
Criminal Responsibility of Criminal Acts of Hate Speech Through Social Media

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Abstract

The development of information technology has changed the lifestyle of Indonesian people, including expressing their opinions through various social networking sites such as Facebook, Instagram, Twitter, WhatsApp and various other types of social media. The research method used is Normative legal research is a legal research method that examines applicable legal provisions. Freedom to express written and oral opinions has become the right of every Indonesian citizen which is regulated in Article 28 of the 1945 Constitution of the Republic of Indonesia. In this era, people can easily access social media and express their opinions. Every opinion must be accountable and must not conflict with existing norms. Unlimited freedom of opinion can result in criminal acts of hate speech. Case Study of Decision Number 914/Pid.Sus/PN.Jkt.Pst and Decision Number 63/Pid.Sus/2019/PN.Sdw, where in both cases the decision involved criminal acts of hate speech. The crime of hate speech in Indonesia has not been specifically regulated in any statutory regulations. Criminal liability for perpetrators of criminal acts of hate speech on social media is generally regulated in the Criminal Code (KUHP) and in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions.

Keywords: Criminal Liability, Hate Speech, Social Media

INTRODUCTION

Indonesia is a country of law, meaning that all behavior is regulated by law. Law regulates human actions in the real world and in cyberspace such as the internet. In cyberspace, people do exactly the same things as they do in the real world. Often in cyberspace, namely internet networks, people use social media as a means of making social connections with other people. This shows that social media on the internet has become a necessity for people to help them live socially.

Social media is an online information medium which is a means of human relations that is not limited by space and time, where users can share via internet media, join, participate, and create content in the form of YouTube, social media, blogs and so on. The internet or social networking as well as social media and information technology have become an inseparable unit that has created the emergence of new things in life as it is today. The use of social media itself for someone is also quite important, namely to interact with one another so that we can make new friends through social media. Apart from games, selling on social media can be easier and more efficient if done by a businessman, so searching for any information can be done using social media.

Social media has changed the world as if it were limitless and changed the concept of distance and time. Information can quickly spread through social media. With social media, anytime and anywhere people can see, connect, talk and do business with other people who are not with them. With social media too, it is easier for people to express opinions, opinions, thoughts or ideas. However, this freedom will become a potential conflict and problem if there is no control from someone so that they do not overuse their freedom in using social networks.

Of course, behind the many uses of social media, there are also many negative impacts. Among them is the development of crime in cyberspace or often referred to as Cybercrime. To anticipate this development, the Indonesian Government through the legislative body has made provisions prohibiting the distribution and creation of content containing hate speech, whether distributed via social media, YouTube or personal blogs.

Law Number 11 of 2008 as amended by Law Number 19 of 2016 Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the ITE Law) contains many regulations relating to the prohibition of actions related to transactions. electronically, the ITE Law regulates prohibited acts, including: 1. Decency; 2. Gambling; 3. insult/defamation; 4. extortion; 5. fake news and SARA; 6. threats of violence.

One of the prohibitions on actions related to electronic transactions is regulated in Article 28 paragraph (2) of Law Number 11 of 2008 as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. , which reads:

"Everyone intentionally and without right disseminates information aimed at creating feelings of hatred or enmity towards certain individuals and/or groups of people based on ethnicity, religion, race and inter-group (SARA)."

The current prohibitions in the ITE Law are not enough to be frightening for users of electronic transactions, it is recorded that there are still many electronic transaction users who violate the provisions in the ITE Law Article 45 A paragraph 2. Hate speech in the media social issues that never subside occur for many reasons, including:

1. Lack of digital media literacy programs for the community.

Digital media literacy to provide awareness to the public about what content has the potential to violate the law and what does not.

2. Unclear law enforcement.

In a number of cases, perpetrators of hate speech are often not processed completely. There are also perpetrators who make mistakes who are not jailed. Legal ambiguity makes people feel protected because there is no clear legal certainty.

3. Political conflict at the elite level.

The bad influence of using social media can also come from public figures who have many fans. They are scrambling to influence society through social media for funpolitical mood.

Hate speech can be carried out through various media, including orations, campaign activities, banners or banners, social media networks, expressing opinions in public (demonstrations), religious lectures, print and electronic mass media, and pamphlets. In the legal sense, hate speech is words, behavior, writing or performances that are prohibited because they can trigger acts of violence and prejudice, whether on the part of the perpetrator of the statement or the victim of the act. Examples of hate speech are race, skin color, gender, disability, sexual orientation, religion, defamation, insults and others. Websites that use or implement hate speech are called hate sites. Most of these sites use internet forums and news to emphasize a particular point of view.

