

CHAPTER I

INTRODUCTION

1.1 Background

Technology is getting more sophisticated along with the times, technology is becoming a daily necessity, whether we realize it or not. Almost the whole world needs it in this era of globalization of information and communication technology. A new world was created because of this or better known as a global village, which makes the residents in it now well-known by the name of “netizens”. Even a very sophisticated life is carried out in this digital revolution so that it can change one's perspective. This technology functions from starting to help make things easier to creating problems because of the proper and correct use of this increasingly sophisticated digital facility. The world has become borderless because of the development of information technology that causes significant social changes to take place very quickly. Like a double-edged sword, in addition to its role in contributing to the improvement of human welfare, progress and civilization, the negative side is that it becomes an effective means of violating the law.¹

Along with the increasing human needs coupled with the development of information technology, especially internet-based communication technology provides convenience for the public to access

¹Ahmad M. Ramli, *Cyber Law dan HAKI*, (Bandung: Refika Aditama, 2010), p.1

various information quickly. With the internet, humans are connected to each other coupled with the use of social media which has become a mandatory requirement for every individual. With social media as a communication tool without time and place limits, people are able to socialize and communicate, work and create.

Cybercrime, especially the spread of false information can target anyone and can happen at any time. Those who abuse access give rise to anxiety for other fellow users. The perpetrator of the crime is of course someone who is an expert in the field of technology. In fact, not infrequently a crime is carried out from various different places at the same time even by people who are not experts in technology. As a result, information or news that is considered true is no longer easy to find. The Mastel survey (2019) revealed that of 941 respondents, 34.6% of them received hoax news every day and 14.7% received it more than once a day. Even mainstream media that are relied on as trustworthy media are sometimes contaminated with the spread of hoaxes. Mainstream media is also a channel for disseminating false information, each at 6.4% (print media) and 8.10% (television/radio). Of all distribution channels, social media is the highest with a percentage of 87.5%.²

False information or commonly known by the public as Hoax is information or news that contains things that are not certain or which really

²Mastel, "Hasil Survey Wabah HOAX Nasional 2019", <https://mastel.id/hasil-survey-wabah-hoax-nasional-2019/> accessed on 12 October 2021, p.24-25

are not facts that happened. Currently, the 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 play a role in the dissemination of information. Unfortunately, there is a lot of information or news that is spread individually or in groups that cannot be justified or are indicated as hoaxes.³ Usually these hoaxes are deliberately exaggerated by irresponsible people so that the situation becomes more noisy or usually people also spread this kind of information just to get the attention of the public, with an intention to create an anxious situation.

The coronavirus pandemic is happening all over the world today, so people need health information to prevent and contain the spread of the coronavirus. Irresponsible elements were present and made various health information about the coronavirus. However, the health information provided was not in accordance with the recommendations of the Minister of Health through the Covid-19 Task Force, there were many cases of spreading false information (hoax) by these people. At the beginning of the pandemic there was a lot of news that contained information that the coronavirus was a harmless virus and nothing to worry about, so people didn't need to wear masks.

The information provided is certainly very dangerous and

³Christiany Juditha, *Interaksi Komunikasi Hoax di Media Sosial serta Antisipasinya*, Jurnal Pekommas, Vol. 3, No. 1 April 2018, p.31

contradicts the health protocol of the Ministry of Health of the Republic of Indonesia, the health protocol, namely 3M, maintaining distance, wearing masks and washing hands. The news is very dangerous for people who have accessed the information as the information is fake information carried out and spread by individuals who are not responsible for their actions, who spread fake information that are disseminated through social media. Perpetrators can be charged with the provisions contained in Law No. 11 of 2008 concerning Information and Electronic Transactions.⁴

There are several studies that are relevant to this research, examining the spread of fake information during the Covid-19 pandemic and efforts to overcome it. The spread of fake information on social media in this study analyzes the enforcement of criminal law against the spread of Covid-19 false information through social media. From the explanation of several previous studies, the researchers then decided to examine the spread of fake information related to health during the Covid-19 pandemic. The purpose of this study is to examine the legal arrangements against perpetrators of spreading false information and to discuss the behavior of criminal responsibility against perpetrators of spreading false information in the midst of the Covid-19 pandemic.

