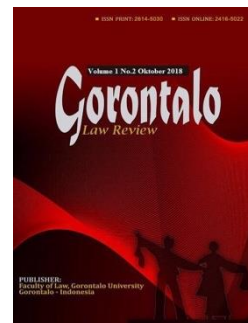


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ABUSE OF SOCIAL MEDIA FOR HATE SPEECH ACTION

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Abstrak

Perkembangan teknologi dan teknologi informasi telah melahirkan kebebasan berpendapat dan berekspresi yang seringkali berujung pada ujaran kebencian. Sehingga perlu adanya batasan yang jelas mengenai tindakan apa saja yang dapat digolongkan sebagai ujaran kebencian dan untuk menentukan apakah seseorang dapat dimintai pertanggungjawaban pidana. Diketahui, ujaran kebencian yang sering terjadi biasanya terkait dengan penghinaan, pencemaran nama baik, penistaan, perbuatan tidak menyenangkan, provokasi, dan upaya hasutan. Metode penelitian yang digunakan adalah yuridis normatif dengan pendekatan perundang-undangan dan pendekatan konseptual. Hasil penelitian menunjukkan bahwa pertanggungjawaban pidana pelaku ujaran kebencian telah diatur dalam beberapa peraturan perundang-undangan antara lain Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, KUHP, UU 9/1998, UU HAM, UU ITE, UU 40/2008, selain Ada Surat Edaran Nomor SE/6/X/2015 tentang Penanganan Ujaran Kebencian. Belum adanya pemahaman tentang cara penggunaan media sosial yang benar menjadi salah satu penyebab terjadinya ujaran kebencian sehingga berdampak negatif. Media sosial yang selama ini menjadi tempat berkomunikasi telah berubah fungsinya. Sehingga isu ujaran kebencian harus disikapi secara cerdas oleh masyarakat agar masyarakat tidak mudah terprovokasi oleh ujaran kebencian yang terjadi. Perlu ditanamkan pemahaman bahwa ujaran kebencian akan berdampak negatif yang dapat merusak kehidupan berbangsa dan bernegara. Untuk itu, upaya penyelesaian ujaran kebencian dapat dilakukan melalui upaya penal dan non penal. Polisi sebagai garda terdepan dalam penanganan dan pemberantasan kasus ujaran kebencian dibantu oleh Kementerian Komunikasi dan Informatika Republik Indonesia. Serta

pentingnya partisipasi sesama pengguna media sosial untuk saling mengingatkan jika salah satu dari mereka melakukan tindakan yang mengarah pada ujaran kebencian, seperti kata pepatah, mencegah lebih baik daripada mengobati.

Kata kunci: Ujaran kebencian; Media sosial; Teknologi dan Informatika.

Abstract

The development of technology and information technology has resulted in freedom of opinion and expression which often leads to hate speech. So it is necessary to have clear limits on what actions can be classified as hate speech and to determine whether a person can be held criminally responsible. It is known that hate speech that often occurs is usually related to insults, defamation, blasphemy, unpleasant acts, provocations, and attempts to incite. The research method used is normative juridical with a statutory approach and a conceptual approach. The results show that the criminal responsibility of the perpetrators of hate speech has been regulated in several laws and regulations including the 1945 Constitution of the Republic of Indonesia, the Criminal Code, Law 9/1998, Human Rights Law, ITE Law, Law 40/2008, in addition to There is Circular Letter Number SE/6/X/2015 concerning Handling Hate Speech. There is no understanding about how to properly use social media to be one of the causes of hate speech, resulting in negative impacts. Social media which has been a place to communicate has changed its function. So that the issue of hate speech must be addressed intelligently by the community so that people are not easily instigated by hate speech that occurs. It is necessary to instill an understanding that hate speech will have a negative impact that can damage the life of the nation and state. For this reason, efforts to resolve hate speech can be done through penal and non-penal efforts. The police as the front line in handling and eradicating hate speech cases are assisted by the Ministry of Communication and Information of the Republic of Indonesia. As well as the importance of participation by fellow social media users to remind each other if one of them takes actions that lead to hate speech, as the saying goes, prevention is better than cure.

Keywords: Hate speech; Social media; Technology and Informatics.