In this research, the author examines cases of criminal acts of hate speech listed in Decision Number 914/Pid.Sus/2019/PN Jkt.Pst and Decision Number 63/Pid.Sus/2019/PN Sdw. Decision Number 914/Pid.Sus/2019/PN Jkt.Pst with Defendants Perdiansyah als Ferdiansyah als Ferdi Bin Nazuroh Efendi. The Public Prosecutor has submitted the Defendant to Trial with alternative charges, namely first violating the provisions of Article 45A paragraph (2) of Law Number 19 of 2016 as an amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions jo. Article 28 paragraph (2) of Law Number 11 of 2008 concerning Information and Electronic Transactions, or secondly violates Article 160 of the Criminal Code, or thirdly violates Article 14 paragraph (1) and paragraph (2) of Law Number 1 of 1946 concerning Legal Regulations Criminal, or fourth, violating the provisions of Article 15 of Law Number 1 of 1946 concerning Criminal Law Regulations.

Decision Number 63/Pid.Sus/2019/PN.Sdw with the defendant H. Fahmi Reza Pahlevi Bin H. Setiahasnan, the public prosecutor has submitted the defendant to trial with the indictment that the defendant H. Fahmi Reza Pahlevi Bin H. Setiahasnan is proven guilty of committing a criminal act " "Deliberately and without the right to disseminate information aimed at creating feelings of hatred or enmity towards certain individuals and/or groups of society based on ethnicity, religion, race and inter-group (SARA)" as regulated and punishable by crime in Article 45a Paragraph (2) Jo Article 28 Paragraph (2) Republic of Indonesia Law no. 19 of 2016 concerning Amendments to Republic of Indonesia Law no. 11 of 2008 concerning Information and Electronic Transactions.

Based on the background description above, the formulation of the problem in this research is: What is the criminal responsibility of the perpetrator in the crime of hate speech in Decision Number 914/Pid.Sus/2019/PN Jkt.Pst and Decision Number 63/Pid.Sus/2019/PN.Sdw? and What is the legal policy in preventing and dealing with hate speech via social media?

RESEARCH METHODS

In this research, the author uses normative legal research, namely a legal research method that examines applicable legal provisions, in this case the Criminal Code, Law Number 11 of 2008 as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions and other laws and regulations relating to research issues.

This type of research is prescriptive in nature because it describes the applicable laws and regulations and is linked to legal theories in the practice of implementation related to the problem, as well as describing/describing the facts that actually occur as a reflection of the implementation of the existing laws and regulations. in this case it is criminal liability of perpetrators of criminal acts of hate speech (Case Study Decision Number

914/Pid.Sus/2019/PN Jkt.Pst And Decision Number 63/Pid.Sus/2019/PN Sdw).

The data used in this research is secondary data. Secondary data is data used to answer the problems in this research through literature study. Secondary data is the main data used in this writing.

In accordance with the type of data used, secondary data consists of 3 (three) legal materials, namely:

a. Primary legal materials

Namely the source of law which is the binding/legal basis, in this case namely:

- 1) Criminal Code;
- 2) Law Number 11 of 2008 as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions; And
- 3) Court ruling.

b. Secondary legal materials

This is legal material obtained from books, scientific papers, legal magazines and scientific essays related to the main issues to be discussed, especially regarding criminal acts of hate speech.

c. Tertiary legal materials

Namely legal materials that provide additional explanations or support data that already exist in primary legal materials and secondary materials, such as legal dictionaries, magazines, newspapers and others that contain writing that can be used as information for this research.

DISCUSSION

Criminal liability of perpetrators in criminal acts of hate speech in Decision Number 914/Pid.Sus/2019/PN Jkt.Pst and Decision Number 63/Pid.Sus/2019/PN.Sdw.

Criminal responsibility in this foreign term is also known as the theory of criminal responsibility or criminal responsibility which leads to the punishment of the perpetrator with the aim of determining whether a defendant or suspect is responsible for a criminal act that occurred or not.

In Article 34 of the Draft New Criminal Code, it is formulated that criminal responsibility is the continuation of objective blame for criminal acts based on applicable legal provisions. Subjectively, the creator who meets the requirements in the law (criminal) can be charged with a crime because of his actions. Meanwhile, the requirement for criminal liability or the imposition of a crime is that there must be an element of error in the form of intent or negligence.

Article 27 of the 1982/1983 Criminal Code concept states that criminal liability is the transfer of objective blame for actions based on applicable law, subjectively to the maker who fulfills the requirements of the law who can be punished for his actions.

In accordance and according to the National Police Chief's Circular Letter No. SE/X/06/2015, what is meant by Hate Speech and what is included in Hate Speech include insults, defamation, defamation, unpleasant acts, provoking, inciting and spreading false news both directly in public and via social media.

Hate speech as a communication act carried out by individuals or groups, it is usually a provocation which can not only be carried out on social media, but also through writing on banners, campaign speeches, pamphlets and so on. There are those who use it in the form of direct pressure, there are those who manipulate it with jokes. For example, by using memes (mimema). The problem of hate speech in this era of modernization can be found in various forms of information, both in print media and social media and can have an impact on acts of discrimination, violence, loss of life and social conflict.

