

Criminal Law Responsibility against the Performers of Spreading Hoax Fake News Performed by Antimasker Activists

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ABSTRACT: *The purpose of this study is to identify and analyze criminal liability for the perpetrators of spreading hoaxes by anti-mask activists. With the formulation of the problems, YW's video upload on social media (Facebook) fulfilled the elements of the crime of spreading hoaxes (fake news) and Violations of the Quarantine Law? How is the criminal responsibility that YW must accept as the perpetrator of the crime of spreading hoax information (fake news)? The approach method used in this research is the analytical juridical method. a) YW's video uploads related to viral news YW anti-mask activists fulfil the elements of the crime of spreading hoaxes (fake news) which can be ensnared through Article 28 of Law Number 11 of 2008 concerning ITE, however, the ITE Law is not the only legal basis that can be used to ensnare people who spread hoaxes or fake news because UUIE only regulates the spread of false and misleading news that results in consumer losses in electronic transactions only and needs to be aligned with the Criminal Code and Law 1/1946. To account for the actions that have been carried out YW as a suspect has been detained at the Banyuwangi Police and charged with Article 14 paragraphs 1 and 2 of Law (UU) number 1 of 1946 concerning criminal law regulations and article 45 letter a Jo article 28 of Law Number 19 of 2016 ITE and article 93 of Law number 6 of 2018 concerning Health Quarantine with a threat of 4 years in prison.*

KEYWORDS -Criminal law liability; Spread of hoaxes

I. INTRODUCTION

The rapid development and progress of Information Technology have led to changes in the activities of human life in various fields which have directly influenced the birth of new forms of legal action. Advances in information and communication technology, the use of the internet, especially online media, is in great demand by the Indonesian people because the use of online media makes it easier for people to find information and news effectively and efficiently. Advances in information and communication technology not only have a positive impact but also have a negative impact. Through this information technology, everyone can easily produce information, and that information is quickly conveyed through social media such as Facebook, Twitter, Instagram, WhatsApp and so on.

Besides that The development of information technology has changed the behaviour of society and human civilization globally, one of which is the presence of Social Media (General Explanation of the ITE Law). Social Media are Sites and applications that allow users to create and share content or to interact socially (English Oxford Living Dictionaries). Social media allows people from all over the world to interact easily and at a lower cost. Another positive impact of the existence of Social Media is the acceleration of information

dissemination. Based on a survey in 2019-2020, there was 73.7 per cent of Indonesian Internet service users, up from 64.8 per cent from 2018. When combined with the figures from the Central Statistics Agency (BPS) projection, Indonesia's population in 2019 was 266,911,900 million. , so that Indonesia's internet users are estimated at 196.7 million users. The data shows that this number has increased from 171 million in 2019 with a penetration of 73.7 per cent or an increase of about 8.9 per cent or around 25.5 million users. 5 million (Secretary-General of the Indonesian Internet Service Providers Association (APJII).

Currently, social media quickly disseminates information to the public, if they are not careful and careful, people will be affected and swallow the information they get from hoax news that is milling about which is sometimes even difficult to distinguish because it is packaged in scientific language and so convincing. When a news fulfils the element of a hoax so that it can fulfil the element of a criminal act or can lead to a civil lawsuit because it has harmed other people.

According to a psychological perspective, two factors can cause a person to tend to easily believe in hoaxes. People are more likely to believe hoaxes if the information matches their opinions or attitudes (Tim Cek Fakta, 2017). Naturally positive feelings will arise in a person if his opinion or belief gets affirmation so it tends not to be care whether the information they receive is true or false and it is even easier for them to redistribute the information. This is further exacerbated if the hoax spreader lacks knowledge in using the internet to find deeper information or just to check and verify facts.

In the past year, the Indonesian people have been shocked by an Antimasker Activist with the initials YW in Banyuwangi, by uploading a video on Facebook social media that went viral, claiming that he does not want to wear a mask according to the rules and recommendations that the Government has set to prevent the chain of transmission of the virus. Covid-19, and in addition to the video, YW also forcibly took one of the bodies of a Covid-19 patient at the Genteng Hospital and then refused to be buried according to health protocols, because it was considered that the patient was only suffering from complications, even though it was proven that the patient died had been declared positive. Covid-19 (Liputan6, October 15, 2020) to be exact on September 28, 2020. YW, who is a member of the Antimasker NGO from Purwoharjo District, is indeed very influential for a group of people, especially in the Banyuwangi City area, besides that he was also known to have been involved in several legal cases that happened to him. YW stated that he had inspired into fear, rather than the people of Banyuwangi and all the people, that this covid is not dangerous, this covid is something that must be avoided. that this covid is not dangerous, this covid is something that must be avoided. that this covid is not dangerous, this covid is something that must be avoided.