In the context of using social media, the spread of this false

⁴Latupeirissa, J. E., *et.al*, *Penyebaran Berita Bohong (HOAX) Pada Masa Pandemi Covid-19 dan Upaya Penanggulangannya di Provinsi Maluku*, Jurnal Belo, Vol. 6, No. 2 February 2021, p.120

information is actually motivated by several factors. One of the factors that may be used as a background for these irresponsible people in spreading untrue information is, they are too hasty in spreading the information. They want to show who spread the news first, or an information without examining the truth of the information, it doesn't really matter where the information comes from or who first created the false news or information. They were in too much of a hurry to take any attitude in spreading the word.⁵

In response to such a situation where a lot of false information is spreading, the government has begun to act to eradicate and overcome the spread of fake news or hoaxes that are increasingly spreading in Indonesia during this pandemic. The government has taken an action to tackle the spread of this false information, one of which is by monitoring the spreaders of information on social media and also using law enforcement where the punishment is quite strict. The Institute for Criminal Justice Reform (ICJR) as the assistant for this supervision once told the authorities to be careful when enforcing the law regarding the spread of this false information. This is because there are several elements that must be met by law enforcement or the authorities before someone can be said to be the perpetrator in spreading false information. There are two things that must be considered and that must be fulfilled. First, the news broadcaster or the spreader of false information must be ascertained that he has the intention to spread the

⁵Hunt Allcott and Matthew Gentzkow, *Social Media and Fake News in the 2016 Election*, Journal of Economic Perspectives, Vol. 31, No. 2, Spring 2017, p.221

information, or it is commonly said that he actually deliberately spreads the information. Second, the disseminator of the false information must also be ensured that he has known that the information he is spreading is false information or at least these people have a knowledge that the information is false information.⁶

There have been many cases of spreading false information by irresponsible people during the Covid-19 pandemic period. There have also been many cases of false information that have been handled by the police. During the investigation by the police, there were suspects who were processed and ended up in prison, but there were also those who were only processed but not processed further. Generally, they only apologize for spreading the fake news in front of the media crew and also in front of the public. In their apology they must promise that they will not make the same mistake again.

As a result of various fake news stories that have been circulating about the coronavirus ever since the virus appeared around the world, including in Indonesia, bad impacts for the community will certainly occur due to hoaxes that are spread on social media as the news makes people often open social media to read things that are not important, and is wasting time. Fake information that is broadcasted on social media will harm certain parties and will also provide benefits to certain parties as well, the influence

⁶Institute for Criminal Justice Reform, *Tanggapan Terhadap Pemberitaan Berita Bohong*, (Jakarta: ICJR, 2020)

of a lot of fake news will also make people's trust in the facts that happen to be down.⁷

In the pandemic period that has not ended since 2020 until now, which has made a lot of information enter Indonesia that is not known to be true. There is more and more fake information during the pandemic and those are being spread by irresponsible people. Therefore, this requires a handling policy that comes from the views of the criminal law itself, which is an integrated matter that is carried out between institutions, both with the Indonesian National Police, more specifically this task is focused for the Cybercrime special units. This strategy for dealing with fake information or hoaxes prioritizes a criminal law approach as well as a non-criminal legal approach or also known as an integrated approach. This crime is a crime that is included in cybercrime.⁸

Criminal action regarding the spread of false information, as in Article 27 paragraph (1) and paragraph (2), as well as Article 28 Paragraph (1) of Law Number 11 of 2008 concerning Information and Electronic Transactions, where the sanctions are applied under Article 45A paragraph (1) as a more special matter. By using this article, the principle of *lex Specialis Derogat legi Generalis* preference is applied, meaning that general

⁷Hanik Chumairoh, *Ancaman Berita Bohong di Tengah Pandemi Covid-19*, Jurnal Vox Populi, Vol. 3, No. 1, p.22–30

⁸Ardiwenatha, K. B., *et.al*, *Pertanggungjawaban Pidana terhadap Pelaku Penyebaran Berita Bohong (Hoax) Terkait Informasi Kesehatan di Masa Pandemi Covid-19*, Jurnal Referensi Hukum, Vol. 2, No. 2 July 2021, p.394-398

provisions or regulations will be overridden by more specific provisions, namely in this case the provisions contained in Law No. 11 of 2008 concerning Information and Electronic Transactions takes precedence over the provisions contained in the Criminal Code which both regulate criminal liability sanctions against perpetrators of spreading false information and/or untrue news.⁹

Based on Article 28 paragraph (1), namely: Every person intentionally and without rights spreads false and misleading information that results in consumer losses in Electronic Transactions. The consumer referred to in the article as defined by the consumer in Article 1 paragraph (2) of Law No. 8 of 1999

Consumer is every person who uses goods and/or services available in the community, both for the benefit of themselves, their families, others and other living things and not to be traded.