So this matter has received attention from the public, both nationally and internationally in line with the increasing level of public concern regarding the issue of human rights violations. To address this, the National Police Chief issued a letter with NO SE/6/X/2015. The letter contains any actions that fall into the category of hate speech as regulated in the Criminal Law (KUHP) and other criminal provisions outside the Criminal Code, which take the form of, among others: Insults, Defamation, Defamation, Displeasing Actions, Provoking, Inciting, Spreading fake news.

In Indonesia itself, the beginning of the rise of hate speech that emerged in society was triggered by the rise of demonstrations. Generally, hate speech can take the form of campaign speeches, demonstrations, demonstrations and heated debates. Generally, those who dominate are groups that are arrogant, feel strong, have protectors, have influence, have large masses and so on. However, it is also possible that minority groups are the ones who trigger hate speech.

The Republic of Indonesia has legal regulations which are implemented into laws. The existence of these regulations can mean that there is law enforcement from law enforcement officers or state agencies as a body that has the authority to enforce the law because there is an unlawful act committed by the perpetrator of a criminal act. Law enforcement carried out by state officials through state agencies is a series of processes to translate values, ideas and ideals into a goal of the law itself. Law enforcement has a dynamic nature or develops with the times, starting from the traditional era to the modern era like today, so with this, law enforcement in Indonesia is always developing along with the development of criminal acts that occur as a result of developments over time. The development of the times can influence the emergence of new legal violations, such as criminal acts in the field of modern technology and information which are increasingly emerging at this time.

Current developments can influence patterns of life in society, from changes in the direction of life and values, to social structures and institutions in society. Law enforcement is not an activity that can stand alone, but must be dynamic or adapt to community activities. Social media is one of the changes in times that can influence people's lifestyles in everyday life. So with the existence of social media, the government has also issued regulations that regulate the use of social media so that it does not cause problems among the public. This is done so that everyone who uses social media can be held accountable for their actions.

Due to this, it can be seen that the criminal liability of perpetrators of criminal acts of hate speech via social media is Decision Number 914/Pid.Sus/PN.Jkt.Pst and Decision Number 63/Pid.Sus/2019/PN.Sdw. Decision number 914/Pid.Sus/PN.Jkt.Pst in the name of Perdiansyah als Ferdiansyah als Ferdi bin Nazuroh Efendi. The explanation of the decision is as follows:

The defendant Perdiansyah als Ferdiansyah als Ferdi bin Nazuroh Efendi on Wednesday 22 May 2019 or at least in a series of times in 2019 was located in the Gambir area, Central Jakarta or at least in the jurisdiction of the Central Jakarta District Court, intentionally and without The right to disseminate information aimed at causing feelings of hatred or hostility towards certain individuals and/or groups of society based on ethnicity, religion, race and inter-group (SARA), in the following manner:

That on Thursday, May 16 2019, the defendant used a Luna Elevante cellphone with the IMEI number 351727080310405, gold, opened a conversation application called WhatsApp (WA) to send a series of provocative conversation messages to the WhatsApp Group (WAG) called P.Pohon Jambu 25l, which is a group conversation between members of the study group consisting of: Defendant, Witness Abdul Latief, Witness Gofur, Br. Mulyadi, Br Ronny, Br Budi, Br M. Raffi and Br Ubay Dilah who live on Jl. Rawa Sawah, Kampung Rawa Village, Johar Baru District, Central Jakarta with sentences that can be seen by all members of WAG P.Pohon Jambu 25l, with the following description, At 15.49 WIB, the defendant sent a message to WAG P.Pohon Jambu 25l:

- a. On the 22nd, if Jokowi is elected, we will make it like 98, takbir!!", which aims to cause riots like in 1998 which caused the resignation of President Suharto who was in office at that time so that the current president can be removed because the Defendant wants a change in his life. as a businessman if the presidential candidate is replaced and what the defendant means by 'Jokowow' is President Joko Widodo.
- b. Then on Sunday 19 May 2019 the defendant again sent a chat message to the WhatsApp Group (WAG) called P.Pohon Jambu 25l which aimed to invite members of the WAG P.Pohon Jambu 25l to also move on 22 May 2019 to take action to General Election Commission building with the description: At 13.51 WIB, the defendant sent a message to WAG P. Tree Jambu 25l with an invitation sentence which could be recognized by members of WAG P. Tree Jambu 25l: "Come on when??" " and "If possible on the 21st, at the same time as a meeting of anyone who goes to the KPU building on the 22nd. At 16.33 WIT, the defendant again sent a message to WAG P. Jambu Tree 25l containing an invitation sentence which could be recognized by members of WAG P. Jambu Tree 25l : Don't just be cute, move too... on the 22nd...!!! "
- c. Then on May 22 2019 at 01.21 WIT, the defendant again sent a message to the WhatsApp Group (WAG) called P.Pohon Jambu 25l with a sentence that could be known by WAG members. continued at 01.33 WIT the defendant sent another message to WAG P. Tree Jambu 25l with the sentence: "It's already burnt." That the message sent by the defendant to WAG P. Pohon Jambu 25l was then responded to by witness Gopur with the sentence: "You can't get through to my brother's house and Jalan Nye is closed."
- d. Then on Wednesday 22 May 2019 at 11.01 WIB the Defendant again sent a conversation message in the form of a photo/drawing followed by a message to WAG P. Tree Jambu 25l: "Preparation for war... which one else?".
- e. On the same day and date, namely Wednesday 22 May 2019, the defendant also departed from Johar Baru together with Mr. Herlan and Br. Budi headed to the General Election Supervisory Agency (Bawaslu) building to take part in a demonstration at Bawaslu. However, when the defendant crossed the Gambir Police Station area, the defendant was stopped by members of the police, namely witness Iwan Kurniawan, Br Heri Wibowo, witness Triyono, witness Anton Halomoan Ritonga and his team while on patrol around the Gambir Metro Police Headquarters around 500 meters from the office area. Gambir Sector Police to sterilize the area and there was an order to secure people who were causing trouble and a body search was carried out because they were suspected of carrying sharp weapons and tools that could harm other people, then among the crowd of people who were causing trouble and rioting, the defendant was also arrested. Then a body search was carried out and the defendant's cell phone was found, namely a Luna Elevante brand cell phone with IMEI number 351727080310405 gold color and witness Anton Halomoan Ritonga found a provocative message sent by the defendant to WAG P. Pohon Jambu 25l so the defendant was arrested.
- f. The conversation message sent by the Defendant to WAG P. Pohon Jambu 25l was intended to inform people who were members of WAG P. WAG member P. Guava Tree 25l.

The demands of the Public Prosecutor in the criminal case of hate speech which has been decided in case Decision Number 914/Pid.Sus/PN.Jkt.Pst are as follows:

- a. Declare the accused Perdiansyah Als Ferdiansyah Als Ferdi Bin Nazuroh Efendi has been legally and convincingly proven guilty of committing the criminal act of "spreading information aimed at causing feelings of hatred or hostility towards certain individuals and/or groups of society based on ethnicity, religion, race and inter-group (SARA)" as regulated and punishable by crime in Article 45 A paragraph (2) of Law Number: 19 of 2016 as an amendment to Law Number: 11 of 2008 concerning Information and Electronic

Transactions in conjunction with Article 28 paragraph (2) of Law Number: 11 of 2008 2008 concerning Information and Electronic Transactions.

- b. Sentenced the Defendant Perdiansyah als Ferdiansyah als Ferdi bin Nazuroh Efendi to prison for 1 (one) year and 10 (ten) months, as well as a fine of IDR 100,000,000 (one hundred million rupiah) provided that the fine If the payment is not paid, it will be replaced by imprisonment for 1 (one) month;
- c. State evidence in the form of:
 1. 1 (piece) cellphoneLuna Elevante brand with IMEI number 351727080310405 gold color along with Simcard;
 2. 1 (one) sheet of print-out screen capture of Whatsapp P. Tree Jambu 25I; All of them were confiscated and destroyed.

The judge's decision in the criminal case of hate speech which has been decided in case Number Decision Number 914/Pid.Sus/PN.Jkt.Pst is as follows:

1. Stating that the Defendant, Perdiansyah als Ferdiansyah als Ferdi bin Nazuroh Efendi, has been legally and convincingly proven guilty of committing the criminal act of "spreading information aimed at creating feelings of hatred or enmity for certain individuals and/or groups of society based on ethnicity, religion, race and intergroup (SARA)"
2. Sentenced the defendant Perdiansyah als Ferdiansyah als Ferdi bin Nazuroh Efendi to prison for 1 (one) year and 10 (ten) months, as well as a fine of IDR 100,000,000 (one hundred million rupiah) with the provisions if the fine is not paid, it will be replaced by imprisonment for 1 (one) month;
3. Determining the period of arrest and detention that the Defendant has served is reduced by sthe entirety of the sentence imposed;
4. Order that the Defendant remain detained;
5. Determine evidence in the form of:
 - 1 (piece) cellphoneLuna Elevante brand with IMEI number 351727080310405 gold color along with Simcard;
 - 1 (one) sheet of print-out screen capture of Whatsapp P. Tree Jambu 25I; All of them were confiscated and destroyed. (All confiscated to be destroyed).

