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The Law Enforcement Of Hate Speech Crime In Polda Lampung

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Abstract

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Criminal acts related to hate speech are one of the crimes that occur as a result of the misuse of information technology carried out by a person or group by conveying forms of provocation, seditious actions, or in the form of insults to someone or certain other groups in terms of various indicators, namely race, skin, gender, religion and others. Research problems: how are the efforts to deal with the criminal act of distributing electronic information containing hate speech at POLDA Lampung and why there are obstacles to efforts to overcome the criminal act of distributing electronic information containing hate speech at the Regional Police located in Lampung Province. This type of research is a normative juridical research. The data analysis was done qualitatively. The approach to the problem used is the statute approach. The results of this study indicate that the law enforcement of hate speech using social media is carried out by the Sub-Directorate for Cyber Crime of POLDA Lampung through non-penal and penal means. Non-penal efforts are carried out by carrying



out cyber patrols and socializing the prohibition on hate speech using social media. Penal efforts carried out by investigation and investigation. The factors that hinder efforts to overcome criminal acts of hate speech by using social media are in the aspects of legislation, aspects of law enforcement officials, facilities and infrastructure, community conditions and cultural aspects of these factors, there are dominant factors being weaknesses, namely in the aspect of law enforcers who are not yet competent and have mastered the development of types of crimes related to information technology, precisely at the Cyber Police Unit in Lampung Province.

A. Introduction

Law enforcers who handle legal issues directly in the field are the police department. The duty of the police department is to maintain order and security in the territory of the Republic of Indonesia. The functions inherent in the police body are protection, as well as services that must be consistently implemented in the community.¹ The legal basis for the police institution to act is Law No.2 of 2002 which regulates the Indonesian National Police. The goal that must be realized by the police is a peaceful community.²

The development of information technology in Indonesia has led to hate speech crimes circulating on social media. There are limits set out in legal regulations regarding hate speech. Hate speech is defined as an action in the context of communication carried out by a person or group that contains elements of provocation and contains seductive elements and can also contain insults to a person and group. The characteristics of the content can relate to racial, sexual orientation, nationality, religion and other content.³ Hate speech has a definition of an action which can be in the form of words, actions, writing and can be related to prejudice that contains elements of hatred. Sites where these crimes occur frequently are on social media and the internet.⁴

A criminal offense defined in a legal rule must contain elements against the law and there is an error.⁵ All of these existing actions must be accounted for through punishment if they are proven to

¹ Hwian Christianto, "NORMA PERSATUAN SEBAGAI BATASAN PERBUATAN PIDANA PENYEBARAN UJARAN KEBENCIAN MELALUI INTERNET," *Veritas et Justitia* 6, no. 1 (June 28, 2020): 94–126, <https://doi.org/10.25123/vej.3501>.

² Yunita Rahayu Kurniawati, "PERTANGGUNGJAWABAN PIDANA ATAS PENYEBARAN BERITA BOHONG (HOAX) DI MEDIA SOSIAL," *Dinamika: Jurnal Ilmiah Ilmu Hukum* 26, no. 4 (January 30, 2020): 422–37, <http://www.riset.unisma.ac.id/index.php/jdh/article/view/5492>.

³ Wahyuni Choiriyati et al., "ETIKA MEDIA DALAM KULTUR NEW TECHNOLOGY (MENGAJI ETIKA INTERNET VERSUS UNDANG-UNDANG INFORMASI DAN TRANSAKSI ELEKTRONIK) MEDIA ETHICS IN NEW TECHNOLOGY CULTURE (REVIEWING THE INTERNET ETHICS VERSUS THE INFORMATION AND ELECTRONIC TRANSACTION ACT)," *Jurnal Masyarakat & Budaya*, vol. 21, November 1, 2019, <https://doi.org/10.14203/JMB.V21I2.763>.

⁴ Tansah Rahmatullah, "Hoax Dalam Perspektif Hukum Indonesia," *JURNAL HUKUM MEDIA JUSTITIA NUSANTARA* 8, no. 2 (October 17, 2019): 103–11, <http://103.66.199.204/index.php/MJN/article/view/673/457>.

⁵ Rory Ramayanti and Lailatus Sa'diyah, "PERANAN LITERASI MEDIA DIGITAL DALAM MENCEGAH PENYEBARAN HOAKS," *Baitul 'Ulum: Jurnal Ilmu Perpustakaan Dan Informasi*, December 6, 2017, http://baitululum.fah.uinjambi.ac.id/index.php/b_ulum/article/view/15.

have committed an error which has been regulated in legislation.⁶

There are characteristics regarding hate speech that exist in the realm of information technology, (1) hate speech is not fixated on the territory, (2) hate speech not limited to the scope of the area, and (3) the hate speech does not use physical documents but in the form of data. To resolve it, law enforcers carry out digital searches to digital disguise, because they need a digital of the perpetrators. Evidence will of course be organized in log files. Location tracing is done through IP (Internet Protocol) tracing. The criminal act of distributing electronic information containing hate speech will have an impact on the public's security, because it has motivates a disharmonious situation between one community group and another.