After fulfilling the summons as a witness by the Banyuwangi Police investigators, YW was present without wearing a mask, after being examined for about 5 hours as a witness for the Reported Party, the Banyuwangi Police Satreskrim Investigator Team immediately identified him as a suspect. Before YW was questioned, the Banyuwangi Police Satreskrim Investigation Team also asked for information from four expert witnesses related to this case, including a language expert, ITE Expert, Health Quarantine Expert, and Lung Disease Expert. Kombes Pol Arman Asmara, Banyuwangi Police Chief also said that "everything is under examination of what has been done by the person concerned (YW), to a statement uploaded via Facebook, then Previously, we examined witnesses and evidence, as well as expert witnesses, their status is already suspect." (Liputan6, October 17, 2020, 19.34 WIB). And it is known that YW's status has changed to a suspect who has been charged with Article 14 paragraphs 1 and 2 of Law Number 1 of 1946 concerning the Criminal Law Regulations, and Article 45 in conjunction with Article 28 of Law Number 19 of 2016 concerning ITE, and Article 93 of the Law. Law Number 6 of 2018 concerning Health Quarantine, the penalty is up to 5 years in prison (Abner et al., 2017).

The show is considered to be disturbing to the public and provides inaccurate information so that it gets a lot of opposition by academics, scientists, the Indonesian Doctors Association (IDI) and has the potential to cause uproar and polemics in the community. Based on this, one of the residents from Songgon Village who incidentally was a Covid-19 volunteer who received the news took the initiative to report YW to the Banyuwangi Police, and has accepted The Banyuwangi Police immediately followed up to summon YW for questioning, with the alleged articles being Article 14 paragraphs 1 and 2 of Law Number 1 of 1946 concerning

the Criminal Law Regulations, and Article 45 in conjunction with Article 28 of Law Number 19 of 2016 regarding ITE, as well as Article 93 of Law Number 6 of 2018 concerning Health Quarantine (Muhammad Nurul Yaqin, 2020).

Hoax news is increasingly difficult to contain, even though the government has blocked sites containing negative content, but every day hoax news continues to emerge, this may be because the blocking case is not followed by a law enforcement process in court so that hoax spreaders are still roaming around and do not feel deterred.

II. RESEARCH METHODS

This research is normative descriptive field research, meaning that it describes the data found in the field and analyzes it to get correct and accurate conclusions (CholidNarbuko & Abu Achmadi, 2005). This research is legal research that uses several approaches to be able to answer the problems studied, namely the legal approach (statute approach), and the conceptual approach (conceptual approach). The statutory approach is used to be able to examine in-depth various regulations relating to information and electronic transactions related to hoax news. A conceptual approach is used to understand the criminal and civil liability for the impact of hoax news. This study uses the method of content analysis (content analysis) is research that is an in-depth discussion of the contents of written or printed information in the mass media that is recording messages systematically, then given an interpretation.

III. DISCUSSION

1. Elements Fulfilled in the Crime of Spreading Hoaxes and Quarantine by Defendant YW in uploads on social media Facebook (analysis of viral news about Covid 19)

Dissemination of information or news through online media is not only carried out by news sites that are already known to the public, but anyone who uses the internet can disseminate information or news through online media. This resulted in everyone being able to express and freely disseminate information or news through their online media. Based on this, if you are not careful, the use of online media will result in the emergence of legal actions that result in criminal acts or violate civil rights.

Hoax news is processed in such a way as to attract the interest of readers, so that netizens do not realize it is hoax news or information and instead comment with each other to discuss with their respective versions of their opinions, thereby adding to the complexity and bias of the news.

The formulation of the offence that regulates hoaxes through electronic or online media has been regulated in Article 28 paragraph (1) which states that Everyone intentionally and without rights spreads false and misleading news that results in consumer losses in Electronic Transactions. If it is observed that the provisions of Article 28 paragraph (1) contain the element that every person, intentionally and without rights, spreads false and misleading news, resulting in consumer losses, in Electronic Transactions.

