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Legalization Of Rules For Determination Of The Fake News Spreading Suspect As Seen From Law On Electronic Information And Transaction

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Abstract

This research aims to observe the legality of determination of the fake news or hoax spreading suspect as seen from Law no 11 of 2008 on Electronic information and transaction law. The employed method is normative legal research by examining applied legal rules in Indonesia. The results show that the determination of a suspect in a fake news or hoax case is based on Article 28 paragraph (1) of Electronic information and transaction law (UU ITE). However, the use of the article is unfitting because the existence of a clause "which causes consumer losses in Electronic Transactions". The term is used in trading activities through electronic systems (electronic commerce) in the national and international trades. Besides, the element of consumer loss must be fulfilled. Consequently, a special article in Electronic information and transaction law related to hoax spreading should be composed.

Keywords

Legalization, Determination, Fake News, Suspect

1. Introduction

Fake news is not a new phenomenon in Indonesia which is in line with the issuance of Law No. 11 of 2008 concerning Electronic information and transaction law (UU ITE) which in one of its articles carries the phrase "hoax". The spreading fake news or hoaxes cases have been increased lately. One of attention grabbing cases is a hoax involved an old lady who is known as human right activist. The above mentioned activist claimed to have been beaten up by strangers with stocky body types at Husein Sastranegara Airport, Bandung, on September 21, 2018. The claim was reinforced by the circulation of her photographs with a wounded and swollen face. Additionally, the incident was justified by one of the presidential candidates and the leaders of the supporting parties through an official statement expressing concern and appealing for such beatings or persecution to be dealt with immediately. In the beginning, the public believed in this beating news; but, in the end, this activist admitted that all stories were merely fabrications [1]. Surprisingly, this incident backfired that presidential candidates and the leaders of the supporting parties, especially it happened before the presidential election. One of Partai Kebangkitan Bangsa/ The National Awakening Party (PKB) politicians who is also a member of Komunitas Pengacara Indonesia Pro-Jokowi/ the Indonesian Pro-Jokowi Lawyer Community (Kopi Pojok), along with several other communities such as volunteers of Garda Nasional untuk Rakyat/ National Guard for the People (GNR), Biar Pak Jokowi Saja/ Just Jokowi (BPJS), and Saya Tetap Memilih Jokowi/ I Still Choose Jokowi (STMJ) report them allegedly committing hate speech and dissemination of false news of persecution victims 'drama' and deception of the mentioned activist to the District Court [2].

2. Literature Review

In another case, a woman was arrested for spreading hoax of an earthquake. She argued that she was only "forwarding" the information from WhatsApp to Facebook so that the readers could be alert, even though she was not able to verify

the truth [3]. This is the iceberg phenomenon; a lot of similar cases apply article 28 paragraph (1) of Electronic information and transaction law (UU ITE) as the basis of the arrest. The official poster issued by the Ministry of Communication and Information technology also applies Article 28 paragraph (1) "*Every person, intentionally and without rights, spreads false and misleading news that results in loss of consumers in Electronic Transactions*". Hoax first appeared in 1661, foreign musician John Mompesson sued another musician named William Drury. The substance was unclear, but the case was won by John, so William was punished. John accused William of sending black magic as he was haunted by the sounds of drums within his house every day. The news of John's haunted house spread quickly and was heard by a writer named Glanvill. After that, Glanvill claimed that he had proven himself hearing the sound of drums when visiting John's house. Glanvill presented his experience into three books and stated that as a true story. Many are interested in buying the books. However, in his third book, Glanvill admitted that the story was only made-up and a trick to surprise the public [4]. The next generation in the hoax history occurred in 1745 when Benjamin Franklin, an American, claimed to discover a stone that cure various diseases. The diseases include: rabies, cancer, and other serious diseases. At that time, Medical world, did not conduct medical research on that stone; for that reason, it was assumed that they believed of its alleged benefits. One day, a study on the stone which was named Chinese stone by Benjamin was finally performed. The results showed that was not a stone but only an altered deer horn that did not have any healing capabilities. The mentioned Chinese stone healer and other fake news made up by Benjamin were published in the Pennsylvania Gazette. One of Pennsylvania Gazette readers knew that the stone was not like what Benjamin claimed. Finally, the United States Food and Drug Administration was formed in the 20th century[4]. The word "hoax" was initially used around 1808; it was derived from the word "hocus" which means tricking. The utilization of hoax until today has been associated with the dissemination of fake news which causes a commotion directly and indirectly [4]. The word hoax is listed in Kamus Besar Bahasa Indonesia (Indonesia Dictionary), meaning fake news. The Director of Operations of the Indonesian Internet Domain Name Management, Sigit Widodo, states that the history of fake news in Indonesia began in 2017 when the regional head elections were organized. The elections moment was the right time to disseminate the fake news. The subject of SARA (ethnicity, religion, race, and inter-group relations) and Chinese workers are preferred preference, as stated by Sigit. Along with this, the Ministry of Communication and Information technology has found an increase in hate and hoaxes based sites and social media accounts occurred from October to mid-December 2016. SARA (ethnicity, religion, race, and inter-group relations) contents, hate speech and provocation contents have been disseminated through over 300 social media accounts. Sigit adds that the government's steps to block and freeze such sites are ineffectual since its great number of sites. Accordingly, he suggests the government to issue clarification of hoaxes as was done by President Jokowi and Labor Minister Hanif Dhakiri regarding the issue of Chinese workers [5].

