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**HATE SPEECH FOR THE PURPOSE OF CREATING HOSTILITY
IN INDONESIAN COMMUNITIES
(Study of Criminalization and Legal Reality According to Criminal Law Experts)**

Maradingin

State Islamic University of North Sumatra, Indonesia

maradingin@gmail.com

Pagar

Professor at State Islamic University of North Sumatra, Medan

Prof.pagar@yahoo.com

Jamil

State Islamic University of North Sumatra, Indonesia

jamil@gmail.com

Abstract. Especially printed media sheets and electronic media monitors, as well as direct educational exposure, always fulfills important information presentations that are sometimes mixed with Hate speech in the digital age, and democratization is growing very rapidly lately. In addition to its many benefits, it will also be able to threaten the integrity of the nation. Hate speech (hate speech) can trigger the occurrence; riots, hostilities, fights, even wars. This research has some influence, because the previous article "TWITTER: Expressing Hate Speech Behind Tweeting Yudha Wirawanda and Tangguh Okta Wibowo, in" Prophetic Communication Journal "Sunan Kalijaga State Islamic University, Yogyakarta, only offered findings about the pattern of tweeter usage patterns among Indonesians, where they tend to be able to freely devote their particular emotions in cyberspace. This research is specifically for questioning; How do the expressions of hate speech in Indonesia give birth to the criminalization and legal reality according to Criminal law experts? This research is presented in the form of field research. The type of research is qualitative in descriptive exposure. The sample; North Sumatra, Aceh, DKI and West Java. Research findings; "No settlement of hate speech cases is found as an act of criminalization in the midst of Indonesian society. It is estimated, there are a handful of public perceptions that criminalization of the handling of hate speech cases in Indonesia, especially the hate speech clamps aimed at the Government.

Keywords; Criminalization, hate speech, professionalism, and hoaxes.

INTRODUCTION

Harmony and peace, even the unity of the Indonesian nation is now disturbed by the emergence of a new phenomenon indicated violation of the law, namely "Hate

speech (hate speech)". The words of hatred have surrounded many aspects of the life of society, nation and state. Every second and the opportunity for hate speech spreads very quickly, as if unstoppable, it has even been transformed into a terror of SARA that is organized and raises controversial legal polemics.

This research will specifically examine the criminalization and legal reality regarding hate speech (hate speech) to create hostility among the public according to the views of criminal law experts in Indonesia.

The importance of this research is that criminal acts of hate speech (hate speech) have caused anxiety in Indonesian society. Mutual suspicion and enlarge the space of difference and even cause social polarization based on social identity by degrading and intimidating other groups / groups or components of society, creating discourse of hostility, matching the seeds of intolerance or verbally hurting other identity groups. The speech of hatred is closely related to the creation of hostility, social conflict, social aggressiveness, violence and social association that leads to the destruction of society, nation and state.

Through this research, the research team wanted to find out how the criminalization and reality of the Law of Hate Speech (Hate Speech) to create hostility among Indonesian people in the view of criminal law experts. This study describes how the views of criminal law on the one hand about the number of cases, controversies that occur and are effective to be declared criminalized by the complainant, or the statement is true is a legal reality based on the facts that are categorized as Hate Speech (Hate Speech) so that deserve to be declared a suspect, even convicted.

LITERATURE REVIEW

Hate Speech

Referring to the Oxford English Dictionary (OED), Robert Post, defines hate speech as "speech expressing hatred or intolerance of other social groups, especially on the basis of race and sexuality." Then, the question arises about what can fall into the category of 'hate' ? Again referring to OED, Post gives understanding by; 'An emotion of extreme dislike or aversion; abhorence, hatred "(Robert Post 2009: 123).

