

Problems of Legal Construction of Hate Speech Crimes from the Perspective of Punishment Effectiveness

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Abstract. *The criminalization of hate speech in Indonesia provides a strong legal basis for authorities (formal effectiveness), but its substantive effectiveness remains low. The increase in hate speech cases on social media and verbally indicates that criminalization has not fully created a harmonious digital environment. This also has implications for the judicial burden on hate speech cases, which are still subject to alternative criminal resolution and do not necessarily result in imprisonment. The aim of this research is to determine and analyze (1) the form of national criminal instruments that accommodate the criminalization of hate speech, (2) the development of law enforcement against hate speech crimes, (3) the problems of criminalizing hate speech crimes in relation to the effectiveness of punishment. The approach method used in this research is normative juridical. The specifications of this research are analytical descriptive. The data source used is secondary data. Secondary data is data obtained from library research consisting of primary legal materials, secondary legal materials and tertiary legal materials. The research results and discussion can be concluded: (1) Indonesia has long accommodated the problem of hate speech, as evidenced by the inclusion of criminal instruments for hate speech in the Criminal Code, Law Number 11 of 2008 concerning ITE, Law No. 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination, and Circular Letter of the Chief of Police Number SE/06/X/2015 concerning Hate Speech Amnesty International Indonesia recorded that 758 civilians were criminalized under the flexible articles of the Electronic Information and Transactions Law (UU ITE) from January 2018 to July 2025. They were charged with hate speech and defamation articles recorded in 710 criminalization cases. Amnesty detailed that of the 758 civilians who were criminalized, 634 of them had been sentenced at the District Court level, while the rest were still undergoing legal proceedings both in court and during investigations.*

Keywords: *Criminalization; Effectiveness; Problems.*

1. Introduction

The Republic of Indonesia is a country based on law. This is stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. ¹Indonesia places law as base or runway in determine state policies throughout sector good sector government, education, economy, even sector law Good in manufacturing law, implementation law, as well as enforcement law. Criminal law including law public, which regulates connection between public with the country emphasizing to interest public or interest general. ²In the division law conventional, legal criminal including law conventional.³

Criminal law has been around for a long time, even before the term criminal law itself appeared. Before the term criminal law existed, criminal law Criminal law has long been known to society as a sanction/punishment for crimes. Previously Society is more familiar with the term crime, which in the modern era is known as criminal law. Crimes that occur in the community certainly do not occur because there are no factors that cause a crime to occur, there are many factors that cause it to occur. a criminal act.

In Indonesia there is a codified criminal law, namely the Criminal Code and criminal law outside the codification. namely laws or regulations outside the codification (outside the Criminal Code). This means that there are criminal law regulated outside the Criminal Code. Acts criminalized in laws outside the Criminal Code demonstrate a tendency for state control over citizens' activities and civil liberties to become increasingly strong.⁴

The large number of laws containing criminal provisions related to issues outside the Criminal Code (KUHP) has implications for at least two aspects. First, there is a transformation in the perspective in addressing social problems, from initially applying civil/administrative legal instruments to shifting to criminal legal instruments. Criminal law is no longer positioned as *the ultimum remedium* (last resort/last resort) in dealing with acts categorized as criminal offenses, but rather as *the primum remedium* (primary option). ⁵Second, the process of criminalization that continues continuously without being based on tested assessments and without an evaluation of its impact on the entire system also results in the emergence of a crisis of excess criminalization (*the crisis of criminalization*),

¹Sumaryono and Sri Kusriyah, The Criminal Enforcement of the Fraud Mode of Multiple Money (aCasestudy Decision No.61 / Pid.B / 2019 / PN.Blora). *Journal of Legal Sovereignty* : 3 (1), March 2020, page 237

²Lilik Eko Sukaryono and Amin Purnawan. The Role of Visum Et Repertum as a Provision Effort on Criminal Financing. *Jurnal Daulat Hukum*, 3 (1) March 2020, p. 131

³Teguh Prasetyo, *Criminal Law*. Jakarta: Raja Grafindo Persada, 2014, p. 1.

⁴Mahrus Ali. Overcriminalization in Indonesian Legislation. *Ius Quia Iustum Law Journal*, 25 (3) September 2018, p 451

⁵Kania Tamara Pratiwi, Siti Kotijah, and Rini Apriyani. Application of the Primum Remedium Principle to Environmental Crimes. *SASI*, 27 (3) July-September 2021, p. 366

namely the large or abundant number of crimes and acts that are criminalized.
⁶One of transformation functional instrument criminal that is implementation of a offense that is offense speech hatred.

The era of globalization has brought major transformation in the whole aspects of life, including in social, economic and cultural fields. Advances in information technology and communication is possible increasingly disconnected world relations boundaries, providing access to information which is fast, and allows massive cross-border communication. Mass media and social media now acts as the main medium in the dissemination of information, make individual capable disseminating opinions and expressions freely. However, this convenience also opens up opportunities for various forms of digital crime, including hate speech.

Hate speech is a controversial topic that has grown with public attention recently. This public attention has grown due to the numerous cases of hate speech that have surfaced and become public discussions. Pros and cons regarding the regulation and implementation of existing regulations regarding hate speech have also developed. Most of the cases that have emerged are related to the use of the internet and social media. The development of internet and social media usage still needs to be balanced with the intelligence of its users, so that they do not fall into criminal cases.