1. INTRODUCTION

Like a double-edged sword, the development of information technology today brings many benefits that can be felt by users, both positive and negative benefits. The benefits are felt that information and communication technology provides a lot of contributions in the context of improving human welfare and civilization. Not only that, on the other hand, advances in technology and information are used by some people to carry out actions that are against the law, both those related to the legal interests of people, society and the state (Adami Chazawi, 2015) .

Hate speech is an act of spreading hatred and hostility that is ethnic, religious, racial, and inter-group (SARA). Another opinion says that hate speech means words, behaviors, writings, or performances that are prohibited because if done it can provoke criminal acts of violence and prejudice both from the person making the statement and the victim of the statement (Syahdeini, 2009) . Hate speech that contains elements of SARA can have a very fatal impact if it is carried out through social media because of its wide reach and very fast spread of content. Worse, hate

speech can lead to crimes that lead to the crime of genocide. While at the lowest point it can cause horizontal conflicts on a small scale (Sahrul Mauludi, 2018) .

The development of information and communication technology, which cannot be avoided, is also continuously followed by the development of various types of crimes that occur in society. The initial step taken by the Government to anticipate these developments is to make provisions for laws and regulations regarding the prohibition of the spread of hate speech. This can be found in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (hereinafter referred to as the ITE Law). Article 28 paragraph (2) of the ITE Law expressly "prohibits anyone from spreading hate speech that can cause feelings of hatred and hostility towards certain individuals or groups of people based on ethnicity, religion, race, and between groups."

There have been many approaches in the legal field that have been taken by the Government and the consequence is that the perpetrators of hate speech can be legally processed, but in fact this does not change the situation that occurs in society because it does not cause a deterrent effect. Hate speech on social media that does not subside occurs due to many factors. *First*, the lack of digital media literacy to the public. Digital media literacy is intended to be able to provide awareness, especially to the public, regarding which content is considered unlawful and which content does not violate the law. *The second* is the lack of clarity about the sanctions imposed. In a number of cases, many perpetrators of hate speech were not processed to completion, even those who committed hate speech were not punished. This makes many people feel protected because there is no clear legal certainty regarding this hate speech. *The third* is political conflict (Awaluddin, Afif Khalid, 2022) .

The nature of information disclosure on social media is what triggers the high tendency of people to make hate speech, such as the comment menu for readers on electronic-based media. Often this is the reason why someone makes hate speech using social media.

The development of information technology that is quite sophisticated, of course opens the possibility of being followed by the development of crime. The more diverse the modus operandi used, the more complicated the application of the crime. There are elements of the article that must be fulfilled by a person before being declared a criminal. Likewise, when an offender will be sentenced to a crime, it is necessary to have a condition for the perpetrator's fault. According to Packer, 3 (three) things must be considered in imposing a crime, namely acts against the law; perpetrator's fault; and criminal sanctions are threatened.

The absolute theory views that punishment is retaliation for mistakes that have been made, so it is action-oriented and lies in the crime itself. The punishment is given because the perpetrator must accept the sanction for his fault. According to this theory, the basis for punishment must be sought from the crime itself, because the crime has caused suffering to others, in return (*vergelding*) the perpetrator must be given suffering. Every crime must be followed by a criminal, it may not be, without bargaining (Ayu Efridadewi, 2020) .

One thing that must be understood properly, that current criminal law is what is delivered by Jan Remmelink in every offense what function and are considered as forming elements in addition to human behavior also do and not do, one's inner attitude, however immoral or disgraceful to society, it is not important. Currently, criminal law is still focused on action (*daadstrafrecht*). In this case, not only the qualifications of a socially dangerous individual who become the main focus, but also

the actions or actions that he does (Arief, 2006). Even after there is a regulation in criminal law that prohibits hate speech, it does not reduce the number of perpetrators of this hate speech crime. So the problem is how is the responsibility of the perpetrators of the crime of hate speech and how to resolve the crime of hate speech.

2. METHOD

The type of research used is normative juridical (*legal research*), namely research that is focused on testing the application of rules or norms in applicable positive law. The approach used by the author is the *statute approach*, this approach is carried out by reviewing all applicable laws and regulations. related to the legal issues being handled and the Approach conceptual *approach*, this approach departs from the views and doctrines that develop in the science of law. Understanding of views and these doctrines are the basis for the author in building a legal arguments in solving the issues at hand (Peter Mahmud Marzuki, 2022) . Sources of data used in the form of secondary data. The legal materials are divided into primary, secondary, and tertiary legal materials. There are three ways of collecting data in normative legal research, namely by conducting literature studies, documents, and archive studies (Muhaimin, 2020) . Among the three ways of collecting data, the author will conduct research by means of library research. After the secondary data has been collected, the writer will analyze the data qualitatively, which is to describe the data in the form of regular, coherent, logical, and effective sentences. The collected legal materials will be analyzed using the *content analysis method*. *Content analysis* aims to explain in detail on something, therefore the writing technique will be descriptive.