3. Methodology

The applied research method is a normative method using legal rules that apply in Indonesia or positive law. According to Soerjono Soekanto, normative legal research is conducting research on library material or secondary data [6]. According to Abdulkadir Muhammad, normative legal research examines laws that have been conceptualized as a norm or rule that applies in society [7]. The rule is in the form of Law No. 11 of 2008 on Electronic information and transaction law (UU ITE).

4. Result and Discussion

ITE stands for *Informasi dan Transaksi Elektronik* (Electronic information and transaction). The consideration states that this law is aimed at overcoming the wider problem caused by electronic transactions. Electronic information and transaction law (UU ITE) is made for trade activities through electronic systems which are now part of national and international commerce [8]. So that, there are several articles specifically intended to regulate electronic transactions. As Article 28 paragraph (1) states "*Every person, intentionally and without rights, spreads false and misleading news that results in loss of consumers in Electronic Transactions.*" This article has elements: *every person who is intentionally and without rights, spreading false and misleading news; such false and misleading news has resulted in consumer losses*. In order to apply this article as a legal basis, all elements must be fulfilled including 'requirement' which mentions 'consumer losses'. Explanation of Article 28 paragraph (1) of the ITE Law is only written "quite clear" which means the absence of further explanation. Moreover, Law No. 8 of 1999 on Consumer Protection, the definition of consumer loss is also not explained. According to the KBBI (Indonesia Dictionary), the loss is to bear or suffer a loss or something that is deemed to bring loss (damage) [9]. Consumer is users of manufactured goods (clothing, food, etc.) or service users (customers and so on) [8]. It can be concluded that Consumer Losses means a damage suffered by a person who uses goods and or services. Article 28 paragraph (2) states "*Every person, intentionally and without rights, disseminates information intended to create a sense of hatred and hostility of*

individuals and / or certain groups of people based on ethnicity, religion, race, and inter-group relations (SARA)". This article sets out several requirements, namely: every person who is intentional and without rights, disseminates information intended to create a sense of hatred and hostility based on ethnicity, religion, race, and inter-group relations (SARA). Phrase "intended to create a sense of hatred and hostility" requires special interpretation of linguists who master language as their scientific field. This law, as before, does not write about hatred and hostility in the article of explanation. Referring to article 156 of Criminal Code, hostility (*vijanschap*) is directed towards actions carried out by speech which is considered by the public as 'antagonistic' to a certain group or community of Indonesian citizens. Furthermore, the act of expressing hatred (haat) in the form of actions carried out by speech was assessed by public as hating against a certain group or community of Indonesian citizens. In addition, the last is the act, deemed by the public, express remarks that are insulting, degrading, harassing a certain group or community of Indonesian citizens. [10]. The warning of severe punishment should prompt the more careful acts in application of this article. The violation of this article is subjected to imprisonment for a maximum of 6 years and / or a fine of a maximum of Rp1,000,000,000.00 (one billion rupiah). The previous explanation states that Article 28 paragraph (1) contains the phrase "consumer loss" and includes elements that must be fulfilled. So, in a case of someone spreads fake news on social media that does not cause consumer harm or creates a sense of hatred and hostility, can the doer be punished? The answer is he/she can be punished. However, it is not appropriate to continuously apply Article 28 of the ITE Law, but it should be referred to article 40 paragraph (2) "*The Government protects the public interest from all types of disturbances as a result of misuse of Electronic information and transaction that disturb public order, in accordance with the provisions of the Law*". This means that the government will guarantee the rights of each citizen to utilize technology and maintain public order in it. The government can take the necessary actions to counteract and eradicate hoaxes. Since the definition of hoax is not explained clearly in our law, so it is relatively vulnerable to be interpreted differently. Some make a distinction between fake news and news that has not been claimed as valid. Accordingly, public asks whether it is considered as spreading fake news or not when someone who experiences an incident shares it on social media, while others judge that the truth of such information has not been tested. The answers are diverse. When the governed specific rules are absence, different perceptions are born. At the present time, government regulations relating to Electronic information and transaction law (UU ITE) is about administering systems and electronic transactions. The government has not issued regulations regarding the spread of hoaxes. So there is no standard rule regarding enforcement of anti-hoaxes. However, this is not an excuse to 'force' the law so that the hoax spreader can be sentenced. Indonesia is a civil law country, which means everything must go according to the rules that have been set. It will be wiser for us to complete the rules in advance to anticipate legal vacuum or obscure norms. The purpose of law is solely to achieve justice by conveying advantages and regulating public order by its nature which regulates, forces and protects citizens.

5. Conclusion

Legal rules related to the spread of fake news have been regulated in Indonesia, but the deficiencies are still attached. The absence of the further explanation of hoax in the article creates an obscurity in determination the hoax spreader suspect. In particular, the Article 28 paragraph (1) of Electronic information and transaction law (UU ITE) mentions a phrase "consumer losses" that must be fulfilled. Based on this phrase, people who commit hoax dissemination cannot be punished because of the non-fulfillment of the element. To avoid legal vacuum, government needs to write a special article on hoax as part of UU ITE.

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