The First Amendment to the United States Constitution states that " Congress shall make no law...abridging the freedom of speech." The First Amendment clearly states that no restrictions on a person's freedom of expression are permitted. However, the dilemma of unrestricted freedom of expression is that it can lead to actions that can incite violence and anger due to hate speech directed at certain parties.⁷

properly regulate *hate speech* It has been a long time and is commonplace. The polemic about *hate speech* is always related to the dependency between freedom of expression and protection of equal values (*equal protection values*). Freedom think that it requires a society from which communication can be carried out. Meanwhile, society needs freedom of expression because it can provide explanation of what society should do. Although in reality, freedom Excessive and uncontrolled opinions can have negative consequences for minority groups. However, people's freedom of expression cannot be too restricted because this could "freeze" social change.

In understanding the phenomenon of *hate crimes*, there is often a confusing interpretation. understanding the phenomenon of conflict. According to Simon

⁶M. Sherif Bassiouni, *Substantive Criminal Law*, Charles Thomas Publisher, Springfield, Illinois, USA, 1978

⁷Yulia A. Timofeeva. Hate Speech Online: Restricted or Protected? Comparison of Regulations in the United States and Germany. *Transnational & Policy Journal*, 12(2) Spring 2003, p 270

Fisher, the definition of conflict is a relationship between two or more parties (individuals or groups) who own, or who feel they own, incompatible goals.⁸ Ted Robert Gurr, said, to be able to called a conflict, there are several criteria that determine it, namely, (1) a conflict must be involving two or more parties in it, (2) the parties must attract each other in acts of hostility, (3) they usually tend to engage in coercive behavior to confront and destroy opponents, and (4) conflicting interactions between parties it is in a state of firmness.⁹ According to conflict theorists, conflict can be defined as conflict, when the conflict is direct, namely marked by reciprocal interaction between the conflicting parties.

2. Research Methods

The approach used in study This is juridical normative or approach law written (statutory *approach*). Approach juridical normative is the approach taken based on material law main with method examine theories, concepts, principles law as well as regulation related legislation with study this. Approach This also known as approach library, namely with learn books, regulations legislation and other related documents with study This research uses specifications research with method descriptive method Can interpreted as a problem-solving process something the problem being investigated with describe or depict condition subject or object research at the time Now based on the apparent facts or as existence.¹⁰ With use type study this, the author aim For describe, depict and provide precise data maybe that's useful For investigate, solve problems that arise as well as analyze and organize it in form thesis. The data used for this research is secondary data. Secondary data is data obtained from library research consisting of primary legal materials, secondary legal materials, and tertiary legal materials.

3. Results and Discussion

3.1. Form Instrument National Criminal Code that Accommodates the Criminalization of Hate Speech

Hate speech or speech hatred is definition action related crimes with words loaded swearing, insults to individual or group on base race, sex, orientation sexual, ethnic and religious. Where the act the is form insults that cause atmosphere hostility, intimidation as well as is part from action pollution.¹¹ In the Oxford Dictionary, *hate speech* interpreted as expressive words hatred and intolerance to group social, usually based race and sexuality.¹²

⁸Simon Fisher. *Managing Conflict (Skills and Strategies for Act)*. Jakarta: The British Council, 2001

⁹Ted Robert Gurr, *Handbook of Political Conflict*, The Free Press, 1980

¹⁰ Nawari Hadari, *Legal Research Methods*, Yogyakarta Gajah Mada University Press, 1987, p. 25.

¹¹Susan J. Brison, The Autonomy Defense of Free Speech. The University of Chicago, *Chicago Journals*. 108 (2) 1998. p. 313.

¹²Eric Heinze, and others (eds), *The Oxford Handbook of Hate Speech*. Oxford Handbooks, Oxford University Press: Oxford, 2026

Definition *hate speech* according to *The United Nations* as all form communication in speech, writing, or behavior, which attacks or use derogatory language or discriminatory with refers to a person or group based on Who they are, in other words, based on religion, ethnicity, nationality, race, color skin, heredity, type gender, or factor identity other.¹³ Definition the awarded in 2020, as effort For respond surge case speech hatred recently this is all over the world. According to report from the Geneva Center for International Justice, in part most Western democracies have witness improvement case speech hatred and discrimination in a number of year final.¹⁴

William B. Fisch provides definition as incitement hatred to group or individual on base race, sex and orientation sexual, ethnic, religious. According to him, it is very close with meaning in International Covenant *on Civil and Political Rights* in 1966 article Number 20 paragraph 2 regarding state ban on do advocacy on hatred on race and religion which are incitement for discrimination, and give rise to hostility as well as violence.¹⁵

According to Gerstenfeld, hate crime is defined as action crimes committed at least, or partly, with motivation existence group victim affiliation based on group race, religion, ethnicity, gender, disability and others. ¹⁶Mustofa strengthens definition the with give example events in Indonesia. Among them is attack to ethnic Chinese, followers Ahmadiyah, treatment No fair against the accused person have connection with the PKI and the organizations under its auspices underneath.¹⁷

In level national, since In 1945 Indonesia had confess right on freedom express yourself. And things This emphasized Again in the 1945 Constitution of the Republic of Indonesia in particular Article 28 F states that" Everyone has the right For communicate and obtain information For develop personal and environmental social, as well as entitled For search, obtain, possess, store, process and convey information with use all type available channels."; Article 28E paragraph (2) of the 1945 Constitution of the Republic of Indonesia," Everyone has the right on freedom believe belief, stating thoughts and attitudes, according to with heart conscience" and paragraph (3)," everyone has the right on freedom associate, gather, and issue opinion".