The definition of hate speech contains two important aspects; the first relates to the substance or content of utterances and the second relates to the 6 types of groups targeted, as follows. A speech can be said (hate) if the first one expresses feelings of

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hatred or intolerance that are extreme and the second feeling is directed at other groups based on their identity such as race and sexual orientation. Based on this definition Post criticizes the criminalization of hate speech because according to him the expression of feelings of hatred is normal in human emotional life. The line between extreme and moderate in speech is difficult to measure. Prohibition of hate speech according to Post will face conceptual problems in distinguishing between "hate" with "normal dislike" or "disagreement" (Post 2009: 125).¹

Hate speech is very worrying and dangerous. Not only for coexistence between identity groups that exist among diverse and multicultural Indonesian societies, but it is also very rewarding for democracy especially the tarnished freedom of expression, can be a source of horizontal hostility and social conflict, it can even be a serious threat to the stability of security and public order and threats to the integrity of the life of the nation and state.²

Hate speech itself can be in the form of insults, defamation, defamation, unpleasant acts, provocation, incitement and spreading false news. Hate speech can be called hate speech. These words can lead to non-discrimination, violence, loss of life, and social conflict.³

Creating Hostility

In connection with this research, what is meant by the term creating hostility is the act of deliberately issuing words, displaying attitudes and acting aggressively as a form of hatred towards other individuals / groups / social communities, or as a conflict effect, or as a form of social identity polarization .

Antasari mentions six characteristics of aggressive behavior, one of which is: Hostility towards others; aggressive behavior which refers to hostility as an action intended to hurt others.⁴ The aggressive type is classified into two, namely: Aggressive

¹ Ahnaf, M.I. dan Suhadi. 2015. *“Isu-Isu Kunci Ujaran Kebencian (Hate Speech): Implikasinya terhadap Gerakan Sosial Membangun Toleransi”*. dalam *Harmoni: Jurnal Multikultur Multireligius*. Jakarta: Ministry of Religious Affairs, Center for Research and Religious Development.

² Soerjono Soekanto, 1986, *Pengantar Penelitian Hukum*, UI-Press, Jakarta, p. 15

³<http://ejournal-s1.undip.ac.id/index.php/interaksi-online/article/view/15556/15048>, Accessed on 20 September 2017.

⁴ Anantasari. 2006. *Menyikapi Perilaku Agresif Anak*. Yogyakarta: Kanisius, 2006, p. 80

hostility (hostile aggression) is solely done with the intention of hurting others or as an expression of anger and is characterized by high emotions. Aggressive behavior in this first type is the goal of aggression itself or to do something violent to the victim. Aggressive behavior can be verbal and physical, active and passive, direct and indirect. The difference between verbal and physical is between physically hurting and attacking with words; active or passive differentiate between visible actions and failure to act; Direct aggressive behavior means making direct contact with the victim being attacked, whereas aggressive behavior is not directly carried out without direct contact with the victim.⁵

Bush and Denny (1992) classify aggressiveness in four aspects, namely physical aggression, verbal aggression, anger, and hostility. Physical aggression and verbal aggression represent the motor component in aggressiveness, while anger and hostility represent the affective and cognitive components in aggressiveness. Verbal aggression is aggression with words. Verbal aggression can be in the form of swearing, satire, slander, and sarcasm. Hostility is a cognitive component in aggressiveness consisting of feelings of wanting to hurt and injustice. so as to produce forms of aggressiveness. Buss said, there are 8 aggressiveness 2 of which are related to hate speech, namely: Active verbal aggressiveness directly such as berating others stabbing, hitting. Active verbal aggressiveness that is carried out indirectly such as spreading false rumors to others. (Muttaqin, 2011: 16-20).

Communities

In connection with this research, what is meant by the term community here is the reach of hate speech in social processes and interactions between parts / components of the Indonesian nation that are multicultural and heterogeneous / plural.

Criminalization

According to Soerjono Soekanto, criminalization is an act or determination of the authorities regarding certain acts which are considered by the community or groups of

⁵ Robert a. Baron dan Donn Byrne.2005. *Psikologi Sosial Jilid 2*. Jakarta. Erlangga. p 169.

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people to be criminal acts or make an act criminal and therefore can be convicted by the government by working on the name.⁶

Soetandyo Wignjosoebroto argues that criminalization is a statement that certain actions must be judged as criminal acts which are the result of a normative considerations whose final form is a decision⁷

Criminalization can also be interpreted as the process of determining a person's actions as acts that can be convicted. This process ends with the formation of a law in which the act is threatened with a sanction in the form of a criminal⁸

Law Reality

Thus, in relation to this research, what is meant by the term legal reality is legal reality, the opposite of criminalization, namely because the criminal legal system has been carried out correctly, especially in the process of proofing, it is clear that a person's connection to the hate speech crime, with thus someone's status is confirmed, whether he is the culprit then declared as a suspect and ultimately convicted, or not so that he is free by law.