3. DISCUSSION

The law is a rule that is coercive in nature and there are sanctions for anyone who violates it (HSB, 2016) . Law enforcement aims to bring order to the community for the sake of legal certainty as one of the goals of law. Law enforcement factors cannot run optimally, one of which is influenced by law enforcement factors themselves (Roihanah, 2015) . The law does not look at a person's social strata in determining justice.

Equality *before the law* emphasizes that every citizen is equal before the law with no exceptions. That is, in law enforcement all citizens have the same position. There is no term selective logging in its enforcement or even immunity from the law. So that anyone who violates the law, be it kings or ordinary people, must have the same enforcement in the law (Walukow, 2013)

Hate speech is a phenomenon that often occurs using social media. Currently, many of the social media users do not use social media wisely and correctly. Therefore, of course this cannot be justified because it will cause chaos between users and this may have an impact on real life. Often, this becomes a freedom in democracy. However, of course democracy will become wild if hate speech continues to be allowed so that it will become a very serious problem in the life of the nation and state. The public space created by social media becomes volatile because there is information containing SARA issues which is then disseminated instantly (Pamuji, 2020) .

The digital world in this case is social media which can be interpreted as a facility that should be able to facilitate human work, but the fact is that the digital world is a tool to spread things that incite or insult certain people based on SARA. The issue of SARA is a very sensitive matter when it is used as an excuse for hate

speech. Because in essence, all humans have human rights, which means that all humans are the same and have the same rights and obligations. Therefore, humans have no right to hate, revile, insult, or act racism against each other just because of differences in ethnicity, religion, race, skin color, and class.

This hate speech can be in the form of writing, news through any media such as television, radio broadcasts, and sentences spoken by someone. Whatever the form and medium, for some people, it can certainly cause the same thoughts as what they get so that they can provoke people to commit crimes to provoke violence and enmity between groups who feel hurt because of the hate speech. Of course, the issue of hate speech is a problem that must be faced by all countries, not only in Indonesia. Remember, everyone can convey anything that sometimes gets out of control from the laws that govern the country.

Living with a heterogeneous society, of course, requires a high sense of tolerance in order to maintain unity. The specific characteristics of social media have an impact on the spread of hate speech to spread faster and spread widely. The specific characteristics of social media are: (Syahputra, 2017)

1. *Intertextuality*, meaning that every text and some other texts can be linked and talk to each other. Therefore, sometimes one text can only be read and understood if the other texts are read first. Furthermore, the network between the texts can create context.
2. *Nonlinearity*, meaning that every movement of speech cannot be predicted in a straight and linear manner. One topic of conversation can develop and give birth to other new topics.
3. *Blurring the reader/writer distinction*, meaning that there is a blurred distinction between the reader and the writer. It could be a netizen initially as a consumer of information. However, the information is repackaged and then redistributed into new content. At the same time the reproduction of the information becomes a subtle barrier between consumers and producers of information.
4. *Multimediality*, meaning that social media is a convergence that can contain text, audio, video and so on.
5. *No Gatekeeper*, meaning that in social media there is no gatekeeper whose function is to select incoming and outgoing information on social media as is the case with mainstream media.
6. *Ephemerality*, meaning that the text on social media is unstable. At their own will, a text on social media can be deleted either intentionally or unintentionally."

With the above characteristics, all information on social media can be accessed widely because it is not limited to whom the information will be addressed to. Moreover, it is supported by the democracy adopted by Indonesia, making it easier for every individual to express their opinion on social media. Therefore, it is very necessary to have self-control in order to have control as a social media user both in terms of conveying information and getting information.

Like a coin, society and law have always lived close to each other. Even though they are different, they cannot be separated from one another, in other words that law without society is meaningless, and vice versa, that the existence of a society without law can quickly destroy society itself. The diversity of society certainly raises the emergence of diverse interests as well. That is why in society it is necessary to regulate the various interests that exist, so that these interests do not conflict with one another. So that the role of law is made in order to create certainty, justice and benefit for the community in accordance with its objectives (Theo Huijbers, 2011).