Article 23 paragraph (2) of the Republic of Indonesia Law Number 39 of 1999 concerning Human Rights Man ensure that everyone has freedom for own, issue

¹³United Nations, *United Nations ...Op.Cit*, September 2020, p 9

¹⁴Nora Futtner and Natalia Brusco, *Hate Speech ...Op.Cit*, March 2021, p 1

¹⁵Willian B. Fisch, Hate Speech in the Constitutional Law of the United States. *The American Journal of Comparative Law*, 50(1) Fall 2002. p 463

¹⁶Phyllis B Gerstenfeld, *Hate Crime: Causes, Control and Controversies*. London UK: Sage Publications. 2004. p 9

¹⁷Yayan Muhammad Royani, *Legal Studies...Op.Cit*, December 2018, p. 21 5

and disseminate opinion in accordance heart his conscience, in a way oral and /or written through print media and electronic with notice religious values, morality, order, interests general, and integrity nation. It is clear that the limits of freedom express in human rights in Indonesia is religious values, morality, order, interests general, and integrity nation. This is meaningful that freedom express yourself, even though is right basic, no Can violate those boundaries.

Misuse freedom expression and arbitrariness in express yourself and use freedom express For expressing hatred make people able to trapped in the action called hatred or *hate speech*. This action possible to do in form activity speech company in the form of distribution banner or banner, distribution news lying on social media networks, badmouthing somebody in advance general or in a way direct in form opinion (demonstration). Speech Hatred Can push occurrence hatred collective oppression, exclusion, discrimination, violence, and even at the most horrific level, massacre. ethnicity or genocide to group, all of which That will remove fullness self as dignified human being.

Anne Weber in his research propose effort balancing two interests:

- 1) The right to communicate idea about belief communicate his idea about religious belief in society (*Freedom of Expression*);
- 2) The right to honor freedom thinking, believing and being religious (*Protection of Human Dignity and Groups*).¹⁸

Anne emphasized balance the Because according to him in a number of state, freedom expressing yourself is also possible become threat to right for honor privacy. There are also risks conflict between freedom expression and prohibition from all form freedom expressions containing element hate speech.

In the Circular Letter Chief of Police Number SE/06/X/2015, contains actions What only those included category speech orchestrated hatred in Criminal Code (KUHP) and its provisions criminal others outside the Criminal Code, which are in the form of including: Insults, Defamation, Blasphemy, Acts No fun, provoking, inciting, spreading news lie. As for the explanation forms categorization speech hatred (*hate speech*) includes:

- 1) Insult

Insult originate from the root word contemptible. In the Indonesian Dictionary (KBBI) contemptible means low his rank, position, dignity, vile, lacking Good his actions, etc., opponents from glorious.¹⁹ Words insult own affixes peng and an,

¹⁸Dita Kusumasari and S. Arifianto, The Meaning of Hate Speech Texts on Social Media. *Journal of Communication*, 12 (1), July 2020, p. 11

¹⁹Hoetomo, *Complete Dictionary of the Indonesian Language*. Surabaya: Mitra Pelajar, 2005, p. 186.

and constitute functional affixes forming nouns. The nouns "peng" and "an" are related with verbs affix "me". The affixes "peng" and "an" express meaning of process or "me" actions. So that's an insulting word can also mean a process or insulting act.²⁰

Insults can also be interpreted feeling direct express a feeling of disapproval respect and disrespect Like to a person. In psychology and science social, insult is intense feelings from lack of confession or honor as well as reluctance. Insult is questioning rejection ability and moral integrity. This similar with hate, but implies a sense of superiority.

Someone who insults usually see a individual with attitude demeaning as well as consider someone hated No worthy. Robert C. Solomon puts humiliation at the same event like hatred and anger, and he have an opinion that difference between all three is hatred directed by individuals of status more high, anger directed towards the same status individual, and insult directed going to lowering the status of individuals.

2) Blasphemy

Understanding from the word insult originate from the word nista. Some experts use it as a word of reproach. The difference term the caused by use of words in translate the word *smaad* from Dutch. nista means lowly, despicable, lowly, stain.²¹ Whereas in in the Big Indonesian Dictionary (KBBI) it is defined as as a process, or method actions insulting other people in the sense of cursing, insulting and belittling them the dignity and honor of the person who was insulted.

3) Spread of Fake News (*Hoax*)

The beginning occurrence *hoax* initiated by individuals or group with various objectives, including tinkering, deception, propaganda and establishment opinion public. *Hoax* usually appear when issue sticking out to surface but Lots things that have not been done revealed or become sign ask. *Hoax* is news, information, news false or lie. Meanwhile in KBBI it is called with *hoax* which means news lie. *Hoax* is term news fake that is not There is the truth. *Hoax* can cause restlessness, paranoia and fear of objects certain although matter This sometimes No cause material loss in direct.²²

know characteristic features the following hoax news This There is a number of representative criteria including:

²⁰ *Ibid*, p. 460

²¹ Leden Marpaung, *Crimes Against Honor*, Jakarta, PT: Raja Grafindo Persada, 1997, p. 11

²² Fadila Akmelia Rizki, et al. Preventing Hoax News in Rural Communities Using Educational Methods. *Proceedings of UIN Sunan Gunung Djati Bandung*, I (57) December 2021, p. 109

a. *Fake news*

It is news lies, news that tries to replace the original news. This news aim falsify original and usual news added with news that is not Correct

b. *Clickbait*

Link trap, a link displayed on a particular site with objective draw others in to the site. Link This Can contains exaggerated news accompanied by interesting picture For visited reader

c. *Confirmation Bias*

Trend For interpret new events happen as good as proof from trust that has been There is.

d. *Misinformation*

Information that has been clear No accurate and targeted fraud.

e. *Satire*

A piece of writing that uses humor, irony, exaggeration For comment current events warm

f. *Post - truth*

An incident where emotions more play a role than fact form opinion public.

g. *Propaganda*

Activities spread expand information, facts, arguments, gossip, half truth, or even lie influence opinion public.

More people tend believe *hoax* If the information in accordance with opinion or attitude that is owned.²³This is can aggravated If distributor *hoax* own lack of knowledge in use the internet to search information more in or just check and recheck fact.