METHODOLOGY

This research is categorized into qualitative research with a descriptive approach. Like empirical research in general, this research is based on sociology theory about law. The theory built in this study departs from the conception of social science and not from the conception of legal science. The law here is not merely observed as a product of a norm system such as regulation, but the law is conceptualized as institutionalized social behavior and has general legitimacy. The characters are Max Weber, Eugen Ehrlich, Herbert Spencer.⁹

⁶ Soekanto, Soerjono, 1981, *Kriminologi: Suatu Pengantar*, Cetakan Pertama, Ghalia Indonesia, Jakarta. p. 62.

⁷ Wignjosoebroto, Soetandyo, "Kriminalisasi Dan Dekriminalisasi: Apa Yang Dibicarakan Sosiologi Hukum Tentang Hal Ini, disampaikan dalam Seminar Kriminalisasi Dan Dekriminalisasi Dalam Pebaruan Hukum Pidana Indonesia, Faculty of Law UII, Yogyakarta, 15 Juli 1993. p. 1

⁸ Sudarto, *Kapita Selekta Hukum Pidana*, Alumni, Bandung. 1986. Hlm. 31

⁹ Gunarto, Prof. Dr. H; SH., SE., Akt., M.Hum. 2012. *Metode Penelitian Hukum: Dualisme Penelitian Hukum Normatif & Empiris*. (Presentatio Material). p.15.

So, the empirical legal approach in this research can be said as a research approach which is carried out through extracting information related to social reality and then related to legal reality and criminalization.

FINDINGS AND DISCUSSION

Hate Speech Condition

DR. Hasbullah, M.Sc., Lecturer at Sultan Syarif Qasim State Islamic University in Pekanbaru, said; Culturally, Indonesia is a fertile place for the development of hate speech. The character of the Indonesian people is that they like to talk, even though religion forbids it, actually Indonesians like to gather, like to tell stories to one another. Times have changed, together with the more easy to talk even though there is no need to meet again, once people can go to the side of the road, now people just tell stories through social media that is always in his grasp, and he can tell whenever he wants with no limits on space and time. With the help of this communication technology, it makes people easier and more free to tell stories, which sometimes flow without being filtered and finally engage in hate speech..¹⁰

The intensity of hate speech occurring in Indonesia is quite high, and is already alarming. This can be seen in everyday life, there are thousands of social media accounts that present expressions of hatred between one group and another. More concrete can be exemplified in elections / elections, for example in the succession contestation of regional and central leadership. Found utterances that tend to discredit someone, both those who come directly from regional head candidates or presidential candidates, as well as from supporting parties, even sympathizers of parties who contest with their rivals. Becomes even more crowded by looking at the responses and replies of the parties with the equivalence. In particular, in a head to head fight that only consists of two candidates, the battle becomes more exciting, when there is a pro-active nature to attack each other in attacking each other in the context of killing the opposing character. All of this is very potent in creating riots.

This hate speech tends to be difficult to trace. Deliberately made with a higher level of security, by the way; Perpetrators are individuals, if it turns out that the victim

¹⁰ Interview with DR. Hasbullah, M.Si., Lecturer of Universitas Islam Negeri Sultan Syarif Qasim Pekanbaru.

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is found only privately, then deliberately used a fake social media account, so it is not clear who uploaded it, the last activation for a moment, so that when people want to track it down then the account has been deleted, but the message has arrived. Although there have been many perpetrators of hate speech who have been caught red-handed, so far more hate speech has not yet been traced to any one.

The material of the hate speech presented is more on insults and slanders. If in Jakarta, this insult and slander seems to fry the issue of religion, it is different from where I use the tribal mode more, for example, modifying hate speech and socializing it, whose purpose is easily understood that black people cannot become regents or derangements. The issue of hate speech which tends to prioritize identity politics is closely related to the central issues that exist in certain regions.

In a very far prediction, the expression of hatred in Indonesia could potentially reach the level of damaging Indonesia as a nation. Today, the expression of hatred has clearly damaged the solidarity of the nation's children. Seeing this phenomenon, if the utterance of hatred that is happening right now is not impossible in a long period of time, the condition of this nation's children is not only not solid but can reach the level of mutual neglect. Such conditions will ignite riots.