Often faced with a problem related to the delivery of information, communication and/or data electronically. As a result of such developments, gradually, information and communication technology has changed people's behavior from human civilization globally (Budi Suhariyanto, 2014) . There are so many people who are active users of social media, but only a few of them know the legal rules for using it. So it is hoped that the public must be wise and vigilant when using social media so as not to get caught up in negative things that are often found through social media (Fitri, 2017) .

The existence of social media makes it easier for someone to express opinions, ideas or ideas (Febriansyah et al., 2020) . One of the reasons why hate speech is carried out through social media is because it considers technological progress and information to be accessed quickly through various media on the internet. Freedom of opinion and expression is a characteristic of a democratic country. This is the right of every Indonesian citizen and has become part of the rights guaranteed by the Indonesian state in the constitution. Thus, the sophistication of information and communication technology can be said to be a factor for someone to make an utterance of hatred because the sophistication of information and communication technology can encourage someone to do evil or make it easier for someone to commit a crime which of course identifies someone in doing evil.

a) Accountability of Perpetrators of the Crime of Hate Speech

Criminal liability leads to the punishment of the perpetrator if he has committed a crime and fulfills the elements that have been determined in the law. One of the elements of criminal responsibility is the ability to take responsibility. Viewed from the point of view of the ability to be responsible, then someone who can be responsible for his actions if the state of his soul and mental abilities are not disturbed (Sianturi, 2012) .

In Indonesia, all social aspects are regulated by law. No one is above the law, even a head of state. The law provides equality for all Indonesian people. The law is coercive, meaning that all Indonesian citizens must obey and submit to the law. Every action taken will have legal consequences, even in cyberspace, the community must be able to account for their actions before the law. But in reality, in cyberspace there are still many people who do things that are prohibited by law and harm others. The public is not aware that what is uploaded on social media is wrong and violates the law so that they must be held accountable for their actions before the law even though they argue that they do not know the legal rules, do not necessarily free them from the snares of the law. (Saragih et al., 2021) .

With regard to issues in the digital world, one of which is hate speech, of course in this case Indonesia has also regulated it in the 1945 Constitution of the Republic of Indonesia (hereinafter the 1945 Constitution of the Republic of Indonesia), the Criminal Code, Law Number 9 of 1998 concerning Freedom to Express Opinions in Public (hereinafter Law 9/1998), Law Number 39 of 1999 concerning Human Rights (hereinafter the Human Rights Law), Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions and Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination (Law 40/2008).

Identity-based conflicts (religion, belief, ethnicity, etc.) that begin with hate speech often occur and the bad impact will result in division in society. If *hate speech* is not handled properly, it becomes a threat to Indonesian democracy. In particular, the perpetrators of hate speech through electronic media will cause several impacts

in society such as *stereotyping* / labeling, stigma, exclusion, discrimination, even increasing into violence, hatred of ethnic groups with religious / national groups (Sultan Ali Sya'bana, Warasman Marbun, 2019) .

As stated in "Article 28F of the 1945 Constitution of the Republic of Indonesia which stipulates that everyone has the right to communicate and obtain information to develop their personal and social environment, and has the right to seek, obtain, possess, store, process, and convey information using all kinds of channels. which is available." Further arrangements are contained in "Article 5 of Law 9/1998 stipulating that citizens have the right to express their thoughts freely and obtain legal protection." It is clear that in fact anyone is allowed to express opinions freely, so that this free meaning must be understood by everyone. Do not let it be when the state has given rights but misused it by means of hate speech. It must be realized that not all constructive comments are given by saying something that later contains elements of hate speech, so that what is in the spotlight is how a person expresses his opinion.

Then, one year later, Article 23 paragraph (2) of the Human Rights Law also stipulates that everyone is free to have, issue and disseminate opinions according to his conscience, orally and or in writing through print and electronic media with due regard to religious values, morality, order, public interest, and the integrity of the nation." The regulation in this Law on Human Rights is more complete and is not limited whether by means of print media and/or electronic media, all of which are still given limitations in order to express opinions in accordance with applicable norms. So that it will create more secure, peaceful and peaceful community conditions.

