

Hate Speech Limitation On Social Media In The Perspective Of Freedom Of Speech And Electronic Information And Transaction Law

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Abstract - Freedom of speech that applies in Indonesia must be in accordance with the limitations of the applicable laws. The problem of hate speech has been regulated in Law Number 19 of 2016 on Electronic Information and Transactions, namely Articles of 28 paragraph (2), and sanctions for violators are listed in Article of 45 paragraph (2). Hate speech can cause problems of discrimination, acts of violence, murder so that hate speech must be taken seriously and get more attention without compromising people's rights to express their opinions. So based on the analysis, it can be said that hate speech is not a form of freedom of speech because hate speech has violated the freedom and rights of others who feel demeaned or humiliated by their hate speech. Freedom of speech that applies in Indonesia is the freedom that was limited by the rights and responsibilities of others.

Keywords - Hate Speech, Freedom of speech, Electronic Information, Transactions Law.

I. INTRODUCTION

Indonesia is a country that adheres to a democratic system. One of the requirements of a democratic state is to give its citizens the freedom of speech, form organizations, establish or join political parties, which are also human rights. Freedoms that apply in Indonesia must be in line with the signs of the laws that have been imposed by the government. The government also guarantees its citizens to freely provide input and suggestions on policies taken by the government so that it can be said that the expression of an opinion is a form of basic human right that is very important and fundamental for a democracy based on the law (Atmadja I Dewa Gede, 2015).

Freedom of speech in Indonesia has been regulated in Article 28 of the 1945 Constitution as well as other applicable regulations, including law number 11 of 2016 as amended in Law Number 19 of 2016 concerning Electronic Information and Transactions. The Electronic Information and Transactions Law is formulated to provide legal certainty, provide benefits, increase attention, foster good faith in utilizing information technology. The purpose of the Electronic Information and Transactions Law is to increase the level of public intelligence, increase

trade and national economic activity, make more efficient and effective public services, enable everyone to take advantage of technological advances, foster a feeling of security, fairness, and guarantee legal certainty for users of information technology (PuspitasariDwiNikmah, 2016).

Social media has become the life and spirit of Indonesian society. All stories and feelings expressions are included in the mass media. However, after the enactment of the Electronic Information and Transactions Law, the government sets limits in expressing opinions or ideas through social media because of the growing number of hate speeches. The practice of freedom of speech in Indonesia was limited by the norms and freedoms of other people or social media users. Social media users, in conveying their ideas or thoughts, should do not express hate speech to other people, ethnicity, religion, race, or certain community groups.

The rapid development of social media causes many consequences that must be faced by the community, both positive and negative impacts. The positive impact is that social media causes the communication process to be faster and information spreads quickly, while the negative impact is the spread of false information (hoaxes), misleading news, and hate speech which is increasingly and rapidly spreading on social media. Social media can be said a double-edged sword. On the one side is a means to improve the knowledge and prosperity of society, but on the other side as a potential tool and effectively to violations of the law in the form of hate speech.

The spread of hate speech has disturbed the security and order of the Indonesian nation. Hate speech cases get great attention, so the spread of hate speech causes unrest in the community and even causes the division of the Indonesian nation. However, legal action against hate speech cases has also caused people to be afraid to share their opinions and ideas related to the government on social media. This condition actually endangers Indonesian democracy and can encourage the emergence of an authoritarian government due to the suppression of freedom of speech and criticism of the government to control the policies implemented by the government (Iman Amanda Permatasari, 2019).

This issue must be resolved legally. The law, through its regulations, must provide clear boundaries and



benchmarks for the government and society regarding freedom of speech so that it will be clear which is hate speech and freedom of speech. Hate speech cases prosecuted under the ITE Law are due to the absence of clear standards regarding criticism as a form of freedom of speech orally or in writing with hate speech. The limitation between criticism as an expression of speech freedom and hate speech is very important to be stipulated in the legislation. The determination of clear boundaries also makes it easier for law enforcers to take action against the perpetrators of hate speech and makes it easier to file demands in court.

II. METHODOLOGY

The research method type was used the normative research method. Normative legal research includes legal systematics, legal harmony, history, and legal comparisons (Muhammad Abdulkadir, 2004). The legal material used as a tool to analyze the problems was obtained through a literature study in the form of primary and secondary legal materials. The legal materials were collected through a literature study by identifying legal materials, making an inventory of legal materials, and ending with an analysis of the collected legal materials. The analytical method was used the descriptive method.