Spread news or information without corrected and sorted, in the end will has an impact on the law and *hoax* information has also break split public. Currently in Indonesia in particular public currently rampant happen incident distribution news false or what is called a *hoax*. Event the spread of this *hoax* cause anxiety people in Indonesia, many the party who feels harmed on the circulation of the *hoax*. This

²³Andi Fadli. Journalist Ethics and Responsibilities (A Study of Hoax Reporting via Online Media in Makassar City). *Jurnalisa*, 04 (2) November 2018, p. 185

due to rapid development technology that makes public the more easy get information anything from various social media applications.

The Criminal Code has accommodate actions distribution news and information the lies that are written as broadcasting or dissemination news or announcement lie in the article:²⁴

Chapter	Criminal Norms
Article 263	1) Every person who broadcasts or disseminate news or announcement whereas it is known that news or announcement the lies that result in unrest in society, convicted with criminal maximum imprisonment of 6 (six) years or criminal the biggest fine category V. 2) Every person who broadcasts or disseminate news or announcement whereas worthy allegedly that news or announcement the is lies that can result in unrest in society, convicted with criminal maximum imprisonment of 4 (four) years or criminal the biggest fine category IV.
Article 264	Every person who broadcasts news that is not certain, excessive, or not complete whereas it is known or worthy it is suspected that news thus can result in riots in society, criminalized with criminal maximum imprisonment of 2 (two) years or criminal the biggest fine category III.

4) Incitement

Incitement more identical to the term meaning encourage, invite, arouse or burn people's enthusiasm so that do something. However in the word inciting concluded characteristic intentionally. Incite That more hard rather than captivating or persuade will but No force.²⁵ In the Indonesian dictionary action incitement is something embodiment for awaken people's hearts so that angry (for oppose or rebel). Meanwhile That according to *Black's Law Dictionary* incite interpreted as" *provocation*", namely" *something (such as word or action) that affects a person's reason and self-control, esp. causing the person to commit a crime impulsively*".²⁶

3.2. Development Law Enforcement against Offense Speech Hatred

In order to recognize ' speech' hatred ', first of all We must understand importance right basic humans who interact with each other strengthen that is freedom expression and equality. In the section this, proposal typology for recognize" speech" hatred" distinguishes various form according to level severity expression and its impact. we believe that matter this important for influence response

²⁴ Articles 263 and 264 of Law Number 1 of 2023 concerning the Criminal Code

²⁵R. Soesilo, *Criminal Code (KUHP) and its Complete Commentaries Article by Article*, Bogor: Politeia, 1996, p. 136.

²⁶Candra Wicaksono, Femmy Silaswaty Faried, Hanuring Ayu Ardhani Putri. A Comparative Study of the Implementation of the Criminal Act of Incitement in the Criminal Code and the ITE Law. *JIHHP: Journal of Law, Humanities and Politics*, 5 (3) January 2025, p. 1785

effective and sophisticated against "speech" hatred" and in case outside normal prohibition of "speech" hatred".²⁷

Freedom opinion and expression (freedom expression) is right basic fundamental human beings, protected in Article 19 of the Universal Declaration of Human Rights Human Rights (UDHR)²⁸ and have strength law based on all over agreement right basic the main human being.²⁹

Law of rights basic man international obligatory all countries for ensure freedom For seek, receive or spread information or idea anything to everyone, without limitations, as well as through any media chosen someone. Coverage right on freedom very broad expression. This includes, for example, the expression possible opinions and ideas considered highly offensive for others, and perhaps covers expression discriminatory.³⁰

Therefore, the right on freedom express is not right absolute, and the State can, in condition outside normal certain, limiting right mentioned below law right basic man international.

Law of rights basic man international ensure equality and non- discrimination for everyone.³¹ The state is obliged ensure equality in fulfillment right basic human beings, and protection equal law. The principle of non- discrimination own three interconnected elements related. This is understood as:

- a. every distinction, exception, limitation or preference to somebody;
- b. based on recognized protected characteristics law right basic man international (concerning age, disability, replacement type gender, marriage and life together in a way civil, pregnancy and duties motherhood, race, religion or belief, type gender and orientation sexual);

²⁷Article 19, 'Hate Speech' Explained: A Guide. Free Word Centre: London, United Kingdom, 2015 Edition, p. 6

²⁸The UDHR is not legally binding on states, however, many of its provisions are considered to have been gained legal force as customary international law since the adoption of the Universal Declaration of Human Rights; See Roy R. Loya, Federal Jurisdiction of Alleged Torturers Under the Alien Tort Statute: *Filartiga v. Pena-Irala* 630 F.2D 876 (2D Cir. 1980). *Maryland Journal of International Law*, 6(2) 1981, pp. 289-295

²⁹See Article 19 of the International Covenant on Civil and Political Rights (ICCPR), Article 9 of the Charter African (Banjul) Convention on Human and Peoples' Rights (ACHPR); Article 13 of the American Convention on Human Rights (AmCHR), and Article 10 of the European Convention on Human Rights (ECHR)

³⁰Paragraph 11. Human Rights Committee (HRC), General Comment No. 34, CCPR/C/GC/34, 12 September 2011

³¹Article 1 of the UDHR and Article 2 (1) and Article 26 of the ICCPR. At the regional level, for example, freedom of expression is protected in Articles 2 and 19 of the ACHPR, Articles 1(1) and 24 of the AmCHR and Article 14 of the ECHR and in Protocol 12 of the ECHR.

c. which has objective or consequence eliminate or weaken recognition, enjoyment or implementation, above base equal footing with right basic human beings and fundamental freedoms in field politics, economics, social, culture or field life public other.³²

One thing that is important, namely protection dignity for everyone without discrimination, which encourages part big response on ' speech hatred ', including restrictions right to freedom express. Response against ' speech hatred along with prohibition above it also often justified on base protect security national, order general, or public morals. However, if objective This combined with objective protect individual from discrimination, limiting response expression can with easy become excessive and can misused.³³

However when speak about speech hatred, some big discussion, okay academic and in discourse public, only focus on searching for words or phrase specific according to observer signify existence speech hatred. Speech term hatred first used by experts law in the 80s as draft explanation For grouping and identifying cases and laws that refer to the type speech discriminatory or offensive certain. With Thus, the implementation law term the new appear after incident, which gives rise to a series difficulty in its implementation. In fact, even though the definition given by the UN unites the most common interpretation from draft said, no There is consensus official about What That speech hatred, because term the No defined by convention any ³⁴international.