In this case, the news issued by each news portal is a product of the news portal itself, and the news readers or those who receive information are called consumers. Thus, this article becomes the legal basis for the spread of false information as the fake information circulating during this Covid-19 pandemic is detrimental to the community, namely those who are called "consumers" in the article.

The regulation of legal liability for the perpetrators of spreading false information during the Covid-19 pandemic is regulated in Law No. 11 of

⁹Moeljatno, *Asas-asas hukum pidana*, (Jakarta: Rineka Cipta, 2002), p.56

2008 concerning Information and Electronic Transactions. First, the perpetrators of spreading false news related to health information during the Covid-19 pandemic must meet the subjective and objective elements in Article 28 of Law No. 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016. The spread of false information or hoaxes is also contained in Law Number 1 of 1946 concerning Criminal Law Regulations in Article 14 and Article 15. The two articles of crime relate to the act of broadcasting false news (Article 14) and broadcasting uncertain news (Article 15). Furthermore, if the perpetrators of spreading false information have fulfilled the subjective and objective elements stipulated in Article 28, then criminal liability for the perpetrators of spreading false information related to health information during the pandemic the Covid-19 virus is subject to criminal liability sanctions based on the provisions contained in Article 45A paragraph (1) with the threat of imprisonment for a maximum of six years and a maximum of one billion rupiah. Criminal liability sanctions against perpetrators of spreading fake information during the Covid-19 pandemic are expected to be able to provide a deterrent effect and perpetrators no longer do so because the fake information harms other people in a wide scope and even the country is also harmed. It is hoped that people will be wiser when using internet social media. Besides that, people are also expected to be good at sorting out correct health information in dealing with the corona virus outbreak that can endanger health.

False information or Hoaxes are also regulated in the implementation of the Joint Decree of the Electronic Information and Transaction Law (SKB UU ITE) Article 28 paragraph (1). This article underlines the act of spreading false news in the context of electronic transactions such as online trading transactions and cannot be imposed on parties who default and/or experience force majeure. It is a material offense, so consumer losses as a result of fake news must be calculated and the value determined. Furthermore, Article 29, regarding the act of sending information containing threats of violence or intimidation which is intended personally or threatens human life, is not threatening to damage buildings or property and is a general offense. The articles previously mentioned are those related to false information.¹⁰

The spread of false information which is increasingly making regulations regarding Hoax also varies. In addition to the above regulations, the Indonesian National Police also publishes regulations on hoaxes, namely Article 14 and 15 of Law No. 1 of 1946 which regulates false information. The article reads as follows:

Whoever, by broadcasting false news or notifications, intentionally causes trouble among the people, shall be punished by a maximum imprisonment of ten years.

Therefore, in overcoming the crime of information technology, the

¹⁰Kominfo, “SKB Pedoman Implementasi UU ITE Ditandatangani, Menko Polhukam Berharap Beri Perlindungan Pada Masyarakat”, <https://www.kominfo.go.id/content/detail/35229/skb-pedoman-implementasi-uu-ite-ditandatangani-menko-polhukam-berharap-beri-perlindungan-pada-masyarakat/0/berita>, accessed on 3 October 2021

problem of spreading false information, the Indonesian National Police will continue to cooperate with the Special Unit at the Criminal Investigation Agency (*Bareskrim*) of the National Police Headquarters, namely the Directorate II for Economics in overcoming cyber crime in several Regional Police.¹¹

In addition to sanctions for criminal threats that will be found by suspects of spreading false information, the government has also provided a service for the public to seek information on crimes on social media or where they can see any hoax news that has been spread on social media, and therefore, they will not redistribute the news that they had read before. The Ministry of Communication and Information, for example, has provided a complaint platform for the public to minimize the spread of hoax content.¹²

The alternative in solving this problem is restorative justice which is the development of human thought that underlies the judicial tradition in solving the problem of criminal acts. Solving problems for perpetrators of spreading false information using a restorative justice approach focuses on justice for perpetrators and victims. The concept of restorative justice can see what kind of justice is right to be given to the perpetrators of spreading false information, as well as the punishment that will be obtained.¹³

