

## REFORMULATION OF ELECTRONIC INFORMATION AND TRANSACTION LAW IN ENFORCING CRIMINAL ACTS OF HOAXNEWS THROUGH SOCIAL MEDIA

Fahrul Anggara Putra<sup>1</sup>, Lomba Sultan<sup>2</sup>, Abdul Wahid Haddade<sup>3</sup>, Munadi<sup>4</sup>

<sup>1,2,3</sup>Universitas Islam Negeri Alauddin Makassar, Indonesia

<sup>4</sup>Universitas Sultan Muhammad Syafiuddin Sambas, Indonesia

Correspondent E-mail: [fahrul@gmail.com](mailto:fahrul@gmail.com)

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### ABSTRACT

The rapid development of information and communication technology has had a significant impact on people's lives, especially through the use of social media as the main means of disseminating information. However, this convenience also triggers serious problems related to the spread of hoaxes that can cause public unrest, even having implications for social and legal stability. This research aims to analyze law enforcement against criminal acts of spreading false news through social media, examine the urgency of the Electronic Information and Transaction Law (ITE Law), and formulate alternative reformulations of Article 28 paragraph (1) of the ITE Law to make it clearer and more applicable. The method used is a normative juridical approach with qualitative analysis, supported by case studies and observations of legal implementation carried out by the West Kalimantan Police Cyber Subdit and a review of the 2021 Joint Decree of the Three Ministers. The results showed that law enforcement against hoaxes still faces challenges in the aspect of proving legal elements and the unclear redaction of norms in the ITE Law. In addition, the urgency of regulatory reform is very high considering the inaccurate use of articles in several cases has an impact on potential violations of the right to freedom of expression. Therefore, it is necessary to reformulate Article 28 paragraph (1) which emphasizes objective terminological limitations and the actual impact of false information. This reformulation is expected to provide legal clarity, increase the effectiveness of enforcement, and still ensure the protection of civil liberties in the digital era.

**Keywords:** Hoax; Social Media; ITE Law; Legal Reformulation; Law Enforcement

### A. INTRODUCTION

Rapid advances in information and communication technology (ICT) have changed the way individuals interact, access information, and participate in economic, political, and social spheres (Komalasari, 2020). Online media has become an integral part of modern life, providing instant access to news, entertainment and interpersonal communication. The accessibility and efficiency offered by digital platforms have democratized information dissemination, allowing users from different segments of society to actively engage in the digital environment (Aprilistya et al., 2023). However, this transformation also poses complex challenges, especially in the realm of cyber law and digital governance (Ansori, 2018).

One of the most pressing issues in the digital age is the widespread dissemination of false information, commonly referred to as "hoaxes (A. Sitompul, 2004)". The proliferation of user-generated content, especially on social media platforms, has increased the risk of misleading or falsified information being consumed as truth. Such actions not only distort public perception but can also trigger social unrest, disrupt

public order, and undermine the democratic process. Despite the existence of legal instruments regulating it, including Law No. 19 of 2016 on the Amendment to Law No. 11 of 2008 on Electronic Information and Transactions (ITE Law), there is still ambiguity in the interpretation and application of Article 28 Paragraph (1) which regulates the dissemination of misleading information and creates a sense of hatred or hostility. Legal practitioners argue that the vague phrasing of this article often results in inconsistent application of the law and potential overcriminalization, raising concerns about legal certainty and the protection of fundamental rights (Juanda, 2017).

The urgency to reformulate the ITE Law, particularly in the context of offenses related to hoaxes on social media, is further reinforced by high-profile cases such as the Ratna Sarumpaet case, which attracted national attention and exposed gaps in the legal framework. In addition, law enforcement agencies in the regions, such as the Cyber Subdirector of the West Kalimantan Police, experienced difficulties in interpreting and enforcing these regulations. In response, a Joint Decree issued in 2021 by the Ministry of Communications and Informatics, the Attorney General's Office, and the Indonesian National Police provided implementation guidelines, clarifying that Article 28 Paragraph (1) does not criminalize falsehood in general, but rather targets misinformation in the context of electronic transactions (J. Sitompul, 2012).

Given these complexities, comprehensive legal reform is essential to ensure that Indonesia's cyber legal regime effectively addresses the spread of hoaxes without violating digital rights. This research aims to critically analyze law enforcement against hoax-related offenses through social media, evaluate the legal significance of the current ITE Law in this context, and propose a reformulation of Article 28 Paragraph (1) to improve the clarity, consistency, and effectiveness of the law in combating digital misinformation.

