

HOAX AND LAW ENFORCEMENT IN THE POST-TRUTH ERA IN A PROGRESSIVE LEGAL PERSPECTIVE

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Abstract

The phenomenon of reporting and spreading hoaxes on social media to drive public opinion is packaged in the concept of post-truth, where a pattern of a lie that is repeatedly told will disguise itself as the truth. Ignoring this will have an impact on the emergence of panic, hatred, anxiety, commotion, insecurity, fear, damage to reputation and can even lead to social movements and divisions in society. Law enforcement efforts with a responsive legal approach offer liberation from types, ways of thinking, not only texts, but also contexts, so as to place certainty, justice and benefits in one breath. The application of all of the above dimensions does not only affect the law from the process of its occurrence to its enforcement,

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INTRODUCTION

The swift currents of globalization that are sweeping the world today are slowly but surely causing changes in various aspects and dimensions of human life. Globalization is a special phenomenon in human civilization that continues to move in a global society and provides an opportunity for every human being to develop a range of social relations, with a scope that almost knows no national borders.¹With the globalization of the world that is so wide, it is no longer a barrier to interrelationships.

This is inseparable, where the process of globalization itself is supported by the rapid advances in information and communication technology, so that relations between people in all their activities are getting easier. Various events, no matter how small, can be accepted in all places and by everyone without exception.

The development of information technology in the decade of the 20th century has experienced very rapid development by developing space for new life through cyberspace. Cyberspace is electronic media in computer networks that can be used for one-way and reciprocal communication online, connected directly online. Cyberspace or also called the world of the internet can play a role in integrating various communication equipment and computer networks that can connect communication equipment that is spread all over the world interactively.

The presence of the internet has dominated human activities, because besides its function as a virtual or online communication tool, it can also be used as a means outside its designation and/or used by irresponsible persons as a means of committing acts against the law. One form of unlawful act that is currently rife on social media is the dissemination of news whose source of truth is unclear (hoax).², tends to be provocative and aims for political, economic and social interests, regardless of the responsibilities and impacts.

From data from the Ministry of Communication and Informatics, during November 2019, there were 260 hoaxes, fake news, fake news, so that the number of hoaxes identified and validated was 3901 in the period August 2018 to November 2019. Of the total 3901 hoaxes in the political category, 973 hoax items dominated. 743 government categories, 401 hoaxes in the health category. 307 hoaxes in the other category, 271 hoaxes in the crime category, 242 hoaxes in the slander category, 216 hoaxes in the international category and the rest are hoaxes related to natural disasters, religion, fraud, myths, trade and education³

The hoax data above illustrates the high level of unlawful acts in cyberspace, as well as a very worrying phenomenon, because it will have an impact on the emergence of panic, hatred, anxiety, commotion, insecurity, fear, damage to reputation and can even lead to social movements and divisions in the world. public.

So far, the government has tried to minimize the spread of hoax news on social media by blocking thousands of sites which generally contain pornography, gambling, fraud, radicalism and SARA. However, blocking measures are considered less effective in overcoming them. The problem then is how to respond to hoax news from a Progressive legal perspective.

¹. Soetandyo Wignjosebroto, *Law, Paradigm, Method and Problem Dynamics*, 2002, Jakarta: Elsam Huma, p. 183

²Hoax is dangerous and misleading information. Hoax is false information conveyed as a source of truth, giving rise to misleading perceptions. Hoax with its very high level of spread is currently a burden and at the same time a separate concern for the creation of national unity and integrity

³. <https://kominfo.go.id>, accessed, 16 August 2021

RESEARCH METHODS

The type of research that the authors use is empirical legal research (Kadarudin, 2021:193), with a case approach (Peter Mahmud Marzuki, 2010:35) which examines legal provisions related to the environment that regulates and establishes an environmental law enforcement system for cases of environmental impacts due to the activities of the palm oil company PT. Medcopapua Green Harmonious in Sidey District, Manokwari Regency, West Papua Province. The data used are primary data and secondary data obtained through interviews and literature. The data obtained both primary and secondary data were categorized according to the type of data, then the data were analyzed qualitatively (Bachtiar, 2018:73).

RESULTS AND DISCUSSION

Progressive Law In Theoretical Perspective

Progressive legal thinking was born because there were concerns about the unsatisfactory quality of law enforcement in Indonesia, especially since the reforms around 1997.⁴ This is because the practice of law enforcement in Indonesia so far has been derived from the teachings of positive law science which focuses on a positivistic paradigm.

