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Criminal Liability for Perpetrators of Hate Speech via Social Media

Pandu Prakoso[1*]

[1] Universitas Negeri Yogyakarta, Yogyakarta, Indonesia

Abstract:

Describe an abstract in one concise and clear way, with no more than 250 words. The abstract should not include an introduction or conclusion of the article; instead, it is encouraged to include several key points: 1) Main questions and context of the discussion; 2) Role of the study; 3) Results of the data; 4) How the article discussed; and 5) Main findings. It is still possible to convey the things that are significant and contribute to the research as long as the words do not exceed the number as mentioned beforehand. It is also highly necessary to avoid the footnotes, references, and subtitles. The more concise the abstract is, the better assessment it will be. (150 – 250 words).

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Keywords:

Mention 4-7 (four to seven) specific words or phrases about the research variables.

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1. Introduction

Indonesia is a country based on law as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This principle has the consequence that the development of social life, including changes in communication patterns due to technological advances, must continue to take place within a legal framework. The development of the internet and social media has created major changes in the way society obtains, produces, and disseminates information. Social media is no longer only used as a means of personal communication, but has also become a public space for expressing opinions, conducting criticism, building social relationships, and shaping public perceptions of various issues. The increasing intensity of social media use ultimately makes digital space have a major influence on people's social lives (Sherlyanita, 2016; Supratman, 2018).

This convenience offers both benefits and creates new problems. Information can be produced and disseminated very quickly without the filtering process found in conventional media. This situation allows false information, provocative statements, and content attacking certain parties to gain widespread attention in a short time. Adhiarso et al. (2017) showed that hoax reporting in online media is not only related to the construction of information, but also elicits responses from users or netizens. This demonstrates that digital media users are not simply recipients of information, but also play a role in expanding the dissemination of content. With these characteristics, social media can become a space that amplifies the impact of a statement, even when the statement contains elements of hatred.

Hate speech is an issue that requires attention because its spread through social media can influence targeted individuals and groups. Waruwu and Vera (2020), through a study of hate speech on social media, demonstrated that this phenomenon can be observed through user communication activities within a social media account. Hate speech does not always appear in the same form, but can be found through the use of language, statements, and messages directed at specific parties. Sa'idah et al. (2021) also showed that the production of hate speech through social media is influenced by certain factors related to the process by which such behavior emerges. This means that the issue of hate speech is not only related to the content of the message, but also to user behavior and the digital communication environment that allows such messages to be produced and disseminated.

Another issue arises when freedom of expression on social media is understood as a limitless freedom. In a state governed by the rule of law, freedom of expression is indeed an essential part of democratic life, but its implementation must still respect the rights of others and legal provisions. Not every opinion that is critical, harsh, or differs from the views of others can be immediately labeled hate speech. Syarif (2019) shows that social media can be linked to young people's attitudes and opinions regarding hate speech, so the presence of digital content can influence how society understands an issue. Tan and Aladdin (2019) and Purnamasari (2018) also highlight the importance of observing how readers or users receive news or information. Therefore, the context in which messages are delivered and received is crucial in understanding communication that occurs in the digital space.

Hate speech also needs to be distinguished from social criticism and the expression of aspirations. Criticism of the government or public policy is part of the dynamics of social life, while hate speech can have a different character when a message is directed at building hostility or hatred toward a particular party. Pratama et al. (2023) showed that social criticism of the government can be part of public communication, so it is necessary to distinguish between criticism that is a form of expression and communication that has led to violations of the law. Studies on the representation and construction of discourse in the media also show that a message can have different meanings based on how it is formed and delivered (Alam, 2019;

Lubis & Khairani, 2020). Therefore, determining hate speech cannot be done simply by looking at a single word or sentence in isolation, but rather requires considering the context and character of the entire message.

From a criminal law perspective, the development of digital communications demands certainty regarding the limits of actions that can be held accountable. Law Number 11 of 2008 concerning Electronic Information and Transactions, which was later amended by Law Number 19 of 2016, provides the legal basis for regulating various activities conducted through electronic systems. Provisions regarding the dissemination of information intended to incite hatred or hostility toward certain individuals and/or community groups serve as a basis for addressing the issue of hate speech through electronic media. The implementation of these provisions must be carried out carefully so that law enforcement can provide protection to the public without eliminating the space for legitimate freedom of expression.