Hate speech is quite widespread in Indonesia because of mental attitude problems and communication technology. The issue of mental attitude, that is, the mental attitude of people who change into increasingly have the freedom to express opinions and express their hearts in public during this reform era. Next, the increasingly sophisticated social media in mobile devices that makes people free to use it as a means to pour out their hearts and feelings. Finally, social media is not only a place for people to communicate with positive nuanced content, but also negative ones, a kind of utterance of hatred.

KH. Muhammad Faizin, Head of the Banyuwangi Darussalam Islamic Boarding School in East Java, said that this expression of hatred was also found in East Java. As with other regions in general, the utterances of hatred are scattered everywhere, through existing social media, it is very easy for people to socialize their ideas and ideas, even without filtering at all, finally Indonesia is now beset by news Irresponsible hoaxes that can damage a person's reputation. It seems that the prevalence of hate speech on social media is now national.

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Today many people criticize the Government. All kinds of criticism come in, all criticism may be conveyed, as long as it has a basis, if the criticism is unfounded it could be slander, and this slander is more cruel than murder. To all people to be careful in expressing their criticism.

The latest survey conducted by We Are Social and Hootsuite shows that social media users in Indonesia are very widespread. The total population of Indonesia in January 2018 was 265.4 million people. Of these, 132.7 million are internet users. Furthermore, 130 million of them are social media users, such as; Facebook, Twitter, Instagram and others. 97.9% of them are categorized as social media users. Of these, 92% of them, namely 120 million people use mobile phones as social media tools that are very easy to carry anywhere,

Image: Mobile users as a social media tool in Indonesia.



Criminalization and Law Reality

The question arises regarding the legal process for the perpetrators of hate speech that has been declared to the level of suspects by the police in Indonesia, whether categorized as an act of criminalization or not. In this case, it is found in general data that there is no terminal of criminalization that occurs in people who stumble over cases of hate speech in Indonesia in recent times.

Rudi as a prosecutor who has handled hate speech several times said that the hate speech cases have been processed professionally by law enforcement officers. That is, the case was proceeding purely, there was no charge of interest in it except law enforcement and the eighth. Law enforcement officials work fairly, because the people

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have trusted them, there is no intervention, and are not influenced. The point is there is no criminalization in the process of handling these hate speech cases.

Even more convincing, that the case has proceeded purely seen in the reception of convicted by the judge's decision. An understanding emerged that the perpetrators were aware of their mistakes, at that time the perpetrators were ignited emotionally, then lost their senses, not because of ignorance, precisely they were educated, because there were students, there were people who were respected, but they were unaware that there was an ITE Law, then erred and do the utterance of hatred. The perpetrators felt that they deserved the judge's verdict which was decided in retaliation for the mistakes made, the perpetrators sincerely accepted it, and therefore did not appeal again. Thus the case was completed peacefully.

Dr. Deni Setiya Bagus Yuherawan SH., MS., As Vice Chancellor I of the University of Trunojoyo Madura said;¹¹ Nationally, the use of many people against the word criminalization is wrong. Criminalization is a deliberate and planned effort to classify an act that was not categorized as a crime into a criminal act. This is in the process of legislation of course with the principle of existing legality. It is different from the meaning meant by many people towards criminalization is more towards manipulating how someone who actually does not meet the elements of the offense of certain articles, but will be legally processed. The difference is seen in the legislation process itself on one side and on its application on the other side.

Explicitly, the term hate speech is not found in the legislation. If there are people who talk about criminal acts of hate speech, the contents must be related to the articles of defamation, contempt, etc., then they are related to the media, both print and electronic media. For those actions, article 310, ... all that is used is always referred to as the ITE Law. This combination of defamation and copying, and then publishing it through the media, becomes a hate speech.

Any new statement can be said to be an insult, if it fulfills the elements of the alleged article. If there is only one element of the article that is not fulfilled then that action cannot be said with contempt. It might be that the act was not an offense, or was

¹¹ Interview with Dr. Deni Setiya Bagus Yuherawan SH., MS., in Sukarno Hatta International Airport. Jakarta.

not even categorized as a criminal offense. With that, the perpetrator cannot be declared as a suspect in an insult case.