The positivistic paradigm with all its characteristics⁵ has changed the position of law which was originally a complex institution, has been reduced to something that is linear, mechanistic and deterministic. Modern law requires that in solving every problem that occurs in society and the state it must be resolved through legal channels in line with the motto of justice through law, because justice has been given by making positive laws (laws). The relationship between the state and society is based on impersonal and impartial rules and procedures.⁶

Responding to the way of judging the positivistic-legalistic paradigm, truth and justice which is solely judged by what is written in the text, Satjipto Rahardjo initiated the way of law which is commonly known as Progressive legal thought. Furthermore, it is said that the essence of progressive law is in principle, as follows:

- 1). It's not just how to make and apply the text of laws and regulations (rule making), once that's done. But in certain circumstances the method of law needs to make a legal breakthrough (rule breaking) in the sense that when a legal text is judged to be no longer capable of producing justice for society, progressive law offers that law is not only seen in its dogmatic nature, but also needs to be attention to aspects of human behavior in order to create justice.
- 2). Progressive law is a liberation movement towards the types, ways of thinking, legal principles and theories that have been used so far and liberation from the culture of law enforcement that has been in power and is felt to be hindering legal efforts to resolve problems.⁷
- 3). Progressive law is not only text, but also context, meaning that the existing relations around the law must be used as a basis for consideration in applying the law.
- 4). Progressive law places certainty, benefit and justice in one breath. Written law requires legal certainty and applies universally, regardless of social class. This means that written law is blind to the fact that law is not born from an empty space, but is influenced by

⁴Satjipto Rahardjo, "Progressive Law: Liberating Law", in *Progressive Law Journal*, Doctoral Program in Law, Diponegoro University, Vol. 1 No. April 1, 2005, p. 5

⁵The inherent characteristics of modern law are (1) public in nature; (2) is positive, is a rule that is posited; (3) are general in nature, for all groups in society; (4) is autonomous in (a) substantive, (b) institutional; (c) methodological and (d). occupational. Roberto Unger, *Law in Modern Society*, New York, The Free Press, 1976. p. 52-54.

⁶Satjipto Rahardjo, *Law and Bureaucracy*, Paper on the Panel Discussion on Law and Development in the Context of Chess Windu Faculty of Law UNDIP, December 20 1998, page 5.

⁷Suteki, *The Future of Progressive Law*, (Yogyakarta: Thafa Media, 2015), p. 10

various social, political, economic, cultural and religious dimensions. All of the dimensions above, not only affect the law since the process of its occurrence, but also in its enforcement.

Therefore, in progressive legal thinking, as long as the written law (statute) is unable to bring benefits and justice to society, it is obligatory for law enforcers to violate the law. Because for law enforcers, especially progressive-minded judges, they do not always view laws as the only way to achieve justice for society. For them, laws are not always fair.

Besides that, progressive law adheres to conscience, law enforcers should not refer to formal legal truths, but should also involve conscience in every legal step they take. Because legal certainty contained in the aspect of legality-formal does not always give a sense of justice for society.

In this regard, progressive law views that law for humans is a mistake in the positivistic paradigm which limits the understanding of the object of study to legislation alone. So it is only natural that someone who studies law is only able to operate/execute the law as he operates a vehicle. Even though the science of law when viewed holistically is not only related to laws and regulations, but furthermore, the science of law is also related to the environment, nature and humans, even the larger order of life.⁸

As the initiator of progressive law, Satjipto Rahadjo often conveys that law is not just logic, more than that law is true science (genuine science) by always trying to understand and see the connection between legal texts and the things behind the law.⁹

In other words, the idea of progressive law wants to encourage activists of legal scholarship that good law is how to use social logic to be bigger than the use of legal logic. Progressive law is an idea of law science that flows, does not want to be trapped in the status quo, which ultimately causes it to become stagnant. More than that, progressive law wants to always be loyal to the great principle that "law is for humans, not the other way around".¹⁰ Because of its essence, law must always flow following human development which is dynamic and changes from time to time. That way, all the problems faced by humans, can be answered by law fairly.

In addition, observing the law enforcement crisis in Indonesia can be seen from its main orientation which prioritizes aspects of legal certainty rather than aspects of benefits and justice for the community. When legal norms have been implemented, it means that justice has been given.