This issue becomes increasingly important because the nature of social media allows a statement to spread beyond its creator's original intent. Published content can be copied, shared, commented on, and consumed by other users, allowing its impact to grow widely. Therefore, social media users need to understand that freedom of expression comes with responsibility for the information they produce and disseminate. Based on these conditions, this study addresses three main issues: first, what are the characteristics and definition of cybercrime in the use of social media? Second, what are the limits or measures of an act that can be categorized as hate speech through social media? Third, what is the criminal liability for perpetrators of hate speech through social media under Indonesian law?

2. Methods

This study employs an empirical legal research method, a research approach that views law not only as written norms but also as rules applied and related to societal behavior in real life. This approach is used to understand the phenomenon of hate speech that develops in the use of social media and its relationship to the application of legal provisions to actions carried out through digital spaces. The research focuses on observing various social phenomena and forms of communication activities occurring in cyberspace, particularly actions that have characteristics of hate speech.

The research data sources consist of primary and secondary data. Primary data were obtained through observations of social media usage in cyberspace, particularly regarding forms of communication and information dissemination related to hate speech. Observations were conducted by paying attention to the characteristics of the actions, the form of information delivery, and the patterns of its dissemination on social media. This data was used to obtain an overview of the legal phenomena occurring in practice. Meanwhile, secondary data was obtained through a review of various legal materials and literature relevant to the research object, such as books, journal articles, legal documents, and laws and regulations governing the use of information technology and criminal liability.

Data collection was conducted by identifying and categorizing information related to cybercrime, social media use, hate speech, and provisions regarding criminal liability. The data obtained were then analyzed descriptively by describing the phenomena encountered and linking them to relevant legal provisions. The analysis was conducted qualitatively to examine the relationship between facts occurring in the digital space and the legal norms that govern it. The analysis stages included grouping data based on the research problem, examining the characteristics of the act, assessing the boundaries of hate speech, and analyzing the basis for criminal liability for the perpetrator. Furthermore, the analysis results were used to draw conclusions regarding the application of the law to hate speech via social media in Indonesia.

3. Results

3.1 Characteristics of Cybercrime in the Use of Social Media

Cybercrime in the use of social media demonstrates the changing nature of criminal acts along with the development of digital communication technology. Acts that previously required physical meetings or conventional communication media can now be committed through social media accounts, comment columns, electronic messages, posts, images, videos, and other forms of digital content. The main characteristic of cybercrime lies in the use of information technology as a means of committing the act, so that the perpetrator does not always have to be in the same location as the victim. Siahaan (2018) explains that the development of cybercrime raises its own challenges in law enforcement, including those related to jurisdiction and the nature of violations committed through cyberspace. In the context of social media, these issues are further complex because a single user can produce information that is then repeatedly forwarded by other users.

Published information can also persist in digital space and reappear even after the creator has deleted the initial post. This characteristic makes the impact of an act in cyberspace broader and longer-lasting than communication that occurs solely in person. The development of social media usage shows that users are not only consumers of information, but also act as producers and distributors of information (Supratman, 2018). These conditions create opportunities for the emergence of forms of technology abuse, including the dissemination of information that is detrimental to others. Adhiarso et al. (2017) showed that information in online media can elicit responses and further dissemination through users or netizens. This pattern demonstrates that the speed of information distribution is a crucial characteristic of digital communication.

In the context of cybercrime, this speed can magnify the consequences of an act because problematic content does not stop at the creator's account but can spread through other users' networks. The phenomenon of hate speech also exhibits similar characteristics. Waruwu and Vera (2020) showed that hate speech can be observed through user interactions and communications on social media. This means that the digital space provides an environment that allows individuals to convey statements to the public with a much broader reach. Sa'idah et al. (2021) also showed that the production of hate speech through social media has certain factors related to user behavior. Thus, cybercrime in social media is not only determined by the presence of technological devices, but also by the patterns of interaction and behavior of the people who use the technology. Its cross-border nature, speed, ease of dissemination, and ability to leave an electronic trail distinguish cybercrime from conventional crime.