Associated with the case that ensnared M YunusWahyudi (YW), that the element of the perpetrator "deliberately" had been fulfilled in this case, YW could be charged with criminal law because he had committed an act of spreading false news through uploading videos on social media, to be exact on his Facebook account which lasted a long time. 5 minutes 51 seconds, which states that in the city of Banyuwangi there is no Covid-19, and the perpetrators were also seen carrying out the act of forcibly picking up the bodies of Covid-19 reactive patients at the Genteng Hospital in October 2020. Only one thing that made the investigators base in establishing YW as a suspect after being examined for 8 hours was through YW's statement which explained that he had met with Doctor Rio and the Regent, but after being confirmed in Doctor Rio's statement he never met YW at all.

Likewise, the element of "against rights" is also fulfilled because YW has conveyed information that is against the law, namely false information that is not following the facts and applicable legal provisions. And the element of "spreading false and misleading news" is also fulfilled because the information related to YW's statement that the basis of the news that was conveyed had received confirmation from Doctor Rio and the

Regent was not true or false and of course also misled the public. Likewise, the element of "harming consumers" is also fulfilled because based on YW's admission the drug has been distributed to remote areas, which means that it has harmed the community as consumers (recipients of news).

The criminal threat of violating Article 28 paragraph (1) is regulated in Article 45A paragraph (1) Any person who intentionally and without rights spreads false and misleading news that results in consumer losses in Electronic Transactions as referred to in Article 28 paragraph (1) shall be subject to criminal sanctions, imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

Following the principle of legality, to be able to become a criminal act, it must meet all the elements of the articles stipulated in the law. In addition to Article 28 paragraph (1) of the ITE Law, the elements of the crime of broadcasting false news are also regulated in Article 309 paragraph (1) (2) and 310 of the Criminal Code (KUHP) which states Article 309 (1): "Everyone who broadcasts false news or false notifications that causes trouble or riots in the community, shall be sentenced to a maximum imprisonment of 2 (two) years or a maximum fine of Category III."

Article 309 (2): "Anyone who broadcasts a news or issues a notification that can cause trouble or riots in the community, even though it is known or reasonably suspected that the news or notification is a lie, shall be punished with imprisonment for a maximum of 1 (one) year or a fine of a maximum of Category II."

Article 310 reads: "Everyone who broadcasts news that is uncertain, excessive news, or incomplete news that causes trouble in society, shall be punished with imprisonment for a maximum of 1 (one) year or a fine for a maximum of Category II".

Likewise, Article 14 and Article 15 of Law Number 1 of 1946 concerning Criminal Law Regulations also regulate fake news, namely: Article 14 paragraph (1) "Whoever, by broadcasting false news or notifications, intentionally publishes trouble among the people, is punished with a maximum imprisonment of ten years. Article 14 paragraph (2) "Anyone who broadcasts a news or issues a notification that can cause trouble among the people, while he should be able to think that the news or notification is a lie, is punished with a maximum imprisonment of three years. Article 15 Whoever broadcasts uncertain news or news that is excessive or incomplete,

The existence of the Criminal Code and Law Number 1 of 1946 concerning Criminal Law Regulations which regulates fake news is a general provision (*lex generalis*) that can complement the provisions in the ITE Law because the provisions in ITE are limited to electronic information or online.

Furthermore, concerning YW's actions in uploading the video, forcibly picking up the corpse of a Covid 19 reactive patient at the Genteng Hospital in October 2020 was a violation as contained in Article 93 of Law No. 6 of 2018 concerning Health Quarantine states that "Everyone who does not comply with the implementation of Health Quarantine as referred to in Article 9 paragraph (1) and/or obstructs the implementation of Health Quarantine causing a Public Health Emergency shall be punished with imprisonment for a maximum of 1 (one) years and/or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah)" (Tim Cek Fakta, 2017).

Thus, in addition to fulfilling the elements contained in the legal regulations and provisions regarding the spread of hoaxes, YW has also violated the provisions of Article 93 of Law. 6 of 2018 concerning Health Quarantine, according to the results of the investigation team from 14.00 WIB to around 18.00 WIB, this anti-mask activist who went viral on social media was named a suspect who was charged with the ITE Law No. 19 of 2016 Article 45 in conjunction with Article 28 and Article 93 of Law No. 6 of 2018 concerning Health Quarantine.

2. Criminal Liability Against YW as Perpetrator of the Crime of Disseminating Hoax Information (fake news)

Criminal liability, based on the point of view of the occurrence of a criminal act, a person is criminally responsible if his actions have been against the law. In addition, the criminal act committed also does not have a justification or nullification of the nature of being against the law. Then from the point of view of the

ability to be responsible for the perpetrator, only someone who can be responsible and fulfils the requirements of the ability to be responsible can be held criminally responsible for his actions.