1. Charge the Defendant to pay court costs of IDR 5,000 (five thousand rupiah);

Meanwhile, in Decision Number 63/Pid.Sus/2019/PN.Sdw. The explanation of the decision is as follows:

Defendant H. Fahmi Reza Pahlevi Bin H. Setia Hasnan on Tuesday 05 March 2019 at approximately 11.50 WITA or at least one day in March 2019 at Kec. Melak, West Kutai Regency or at least a place which is still included in the jurisdiction of the West Kutai District Court which has the authority to examine and adjudicate, intentionally and without right disseminating information aimed at causing feelings of hatred or enmity towards certain individuals and/or community groups based on ethnicity, religion, race and intergroup (SARA). The defendant committed this act in the following way:

- a. The defendant as the owner of the Fahmi Van Koetai Facebook account on March 5 2019 at the defendant's house on Jl. Ki Hajar Dewantara RT/RW 028/000 Kel. Melak Ulu District. Melak Regency West Kutai used the defendant's cell phone to post the status: "Non-Muslim and Non-Pious People, Later in the Afterlife Will Enter Non-Heaven, Then They Will Get Non-Stop Torture", then witness Janus Said (still under investigation by the West Kutai Police) with an account Facebook Said Tunjung read the defendant's post and commented: "Have you ever been to heaven, my boss Haji Fahmi." Then, on Saturday, March 9 2019, at around 21.00 WIT, a screen shot of the defendant's post was distributed by witness Januarys Said via his Facebook account, which then went viral and received many responses and caused unrest in the people of

West Kutai Regency. Then, witness Suriansyah, as a Catholic, felt offended by the defendant's post, where witness Suriansyah considered the article to be very offensive to other religions which could be an element of SARA, so witness Suriansyah reported the incident to the West Kutai Police.

- b. As recommended by the West Kutai Regency Religious Harmony Forum (FKUB) Number: 04/REK/FKUB/III/2019 dated 09 March 2019 which was signed by EV. Petrus Satian, C.Min, S.Sos as Chair of the West Kutai Regency FKUB, essentially concluded that the defendant's post was "Non-Muslim and Non-Pious People, Later in the Afterlife Will Enter Non-Heaven, Then They Will Get Non-Stop Torture" has caused unrest which is quite dangerous for inter-religious harmony in the West Kutai Regency area and has violated the Ethics of Religious Harmony.
- c. That the post on the status of the Defendant's Facebook account is open to the public and can be accessed by everyone (public). The defendant is not a preacher/religious leader, so the defendant should be aware that the electronic information posted by the defendant could cause feelings of hatred or hostility between religious groups.

The defendant's actions are as regulated and punishable by crime according to Article 45 A Paragraph (2) in conjunction with Article 28 Paragraph (2) of Republic of Indonesia Law No. 19 of 2016 concerning Amendments to Republic of Indonesia Law no. 11 of 2008 concerning Information and Electronic Transactions.

The Public Prosecutor's demands in the case of criminal acts of hate speech which have been decide in case Decision Number 63/Pid.Sus/PN.Sdw. as follows:

- a. Stated the defendant H. Fahmi Reza Fahlevi Bin H. Setia Hasnanhas been legally and convincingly proven guilty of committing the criminal act of "spreading information aimed at causing feelings of hatred or hostility towards certain individuals and/or groups of people based on ethnicity, religion, race and inter-group (SARA)" as regulated and punishable by crime in Article 45 A paragraph (2) of Law Number: 19 of 2016 as an amendment to Law Number: 11 of 2008 concerning Electronic Information and Transactions in conjunction with Article 28 paragraph (2) of Law Number: 11 of 2008
- b. Sentence the defendant to imprisonment for 6 (six) months and a fine of Rp. 500,000,000 (five hundred million rupiah) with the provision that if the fine is not paid, it will be replaced by imprisonment for 1 (one) month;
- c. State evidence in the form of:
 - 1 (piece) Android cellphone Type A37Oppo brand gold color with IMEI number 864217035997035 along with SIM Card Number 08125855618;
 - 1 (one) Facebook account in the name "Fahmi Van Koetai" with an email addressawasadasule33@ymail.com

Returned to the defendant H. Fahmi Reza Pahlevi Bin H. Setia Hasnan.

The judge's decision in the criminal case of hate speech which has been decided in case Decision Number 63/Pid.Sus/PN.Sdw. as follows:

1. Declare that the Defendant H. Fahmi Reza Pahlevi Bin H. Setia Hasnan has been legally and convincingly proven guilty of committing the criminal act "Deliberately and without right disseminating information aimed at causing feelings of hatred or enmity towards certain individuals and/or community groups based on ethnicity, Religion, Race and Inter-Group (SARA)";
2. Sentencing the defendant to imprisonment for 6 (six) months and a fine of IDR 500,000,000 (five hundred million rupiah) with the provision that if the fine is not paid it will be replaced by imprisonment for 1 (one) month;
3. Determining that the period of arrest and detention that the Defendant has served shall be deducted entirely from the sentence imposed;

4. Order that the Defendant remain detained;
5. Determine evidence in the form of:
 - 1 (piece) Android cellphone Type A37Oppo brand gold color with IMEI number 864217035997035 along with SIM Card Number 08125855618;
 - 1 (one) sheet of print-out screen capture of Whatsapp P. Tree Jambu 25I; All of them were confiscated and destroyed. (All confiscated to be destroyed).
6. Charge the Defendant to pay court costs of IDR 5,000 (five thousand rupiah);