Secretary General Union United Nations Antonio Guterres discusses issue speech hatred, which is considered as one of the the most dangerous predecessor from hate crimes and atrocities, in 2020. Secretary General underline How type speech This can result in decline for peace in the world and focuses on the role of social media and the internet in distribution phenomenon the.³⁵

Definition and application draft international depends on two groups provision main: anti- discrimination provisions and provisions freedom speaking. Group First based on the principle equality, because anti- discrimination laws is response to inequality that can found in society. Considering that speech hatred can defined as attack to somebody or group based on characteristics personal, anti-discrimination laws is tool the first one that can used overcome phenomenon said. Although implementation of these norms has develop in a number of decade

³² Paragraph 6, Human Rights Committee, General Comment No. 18, 1989

³³Article 19, *Explanation ...Op.Cit*, 2015 Edition, page 8

³⁴Laura Barison, Hate speech in international law: Searching for the complex balance with freedom of expression. Master's Degree programme in Comparative International Relations, Ca'Foscari University of Venice: Italy, *Final Thesis*, 2021, p 7

³⁵ *Ibid*, p. 8

lastly, to be clear that instruments This No Enough For remove inequality or For fighting phenomenon speech relative hatred new.³⁶

According to Adnan Buyung Nasution in that respect to humanity is form confession towards pluralism in public with method respect to existing diversity. According to analysis Researchers with based on Constitution Number 39 of 1999 concerning Human Rights Human Rights (Human Rights Law), that based on Article 23 paragraph (2) of the Human Rights Law which confirms that in freedom in put forward opinion must pay attention elements related religious values, morality, order, interests general, and the integrity of the state.³⁷ Elements this is what becomes limitations for Indonesian society in use right freedom opinion. Limitations the need considered as something obligation for Indonesian society to operate matter so that it can be created orderly society.

This limitation No curb freedom have an opinion but For honor right basic human rights owned by individuals, owned by corporations, and so that freedom the No be ' too late ' so harming others.

In the mechanism enforcement law offense speech hatred at the stage investigation, investigator Police do investigation in two ways different when find case crime speech hatred dominated in scope activity cyber. Ways the used to identify suspect, collect tools and evidence, as well as ensure *tempus*³⁸ and *locus delicti*³⁹:

- a. Collection evidence that has been exist and identify perpetrator online and using facility computer;
- b. Special do digital forensic testing to collect computer - generated evidence and evidence or technology traditional.⁴⁰

As for the steps first thing to consider police assessing *tempus delicti* is time perpetrator access, create, or do violations on the internet. The second step that occurs consequence operation This is time and date the data was received by the system or facility computer. Third, regarding time occurrence crime, month, date

³⁶Sandra Fredman. *Discrimination Law*, Oxford: Oxford University Press, 2011, p 5

³⁷Dwi Putra Nugraha, (Re)interpreting Four Pillars of National and State Life Indonesia. *Law Review*, 12 (3) 2013, pp. 331-358

³⁸*Tempus delicti* is *tempus* from the word *tempo* which means time, in terms of the application of criminal law seen from the perspective of the time of the criminal act. See in: Aliefka Albiandro. Legal Analysis in Determining *Locus Delicti* in the Criminal Case of Forgery of Authentic Deeds. *Student Online Journal (JOM)*, IX (1) January-June 2022, p. 3

³⁹Determining the place of crime in Latin is known as with *locus delicti*, which is a series of the words *locus* and *delictum*. *Locus* means "place," while *delictum* means "unlawful acts, crimes and criminal offenses". So *locus delicti* means "the place where the crime occurred." See: S. Adiwinoto, *Legal Terms*. Jakarta: Intermasa, 1977, p. 34.

⁴⁰Agus Prasatya & Diding Rahmat, Criminal Law Enforcement Defamation Through Social Media. *MALA IN SE: Journal Criminal Law, Criminology and Victimology*, 1(1) April 2024, p. 48

and time which are automatic entered to in documents read saved at the time perpetrator *login* to the internet.⁴¹

Based on example cases raised writer above which enforcer law apply articles related speech hatred that exists in the ITE Law because of the media used by the perpetrators is electronic media with social media platforms and things the fulfil elements the penalty imposed based on articles that are formed in the ITE Law. This give reality that offense speech hatred is very vulnerable entangled to society which is known to be in the era of modernization This using social media If No be careful and don't wise in utilizing electronic media. Reality it also describes that transformation law Indonesian criminal law in enforcement the law has expanding into electronic media in a way legitimacy the law that has been accommodated in various substances in the product law Indonesian criminal law, including the ITE Law, the Criminal Code and other related laws.

Incident action criminal speech hatred with each mode used applies to an unseen reality inevitable that is reality electronics that are always will leave digital footprint. Regarding the section This should every individual must be careful and wise in post or distribute smelly links incitement, news lying and discrimination and think twice in decide do actions the.

