down content, or block information proven to be false. POFMA also allows the government to compel perpetrators to issue public clarifications to prevent the public from continuing to receive disinformation. While this regulation is effective in curbing the spread of hoaxes, its implementation is often criticized for its potential for misuse to suppress political criticism. Nevertheless, the rapid correction direction and targeted removal mechanisms are advantages in maintaining a healthy information space.

These two countries demonstrate that handling hoaxes is not solely about punishing individuals, but rather emphasizes shared responsibility between the government, digital platforms, and the public. Both also emphasize a rapid response to minimize the spread of false information before further social damage occurs. This approach is considered more effective than relying solely on punishment after the impact of the hoax has occurred.

For Indonesia, a model similar to Germany's could be adopted, with stricter legal obligations for digital platforms to remove hoax content within a specified timeframe. Currently, hoax prevention efforts are too focused on individuals, despite the digital ecosystem's algorithmic architecture accelerating the spread of information. Indonesia needs to encourage structural collaboration with technology companies and strengthen content moderation mechanisms without sacrificing freedom of expression. Meanwhile, Singapore could adopt a rapid correction mechanism.²⁷which requires perpetrators or platforms to provide clarification so that the public does not continue to consume false information.

²⁵ Liesem, Kerstin. "Diversity, fake news and hate speech: The German response to algorithmic regulation." In *The algorithmic distribution of news: policy responses*, Cham: Springer International Publishing, 2022. p. 209-231.

²⁶ Foo, Cechao. "Protection from online falsehoods and manipulation act and the role of internet intermediaries in regulating online falsehoods." *Singapore Academy of Law Journal* 33, no. 1 (2021): p. 438-482.

²⁷ Swastiningsih, Swastiningsih, Gatot Repli Handoko, and Heru Yulianto. "Utilization of Social Media by Government Institutions to Enhance Digital Public Participation in Addressing the Free Nutritious Food (MBG) Hoax Issue." *Socioeducation: Scientific Journal of Educational and Social Sciences* 14, no. 4 (2025): pp. 2615-2624.

In the future, law enforcement against the spread of fake news in Indonesia will be more effective if it balances three approaches: clear regulations, a rapid correction mechanism, and shared responsibility between the government, platforms, and the public. Learning from the experiences of Germany and Singapore, Indonesia can build a legal system that is not only repressive, but also preventive and educational, thus maintaining the quality of the digital information space without eroding democratic principles.

4. Conclusion

The spread of fake news on social media in Indonesia reflects weaknesses in the substance, structure, and culture of the law. The definitions of hoaxes in the Criminal Code and the Electronic Information and Transactions Law remain vague, overlapping, and potentially subject to abuse. The capacity of law enforcement agencies has not yet fully adapted to the dynamics of digital technology, and low public literacy exacerbates the click-share culture. The Constitutional Court's ruling emphasized the need to limit the articles on fake news so that they do not restrict freedom of expression and are only applied to actions that pose a real risk. Enforcement must therefore consider intent, context, and impact proportionally. The future framework for handling hoaxes needs to strengthen inter-institutional coordination, consistency in decisions, and the obligation of digital platforms to expedite the removal and correction of content, while simultaneously encouraging digital literacy education and active public participation. Lessons learned from other countries show that successful hoax prevention depends on the synergy between the state, digital platforms, and the public to create a safe, fair, and democratic information space.

5. References

- Aditia, Ilham Maulana, Dinie Anggraeni Dewi, and Yayang Furi Furnamasari. "Runtuhnya nilai-nilai persatuan dan kesatuan bangsa bernegara akibat merajarelayanya *hoax*." *Jurnal Pendidikan Tambusai* 5, no. 3 (2021): hlm. 8995-9003.
- Andrian, Sri. "Literasi Digital Dalam Tindak Pidana Penyebaran Berita Bohong dan Menyesatkan Berdasarkan Undang-Undang Nomor 19 Tahun 2016 Tentang Informasi dan Transaksi Elektronik." *Ameena Journal* 1, no. 4 (2023): hlm. 340-350.
- Andrian, Sri. "Literasi Digital Dalam Tindak Pidana Penyebaran Berita Bohong dan Menyesatkan Berdasarkan Undang-Undang Nomor 19 Tahun 2016 Tentang Informasi dan Transaksi Elektronik." *Ameena Journal* 1, no. 4 (2023): hlm. 340-350.