The police department is one of the law enforcement agencies that have a strategic role in enforcing the law against crimes of hate speech in a professional and non-selective manner by prioritizing the principle of equality of citizens before the law. The crime of hate speech is a crime that disturbs the public, thus the police shall carry out efforts to combat criminal acts in accordance with the duties, functions and powers of the police. Therefore, the police have formed a special organization at the Regional Police level, namely the Sub-Directorate for Cyber Crime in order to deal with these crimes.

The police, in order to maintain progress in communication and information technology, are required to increase competence in the field of masters of technology. Technological advances currently provides an accelerated process and the low costs are also competitive. The internet in the regions has also increased with educational programs from internet service providers. The presence of smart phones and net-books also supports the public to enjoy the convenience of media communication; information can be accessed through this sophisticated media. We can find the latest and most current information on the internet. This shows that the internet has become part of people's lives. The POLDA Lampung (Lampung Regional Police), in an effort to combat criminal acts in distributing electronic information containing hate speech is a case in 2017. POLDA Lampung has secured an owner of a social media account. The name of the account's owner is M. Ali Amin Said who issued hate speech towards the National Police Chief, General Tito Karnavian. The content, which contains elements of Ethnicity, Religion, Race and Inter group or *Suku, Agama, Rasa, dan Antar-golongan* (SARA), is posted on Facebook.

The problem identification raised by this research is how is the law enforcement of hate speech in POLDA Lampung? What are the inhibiting factors in law enforcement for hate speech in POLDA Lampung? The type of research used in this research is normative juridical, using secondary data collected through literature study. The approach to the problem is the statute approach. Data analysis was carried out using descriptive qualitative analysis to obtain conclusions in accordance with the proposed problems.

B. Discussion

1. The Law Enforcement of Hate Speech Crime in POLDA Lampung

a. Crime Management Based on Non-Penal Means

Non-penal means has become a way to solve problems in crime prevention.⁷ The factual implementation is performed by the Cyber Crime Sub-Directorate of POLDA Lampung (Lampung Regional Police) as follow:

1) Implementing Cyber Patrol

Police efforts in the form of cyber patrols are applied as an implementation of Article 2 of the Law on State Police.⁸ The steps taken by law enforcers are very important in efforts to prevent

⁶ Nynda Fatmawati Octarina and Anisatul Ulfa, "SIMPOSIUM HUKUM INDONESIA ATURAN TERKAIT PENETAPAN TERSANGKA PELAKU PENYEBAR BERITA BOHONG PADA MEDIA SOSIAL," *Simposium Hukum Indonesia*, vol. 1, June 12, 2019, <https://news.detik.com/berita-jawa->

⁷ Leni Anggraeni and Hilal Ramdhani, "PENCEGAHAN MONEY POLITIC DALAM PEMILIHAN UMUM MELALUI PENGUATAN KEBIJAKAN NON PENAL," *Jurnal Komunikasi Hukum (JKH)* 4, no. 1 (February 28, 2018): 59, <https://doi.org/10.23887/jkh.v4i1.13660>.

⁸ Mochamad Ramdhan Pratama and Mas Putra Zenno Januarsyah, "UPAYA NON-PENAL DALAM PEMBERANTASAN TINDAK PIDANA KORUPSI," *Jurnal Ius Constituendum* 5, no. 2 (October 19, 2020): 235–55, <https://doi.org/10.26623/JIC.V5I2.2195>.

criminal acts, especially in the realm of social media. There are two software tools that assist the police to perform prevention which are the Nawala Project and ID-SIRTII. The task of this software is very useful and effective in detecting content that has elements of hate speech.