The aspects of hate speech as intended, aim to incite and incite hatred against individuals or against community groups in various communities which are distinguished from the following aspects (Komnas HAM, 2015) :

1. "Ethnic groups seek general support by inciting violence, discrimination or hostility so that social conflicts between ethnic groups occur;
2. Religion, insulting on the basis of religion, in the form of incitement to violence, discrimination or hostility;
3. Religious sects, recommending or seeking general support for interpreting a religion adhered to in Indonesia or carrying out religious activities that resemble those religious activities, with the intention of inciting others to commit violence, discrimination or hostility;
4. Beliefs/Beliefs, inciting hatred or statements of hostility to other people's beliefs or beliefs so that discrimination occurs between people;
5. Race, showing hatred or hatred towards others because of the treatment, distinction, restriction, or election based on race which results in the revocation, reduction of recognition or implementation of human rights;
6. Between Groups and Ethnicities, showing hatred towards other people or groups because of humiliation, distinction, restriction, or election based on ethnicity and class;
7. Skin Color and Gender, all forms of distinction, exclusion or restriction which have the effect or purpose of reducing or eliminating the recognition, utilization of human rights, which are based on skin color and gender;
8. People with disabilities, showing hatred towards people with disabilities, so that there are restrictions, obstacles to difficulties or the elimination of the rights of people with disabilities;

9. Sexual Orientation, Gender expression; Make it difficult for hatred or hatred towards other people who have a sexual orientation so that discrimination occurs against these people.”

Based on the Circular Letter of the Head of the State Police Number SE/6/X/2015 of 2015 concerning the Handling of *Hate Speech*, it is explained that hate speech can be in the form of criminal acts regulated in the Criminal Code and other criminal provisions outside the Criminal Code, in the form of (1) humiliation; (2) defamation; (3) blasphemy; (4) unpleasant actions; (5) provoke; (6) inciting; (7) the spread of fake news. All of these actions have a purpose or can have an impact on acts of discrimination, violence, loss of life, and/or social conflict” (POLRI, 2015).

The number of hate speech that is scattered on social media makes readers make several conclusions and even get influenced. Therefore, in order to maintain order in the life of the nation and state, Police General Badrodin Haiti (Head of National Police for 2015-2016) emphasized that news that tends to corner or criticize the government is not included in *hate speech*. Except, if the criticism submitted has cornered a certain religion, ethnicity and skin color. (Hutomo, 2018) Badrodin said that the SE/6/X/2015 issued was intended for the public not to frequently issue hate speech against ethnicity, religion, race and skin color (SARA). Furthermore, the SE is issued so that the public is more careful in giving comments or opinions either directly or through social media. In addition, this SE is also one of the efforts to affirm the Criminal Code related to the handling of cases involving hate speech (Hutomo, 2018).

The inclusion of the element of humiliation in the SE KAPOLRI 6/2015, it is necessary to review the arrangement in the Criminal Code (hereinafter referred to as the Criminal Code). R. Soesilo said that there are 6 kinds of insults (R. Soesilo, 2003), namely:

1. “Menista (*smaad*) as regulated in Article 310 paragraph (1) of the Criminal Code ;
2. Blaspheming with a letter (*smaadschrift*) as regulated in Article 310 paragraph (2) of the Criminal Code;
3. slander (*laster*) as regulated in Article 311 of the Criminal Code;
4. Minor insults (*eenvoudige belediging*) as regulated in Article 315 of the Criminal Code;
5. Complain slanderously (*lasterlijke aanklacht*) as regulated in Article 317 of the Criminal Code;
6. The accusation of slander (*lasterlijke verdachtmaking*) as regulated in Article 318 of the Criminal Code.”

So that law enforcement on suspicion of a crime hate speech with reference to on provision:

1. Chapter 156 KUHP, which reads:

"Goods who in front general state feeling hostility, hatred or condescension towards one or more more ethnic Indonesians are punished with imprisonment a maximum of four years with a maximum fine of height four thousand five hundred rupiah."
2. Chapter 157 KUHP, which reads:
 - (1) "Goods who broadcast, show or paste writing or painting in public, which contents contain statement feeling hostility, hatred or insult in Among or to groups people Indonesia, with meaning so that the contents are known or