## **B. METHOD**

In general, the definition of research method is a process or method chosen specifically to solve the problem posed in a research. Meanwhile, the definition of research methodology is a science that explains how a research should be conducted. Process objectives, for example, analyze the data obtained to prove that a legal event has been carried out or not carried out, while the final goal is the result obtained based on the process objective. 27 method is a procedure or way of knowing something that has systematic steps. 28 Moving on from this description, this research will use the method described below:

This research is legal research in the realm of socio-legal studies. Socio-legal is a field of study in legal science that does not base its approach on seeing facts as they are, but begins to see certain characteristics of social behavior using the help of other sciences. From tracing the real reality it is hoped that it will be known whether the positive law and the law born from the relationship between subjects in society are fair laws or not. In other words, it is a study that reviews law as a social fact that can be seen in the realm of experience as a pattern of behavior in the form of social institutions or social institutions, legal studies that conceptualize and theorize law as a positive and

empirical social fact. This socio-legal research wants to examine and analyze norms that have relevance to the settlement of criminal cases in the Electronic Information and Transaction Law. This analysis is carried out by describing legal norms both written and unwritten which are recognized in legal reality and social reality, implemented by reformulating the Electronic Information and Transaction Law in enforcing criminal acts of hoax news through social media. Also to various legal elements based on the values implied and expressed in each norm setting that applies in reformulating the Electronic Information and Transaction Law related to Hoax news. Thus, the principles, values and meanings in the law enforcement of hoax news will be known and explored.

The sources and types of data found in this research are primary data and secondary data. Primary data is data obtained directly from the field. Field data is obtained from the parties involved who are the object of research. Primary data in this study was obtained through interviews with the Chief of the District Court, District Court Judges and the Chief of Police and members of the police who handle cases of Electronic Information and Transactions. Secondary data consists of primary legal materials sourced from laws and regulations and legal documents, secondary legal materials sourced from textbooks, and tertiary legal materials are legal materials that provide guidance or explanation of primary legal materials and secondary legal materials

Data collection techniques were carried out by means of observation, interviews with open-ended interview guidelines and literature studies. Data processing was carried out on the acquisition of primary and secondary data. Primary data acquisition is processed by classifying and systematizing data variations based on predetermined criteria related to delict norms and case settlement mechanisms for Electronic Information and Transactions by means of mediation to find data validity. Fulfilling the need for valid and significant data is done by analyzing qualitatively by examining the content of communication and information (Content Analysis), so that the principles and values of each data that has been collected are reflected, adjusted to the target of achieving research objectives. Data analysis begins with organizing data into certain values related to the settlement of electronic transaction fund information cases with law, both legal reality and social reality (factual), by doing *verstehen* or interpretative<sup>36</sup>, interpreting the data found to determine the values that are explicit or implied from the data obtained and synchronizing the values between one data and other data that have given meaning when analyzed.

## C. RESULTS AND DISCUSSION

### Law Enforcement Related to Fake News through Social Media

Fake news, in terms of language the word "bohong" means not in accordance with the truth or not in accordance with actual events (Chang, 2018; Mauladi, 2018). In terms of terms, there are many definitions of fake news, fake news is the final result of news that is engineered through the news engineering process (Abede, 2005). Hoax is an attempt to deceive or trick the reader/listener into believing something, even though the creator of the fake news knows that the news is fake. One of the most common examples

of fake news is claiming an item or event with a designation that is different from the actual item / event, in Indonesian terms hoax is an absorption word that has the same meaning as fake news (Maulana, 2017) . Hoaxes aim to create opinions, accompany public opinion, shape human perceptions as well as for hufing fun that tests the intelligence and accuracy of internet and social media users. The purpose of spreading hoaxes varies but in general hoaxes are spread (Maulana, 2017) .

This law regulates information and electronic transactions, or information technology in general, this law has jurisdiction that applies to every person who performs legal acts as regulated in the Law, both in Indonesian territory and outside Indonesian jurisdiction, which has legal consequences in Indonesian jurisdiction and / or outside Indonesian jurisdiction and is detrimental to Indonesia's interests. In the Electronic Information and Transaction Law, the element of spreading hoaxes is contained in Article 28 paragraph 1, which reads: "Every person intentionally and without the right to spread false and misleading news that results in consumer harm in Electronic Transactions (Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, 2008) .