Article 28 Paragraph (2) of the Information and Electronic Transactions Law reads "Every person intentionally and without right disseminates information aimed at causing feelings of hatred or enmity towards certain individuals and/or groups of society based on ethnicity, religion, race and between groups. (SARA)". It is clear that this article is a legal certainty that contains hate speech. Article 28 contains the element of every person, which means that anyone who commits a criminal act of hate speech must be held accountable for their actions before the law. It is clear that actions related to criminal acts of hate speech, whether carried out intentionally or unintentionally, require responsibility for these actions before the law in accordance with applicable laws. Related to this, a person's social strata does not differentiate or cannot influence criminal liability for someone who commits a criminal act, especially hate speech crimes committed on social media. The crime of hate speech is not a crime or a new criminal act, because this crime already exists and is regulated in the Criminal Code. However, there are differences in the terms of reference, where currently the public is familiar with the term hate speech, but in the Criminal Code it is known as a statement of hostility in public as regulated in Articles 156 and 157 of the Criminal Code. The article reads as follows:

Article 156 letter a:

Anyone who publicly expresses feelings of hostility, hatred or contempt towards one or several groups of the Indonesian people, is threatened with imprisonment for a maximum of four years or a fine of a maximum of three hundred rupiah.

Article 157:

Any person who broadcasts or displays in public, writings or paintings containing expressions of feelings of enmity, hatred or humiliation between or against groups of the Indonesian people, with the intention of making the contents known or better known to the public, is threatened with imprisonment for a maximum of two years. six months or a maximum fine of three hundred rupiah.

Hate Speech or hate speech can be interpreted as behavior, writing, words or performances that are prohibited by law because they can trigger acts of violence and commotion in life in society. In this regard, based on the National Police Chief's Circular Letter Number SE/06/X/2015 concerning Hate Speech, it is stated that Hate Speech is a criminal offense regulated in the Criminal Code and other criminal regulations in outside the Criminal Code, which is in the following form: a. Defamation, b. Inciting, c. Unpleasant acts, d. Insult, e. Provoking, f. Blasphemy, g. Spreading fake news.

It is known that if these actions occur, they can cause violence or social conflict, discrimination, and can even result in the loss of other people's lives or death. So it can be seen that the aim of carrying out hate speech is to incite hatred and incite individuals and/or groups of people in certain communities. According to Pasek Diantha in letter (h) of the National Police Chief's Circular Letter Number SE/06/X/2015 concerning Hate Speech, hate speech can be carried out through various media, including: a. In campaign activity orations, b. Banners or banners, c. Social media networks, d. Expressing opinions in public (demonstration), e. Religious lectures, f. Print or online mass media, g. Pamphlet

Apart from discussing criminal acts of hate speech, the author will also discuss criminal responsibility. According to Chairul, he stated that:

Accountability is a person's responsibility for the criminal acts they commit. Strictly speaking, what the person is responsible for is the criminal act he committed. Thus, criminal liability occurs because a criminal act has been committed by someone

In essence, accountability is always required of a person or individuals who are deemed guilty of a criminal act, especially hate speech on social media. Regarding this matter, Romli stated that:

Basically, criminal responsibility can be held accountable to the perpetrator of a criminal act, who must fulfill 4 elements of requirements, namely 1) There was an action (commission or omission) by the perpetrator; 2) Those who fulfill the offense formulations in the law; 3) The action is unlawful or unlawful, and 4) The perpetrator must be held accountable.

Related to the above, the form of criminal responsibility for perpetrators of criminal acts of hate speech on social media is based on the principle of *lex specialis derogat legi generali* referring to the provisions of Article 28 paragraph (2) jis. Article 45A paragraph (2) Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. According to Adami, he stated that:

The elements of the crime of Electronic Information and Transactions in Article 28 paragraph (2) are: 1) Error: intentionally; 2) Against the law: without rights; 3) Action: spreading; 4) Object: Information; 5) Purpose: to cause feelings of hatred or hostility towards certain individuals and/or groups of society based on ethnicity, religion, race and between groups (SARA).

Criminal liability for someone who is proven to fulfill the elements of a criminal offense in Article 28 paragraph (2) of Law Number 11 of 2008 concerning Information and Electronic Transactions is someone who has committed a criminal act of hate speech on social media. Based on Article 45 letter A paragraph (2) of Law Number 11 of 2008 concerning Electronic Information and Transactions, the prison sentence is a maximum of 6 years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah). So if you look at this case, it is legally proven that H. Fahmi Reza Fahlevi Bin.H. SetiaHasnan committed the crime of hate speech, so in the decision the panel of judges sentenced the defendant in the name of H. Fahmi Reza Fahlevi Bin.H. SetiaHasnan has been legally and convincingly proven guilty of committing the criminal act of "spreading information aimed at creating feelings of hatred or hostility towards certain individuals and/or groups of people based on ethnicity, religion, race and inter-group (SARA)"; with the defendant being sentenced to imprisonment for 6 (six) months and a fine of Rp. 500,000,000 (five hundred million rupiah) with the provision that if the fine is not paid, it will be replaced by imprisonment for 1 (one) month;

If we look at the case of hate speech on social media, anyone can commit the crime of hate speech on social media, including children, except for children under 12 (twelve) years of age, where the law regulates the limits a person can take. to be responsible for a criminal offense must be 12 (twelve) years of age or older. So in social life in society, using social media as a medium for spreading hate speech can be done by anyone, including children, as long as they can use social media on the internet.