Such an assumption indicates that justice is the same as the application of laws and regulations. In fact, law enforcement based solely on the aspect of legal certainty actually causes the law to lose its true meaning, namely a law that is happy, that provides benefits and justice and that guarantees the fulfillment of human rights (HAM).¹¹

Progressive law requires law enforcement to be carried out by not only looking for conformity between the formulation of the text and the criminal acts that occurred, but also exploring and understanding the moral message behind the laws and regulations. That is, the law in the view of progressive law is open and fluid so that it can capture and digest every change that occurs. This proves that progressive law is a type of law that always thirsts for truth and never stops seeking justice.

⁸Satjipto Rahadjo, *Progressive Law: The Liberating Law*, in *Progressive Law Journal*, Vol. 1 No.1, Year 2005, p. 35.

⁹Turiman, *Understanding Progressive Law Prof. Satjipto Rahadjo in the "Thawaf" Paradigm: A Contemplation of How to Realize Indonesian Grounded Theory of Law*, Doctoral Program in Law, Diponegoro University Semarang, 2010, p. 2

¹⁰Dey Ravena, *Mencandra Progressive Law and the Role of Law Enforcement in Indonesia*, *Unisba Journal*, Vol. IX, No. 3 of 2007 p. 191

¹¹Yohanes Suhardin, *The Phenomenon of Ignoring Justice in Law Enforcement*, *Journal of Mimbar Hukum*, Vol. 21 No. 2, 2009, p. 342.

Thus, progressive law always seeks to create law enforcement which ends in the creation of substantive justice. Realizing progressive law is how to give heavy legal sanctions to corruptors, because it is in line with the ideals of progressive law that is responsive and fulfills substantial justice, rather than punishing a grandmother for stealing 3 cocoa pods which procedurally fulfills justice, but hurts the value of justice in society.¹²

Furthermore, legal breakthrough (rule breaking) is an icon that is inherent in the process of progressive law enforcement, because it is a strategy that always tries to break through the impasse of formal legality. That is, law enforcement officials are allowed to leave the truth of formal legality, in order to achieve justice as the main goal of law. This is what is then commonly referred to as liberation

In conclusion, progressive law can be described as a law that provides justice (substantial justice). It is a type of law that is open and fluid, never stops seeking truth and justice, therefore it is always appropriate and/or adapts to developments and changing conditions in society. That is, progressive law has a responsive nature.

Thus, the process of law enforcement in a progressive legal perspective is more of a process of seeking real justice (substantial justice), not just a process of matching/adjusting the correctness of behavior with the mere formulation of the text of the law. In other words, justice cannot always be found in laws, therefore it takes ways and courage for law enforcement officers to be unfettered by legal-formal truths, by always listening to and using conscience in sentencing.

Hoax Progressive Legal Solution Version

Responding to the increasingly dangerous spread of hoax news on social media in the form of baseless information (hoaxes) that aims to sway public opinion. on social media by unscrupulous hoax spreaders which are carried out continuously and have an impact on the emergence of panic, hatred, anxiety, commotion, insecurity, fear, damage to reputation and can even lead to social movements and divisions in society.

The spread of hoax news is synonymous with a lie that disguises itself as the truth by playing with one's emotions and feelings. Paul Joseph Goebbels, information minister during the Nazi era said, "A lie, repeated a thousand times, becomes a truth" . A lie told a thousand times will become the truth."¹³

Lies disguised as truths are carried out by using a paradigmatic "post-truth" which plays a role in opinion formation by playing with emotional attachments and personal beliefs, so that news coverage of lies over time will turn into a belief in its truth.

Conceptually post-truth is generally used as an instrument in practical politics which is quite disturbing. because, it is often used to make political propaganda and framing news by playing on the feelings and emotions of news recipients as an effort to influence the public in a political context. Because of that, the term post-truth was so popular in 2016 when Britain left the European Union and when the US presidential election was held in 2016 and 2020. Post-truth is often used as a tool to carry out black campaigns.¹⁴

The phenomenon of hoax reporting by using the paradigmatic "post-truth", shows that the human right to freedom of opinion has been abused and at the same time serves as a justification for his actions to continuously spread baseless false information with the aim of herding public opinion.

¹²Ispan Diar Fauzi, Creating a Progressive Legal Paradigm, this article was accessed at www.hukumpedia.com, on March 3 2018.

¹³<https://www.inspiringquotes.us/author/9320-joseph-goebbels>, accessed 14 February 2022.