Criminal provisions against the spread of hoaxes are contained in Article 45 A Paragraph 1, which reads: "Every person who intentionally and without right spreads false and misleading news that results in consumer harm in electronic transactions as referred to in Article 28 paragraph (1) shall be sentenced to a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp.1,000,000,000.00 (one billion rupiah)." Found in the Electronic Information and Transaction Law, which is regulated in Article 28 paragraph (1) of the Electronic Information and Transaction Law, the essence of which is that the perpetrator deliberately unlawfully spreads false news (hoax) which results in losses in electronic transactions.

Law enforcement against the spread of hoaxes through social media in Indonesia still faces various normative and practical challenges. Based on field data and case studies, such as what happened in the jurisdiction of the West Kalimantan Police, it is known that law enforcement officials often use Article 28 paragraph (1) of the ITE Law as a legal basis to take action against perpetrators of spreading fake news. However, this process often causes problems in proving the element of "causing hatred or hostility" which is abstract and multi-interpretive.

From the perspective of Lawrence M. Friedman's law enforcement theory, the legal system consists of three main elements: *legal substance*, *legal structure*, and *legal culture*. In this context, although the legal substance (ITE Law) is available, the structure (law enforcement apparatus) still faces limitations in interpreting the law appropriately, while the legal culture (public understanding of hoaxes) is still low. Therefore, law enforcement is not maximized and tends to be repressive, without being accompanied by adequate digital literacy.

Based on the principle of *lex specialis derogat legi generali*, which means that special rules override general rules, criminal responsibility for the perpetrators of spreading hoaxes in online media refers to the provisions of Article 28 paragraph (1) jis.

Article 45A paragraph (1) of the ITE Law. The elements that must be met in Article 28 paragraph (1) of the ITE Law are:

- a. Everyone, namely the perpetrators of spreading false news (*hoaxes*)
- b. Intentional misconduct, namely intentionally and without the right to spread false news (*hoax*).
- c. Without rights or against the law, namely in the dissemination of false news (*hoax*) is an act against the law and contrary to one's rights.
- d. Act, i.e. someone has spread news that is not in accordance with the facts.
- e. The object is fake news (*hoax*).

### **Urgency of ITE Law in Enforcing Criminal Acts of Hoax News through Social Media**

The ITE Law acts as the main legal basis in regulating the behavior of internet users in Indonesia, including in dealing with the spread of hoaxes. Its urgency is very high because the escalation of the spread of false information can threaten social stability and national security. The ITE Law, especially Article 28 paragraph (1), is the only legal reference that explicitly mentions the spread of false information that can cause hatred or hostility. However, based on the theory of legal utilitarianism (Latipulhayat, 2015), the law should provide the greatest benefit to society at large. In its implementation, ITE Law sometimes becomes a criminalization tool that creates fear of expression in the digital space. This shows that despite its high urgency, the ITE Law needs to be evaluated so that it does not become counterproductive to the principles of justice and freedom of expression guaranteed by the constitution.

### **Reformulation of Article 28 Paragraph 1 of ITE Law Related to Criminal Acts of Spreading Hoax News**

Reformulation of Article 28 paragraph (1) needs to be done to answer the unclear element of "*causing hatred or hostility*". The vagueness of this terminology creates multiple interpretations that have the potential to be misused. Explicit limitations are needed on what is meant by "hatred", who is the protected subject, and the extent of the consequences of disseminating such information to society. Through Hans Kelsen's legislative theory approach, legal norms must fulfill the principles of certainty, justice, and expediency. The reformulation of this article can be directed towards the separation between *general offenses* and *complaint offenses*, as well as strengthening the element of *actual impact* that can be legally verified. One alternative formulation is to add the phrase: "*which causes significant public unrest and can be proven empirically*" (Hans, 2018). The reformulation step must also be synergized with the 2021 Joint Decree of the Three Ministers, which directs that this article should not be used to ensnare disseminators of general information that does not necessarily cause chaos, except in the context of electronic transactions or disinformation that directly harms the public.

### **D. CONCLUSION**

Based on the results of the research, it can be concluded that law enforcement against the spread of fake news through social media still faces serious obstacles, especially in interpreting and proving the element of "causing hatred or hostility" as



stated in Article 28 paragraph (1) of the ITE Law which is multi-interpretive. Although the Electronic Information and Transaction Law has high urgency as a legal basis in tackling hoax crimes in the digital space, its existence has not fully provided legal certainty and has the potential to cause violations of the right to freedom of expression. Therefore, it is very important to reformulate the article by adding normative restrictions that are more objective and specific, so that its application can run fairly, proportionally, and still protect the public from the negative impact of false information without hampering the dynamics of communication in the digital era.

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