In certain cases, Perpetrators can also use identities that are not easily recognizable, so the tracing process requires technical skills and an understanding of digital evidence. Therefore, it is important to understand the characteristics of cybercrime as a basis for understanding how actions on social media can develop into legal issues. Social media still serves an important function as a communication space, but the use of this technology does not eliminate user responsibility for their actions. The greater a person's ability to disseminate information, the greater the potential impact if that information is used to commit a crime. Thus, the development of cybercrime demonstrates that the law must be able to adapt to changing patterns of societal interaction without neglecting the principle of protecting freedom of expression.

3.2 Limitations on Hate Speech via Social Media

The boundaries of hate speech on social media need to be placed proportionally because there is a close relationship between freedom of expression, social criticism, and the prohibition against spreading hatred. Not all statements that generate

debate, criticism, or disagreement can automatically be categorized as hate speech. Assessments must be made by considering the message content, communication context, target audience, form of delivery, and elements of the act as defined by law. Waruwu and Vera (2020) show that hate speech on social media can be understood through communication patterns that develop within user accounts and interactions. This suggests that the communication context plays a role in understanding whether a statement is truly hateful or merely a critical opinion.

Syarif (2019) also shows a relationship between social media use and public attitudes and opinions regarding hate speech. Therefore, measuring an act cannot be done solely based on the subjective reaction of someone who feels offended. The elements of the act must be linked to applicable legal norms. Hate speech can arise through insults, provocation, incitement, spreading hatred, or other forms of communication that meet the elements of a criminal act under statutory provisions. The distinction between social criticism and hate speech is important in this context. Pratama et al. (2023) demonstrated that social criticism of the government is a form of public communication. Such criticism cannot be directly treated as a criminal offense simply because it uses harsh language or causes discomfort to the criticized party. Similarly, the interpretation of a message can be influenced by how the information is constructed and received by the audience. Tan and Aladdin (2019) and Purnamasari (2018) demonstrated that reader responses to news coverage can be crucial in determining how information is understood. Meanwhile, studies on media construction and representation indicate that the meaning of a message cannot always be separated from the discursive context that shapes it (Alam, 2019; Lubis & Khairani, 2020).

Therefore, determining hate speech requires a thorough examination of its content and context. When using social media, a statement also needs to be viewed based on its communication target and potential impact. Statements intended to criticize a policy differ in character from statements deliberately aimed at building hostility toward a particular group. Similarly, the dissemination of false information needs to be distinguished from hate speech, although the two can overlap in practice. Adhiarso et al.(2017) highlighted the issue of the spread of hoaxes in online media and netizen responses, thus understanding that information circulating in digital spaces has complex social consequences. In determining criminal liability, the primary criterion must remain the elements defined by statutory regulations. Therefore, the definition of hate speech must simultaneously safeguard two interests: protecting the public from communications that have the potential to incite hatred and protecting the public's right to express their opinions legally.

3.3 Criminal Accountability and Law Enforcement for Perpetrators of Hate Speech

Criminal liability for perpetrators of hate speech through social media is related to the legal ability to classify a digital act as an act that can be subject to criminal sanctions. Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 19 of 2016 is the basis for regulating various activities in electronic systems, including the dissemination of information intended to incite hatred or hostility towards certain individuals and/or community groups as regulated in Article 28 paragraph (2). Provisions regarding sanctions are contained in Article 45A paragraph (2) of Law Number 19 of 2016. The application of these provisions cannot be based solely on the existence of content that is deemed offensive or controversial. Law enforcement officers must first ensure that the elements of a criminal act are fulfilled based on demonstrable facts.

Thus, there is a need to identify who created or disseminated the content, how the content was conveyed, to whom the information was directed, and whether the act fulfills the elements as determined by criminal provisions. In cases that take place in the digital space, electronic evidence plays an important role because traces of the

act are stored in the electronic system. Posts, comments, screenshots, recordings, messages, and other digital information can be used as evidence if obtained and used in accordance with legal provisions. The characteristics of cybercrime, which allows the use of specific identities or accounts that are difficult to trace, require adequate technical capabilities. Siahaan (2018) identified jurisdictional issues as one of the challenges in handling cybercrime. This situation demonstrates that the existence of criminal regulations alone is not sufficient to ensure effective law enforcement. Officials need to be able to understand the nature of technology, trace digital footprints, link electronic evidence to perpetrators, and objectively assess the context of the act.