There is a tendency now that people understand that hate speech is a scary tool. The perception arises that anyone who speaks loudly will stumble with a criminal case of hate speech, in the case of the context of hate speech that is in the articles; defamation, blasphemy and contempt, depending on what is done by the culprit. Everything will be supported by the name of the goods and evidence that can be found. Therefore not all harsh statements will have the value of hate speech.

Most cases that are declared hate speech are difficult to prove. This difficulty will be experienced from the moment of investigation, prosecution and until the trial. Not all loud statements automatically become hate speeches, moreover the words have a conceptual basis. Juridically, one cannot criminalize knowledge holders, because the truth is in science and science must be published.

For legal people, it's simple, that is, people will not be able to suspect with a hate speech case. Considering that hate speech is a daily vocabulary of sociological language, then it is not found in the Criminal Code, therefore, there are no articles that can be alleged as criminals.

It may be that people perceive that law enforcement in certain cases has a target. As long as he is included in the target then he netted. The problem is whether he is more or not bad, if he is more uneasy then he is struck, if he is lucky then he escapes. If this is the case, then the idealism of law enforcement will be dispersed.

The term criminalization in hate speech cases appears, there may be a perception which says that hate speech cases will only target certain people. Criminal acts of hate speech focus on certain groups, and certain religions, that's all that matters, so there is no fairness there. Even though many people speak loudly, speak not well, but not that many people who are suspected of committing hate speech. That thought awakens itself as the dynamics of political developments that took place lately.

As long as the police work professionally, there is no term criminalization there. The police as the earliest party to deal with the crime will determine whether the action is categorized as a crime or not, even whether it is appropriate to be delegated to the prosecutor or not. Not surprisingly, the police as the party most expected to be fair in handling criminal acts of hate speech.

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The Motivation of Hate Speech

Prof. DR. Arrafi`i Abduh said that the utterances of hatred that were rife in Indonesia could not be separated from the political atmosphere that was heating up now. The political atmosphere in Indonesia seems to be heating up all the time, in connection with the elections every year, coupled with legislative and presidential elections every five years. In 2018 when this research is now being carried out, simultaneous local elections in all regions of Indonesia are underway in 171 districts / cities, and provinces. Furthermore, the procession of the legislative election stages has begun, starting from the candidacy stage, the medical examination, the revocation of numbers, and the stage of socialization and the presidential election campaign in 2019, hence the political atmosphere has become even hotter. The situation became even hotter because the candidates for the presidential election only consisted of two pairs of candidates, namely Jokowi-Ma`ruf Amin as pair number 1, and Prabowo-Sandiaga Uno as pair number 2. The fight was exciting and relatively balanced, head to head, making this political contestation to be very special, as well as being a strong cause in the lively outbursts of hatred.

Motivation of hate speech is done because there is an interest, said DR. Hasbullah, M.Sc. The interest here is, the interests want to gain power, or want to maintain power. This can be seen from; First, people talk, because there is something expected from the conversation, then he forms an opinion to deliver him to his expectations. Second, people used to be called a king if he had mastered the sea, different from now, people are said to have become kings if he controlled social media. The combination of opinion formation with the mastery of the mass media often leads to utterances of hatred, because the utterance of hatred occurs through the formation of opinion through the mass media. All that was done in order to seize or maintain power.

Not sure why people make hate speech, but some hate speech is produced. Saracen as a case that has started to become clear because the police have studied in detail in relation to the culprit has become a suspect and legally processed, it appears that the hate speech that they do is produced, therefore, it is estimated that there are those who produce, there is a buyer, there is a price, and there is a purpose. The expression of happiness in this form seems to be carried out more planned, hence it is understood to be full of interests.

The Impact of Hate Speech on Indonesia's Existence

Andi Komara SH, advocate and public lawyer of LBH Jakarta, said that the impact of the hate speech had created horizontal conflicts. Specifically in the Ahok case in Jakarta, remembering the aspects that triggered the triggering of hate speech started with blasphemy, so the impact that occurred was related to horizontal conflicts that were patterned on religion as well. This clearly has an impact on the disturbance of religious harmony.

After being asked about how the impact on the existence of the nation and state, he answered, until now there has not been any at all.¹² The existence of the nation and state today is strong and stable. In connection with the utterance of hatred that is not directed at the nation and state, the impact that occurs is not for the nation and state. In general, the problem that triggers the emergence of hate speech is the problem of individual, or group, not national and state racial intolerance, so the expression of hatred is also in harmony among the people, especially religious people. The issue of harmony among the diverse community is seen which is very vulnerable to this utterance of hatred.