- better known to the public, punishable by a maximum imprisonment of two years six months or a maximum fine of four thousand five hundred rupiah.
- (2) If which guilty to do crime the on time to run his quest and at that time not yet past five year since the punishment Becomes permanent because of that kind of crime too, concerned could prohibited operate search the."
3. Chapter 310 KUHP, which reads:
- (1) "Whoever deliberately attacks honor or name" good somebody with accuse something Thing, which the meaning is clear so that it is known to the public, threatened because pollution with criminal prison most long nine months or a maximum fine of four thousand five hundred rupiah.
- (2) If it is done by writing or depicting broadcast, displayed or posted in public, then threatened because of written pollution with a criminal imprisonment for a maximum of one year and four months or criminal fine most many four thousand five hundred rupiah.
- (3) Does not constitute written defamation or defamation, if deed clear conducted for the sake of general or because forced for defend self."
4. Chapter 311 KUHP, which reads:
- (1) "If which to do crime pollution or pollution written allowed for prove what which accused that Correct, no prove it, and allegations made contrary to what is known, then he is threatened with slander with imprisonment most long four year.
- (2) Revocation of rights based on Article 35 No. 1-3 can dropped."

In addition, it is also contained in the ITE Law. Some of the provisions in the article include:

1. Chapter 28:
- (1) "Everyone intentionally and without rights spreads news lie and misleading which result in consumer loss in Transaction Electronic.
- (2) Everyone intentionally and without rights spreads information intended to incite hatred or hostility to individuals and/or community groups certain based on on ethnic group, religion, race, and intergroup (SARA)."
2. Chapter 45 A paragraph (2):
- (2) "Everyone who fulfills the elements as intended" in Chapter 28 verses (1) or verse (2) convicted with imprisonment for a maximum of 6 (six) years and/or a fine most many IDR 1.000.000.000,00 (one billion rupiah)."

The actions prohibited in Article 45A paragraph (2) of the ITE Law are intentionally and without rights spreading information aimed at causing hatred or hostility to certain individuals and/or community groups based on ethnicity, religion, race and inter-group (SARA). Actually, the purpose of this article is to prevent hostilities, riots, or even divisions based on SARA due to negative information that is provocative. The issue of SARA in the community's view is a fairly sensitive issue. Therefore, this article is regulated in a formal offense, and not a material offense. Thus for an error to occur so that a person can be convicted, there must be: (1) "commit a criminal act; (2) above a certain age capable of being responsible; (3)

has the form of an error in the form of intentional or negligence; (4) There is no excuse for forgiveness.”

In addition, law enforcement on the alleged occurrence of hate speech crimes can also refer to the provisions of the Act Law 40/2008. Article 16 states that "Everyone who intentionally shows hatred or hatred towards others based on racial and ethnic discrimination as referred to in Article 4 letter b number 1, number 2, or number 3, shall be punished with imprisonment for a maximum of 5 (five) years and / or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah)." In Thing has occur conflict social which background speech hatred, in handling permanent guided by on Law No 7 Year 2012 about Handling Conflict Social and Regulation Head Police Country Republic Indonesia Number 8 Year 2013 about Technical Handling Conflict Social.

b) Hate Speech Resolution Efforts

In this day and age, freedom of expression through social media has become a common thing for Indonesians, and has even become a necessity for everyone. The existence of the internet and social media is indeed quite easy for humans to interact with each other, but it can cause a legal problem if people violate the boundaries that have been regulated by the law that has been set. Through social media people can use it for criminal matters.

Freedom of opinion does not mean that people can freely express all their opinions without taking into account the good and bad or the advantages and disadvantages for others. Of course, there are limits that the public must know and must obey if they do not want to get caught in legal problems in using social media. This is to protect the rights of others to use social media. Therefore, there are many impacts caused by social media, both positive and negative (Febriansyah et al., 2020).

The increase in hate speech cases from year to year is not so surprising, this is certainly the impact of the increasingly sophisticated information and communication technology. Many believe that this hate speech phenomenon will occur. In fact, many countries have taken preventive steps by making rules that prohibit hate speech in their countries. It is clear that the arrangements in each country will be different from one another, this could be in terms of the scope of the act, who did it, and who was the target of the utterance (Hairi, 2019) .

Legally speaking, when cases of hate speech are increasingly widespread and many people are caught in the law and ultimately convicted, it cannot actually be said that the prevention of the crime has been successfully implemented. On the other hand, other efforts need to be made so that the prevention of criminal acts of hate speech can be reduced to a minimum and even no longer violated by the community. Regarding this issue, it is necessary to carry out continuous studies on how criminal acts related to hate speech should be handled, while reducing the possibility of the emergence or increasing problems in national law enforcement.