At the same time, law enforcement must be carried out carefully to ensure that provisions regarding hate speech are not used to restrict criticism or opinions that actually fall within the realm of freedom of expression. Studies on social criticism show that society still has a need to express its assessment of the government and various public issues (Pratama et al., 2023). Therefore, criminal accountability must be based on the fulfillment of the elements of a crime, not merely on differences of opinion or discomfort with an opinion. This approach is necessary to maintain a balance between legal certainty and protection of freedom of expression. Criminal liability ultimately does not only aim to provide sanctions to the perpetrator,It also provides protection for victims and maintains order in the use of digital space. The growing proliferation of social media has increased the need for consistent law enforcement, but this consistency must be accompanied by thoroughness in determining whether content truly meets the elements of hate speech.

Law enforcement against hate speech also needs to be carried out through a preventative approach because the nature of digital communication allows content to spread before authorities can take action. Increasing digital literacy and legal awareness are crucial to reducing the likelihood of people misusing social media. Users need to understand that creating, uploading, and distributing content are not merely communication activities but can have legal consequences if they meet the elements of a criminal act. Sa'idah et al. (2021) showed that there are factors related to the production of hate speech through social media, so prevention is not sufficient only through the threat of criminal penalties. Understanding the factors that drive the emergence of hate speech can be used as a basis for strengthening education for social media users.

Furthermore, the public's ability to distinguish between information, opinions, criticism, hoaxes, and hate speech also needs to be improved. Adhiarso et al. (2017) showed that the spread of hoaxes in online media elicits a response from netizens, so user participation patterns in disseminating information require attention. Users should not automatically forward content if they do not understand the truth and context. In the case of hate speech, the act of re-sharing content can also amplify the impact of that information. Therefore, responsibility in the digital space relates not only to content creators but also to user behavior when redistributing information. Effective law enforcement requires a balance between repressive and preventive measures. Repressive action is necessary when an act meets the elements of a crime and can be legally proven, while preventive action is needed to reduce the likelihood of violations occurring.

Law enforcement officials also need to improve their ability to handle electronic evidence and understand digital communication patterns so that the law enforcement process focuses not only on content but also on identifying the overall context of the act. On the public side, increasing legal awareness can help create a more responsible communication culture. Therefore, the application of criminal liability to perpetrators of hate speech through social media must go hand in hand with the protection of freedom of expression. The digital space must remain open to criticism, the exchange of ideas, and public discussion, but this openness cannot be used as an excuse to spread hate that meets the elements of a legal violation. The

balance between freedom and responsibility is essential for social media to function as a healthy communication space while remaining within the boundaries of the rule of law.

4. Conclusion

Based on research findings, cybercrime involving social media is a form of crime that utilizes information technology and digital space as a means of committing an act. Its characteristics differ from conventional crimes because it can be committed without direct contact between the perpetrator and victim, has a wide reach, occurs quickly, and leaves a digital footprint that can be used as evidence. The development of social media has increased the potential for cybercrime because each user has the ability to create, modify, and disseminate information to the wider public. Therefore, the use of social media cannot be separated from the legal consequences that may arise from an action. Hate speech on social media must be distinguished from freedom of expression. Not all critical, harsh, or unpleasant statements can be directly categorized as criminal acts. Determining an act as hate speech must take into account the content, context, target, form of delivery, and elements of the act as defined by law.

When social media is used to disseminate information that meets the elements of hate speech as prohibited by law, freedom of expression cannot be used as a basis for eliminating legal accountability. Criminal liability for perpetrators can essentially be applied if the actions committed through social media are proven to meet the elements of a crime under applicable regulations. Law enforcement requires identifying perpetrators, securing electronic evidence, examining the content and context of information, and appropriately applying criminal provisions. In addition to law enforcement, prevention also needs to be strengthened by increasing digital literacy and public legal awareness. By striking a balance between freedom of expression, community protection, and proportional law enforcement, social media can continue to function as a communication space without becoming a vehicle for the spread of hate speech that harms others.

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Data Disclosure Statement

The data that support the findings of this study are available from the corresponding author upon reasonable request.