2) Implementing Socialization of Prohibition of Enacting Hate Speech

In this case, the Sub-Directorate for Cyber Crime of POLDA Lampung carried out socialization using various media, either printed, electronic, or social media, regarding the prohibition of hate speech. These actions are the police's efforts in tackling criminal acts of hate speech by using social media. The goal of this outreach is to build more trust in law enforcement officers and avoid taking the law into persecution.⁹

The enactment of Law No. 19/2016 on Information and Electronic Transaction or *Informasi dan Transaksi Elektronik* (ITE Law) is the legal basis for limiting activities on the internet.¹⁰ The demand for a change in conditions in society is the urgency for this law to take effect¹¹ the presence of this regulation is in line with the growing demands of the community, especially in the field of electronic information.¹²

1) Crime Prevention through Penal Means

The next solution is through litigation media or often known as penal means. The penal means focuses on the perpetrator's actions and sanctions that will be given to the perpetrators' criminal act.¹³ Settlement actions related to criminal acts of hate speech using social media through penal means are carried out by the Sub-Directorate for Cyber Crime of POLDA Lampung by conducting investigations and investigations. This effort is made when there has been a crime in the form of law enforcement by imposing a sentence. The way to restore the situation must be carried out repressively if preventive efforts are not successful. This repressive action was carried out because a criminal act had already occurred. The aim is to provide a deterrent effect on the perpetrators from repeating their actions again, and will be accompanied by sanctions that have been determined in the rule of law.¹⁴

Every time there is a report represented by the police who are investigators, they will immediately take action. The law enforcement process must be accompanied by concrete evidence in proving the existence of a crime with hate speech.¹⁵ The elements of hate speech are contained in the ITE Law which further regulates this crime. The foundation and legal standing of the investigators is stated in the provisions of Article 28 which are more detailed in paragraph (2). The sanctions that will be imposed by law enforcers on the perpetrator are imprisonment which has a maximum duration of 6 years, not only imprisonment but also a fine of one billion rupiah (Rp.1.000.000.000,-).

The targets of the investigation process are to show the existence of the truth and in accordance with a sense of justice. This process must be carried out objectively and not against legal

⁹ Iqbal Kamalludin and Barda Nawawi Arief, "KEBIJAKAN FORMULASI HUKUM PIDANA TENTANG PENANGGULANGAN TINDAK PIDANA PENYEBARAN UJARAN KEBENCIAN (HATE SPEECH) DI DUNIA MAYA," *LAW REFORM* 15, no. 1 (May 27, 2019): 113, <https://doi.org/10.14710/lr.v15i1.23358>.

¹⁰ Law Number 11 of 2008 jo. Law Number 19 of 2016 concerning Electronic Information and Transactions

¹¹ Nanda Ivan Natsir, Muhammad Natsir, and Abdul Hamid, "Penanggulangan Tindak Pidana Penyebaran Kebencian Melalui Media Sosial," *Jurnal Kompilasi Hukum* 4, no. 2 (December 31, 2019): 37–52, <https://doi.org/10.29303/JKH.V4I2.14>.

¹² Ahmad Faizal Azhar and Eko Soponyono, "Kebijakan Hukum Pidana Dalam Pengaturan Dan Penanggulangan Ujaran Kebencian (Hate Speech) Di Media Sosial," *Jurnal Pembangunan Hukum Indonesia* 2, no. 2 (May 10, 2020): 275–90, <https://doi.org/10.14710/jphi.v2i2.275-290>.

¹³ I Made Kardiyasa, Anak Agung Sagung Laksmi Dewi, and Ni Made Sukaryati Karma, "Sanksi Pidana Terhadap Ujaran Kebencian (Hate Speech)," *Jurnal Analogi Hukum* 2, no. 1 (March 4, 2020): 78–82, <https://doi.org/10.22225/ah.2.1.1627.78-82>.

¹⁴ Zegovia Parera and Erni Dwita Silambi, "PENEGAKAN HUKUM PIDANA TERHADAP KEJAHATAN UJARAN KEBENCIAN (HATE SPEECH) MELALUI MEDIA SOSIAL (DI TINJAU DARI UU RI NO.19 TAHUN 2016 TENTANG PERUBAHAN ATAS UU NO.11 TAHUN 2008 TENTANG INFORMASI DAN TRANSAKSI ELEKTRONIK)," *Jurnal Restorative Justice* 2, no. 2 (2018): 160–76, <https://doi.org/10.35724/JRJ.V2I2.1931>.

¹⁵ Erdianto Effendi, "Penafsiran Ujaran Kebencian Dalam Hukum Pidana Indonesia Berdasarkan Beberapa Putusan Pengadilan," *Riau Law Journal*, vol. 4, May 31, 2020, <https://doi.org/10.30652/RLJ.V4I1.7824>.

norms and promote respect for the human rights aspects of the perpetrator.¹⁶

Police institutional instruments play an important role in the penal handling process. The penal and handling process is in line and continuous with the duties and functions that have been regulated in the law. Security and order relating to the society must be able act as a protector.