Criminalization own the aim is for the perpetrator become deterrent, no repeat his actions and order social become recover return.⁴² Impact positive to criminalization existence speech hatred that is give effect deterrent to internet users, protecting group minority from verbal attacks, showing state commitment in guard order and justice social., improve awareness public about ethics on social media. However on the other hand the impact negative to criminalization existence speech hatred that is overcriminalization, restrictions freedom opinion, ambiguity in definition, effect cold (*chilling effect*), polarization public.

In a way implications with comparison system law criminal related speech hatred between impact positive and negative, some countries like Germany, have law strict to speech successful hate on social media reduce content violate but criticized Because limit freedom speaking. In Germany, the setting about *hate crimes* appear in form weighting sanctions criminal in a way limited to action crimes motivated by racism. The concept *hate crimes* No appear in a way specific in *German Criminal Code (Strafgesetzbuch-StGB)*. Arrangement *hate crimes*, on the other hand, appear in provision about principles criminalization in *section 46 of the Criminal Code 1998* (amended 2015). Provisions This arrange obligation court (judge) for consider conditions that can aggravate punishment, among other things, regarding with motives and goals perpetrators, especially when there is

⁴¹ *Ibid*

⁴²Eddy OS Hiariej, *Principles of Criminal Law*. Yogyakarta: Atma Jaya University Publisher, Yogyakarta, 2014, p. 31

characteristic racism or *xenophobic*. *Hate as aggravating factor* with thus must considered by the judge.⁴³

In a way overall, enforcement law to perpetrator action criminal speech hatred need harmonious integration between framework existing laws. The ITE Law provides base For enforcement, the Human Rights Act ensures that handling case still in line with principle right basic humans, and the Criminal Code confirms importance guard order general in freedom opinion. Approach this, if implemented with good, can create balance between enforcement law, respect to right basic human beings, and protection interest public.

3.3. Problems Criminalization Hate Speech Crime with Linked to Effectiveness Criminalization

Criminalization offense speech hatred is manifestation from protection to reputation that becomes part from right basic human. Regime freedom expressing opinions and expressions in Indonesia is already ongoing since Indonesia has constitution. Existence the settings in the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) is respond guarantee freedom the in *Universal Declaration of Human Rights* (UDHR).⁴⁴

Freedom speaking and speech hatred is one of the deep debate among modern society today this. Freedom speak is one of the rights that are upheld high by the community which is democratic, freedom speak allows individual disclose his opinions, ideas, and trusted beliefs without There is obstacle from government and other institutions. Freedom speak has recognized in a way international as one of the right fundamentals inherent in each individual can receive, seek, and convey information without obstacle.

Although freedom speak telah guaranteed in constitution, implementation freedom speaking in Indonesian is not without limitations. Indonesia is a democratic country, will but Indonesia is also a country of law (*Rechtstaat*), where every aspect life, including freedom think, must still arranged through law. Indonesia has give freedom every individual convey thought as well as in his opinion, good through oral or writing, but freedom the No Can as well as immediately Then functioned hurt or even harming others.

Speech hate *speech* is something an act carried out by someone or more that can in the form of incitement, insult, provocation to people or another group of people based on various aspect like ethnicity, religion, race, gender, color skin, etc. and can done through various ways, including like campaign, lecture religious,

⁴³Widati Wulandari. Hate Crimes in Indonesia in a Comparative Law Perspective. *Veritas et Justitia*, 3 (1) June 2017, p. 80

⁴⁴Sri Oktaviani. The Constitution and Freedom of Expression in Indonesia: An Analysis of Limitations and Protections. *Scientific Journal of Economics and Management*. 2 (7) 2024, p. 1

pamphlets, banners, or through electronic media.⁴⁵ Speech hatred can done through social media and other electronic media.

Although regulations normative has available, research find that implementation enforcement law to perpetrator speech hatred Still face challenge serious. One of the the most prominent problems is existence ambiguity of legal norms, especially in differentiate between freedom expression protected by the constitution with speech hatred that can convicted.

Apparatus enforcer law often face difficulty in do interpretation to elements articles, especially when speech the nature ambiguous, metaphorical, or delivered in context debate public. The ambiguity of these parameters cause emergence practice enforcement laws that do not consistent in the field.⁴⁶

In addition, the process of proof element subjective in case speech hatred is challenge others. Identification to intention perpetrator whether aim attack honor, raises hostility, or provoke often difficult proven Because perpetrator often quibble that action the is expression personal or criticism social phenomenon anonymity social media users participate make things worse situation, because perpetrator can hiding behind identity false or account that is not verified. Obstacles technical like digital forensic tracking be one of inhibiting factors effectiveness enforcement law in the realm cyber.⁴⁷

Overcriminalization offense speech hate speech *in* Indonesia refers to the phenomenon use law criminal in a way excessive to speech or true expression No worthy convicted, often triggered by the formula multi- interpretable article (article rubber) in Constitution Electronic Information and Transactions Law (ITE Law) and the Criminal Code.

Amnesty International Indonesia recorded 758 citizens civil criminalized with articles rubber Constitution Information and Electronic Transactions Law (ITE Law) from January 2018 to July 2025. They ensnared with chapter speech recorded hatred and defamation in 710 cases criminalization. Amnesty details of 758 residents criminalized civilians of that, 634 of them has undergo verdict at the level District Court, whereas the rest Still undergo legal process good in court or in the investigation. According to Director Amnesty International Indonesia Executive Usman Hamid through press release on Friday, August 15, 2025 said that the victims of the ITE Law spread across 38 provinces. The most victims originate from

⁴⁵M. Ilham Wira Pratama. Implications of Overlapping Hate Speech Articles Pre-Prosecution Stage from the Perspective of the Criminal Justice System Indonesia. *Indonesian Journal of Criminal Law and Criminology (IJCLC)*, 4 (1) March 2023, p 35

⁴⁶Altje Agustin Musa, Meiske Mandey, Christine JJG Goni. A Legal Review of Law Enforcement Against Hate Speech Perpetrators (Hate Speech) Social Media in Criminal Law Perspective. *Tana Mana Journal*, 6 (3) December 2025, p. 175

⁴⁷R. Siregar, Law Enforcement against Cybercrime in Indonesia. *Jurnal Rechtsvinding*, 10 (1) 2021, pp. 45–62.