So if someone has committed a violation of the law or a criminal act, whether done intentionally or negligently, they must still be held accountable for their actions before the law. Usually this happens due to a lack of socialization and less than optimal education regarding the use of social media which is considered a normal thing, but in fact there are regulations that regulate the proper and correct procedures for using social media, so that if someone does not use social media properly and it is true that there will be criminal liability that must be borne.

In relation to this, in general hate speech can be understood as a manifestation or expression of hatred in the form of writing, action, speech and treatment which aims to

humiliate, intimidate, embarrass and provoke other people or other groups based on race, gender, ethnicity, religion and nationality.

Legal policy in preventing and dealing with hate speech via social media

Criminal law policy cannot be separated from the idea of developing a national legal system based on Pancasila as the life value that the Indonesian people aspire to. This means that the reform of the Criminal Code should also be motivated by sources that are oriented towards the basic ideas of Pancasila which contain the concepts of the values of God, Humanity, Nationality, Democracy and Social Justice. In the report of the National Criminal Law Reform symposium held in Semarang, national Criminal Law Reform is essentially an effort that directly concerns the honor and dignity of the Indonesian nation and state and is a basic means for the creation of national goals.

Policies or efforts to overcome crime are essentially an integral part of efforts to protect society (social defense) and efforts to achieve social welfare. Therefore, it can be said that the ultimate goal or main goal of criminal politics is "protection of society to achieve social welfare." Crime prevention needs to be pursued with a policy approach, in the sense of:

1. There is integration (integrality) between criminal politics and social politics.
2. There is integration (integrality) between penal and non-penal crime prevention efforts.

Broadly speaking, crime prevention efforts can be divided into two, namely through "non-penal" channels (not/outside criminal law) and through "penal" channels (criminal law). Roughly speaking, it can be distinguished that efforts to overcome crime through the "penal" route focus more on the repressive nature (suppression/eradication, crushing) after the crime occurs, while the "non-penal" route focuses more on the preventive nature (prevention, deterrence/control) before the crime occurs. .

Considering that efforts to combat crime through "non-penal" channels are more of a preventative measure for crime, the main target is to address the conducive factors that cause crime to occur. These conducive factors, among others, center on problems or social conditions that can directly or indirectly give rise to or foster crime. Thus, seen from a macro and global criminal politics perspective, non-penal efforts occupy a key and strategic position in all criminal political efforts.

The problem of crime is nothing new, even though the place and time are different, the method is still considered the same. As time passes, crime in the capital and other big cities increases, even in some areas and even in small towns. Efforts to combat crime have been carried out by all parties, both the government and society in general. Various programs and activities have been carried out while continuing to look for the most appropriate and effective way to overcome this problem. As stated by EHSutherland and Cressey, in crime prevention, in its implementation there are two methods used to reduce the frequency of crime, namely:

1. The method for reducing the repetition of crimes is a method aimed at reducing the number of recidivists (repetition of crimes) by means of coaching that is carried out conceptually.
2. The method to prevent (the first crime), is a method aimed at preventing the occurrence of the first crime (the first crime) that will be committed by someone and this method is also known as the prevention method.

Based on the description above, it can be seen that crime prevention efforts include preventive activities, as well as efforts to improve the behavior of someone who has been found guilty (as a prisoner) in a correctional institution. In other words, crime prevention efforts can be carried out preventively and repressively or broadly defined as non-penal and penal prevention. Below we will briefly explain crime prevention efforts in general:

1. Penal Effort

Efforts to combat crime through the application of criminal law are efforts to combat crime that focus more on the nature of eradication after the crime occurs.

a. Investigation Action

Investigative action is the initial stage that must be carried out by investigators in conducting a criminal investigation and is also the most difficult stage in the investigation process, because at this stage the investigator must be able to prove the criminal act that occurred, what factors of the criminal act occurred and how to deal with it. According to Willson Buana, in investigating cases of hate speech in the form of insults carried out via social media, many experienced obstacles and difficulties, because the perpetrators of these crimes could carry out their actions at any time without other people's knowledge and use fake accounts. because cases related to cybercrime are handled differently from ordinary or conventional criminal cases.

b. Carry out thorough enforcement against the perpetrators

This is in accordance with the provisions in the General Provisions of the Criminal Code in Article 63 Paragraph 2 which states that "If an act falls within a general criminal rule, which is also regulated in a special criminal rule, then that particular one is applied." Article 28 Paragraph (2) states that every person intentionally and without right disseminates information aimed at causing feelings of hatred or hostility towards certain individuals and/or groups of society based on ethnicity, religion, race and intergroup (SARA). Article 45 Paragraph (2) states that every person who meets the elements as intended in Article 28 paragraphs (1) and (2) will be sentenced to imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of IDR. 1,000,000,000.00,- (one billion rupiah).

c. Repressive Penal Efforts

Repressive Penal Efforts are efforts made to deal with criminals, such as by administering punishments in accordance with applicable law, where the aim of providing punishment is to deter perpetrators, prevent them, and provide social protection. Crime is a form of realization or response to crime which is one of the objects of criminology.