¹¹Latupeirissa, J. E., *et.al*, *Op Cit*, p.181-191

¹²Kominfo, “Ini Cara Melaporkan Konten Hoax”, https://kominfo.go.id/content/detail/8732/ini-cara-melaporkan-konten-hoax/0/sorotan_media, accessed on 20 September 2021

¹³Achmad Ali, *Menguak Teori Hukum dan Teori Peradilan*, (Jakarta: PT. Kencana Prenada Media, 2009), p.150

With the background of the problem above, the author decided to examine the legal liability towards the perpetrators of spreading false information in Indonesia by reviewing the relevant laws. This prompted the author to take the title "THE DEVELOPMENT OF LAW ENFORCEMENT IN THE PERSPECTIVE OF RESTORATIVE JUSTICE FOR THE SPREAD OF FALSE INFORMATION IN INDONESIA".

1.2 Formulation of Issues

The rampant spread of false information has made numerous people restless due to the large amount of incoming information, resulting in confusion of which is fake and real. The formulation of the problem in a thesis research is very important so that the aims and objectives of the research are more in-depth, directed, and precisely reach the target. In regards to the topic of this thesis, the Author will discuss the following formulation of issues:

1. How is the law enforcement towards the perpetrators of false information in Indonesia according to Law No. 11 of 2008?
2. How is the development of law enforcement in the perspective of restorative justice for the spread of false information and defamation in Indonesia?

1.3 Research Purposes

A study must have clear and precise objectives. The purpose of a

study shows the quality and value of the research. Based on the background above, this research has the following objectives:

1. To exhibit the law enforcement towards the perpetrators of spreading false information according to Law No. 11 of 2008.
2. To elaborate the development of law enforcement in the perspective of restorative justice for the spread of false information in Indonesia.

1.4 Research Benefits

After the completion of this research, the author hopes that this thesis research can be useful from a theoretical and practical side in this very special field. This research has the following benefits:

1.4.1 Theoretical Benefits

Theoretically, the results of this research are expected to be useful ideas for the development of cyber law, especially in the field of spreading false information. In addition, it is hoped that this thesis can provide tangible benefits for the advancement of cyber law, especially regarding the law against cyber crimes, namely Law No. 11 of 2008 concerning Information and Electronic Transactions (ITE). As well, it is an additional knowledge of the application of law towards the perpetrators of false information and is expected to be useful for practice in the realm of criminal law focusing on cyber

law, especially in Indonesia.

1.4.2 Practical Benefits

Practically, the author hopes that the results of this study can contribute to the community's thoughts, especially for those who like to spread false information without thinking about the consequences. In addition, it is hoped that this thesis can contribute ideas for researchers and legal practitioners in exploring the legal aspects of the application of law towards the perpetrators of false information. Finally, it can be useful as a broad discourse that can be read by law students in particular, and society in general expecting them to understand the consequences of spreading false information to the society.

1.5 Framework of Writing

In writing this thesis, the author divides the subject matter in detail so that it can be understood clearly. An outline is made which is arranged into five main chapters that will make it easier for readers to understand the discussion of this thesis.

In the first chapter, the author describes the background that causes the author's interest to study further regarding the development of law enforcement in the perspective of restorative justice for the spread of false information in Indonesia. This section consists of five parts, namely the background, formulation of issues, research purpose, research benefits and

framework of writing.

In the second chapter there are two parts, namely the theoretical basis and the conceptual basis. The theoretical basis section will explain in general the theories and elements of the application of law towards the perpetrators of false information in Indonesia as well as ways of dispute resolution in general. In the conceptual basis, several definitions will be explained so that there are no misinterpretations.

The third chapter covers the research methodology that the author uses for this thesis research. The author will describe the type of research, the object of research, legal and non-legal materials and the nature of the analysis as well as describing the obstacles and overcoming them experienced during the research.

The fourth chapter describes the results of the discussion and analysis of the problem formulations studied by the author. The author will describe the problem solving of the problem formulation based on legal theories, legal principles, and legislation, as well as field reviews raised by the author in this study.

In the last chapter, the author will describe the overall conclusions in response to the problems that have been analyzed in chapter four and suggestions on the results of the research that has been done. Conclusions are the points contained in this research, while suggestions are an idea, or ideas that are owned by the author which are shown to be of benefit to

normative legal research.