East Java with 79 victims, followed by other provinces, namely Jakarta with 67 victims, North Sumatra with 59 victims, South Sulawesi with 52 victims, and West Java with 47 victims."There are no free area from cases criminalization".⁴⁸

4. Conclusion

Indonesia has long accommodated problem speech hatred, proven with covered instrument criminal on speech hatred in the Criminal Code, Law Number 11 of 2008 concerning ITE, Law No. 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, Law Number 40 of 2008 concerning Deletion Racial and Ethnic Discrimination, and Circular Letters Chief of Police Number SE/06/X/2015 concerning Speech Hate Speech in the *new* Criminal Code namely Law No. 1 of 2023 which regulates chapter alone with classifying which is implied in the form speech hatred as poured out in Article 433 (defamation), Article 434 (slander) and Article 436 (insult light), Articles 300 and 301 (blasphemy), Articles 263 and 264 (dissemination of news lies /hoaxes), Articles 246-250 (incitement) which have instrument criminal each other related to speech hatred. In addition, the speech hatred is also regulated in Constitution Number 1 of 2024 concerning change second on Constitution Information and Transactions Electronics (ITE Law), in particular in Article 28 jo. Article 45A Law 1/2024. Rule This follow principle *lex specialis derogate legi generalis*, where rules special put aside rule general. Law Number 1 of 2024 becomes regulations main crime or violation *hate speech* on social media, however still must in accordance with the Criminal Code which was ratified on January 2, 2023. The publication of SE KAPOLRI 6/2015 as instructions and guides Police as gate First entry criminalization action criminal speech hatred in the enforcement process law. Next in the Circular Letter (SE) in letter (h) it is stated, Statement Hate Speech can done through various media, including, in Speech activity campaign, banner or banners, social media networks, delivery opinion in advance general (demonstration), lecture religious, print media or electronic, and pamphlets. Based on the Circular Letter Chief of Police said, enforcement law on suspicion occurrence action criminal speech hatred referring to the provisions from the Criminal Code, the ITE Law, and the Law on the Elimination of discrimination race and ethnicity. In connection with the two (2) laws that have been transform namely the old Criminal Code has been replaced with Law No. 1 of 2023 (New Criminal Code) and the old ITE Law which has changed becoming Law No. 1 of 2024 has an effect on the elements the criminal law used Police in use the article to be applied to the perpetrator speech hatred which thing This limited to adjustment with updated law guidelines in implementation enforcement the law. In the mechanism enforcement law offense speech hatred at the stage investigation, investigator Police do investigation in two ways different when find case crime

⁴⁸ Press Statement by Usman Hamid, Executive Director of Amnesty International Indonesia, In <https://www.tempo.co/hukum/amnesty-international-indonesia-758-orang-dikriminalisasi-dengan-uu-ite-sepanjang-2018-2025-2059298>, Accessed on March 13, 2026

speech hatred dominated in scope activity cyber. Ways the used to identify suspect, collect tools and evidence, as well as ensure *tempus* and *locus delicti* as well as involving digital forensic testing to collect evidence. Dominance implementation articles related speech hatred by investigators The police are in the ITE Law because of the media used by the perpetrators is electronic media with social media platforms and things the fulfil elements the penalty imposed based on articles formed in the ITE Law. That matter give reality that offense speech hatred is very vulnerable entangled to society which is known to be in the era of modernization This using social media If No be careful and don't wise in utilizing electronic media. Reality it also describes that transformation law Indonesian criminal law in enforcement the law has expanding into electronic media in a way legitimacy the law that has been accommodated in various substances in the product law Indonesian criminal law, including the ITE Law, the Criminal Code and other related laws. Amnesty International Indonesia recorded 758 citizens civil criminalized with articles rubber Constitution Information and Electronic Transactions Law (ITE Law) from January 2018 to July 2025.

5. References

Journals:

- Agus Prasatya & Diding Rahmat, Penegakan Hukum Tindak Pidana Pencemaran Nama Baik Melalui Media Sosial. *MALA IN SE: Jurnal Hukum Pidana, Kriminologi dan Viktimologi*, 1(1) April 2024
- Aliefka Albiandro. Analisis Hukum dalam Menentukan Locus Delicti dalam Perkara Tindak Pidana Pemalsuan Akta Otentik. *Jurnal Online Mahasiswa (JOM)*, IX (1) Januari-Juni 2022
- Allison Harell, The Limits of Tolerance in Diverse Societies : Hate Speech and Political Tolerance Norms Among Youth. *Canadian Journal of Political Science*, 43 (2) June 2010
- Altje Agustin Musa, Meiske Mandey, Christine J J G Goni. Tinjauan Yuridis Penegakan Hukum Terhadap Pelaku Ujaran Kebencian (Hate Speech) Mi Media Sosial Dalam Perspektif Hukum Pidana. *Jurnal Tana Mana*, 6 (3) Desember 2025
- Andi DarmaTaufik, dkk. Analisis Sejarah dan Perkembangan Teori Utilitarianisme Terhadap Hukum Indonesia. *Yurisprudencia: Jurnal Hukum Ekonomi*, 10 (1) Juni 2024
- Andi Fadli. Etika dan Tanggung Jawab Jurnalis (Studi di Pemberitaan Hoax melalui Media Online di Kota Makassar). *Jurnalisa*, 04 (2) November 2018
- Andrew Sellars, Defining Hate Speech. *Berkman Klein Center Research Publication: For Internet & Society at Harvard University*, (20) December 2016
- Anisyaniawati, dkk. Konsep Hukum dan Keadilan dalam Pemikiran Gustav Radbruch. *Praxis: Jurnal Filsafat Terapan*, 3 (1) Juni 2025