- APJII Jumlah Pengguna Internet Indonesia Tembus 221 Juta Orang, <https://apjii.or.id/berita/d/apjii-jumlah-pengguna-internet-indonesia-tembus-221-juta-orang> diakses 20 Agustus 2025
- Aryanda, Basrief. "Tindak Pidana Penyiaran Berita Bohong dalam Putusan Pengadilan Negeri Jakarta Selatan Nomor 203/Pid. Sus/2019/Pn. Jkt. Sel." *Locus Journal of Academic Literature Review* 3, no. 4 (2024): hlm. 336-348.
- Aryanda, Basrief. "Tindak Pidana Penyiaran Berita Bohong dalam Putusan Pengadilan Negeri Jakarta Selatan Nomor 203/Pid. Sus/2019/Pn. Jkt. Sel." *Locus Journal of Academic Literature Review* 3, no. 4 (2024): hlm. 336-348.
- Candra, Muhammad, and Muhammad Ruhly Kesuma Dinata. "Penegakan Hukum terhadap Tindak Pidana Penyebaran Berita Hoaks melalui Media Sosial." *Arus Jurnal Sosial Dan Humaniora* 5, no. 2 (2025): hlm. 1577-1586.
- Darmawan, Rio Suryo. "Analisis putusan mahkamah konstitusi nomor 78/PUU-XXI/2023 tentang penghapusan larangan penyebaran berita hoaks perspektif siyasah dusturiyah." *Analisis putusan mahkamah konstitusi nomor 78/PUU-XXI/2023 tentang penghapusan larangan penyebaran berita hoaks perspektif siyasah dusturiyah* 5, no. 2 (2024): hlm. 1-16.
- Firdaus, Sunny Ummul, and Putri Anjelina Nataly Panjaitan. "Reformulasi Hukum untuk Mewujudkan Sistem Perundang-undangan Adaptif dan Responsif." *Proceeding APHTN-HAN* 2, no. 1 (2024): hlm. 355-382.
- Foo, Cechao. "Protection from online falsehoods and manipulation act and the roles of internet intermediaries in regulating online falsehoods." *Singapore Academy of Law Journal* 33, no. 1 (2021): hlm. 438-482.
- Hamana, Alife Dwily, Eskandar Eskandar, and Raja Harianto Suka. "Pemberantasan Tindak Pidana Perdagangan Orang Melalui Media Sosial: Kasus Eksploitasi WNI Ke Kamboja." *Aufklarung: Jurnal Pendidikan, Sosial dan Humaniora* 3, no. 1 (2023): hlm. 75-80.
- Kaunang, Agnes Debora Elisabeth. "Menyebarkan berita bohong menyesatkan mengakibatkan kerugian konsumen dalam transaksi elektronik sebagai tindak pidana menurut UU ITE (Putusan Mahkamah Agung Nomor 3905 K/Pid. Sus/2022)." *Lex Privatum* 13, no. 4 (2024). Hlm 21
- Kausar, Henry, Muhammad Hatta, and Hamdani Hamdani. "Pertanggungjawaban Pidana Pelaku Penyebar Berita Bohong (HOAX) di Media Sosial (Studi Penelitian di Pengadilan Negeri Lhokseumawe)." *Jurnal Ilmiah*

Mahasiswa Fakultas Hukum Universitas Malikussaleh 6, no. 2 (2023): hlm. 207.

Liesem, Kerstin. "Diversity, fake news and hate speech: The German response to algorithmic regulation." In *The algorithmic distribution of news: policy responses*, Cham: Springer International Publishing, 2022. hlm. 209-231.