2. Factors for Law Enforcement of Hate Speech at POLRI Lampung

The law enforcement process is not only limited to the implementation of statutory regulations. There are things that become influences in the enforcement process. First is the authorized officer, there are cultural factors; there are juridical factors to include the existence of facilities and infrastructure. The author tries to identify the presence of inhibiting factors from the case resolution process carried out by the POLDA Lampung as follows:

a) Factors of Law Enforcement's Officials

The mistakes made by law enforcers are influenced by the existence of educational factors regarding the law that are not sufficiently credible.¹⁷ The quality of police officers' education who does not take legal education intensively hampers the case handling process which sometimes investigators incorrectly determine the existence of a legal basis and errors in parsing the elements contained in articles of the law. Not only in the police institution, has the prosecutor's position as public prosecutor also often experienced mistakes. The public prosecutor has the authority to return files relating to the investigation process to pre-prosecution. As a result, the perpetrator cannot be arrested because law enforcers fail to prove that the perpetrator has committed a criminal act. Moreover, the cases handled are related to information technology which requires special expertise in the field of Cyber Crime.

The aspect of proportionality that investigators prioritize must be maintained. It is absolutely not permissible to abuse authority in the process of handling a crime, especially crimes related to hate speech. The principles that need to be upheld in the investigation process; from the process of receiving reports on criminal acts, assignment steps, planning stages, to implementation stages, adjustments to files, to control and finally at the evaluation stage. Documentation aspects are also crucial to continue in the next process.

b) Factor of Facilities and Infrastructure

The law enforcement towards people who have committed hate speech by is not maximized, because law enforcement facilities and facilities have not supported their work. The factor of facilities and infrastructure is very decisive in revealing the existence of criminal acts related to this information technology which is the *telematic* aspect. *Telematic* aspect is very useful in the process of solving problems both penal and non-penal.

c) Factor of Society

Increasingly advanced technology demands a high awareness of its users. The new digital world was formed because it was influenced by aspects of globalization that were experienced in every country. Massive and comprehensive changes in all aspects have made the structure of society in the field of information technology develop rapidly.¹⁸ Unfortunately, low legal awareness makes the police's performance complex. Social media is a place for criminals to commit acts of hate speech.¹⁹ The society's structuring pattern can be started with a great awareness construction of the hate speech sanction as a crime. If the community already knows about the threats that will befall them, it can be an effort to raise awareness of the law, especially in the Lampung region.

¹⁶ Ardken Fisabillah and Umi Rozah, "KEBIJAKAN PEMBERANTASAN TINDAK PIDANA PENDANAAN TERORISME SEBAGAI TRANSNATIONAL ORGANIZED CRIME DALAM PERSPEKTIF HUKUM PIDANA Di INDONESIA," *DIPONEGORO LAW JOURNAL*, vol. 8 (Program Studi S1 Ilmu Hukum, Fakultas Hukum, Universitas Diponegoro, October 31, 2019), <https://ejournal3.undip.ac.id/index.php/dlr/article/view/25506>.

¹⁷ Susanto, F. Anton. 2012. *Kepolisian dalam Upaya Penegakan Hukum di Indonesia*. Rineka Cipta. Jakarta.

¹⁸ Syahdeini, Sutan Remy. 2009. *Kejahatan dan Tindak Pidana Komputer*. Jakarta: Pustaka Utama Grafiti.

¹⁹ Raharjo, Satjipto. 2007. *Polisi Pelaku dan Pemikir*. Jakarta: Gramedia Pustaka Utama.

d) Factor of Culture

The impact of internet development is both positive and negative. On one hand, it has an impact that facilitates human life in various aspects and supports creative things in various fields. But not only positive effects are felt but there are negative effects that accompany technological developments. In particular, there are forms of crimes that have emerged. One of them is in the internet sector. One of them is a crime that contains hate speech. Acceleration must be carried out by law enforcers, especially the police institution. If not, law enforcers will be left behind and unable to create a conducive community condition.

C. Conclusion

Based on the discussion, it can be concluded as follows: Handling of the criminal act of distributing electronic information containing hate speech by the POLDA Lampung (Lampung Regional Police) is executed by the Cyber Crime Sub-Directorate through non-penal and penal means. Non-penal efforts are performed by cyber patrols and disseminating information regarding the prohibition of hate speech using social media. Penal efforts are performed through investigations of Cyber Crime Sub-Directorate of POLDA Lampung according to the law. The law enables investigators to seek and collect evidence and suspects that sheds light on criminal acts of hate speech using social media that have occurred. The factors inhibiting efforts to deal with criminal acts of distributing electronic information containing hate speech by the POLDA Lampung consist of law enforcement, facilitation and infrastructure, society, and cultural. The most dominant factor is law enforcement. This is because not all investigators have qualified education in information-technology and there is no cyber unit in law enforcement's institutions.

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