Departing from the goal of crime prevention, namely to protect the interests of the community, ideally criminal law enforcement should be implemented more effectively. "A crime is said to be effective if it can prevent and reduce crime as far as possible". So, the effectiveness criterion is seen from how far the frequency of crime can be reduced (Arief, 2005) .

Next up is GP. Hoefnagel conveyed that several crime prevention efforts could be pursued by: "1) the application of criminal law; 2) prevention without punishment; and 3) influencing the public's view of crime and punishment through the mass

media” (Arief, 2005) . If observed, Hoefnagels' opinion basically focuses on two ways, namely the *penal* method and the *non-penal method*, while the steps to influence the public's views through the mass media can be classified as part of the *non-penal method*. It is said that efforts to overcome crime through the *penal route* are more focused on the nature of suppression/ eradication/ suppression after the crime has occurred. While the *non-penal route* focuses more on the nature of prevention/deterrence before the crime occurs (Soedarto, 2006) . In investigating the crime of hate speech, a complete data search will be carried out against digital evidence or digital track records carried out by the perpetrators (Agustanti et al., 2021) .

When analyzed in the context of overcoming criminal acts related to hate speech, it can be *concluded* that it has actually been built in an integrated criminal justice system with a positive legal framework regulated in several laws, including the Criminal Code, the ITE Law and Law Number 40 2008 on the Elimination of Racial and Ethnic Discrimination. Still related to the ITE Law, in 2017, through Decision Number 76/PUU-XV/2017 the Constitutional Court expanded the meaning of the term “intergroup” contained in “Article 28 paragraph (2) of the ITE Law, to not only include ethnicity, religion, and race, but includes all entities that are not represented or embodied by the terms ethnicity, religion, and race.” This has implications for the wider scope of targets for hate speech, thus opening up opportunities for criminal settlement of this crime through the *penal route*.

In addition, since 2015, there has been a Circular Letter of the Chief of Police Number SE/6/X/2015 which specifically regulates the handling of hate speech. This Circular of the Chief of Police, among others, regulates the handling steps to be carried out by the Police, namely through *preventive* and then *repressive methods* based on the existing law, namely the Criminal Code and the ITE Law. Thus, it is understood that through the *penal route*, the prevention of criminal acts of hate speech has been implemented so far by law enforcement officials, despite the various controversies in its implementation. However, the government's efforts in terms of *non-penal countermeasures* are still very minimal. There is still room to maximize the prevention of criminal acts related to hate speech in a *non-penal* or *preventive manner*. In the concept of criminal law policy, *non-penal prevention efforts* are in essence much more strategic because of its nature to prevent crimes before they occur.

Basically, *non-penal efforts* have been contained in the Circular Letter of the Chief of Police Number SE/6/X/2015, including taking actions by prioritizing the functions of Binmas and Polmas to conduct counseling or socialization to the public regarding hate speech and the negative impacts that will occur. However, this *preventive measure* certainly still needs to be improved, namely by collaborating with international online media to monitor and block all news related to hate speech. Another *preventive* step that can be taken by the government is to continue to build cooperation with community and religious leaders, including outreach in educational institutions. Counseling related to information on the prohibition of hate speech needs to be carried out more massively to the community to grow and increase public legal awareness and community culture, this is important to do in order to suppress the potential for this crime to occur. Prioritizing prevention efforts in overcoming hate speech crimes will have other positive effects (Hairi, 2019) .

3. CONCLUSION

In accordance with its purpose, the law must be fair, certain and beneficial. The rise of hate speech cases through social media encourages the Government to form regulations both in the context of prevention and in the context of recovery after hate speech occurs. There are several laws and regulations whose purpose is to protect all citizens from being the target of hate speech by perpetrators. However, because the crime of hate speech still occurs and is carried out continuously by certain elements, this must be supported by law enforcement officials in the context of eradicating it, in this case the Ministry of Communication and Information of the Republic of Indonesia can always monitor and limit social media users in using existing social media applications. The criminal liability in question is certainly intended for perpetrators whose mental state and mental abilities are not disturbed. Furthermore, the settlement efforts that can be done are penal and non-penal. In addition, participation by the community is very much needed, especially in the digital world / cyberspace in supervising and being part of law enforcement by reminding each other if there are accounts that have the potential to commit hate speech. And, the settlement of this hate speech crime must still pay attention to human rights as well as the interests of interrelated parties.

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