In addition to having been proven to have fulfilled the elements of violating the ITE Law as explained in the first subject above, YW has harmed the people of Banyuwangi, especially due to his actions in spreading hoax information, must accept criminal liability as a consequence of these actions.

Therefore, it can be in the case of YW that YW has been sentenced to a crime because he has fulfilled the requirements for criminal liability. In this case, it is:

- Whereas YW has been proven to have committed a criminal act and was named a suspect;
- That YW must be responsible for the crimes he has committed;
- That YW has been proven guilty, either in the form of intentional or negligence in his criminal act;
- That YW has no justification or excuse eliminates criminal liability for his criminal acts.

YW has been designated as a SUSPECT because his actions have been proven to be criminal acts following what has been regulated in criminal laws and regulations. In criminal law legislation, the principle of legality is known, which is contained in Article 1 paragraph (1) of the Criminal Code, namely: "There is no act that can be punished except for the provisions of the existing legislation before the act is committed."

From this article, it can be interpreted that an act can be punished if there are regulations that previously regulate whether or not an act can be punished. If a person has committed a criminal act, then he can only be tried based on the criminal legislation in force at the time the act was committed.

To account for the actions that have been carried out YW as a suspect has been detained at the Banyuwangi Police and charged with Article 14 paragraphs 1 and 2 of Law (UU) number 1 of 1946 concerning criminal law regulations and article 45 letter a Jo article 28 of Law Number 19 of 2016 ITE and article 93 of Law number 6 of 2018 concerning Health Quarantine with a threat of 4 years in prison (Gema Nusantara, 2020).

Furthermore, the investigation as a suspect as YW will continue to be followed up by the Investigation Team from the Banyuwangi Police, including the YW investigation file which will soon be sent to the Banyuwangi District Prosecutor's Office for follow-up processing. Meanwhile, YW's legal assistant filed a suspension. After undergoing the trial stages at Class II A Banyuwangi District Court, although the trial was delayed for 3 times and finally it was carried out, it was under strict escort from the Banyuwangi Police Police, YW as a defendant in the hoax news case was demanded 4 (four) years in prison by the Public Prosecutor (JPU) District Court (PN) Banyuwangi Regency, On Friday, August 6, 2021, this lawsuit was given to the defendant because he was considered guilty of spreading false news by Article 14 paragraph 1 of Law number 1 of 1946. And at the trial verdict Defendant, YW was sentenced by the Court of Judges with a sentence of 3 (three) years in prison, precisely on Thursday, August 19, 2021, which was chaotic because it was known that YW suddenly attacked the Chairman of the Panel of Judges who sentenced YW at the trial. However, this decision is a decision at the court of the first instance, and Defendant YW still has an appeal or cassation if he is not satisfied with the verdict that has been set by the Panel of Judges at the Court of the first instance.

IV. CONCLUSION

YW's video uploads related to viral news YW anti-mask activists fulfil the elements of the crime of spreading hoaxes (fake news) which can be ensnared through Article 28 of Law Number 11 of 2008 concerning ITE, however, the ITE Law is not the only legal basis that can be used to ensnare people who spreading hoaxes or fake news because UUIITE only regulates the spread of false and misleading news that results in consumer losses in electronic transactions only and needs to be aligned with the Criminal Code and Law 1 / 1946. The existence of the Criminal Code and Law Number 1 of 1946 concerning Criminal Law Regulations regulating fake news is as a general provision (lex general) which can complement the provisions in the ITE Law because the provisions in the ITE Law are limited to electronic or online information and violations of Law No. 6 of 2018.

Criminal responsibility for YW's actions as the perpetrator of the crime of spreading hoaxes and violating Law no. 6 of 2018 concerning Quarantine which must receive a 3-year prison sentence at the District Court. Banyuwangi is still not final because the defendant can still take legal action at the next level, besides

that YW is also known to have committed acts of anarchy against the Chair of the panel of judges who must also accept all the legal consequences and consequences for YW's actions. following the provisions of the applicable laws and regulations.

V. SUGGESTION

Our advice, in this case, the government should increase supervision over the development of the spread of news through internet media, especially information related to health information during the Covid-19 pandemic, of course, this is very dangerous if it can endanger the safety of the people who receive the news when The spread of news through internet media and social media groups such as Whatsapp needs to get more serious attention from the government.

The perpetrators of the crime of spreading hoaxes/cybercrime crimes must be held accountable for the actions they have done and feel the deterrent effect on the actions they have committed, no longer repeating their actions that can harm many people, especially during the current covid-19 pandemic.

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