Maaliki, Naavi'U. Emal, and Eko Soponyono. "Kebijakan hukum pidana dalam menanggulangi tindak pidana berita bohong." *Jurnal Pembangunan Hukum Indonesia* 3, no. 1 (2021): hlm. 59-69.

Muarifillah, Ach Syamsul, Yulia Qur'aini, and Fitri Saswani. "Penguatan Literasi Informasi; Bentuk Pencegahan Berita Hoax Dalam Penggunaan Teknologi Informasi Dan Komunikasi." *Jurnal Multidisiplin Ilmu Akademik* 1, no. 4 (2024): hlm. 61-71.

Mubarak, Ridho, and Wessy Trisna. "Analisis yuridis terhadap korban penyebaran berita bohong (hoax) di media sosial." *Jurnal Ilmiah Penegakan Hukum* 8, no. 1 (2021): hlm. 67-73.

Mukti Fajar dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Empiris*, Cetakan IV, (Yogyakarta: Pustaka Pelajar 2017) hlm. 36

Nur, Fuad. "Pertanggungjawaban Pidana Terhadap Pelaku Tindak Pidana Penipuan Online Dengan Modus Social Engineering." *Innovative: Journal Of Social Science Research* 5, no. 4 (2025): hlm. 342-355.

Permana, Aulia Anastasya Putri, and Shafarina Intan Khomsah. "Penafsiran restriktif atas Pasal 28 ayat (2) UU ITE." *Jurnal Yustika: Media Hukum Dan Keadilan* 24, no. 01 (2021): hlm. 25-36.

Rahmadhany, Anissa, Anggi Aldila Safitri, and Irwansyah Irwansyah. "Fenomena penyebaran hoax dan hate speech pada media sosial." *Jurnal Teknologi Dan Sistem Informasi Bisnis* 3, no. 1 (2021): hlm. 30-43.

Revisi UU ITE 2024 dan KUHP 2023 tentang Berita Bohong, Penghinaan, dan Ujaran Kebencian Harus Dilakukan Merespons Berbagai Putusan MK tentang Kebebasan Berekspresi, <https://icjr.or.id/revisi-uu-ite-2024-dan-kuhp-2023-tentang-berita-bohong-penghinaan-dan-ujaran-kebencian-harus-dilakukan-merespons-berbagai-putusan-mk-tentang-kebebasan-berekspresi/>

Stella, Helen, Gunardi Lie, and Moody Rizqy Syailendra. "Tindak pidana penyebaran berita bohong berdasarkan UU ITE terhadap dampak dari kebebasan berpendapat masyarakat di media sosial (Kriminalisasi kasus Jerinx)." *Multilingual: Journal of Universal Studies* 3, no. 4 (2023): hlm. 472-478.

Stella, Helen, Gunardi Lie, and Moody Rizqy Syailendra. "Tindak pidana penyebaran berita bohong berdasarkan UU ITE terhadap dampak dari kebebasan berpendapat masyarakat di media sosial (Kriminalisasi kasus Jerinx)." *Multilingual: Journal of Universal Studies* 3, no. 4 (2023): hlm. 472-478.

Swastiningsih, Swastiningsih, Gatot Repli Handoko, and Heru Yulianto. "Utilization of Social Media by Government Institutions to Enhance Digital Public Participation in Addressing the Free Nutritious Food (MBG) Hoax Issue." *Sosioedukasi: Jurnal Ilmiah Ilmu Pendidikan Dan Sosial* 14, no. 4 (2025): hlm. 2615-2624.

Wulandari, Charisma Dina, Munadhil Abdul Muqsith, and Fitria Ayuningtyas. "Fenomena Buzzer Di Media Sosial Jelang Pemilu 2024 Dalam Perspektif Komunikasi Politik." *Avant Garde* 11, no. 1 (2023): hlm. 134.