¹⁴Arief Hidayat places Pancasila and the constitution in a progressive legal perspective in the Post Truth era national seminar on UNDIP alumni ties in 2022 page 5

This makes the existence of the basic right to freedom of speech which has been guaranteed through various laws to be misinterpreted as absolute freedom, without limits and at the same time used as a basis for justification for committing acts against the law.

Criticizing the role of hoax spreaders, by looking at their educational background and special skills in processing data which is then transmitted to internet users, shows that they really understand that in expressing opinions on social media there are limitations given by the power of law, and even it is understood that his actions are a violation of independence/freedom itself.

This indicates that the actions of spreading hoaxes are not based on legal awareness in the sense of a willingness to behave in accordance with established legal rules, but are more goal-oriented to create public opinion, lead public opinion, form perceptions with fake news (hoax), regardless of unlawful nature and dangerous nature of the act.¹⁵

Responding to the hoax phenomenon which is packaged in the concept of post-truth and spread through social media, it is certain that it will bring great damage to the order of life of the nation and state and at the same time is a separate challenge and test that must be overcome immediately.

However, in reality the practice of law enforcement against hoax news spreaders has so far been oriented towards achieving legal certainty and ignoring the existence of legal objectives as stated by Gustav Radbruch, namely certainty, justice and benefits.

The orientation of law enforcement which is entirely aimed at ensuring legal certainty must be interpreted that there is no other law except by order of the authorities (law is a command of the lawgivers). Even part of the school of positive law which is known as legism argues even more firmly, that the only source of law is law and has an impact on the conflict between certainty and justice and the benefits of law.

In connection with this, in overcoming hoax news with all its characteristics in the post-truth era, it is necessary to have a legal method and character in the law enforcement process which so far has been oriented towards the principle of legal certainty, justice and benefit in a proportional and balanced manner. Every legal issue must be carefully measured by using three points of view as stated by Gustav Radbruch the existence of legal objectives, namely certainty, justice and its usefulness.

From this understanding it appears that the purpose of law is basically to provide certainty and justice for the realization of human integrity as dignified. Certainty refers to behavior that should be carried out in accordance with the norms outlined in positive law. Meanwhile, justice refers to the positivity of norms that are considered fair by society.¹⁶

This is actually the real meaning that the law wants to achieve, that is, the law must guarantee certainty and justice and therefore the existence of the law then brings benefits and therefore the law continues to be useful (*doelmatig*) for everyone, without exception.

By adhering to the need for balance in law enforcement in accordance with the objectives of law, namely certainty, justice and benefit, the existence of law does not only guarantee the implementation of the public interest, but has also succeeded in balancing the interests of all parties individually in society, thus giving birth to the principles of justice, which is generally accepted.

Observing the reality of law enforcement practices regarding the reporting and spread of hoaxes so far there is still inequality and tends to be discriminatory, in the sense that some are

¹⁵Ibnu Artadi, Hoax Between Freedom of Opinion and Legal Power, in Legal Construction in a Pluralistic Spiritual Perspective, Thafa Media, 2021, p.687

¹⁶Comparing certainty and justice is a guideline for behavior that must support an order that is considered reasonable. Only because it is carried out with certainty and fairly can the law carry out its functions. Frans Magnis-Suseno, Political Ethics, p. 114.

being processed by law, some are being omitted and some are being resolved simply by saying an apology to the community as victims.

Such a condition of law enforcement will of course have an impact on the increasing spread of hoax news and the more uncontrolled its spread. Such a situation is of course very dangerous for the conduciveness of order and security in society.

In connection with this matter related to law enforcement against the reporting and spread of hoaxes, with an approach to the principles of certainty, justice and legal benefits, it is intended that in addition to the perpetrators, enforcement must be carried out consistently in accordance with the legal norms that regulate it, it also needs to be accompanied by the principles of justice and benefit, in the sense of punishing perpetrators must be adapted to the negative impact caused by their actions, so that in the end it will create a conducive atmosphere and therefore be beneficial to the state and society.

CONCLUSION

The phenomenon of reporting and spreading hoaxes which are packaged in the concept of post-truth and spread through social media, can certainly bring great damage to the order of life of the nation and state and at the same time is a separate challenge and test that must be overcome immediately.

In this regard, a progressive legal approach offers a solution in the form of the need for consistency in law enforcement in line with the principle of legal objectives and is carried out without selective (discriminatory) logging, in line with the principle of equality before the law, given the nature of the lawlessness and the dangerous nature of the action due to the resulting impact. in the form of news and its dissemination with provocative nuances and the potential for conflicts which are very dangerous for the establishment of order, security and harmony in society.

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