Based on this, law enforcement officials have guidelines in determining the type of punishment that is suitable to the condition of the perpetrator. Article 10 of the Criminal Code regulates the types of punishment including basic crimes in the form of the death penalty, imprisonment, imprisonment, and fines. And additional punishments in the form of revocation of certain rights, revocation of certain items, announcement of the judge's decision, there are also alternative crimes in the form of conditional sentences for perpetrators who are deemed unable to be responsible for the crimes they have committed (Article 44 of the Criminal Code), other punishments for those who are still under trial. minors (Articles 45, 46, 47 of the Criminal Code) according to determinism, offenders do not need to be punished because people do not have free will in committing acts but are influenced by personal character, biological factors and community environmental factors. Crime is a manifestation of a person's abnormal mental state so that the perpetrator cannot be blamed and cannot be punished.

2. Non-Penal Efforts

To overcome the criminal behavior of extortion and threats through electronic media, non-penal efforts are used, which are preventive efforts, namely preventing or preventing healing behavior. There are efforts made with internal and external steps.

a. Striving to prevent it by providing education on how to use communication tools

wisely, starting from the family to the wider community, the police prioritize the technical function of the Criminal Investigation Department which specifically handles cases of hate speech in the form of insults carried out via social media, namely by carrying out regulatory, guarding and special patrols in locations where these cases are suspected to frequently occur. Socialization of Law Number 11 of 2008 concerning Information and Electronic Transactions. The explanation must be carried out by the police, because the public's lack of understanding about the contents of the ITE Law makes it important for the government to carry out a campaign regarding this regulation. For example, the formulation of Article 27 of the ITE Law in its application can give rise to multiple interpretations and result in a person's human rights being violated, namely in the event of a misunderstanding by law enforcement officials who consider that a criminal act in the ITE Law is a crime.

- b. Internally or from the individual himself, by increasing religious formation to prevent someone from deviating from religious norms. Religion has a very big role in human life, because it has its own system of norms which always teaches its adherents to do good deeds and avoid forbidden acts and the role of the family and environment plays a very important role in controlling social behavior that exists and develops in society. . The family is the smallest social group in society but has a large influence on the environment. Families that instill moral values in each member ensure their behavior is protected from negative influences from relationships outside the home.

Efforts to overcome the occurrence of hate speech crimes on social media consist of penal and non-penal efforts. Where the penal effort consists of giving sanctions to the perpetrator by giving a prison sentence in accordance with what has been stipulated in the ITE Law to provide a deterrent effect. Meanwhile, non-penal efforts include providing counseling or outreach to the wider community regarding information on the impact of electronic media if it is not used wisely, ethics in using social media by providing legal knowledge regarding the ITE Law.

Non-Penal Measures (Preventive and Repressive Measures) Preventive measures are non-penal measures (prevention) such as: 1. Improving the social and economic conditions of society; 2. Increasing legal awareness and community discipline; 3. Improve moral education.

Basically, the most strategic non-penal efforts are all efforts to make society a healthy social and living environment (materially and immaterially) from criminal factors. This means that society with all its potential must be used as a factor in preventing crime. Efforts to combat crime through non-penal channels are more preventative of crime, so the main target is to deal with the conducive factors that cause crime to occur.

CONCLUSION

If someone has committed a violation of the law or a criminal act, whether done intentionally or negligently, they must still be held accountable for their actions before the law. Usually this happens due to a lack of socialization and less than optimal education regarding the use of social media which is considered a normal thing, but in fact there are regulations that regulate the proper and correct procedures for using social media, so that if someone does not use social media properly and it is true that there will be criminal liability that must be borne. Information that used to take months to reach certain areas, now in just seconds this information can be spread to all regions of the world thanks to the internet and smartphones/smart phones. It cannot be denied that social media as a facility and means has a major influence on the occurrence of criminal acts of hate speech in which it is easier for the perpetrators to carry out their actions by using social media as a facility and means in today's modern era.

Police implementation in dealing with crimes of hate speech can be broadly divided into two, namely through the "non-penal" route (not/outside criminal law) and through the "penal" route (criminal law). Roughly speaking, it can be distinguished that efforts to overcome crime through the "penal" route focus more on the repressive nature (suppression/eradication, crushing) after the crime occurs, while the "non-penal" route focuses more on the preventive nature (prevention, deterrence/control) before the crime occurs.

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