III. DISCUSSION

Hate Speech Limitation on social Media In Indonesia In The Perspective Of Freedom Of Speech And ITE Law. Expressing opinions is a human right that must be protected and should not be violated by anyone, including the state and government. Indonesia, as a country based on the law, has protected the right to express opinions for its citizens, which is regulated through Article 28 and Article 28E paragraph (3) of the 1945 Constitution. Freedom of speech in Indonesia is manifested in oral and written forms in various media. Technological developments have allowed someone to more easily express their opinions and ideas using social media and other communication media. Through social media, a person can express an opinion or idea in the form of writing, pictures, videos, speak freely as a form of expression of speech to express opinions, thoughts, and emotions.

Social media cannot be separated from the lives and activities of the Indonesian people. Indonesian people used social media as 1) means to express opinions to the wider community; 2) means to carry out trading activities, running a business, media promotion, and other economic activities; and 3) means of provocation and publication of ideas to criticize the policies taken by the government. The relationship between the development of the internet and freedom of speech is that the internet is a medium to channel ideas, thoughts, and aspirations. The internet and social media provide wide opportunities for people to have opinions and express their feelings (Putu Eva DitayaniAntari, 2017).

Social media has an urgent role in the process of disseminating information. With just the touch of a finger, information was accessed and redistributed to others. Deliberation activities, discussions, seminars no

longer need to gather a lot of people; just by utilizing various social media platforms, discussions can take place without reducing the essence of the discussion or seminar activities. The spirit of freedom and disclosure of information on social media must have certain limitations because if there are no restrictions or rules regarding the limits of freedom in utilizing social media, there is the potential for various problems to arise due to speech or expressions that can offend other people's feelings. One form of speech that is possible to hurt others is hate speech. Hate speech is widely interpreted as an expression of thoughts or ideas that attack the personality of another person so as to encourage unrest and violence in society. The development of information technology and advances in social media is also accompanied by the increasing practice of hate speech appearing on social media. This condition was triggered by the ease of expression through social media not accompanied by public awareness of the ethics of social media. There are still people who are less concerned about the consequences of what is posted through social media. In fact, most people do not first select the truth of the news, and they immediately spread the information through their social media (Kade Richa Mulyawati, 2021).

The spirit to enjoy the freedom of speech through social media is not followed by a deep understanding of the meaning of freedom of speech, the ethics of expressing opinions, and the responsibilities that arise as a result of freedom of speech. Indonesian people are concerned about their right to express ideas/opinions but are not aware of the respondents do not violate others' freedom in expressing their opinions. The basic problem that occurs in the use of social media is that ethics or manners in social media are not fully understood. This condition encourages the emergence of hate speech on various social media platforms.

Hate speech is also interpreted as communication behavior carried out by a person or group of people in the form of provocation, incitement, or insult to other people or groups in various aspects of life. Hate speech's purposes were to reduce the dignity and status of others; besides that, hate speech is also intended to create hatred in society, discrimination, violence, and genocide. Hate speech, if allowed to grow and develop in Indonesia, will loosen the unity of the Indonesian nation, which is full of diversity. Hate speech forms that often appear in Indonesia, especially on social media, are utterances that insult other people, defame, blasphemy against religion and beliefs, unpleasant behavior, provocations, inciting, spreading false information, and all other actions intended to act discrimination, violence, and social conflict (HeriGunawan, 2020).

Hate speech emerged along with the development of information technology and social media such as Whatsapp, Facebook, Twitter, and Instagram, which made it easier for people to express their aspirations and ideas without being filtered by an understanding of good and correct social media ethics. Hate speech cases in Indonesia cover various sensitive issues that arise in society. The most problems that become hate speech content are

political issues (91.8%) and racial issues (88.6%). Electronic media used to spread hate speech are social media (92.4%) (Whatsapp, Facebook, Twitter, and Instagram), internet sites (34.9%), television (8.7%), printing media (8%), email (3.1%), and radio (1.2%) (Dewi Maria Herawati, 2016).

This condition can be seen from the many hate speech cases that have received attention from the public, including 1) the case of Gede Aryastina/Jerinx, who exposed hate speech in his Instagram account; 2) The case of Muhammad Tamim Pardede, who distributed SARA videos; 3) The case of Ahmad Dhani who made his Twitter account shrunk; as well as many other cases that are currently being decided in court and are in the investigation process. Cases of hate speech have also been heard because more people report social media accounts that are considered to have made hate speech toward a person, institution, organization, or government institution.

The more cases of hate speech, the government assumes that there has been an abuse of freedom of speech in Indonesia, so the government needs to issue a set of regulations to limit abuse of freedom of speech in the form of the ITE Law. The government's purpose restricted the freedom of speech is to maintain respect for human rights and the obligation to comply with applicable laws and regulations. Another rationale is that unrestricted freedom of speech will lead to hate speech that can cause collective hatred in the community that encourages exclusion, discrimination, and violence. Therefore, hate speech, especially on social media, must be managed properly because it can attack the principles of diversity, nationhood, and statehood in this country that have much diversity (HeriGunawan, 2020).