- Azmiati Zuliah, Fitri Amalia. Penerapan Adagium Lex Specialis Derogat Legi Generalis dalam Penanganan Tindak Pidana Korupsi di Indonesia. *Jurnal Ilmiah Penelitian: Law Jurnal*, V (2) Februari 2025
- Baharuddin. Konflik Sosial Masyarakat Multikultural dalam Perspektif Sosiologi. *PESHUM : Jurnal Pendidikan, Sosial dan Humaniora*, 5 (2) Februari 2026
- Bimawan Domas Hidayat, Agus Surono dan Maslihati Nur Hidayati. Ujaran Kebencian pada Media Sosial pada saat Pandemi Covid 19 Studi Kasus Putusan No 72/Pid.Sus/2020/ PT. DPS. *Jurnal Magister Ilmu Hukum: Hukum dan Kesejahteraan*, VI (2) Juli 2021
- Brian M. Britt, Curses Left and Right: Hate Speech and Biblical Tradition. *Journal of the American Academy of Religion*, 78 (3) September 2010
- European Commission against Racism and Intolerance, General Policy Recommendation No. 15 - on Combating Hate Speech, CRI: Council of Europe, Strasbourg: France, *Recital*, March 2016
- Fadila Akmelia Rizki, dkk. Pencegahan Berita Hoax di Masyarakat Pedesaan Dengan Menggunakan Metode Edukasi. *Proceedings UIN Sunan Gunung Djati Bandung*, I (57) Desember 2021
- Fariz Albbirr, Fajar Ari Sudewo, Fajar Dian Aryani. Kriminalisasi Terhadap Ujaran Kebencian Di Media Sosial Perspektif Undang-Undang Nomor 1 Tahun 2023. *Pancasakti Law Journal (PLJ)*, 2 (2) Desember 2024
- Herlina Martauli S, dkk. Efektivitas Pelaksanaan Pembangunan dan Pemeliharaan Jalan oleh Balai Besar Pelaksanaan Jalan Nasional V di Provinsi Sumatera Selatan. *Jurnal Ilmu Administrasi dan Studi Kebijakan (JIASK)*, 4 (2) Maret 2022
- Magdhalena Tasik Todingrara, Heryanto. Penegakan Hukum Terhadap Pelaku Ujaran Kebencian pada Era 5.0 Berdasarkan Keadilan Pancasila. *Rio Law Jurnal*, 1 (2) Februari-Juli 2025
- Mahrus Ali. Overcriminalization dalam Perundang-undangan di Indonesia. *Jurnal Hukum Ius Quia Iustum*, 25 (3) September 2018
- M. Choirul Anam dan Muhammad Hafis , SE Kapolri Tentang Penanganan Ujaran Kebencian (Hate Speech) dalam Kerangka Hak Asasi Manusia. *Jurnal Keamanan Nasional*, 1 (3) 2015

Books:

- Abi Zakariya bin Syaraf al-Nawawi Yahya, *Riyadu al-Salihin*. Mesir: Daru alRayyan li al-Turas. 1987
- Adami Chazawi, *Stelsel Pidana, Tindak Pidana, Teori-Teori Pemidanaan dan Batas Berlakunya Hukum Pidana (Bagian I)*, PT.Raja Grafindo Persada, Jakarta, 2002
- _____, *Pelajaran Hukum Pidana 1*, Jakarta: PT Rajagrafindo Persada, 2010
- Ahmad Rifai, *Penemuan Hukum oleh Hakim dalam Perspektif Hukum Progresif*, Sinar Grafika, Jakarta, 2010

- Alan Edward Coke, *The First Part of the Institutes Lawyers of England*, in *The Selected Writing of Sir Edward Coke*, Indianapolis: Liberty Fund, Volume 2, 2003
- Alexander Brown, *Hate Speech Law: a Philosophical Examination*. New York: Routledge, 2015
- A. Mangunhardjana, *Isme-isme dalam Etika dari A sampai Z*. Jogjakarta: Kanisius, 1997
- Andi Zainal Abidin Farid. *Hukum Pidana 1*, Cetakan kedua, Sinar Grafika: Jakarta, 2005
- Article 19, *Penjelasan 'Ujaran Kebencian': Panduan*. Free Word Centre: London, United Kingdom, Edisi 2015
- Bambang Poernomo, *Asas-Asas Hukum Pidana*, Ghalia Indonesia, Jakarta, 1992
- BAPPEDA Kota Yogyakarta. *Efektivitas Peraturan Walikota Yogyakarta Nomor 64 Tahun 2013 dalam Mewujudkan Ruang Terbuka Hijau Publik Kota Yogyakarta*, Yogyakarta, 2016
- Barda Nawawi Arief. *Bunga Rampai Kebijakan Hukum Pidana*. Bandung: Citra Aditya Bakti. 2002
- _____. *Kapita Selekta Hukum Pidana*. Bandung: Citra Aditya Bakti, 2003

Regulation:

- The 1945 Constitution of the Republic of Indonesia
- Constitution Number 2 of 2002 concerning Republic of Indonesia National Police
- Constitution Number 40 of 2008 concerning Deletion Racial and Ethnic Discrimination
- Constitution Number 1 Year 2023 regarding the Criminal Code
- Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions
- Circular letter Chief of Police Number SE/06/X/2015 concerning Handling Speech Hate Speech