Although the expression of hatred has not yet had a significant impact on the existence of the nation and the state, we must remain cautious, because it is not impossible to happen. Adherents of these different religions are polarized according to their respective religions. Considering that because of its small location, which is only Jakarta, the impact is also more local in nature, but if this is widespread nationally it will have an impact on the existence of the nation and state, even though it is not yet up to this level.

DR. Hasbullah, M.Sc. said; the impact of that hate speech is extraordinary. The words of hatred can divide people, both as internal divisions, as well as external divisions. On the one hand, in the past people did not dare to blaspheme because they told stories face to face, now people are free even though they come to the level of attack, because they do not meet, he does not see his face whether red, or pale, so he continues to write on social media. On the other hand, in the past, people's mental endurance to

¹² Interview with Andi Komara SH., Advocate and Public Law Consultant LBH Jakarta in his office.

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receive sloping information was more resilient than now, because before there was no era of reform, now people are easily offended because their self-esteem has become expensive, and there is human rights. All this, exacerbating the impact of hate speech.

Hasbullah continued, Indonesia's potential is very vulnerable to rupture. If the decentralization system implemented during the reform era has divided Indonesia into many provinces and municipal districts for different cultural reasons, and in the context of accelerating development, in fact it has become the seed of the breakup of Indonesia. Indonesia's potential to become like the Soviet Union exists, because Indonesia consists of many tribes; there is Sumatra, there is Java, and so on. Sumatra separated again, namely; there are batak, minang, aceh, Malay, and others, Malay is divided again in large numbers, as well as Java. If the existence of this ethnic group is getting stronger, while Pancasila is increasingly being questioned, while in it there is a single diversity, then the chances of the breakup of Indonesia will be easier.

KH. Munajib, from NTB said, although in a small scale, the words of hatred had influenced the internal and external religious communities in Indonesia. Fellow religious communities have been disturbed by the hate speech, for example, Muslims and other Muslims, due to differences in political views and choices resulting in the distortion of ukhuwah, as well as between religious communities, such as Muslims with Christians, there have been many times of hate speech. Resulting in parties dealing with the law. All this, resulting in the disturbance of the brotherhood of compatriots and religions.

Perhaps, the utterance of hatred was carried out by certain groups as part of their tricks to annex this nation. In conflict theory, it is known that there are attempts to create riots in order to make a profit. Through this theory, there will be people who try to riot, across time and place. They predict that by carrying out normal and legal activities, they will not be able to enter and play an active role in power, then utter hate speech. The hate speech is estimated to have been carried out by design.

KH. Muhammad Faizin, said that this expression of hatred would divide the unity of the nation. Both the unity of one religion, ethnicity, and ethnicity, as well as between them, will be broken, indications in this direction are already visible now. Thus, the law enforcers must be pro-active and professional in implementing the rules and regulations for everyone involved in this matter..

CONCLUSION

Hate speech is found in Indonesia with a high enough intensity, and this has been alarming. In addition to the culture of gathering and telling stories, the current political atmosphere, due to the simultaneous local elections in 2018 which had just been completed, and was greeted by the upcoming 2019 legislative and presidential elections in April 2019 helped to spark up the utterances of hatred.

In the form of reality, the utterances of hatred that have occurred lately have helped shake up the solidarity of the nation's children together. Even the utterances of hatred were addressed indiscriminately, including the Government.

In general it can be concluded that law enforcement officials in handling cases of hate speech have worked transparently, professionally and accountably. Therefore, the handling of hate speech cannot be called criminalization. However, it was also found the views of a handful of people who did not believe in handling a small number of cases of hate speech, they were presenting that there was an indication of criminalization.

The speech of hatred took place lively, because of the interests there, especially political interests. The quite hot political atmosphere in Indonesia has affected the growth and development of the utterance of hatred. This is in line with the political year (2018) that is being faced, and welcomes the upcoming 2019 legislative and presidential election elections.

Specifically in the case of Ahok (a former DKI Governor who later became a convict) has created a horizontal conflict between the nation's children. The rest, hate speech has helped create distortion in the togetherness and harmony of the nation's children.

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