Freedom of speech is one of the basic instruments for a democratic state and the guarantee of citizens' human rights through state laws and regulations. In Indonesia, there are various legal instruments that regulate freedom of speech. The basic principle is Article 28E paragraph (3) of the 1945 Constitution which generally states that every citizen has the right to form associations, assemble, and express their opinions. In addition, there is also Law Number 9 of 1998 concerning freedom of speech in public. The main issue regulated by these two laws and regulations is that everyone has the freedom to express ideas or opinions in public, and these human rights are guaranteed in accordance with the laws and regulations that have been stipulated.

Freedom of speech is a human right in life that is regulated and guaranteed by the state constitution. The exercise of this freedom of speech is in the form of writing, printed books, discussions, or press freedom. People's freedom to express ideas and thoughts was often expressed in the form of social media stories. Various forms of problems expressed through social media include issues of government, law, and political policies taken by the government or state institutions, criticism or suggestions on policies taken by the government concerning the general public. Freedom of speech is actually control over the current government so as not to create an authoritarian government.

Freedom of speech and expression is important to be protected because: (1) freedom of speech is a way to guarantee the fulfillment of one's rights and to show one's potential; (2) freedom of speech is a suggestion to test the truth and increase knowledge, in other terms truth and knowledge can be mastered by someone if that person wants to hear other people's questions, appreciates alternative solutions to these questions, tests the assessment of truth by paying attention to the opposing views, and use conflicting thoughts optimally; (3) freedom of speech is a form of community participation in the decision-making process in politics and government; and (4) freedom of speech allows for a balance between the roles of society and the state (Marwandianto and Helmi Ardani Nasution, 2020).

Freedom of speech is a manifestation of a democratic state, and there is no democracy without freedom of speech. Indonesian democracy, which adheres to the principles of people participation, was required to ensure the active role of the community to participate in government. The community has a role to play in controlling the state government by participating in the delivery of views, suggestions, and criticism of the policies taken by the government. This active community participation is manifested in the form of participation in existing political parties. Freedom of speech can also be channeled through various media that exist in the community, both electronic and social media.

Freedom of speech that grows in Indonesia is developing along with the development of the internet and information technology. The internet, in this case, social media, is an effective means to spread one's ideas directly, and the dissemination can be in a massive reach. Given the increasing freedom of speech on social media, the government has imposed restrictions on the use of social media to express opinions and ideas in the form of the issuance of the ITE Law. The basic rules for expressing opinions through social media are the prohibition on spreading untrue news that can cause harm to others, the prohibition on disseminating information that can cause hatred and hostility in society. The legal provisions in the ITE Law also stipulate punitive sanctions for those who violate the restrictions on freedom of speech (Putu Eva Ditayani Antari, 2017).

The government's effort to implement democracy in Indonesia is to provide protection for the right to express opinions. The government, through its institutions, should not be repressive towards the community or community groups who express their opinions in the form of suggestions and criticisms of government policies. The ITE Law does sometimes cause controversy because it is often used by certain parties to attack other opposing parties through provisions in certain articles. Nevertheless, the ITE Law is still needed to control the use of social media in Indonesia so that it is not arbitrary in exercising its right to disseminate information through social media. The limitations contained in the ITE Law are intended to minimize the bad influence that arises from the existence of freedom in the world of social media (Nur Rahmawati, 2021).

The purpose of publishing various kinds of regulations that limit freedom of speech on social media does not mean that the government intends to suppress freedom of speech in the rule of law. The government still guarantees the implementation of freedom of speech either directly or indirectly as long as the ideas, opinion, or information conveyed do not fall into the category of hate speech, namely insulting, defaming, defaming religion, provoking, inciting, spreading false information, and unpleasant acts, which can result in the emergence of social violence and conflict. The purpose of limiting expression is to create public order and prevent social conflicts that will break the unity and integrity of the nation. Freedom of speech that applies in Indonesia is the freedom that is limited by the rights of others so that any violation of the rights of others is a form of violation of the basic rules of freedom of speech.

Expression of opinion through social media is limited through various regulations contained in the ITE Law. Restrictions on freedom of speech through social media contained in the ITE Law include not being allowed to spread hate speech on social media. Hate Speech is a form of utterance intended to provoke and demean a person or community group such as ethnicity, religion, and race. The provisions governing this condition are Article 28 paragraph (2) of the ITE Law which states that there is a prohibition on disseminating information intended to foster enmity and hatred in the community based on ethnicity, religion, race, and between groups (Dewi Maria Herawati, 2016).

Restrictions on the spread of hate speech are aimed at protecting the rights of freedom of opinion or speech. The expected condition is the preservation of freedom of speech without disturbing or attacking others' freedom of speech. So it can be said that hate speech is not just feelings of hatred between individuals, but hatred towards a group of people with the emergence of speech that can cause divisions such as utterances that incite or invite violence. It should be underlined here that freedom of speech is limited by the prohibition against spreading hatred and violence against a group of people.

Article 28 paragraph (2) of the ITE Law provides limitations and guidelines for freedom of speech on social media. However, according to several experts, the provisions of these articles have not definitively determined the violations that occurred on social media. The article is widely interpreted as a rubber article where the boundaries of hate speech are still biased and multi-interpretation. The provisions contained therein are still subjective provisions (Dewi Maria Herawati, 2016).

In addition to providing limitations on freedom of speech on social media, the ITE Law also provides provisions regarding the sanctions to be accepted for violating the provisions of these articles. Violations of Article 28 paragraph will be prosecuted under the provisions of Article 45 paragraphs 2. The provisions of the sanctions regulated are criminal penalties with a maximum imprisonment of 6 (six) years and a maximum fine of one billion rupiah. The provisions in the ITE Law are only limited in the form of prohibitions (actions that

cannot be carried out), while the rights of social media users are not stated in the provisions of the articles in the ITE Law. So it can be stated that the ITE Law only regulates the obligations that must be carried out by social media users but do not regulate the rights of social media users. The implication of UU ITE enactment against freedom of speech in Indonesia include several things, such as 1) the implications in the social field, users of social media are less or not understand about the rules that exist in the UU ITE will be easy to become ensnared by the prohibition or restriction in the ITE Law; 2) implications in the political field, the ITE Law can be used by the government as a weapon to suppress political opponents who interfere with the interests of the authorities or the government; and 3) implications in the field of psychology, the articles of the ITE Law which have multiple interpretations can become a trap for the victim which has an impact on the psychological impact.

Is Hate Speech A Form Of Freedom Of Speech?

The spread of hate space on social media violates the provisions of the ITE Law, which outlines that the use of information technology or electronic transactions is carried out based on reasons for legal certainty, providing the widest benefits, the principle of prudence, good intentions, and freedom in using information technology responsibly. Hate speech is generally addressed to individuals or groups of people who have views or thoughts that are different from those who spread hate speech. This condition is contrary to the Indonesian constitution, which states that every citizen has the same position in the law and is entitled to protection from other forms of discrimination on the basis of ethnicity, religion, and race. Hate speech that leads to racial and ethnic discrimination is a major obstacle to a life full of kinship spirit that develops in Indonesia. The condition of the multi-ethnic and religious Indonesian society is also increasingly vulnerable to hate speech that roams freely on social media (HeriGunawan, 2020).

Hate speech can cause social conflict and acts of violence, so hate speech must be handled properly based on the applicable laws and regulations. Considering that Indonesia is a country based on law, all actions taken by the government to stop hate speech practices must be based on existing legal instruments. Perpetrators of hate speech should not be dealt with carelessly based on likes and dislikes from the government.

Hate speech that is not handled properly will have an impact on social life in Indonesia. First, hate speech is a limitation on the freedom to express opinions individually and in groups because hate speech hinders the active participation of the community in development and government. Second, hate speech can cause polarization or social groupings in society based on ethnicity, religion, and race, which are dangerous for the unity and integrity of the nation. Third, hate speech has the opportunity to create hostility and intolerance in society. Fourth, hate speech is also related to discriminatory and violent actions (AhnafandSuhadi, 2014).

Based on the description above, it can be said that hate speech is not part of the freedom of speech that

applies in Indonesia. Freedom of speech must not violate and conflict with the rights of others to express opinions. Freedom of speech destroys the social life in Indonesia. To overcome this condition, after the government has set limits on freedom of speech as regulated in the ITE Law, the public must also increase their understanding and knowledge of ethics or manners in using social media. In addition, the government also needs to rearrange the provisions of the ITE Law so that they do not become rubber articles that can be used by certain people or groups of people to attack other people or groups of people.

IV. CONCLUSIONS

Freedom of speech is a human right that must be protected and is one of the certain prerequisites for a democratic country. The Indonesian people in expressing their opinions are not followed by a deep understanding of the meaning of freedom of expression, the ethics of expressing opinions, and the responsibilities that arise as a result of the implementation of freedom of speech, thus encouraging the emergence of hate speech on various social media platforms. Limitation of hate speech is an action to reduce the dignity and status of others so that it can lead to hateful attitudes in society, discrimination, acts of violence, even genocide.

The spread of hate speech cases prompted the government to issue a set of regulations to limit the abuse of freedom of expression in the form of Law no. 19 of 2016 concerning Information and Electronic Transactions. Based on the analysis, it can be said that hate space is not a form of freedom of speech because hate space has violated the freedom and rights of others who feel humiliated by the existence of hate space. Freedom of speech that applies in Indonesia is the freedom that is limited by the rights and responsibilities of others.

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