

The Phenomenon of Hate Speech and Disinformation on Social Media: A Criminal Law Approach in Tackling Digital Crime

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ABSTRACT

The rapid development of information technology, especially social media, has changed the way people interact and access information. However, this openness creates a digital paradox in the form of the spread of hate speech and disinformation that is difficult to control, potentially triggering social conflicts and political polarization, especially in Indonesia. Social media algorithms that amplify provocative content create an echo chamber that magnifies the risk of radicalization and manipulation of SARA's identity. This phenomenon threatens the quality of democracy and social cohesion, requiring a firm but proportionate response to criminal law. Law Number 19 of 2016 concerning Information and Electronic Transactions (ITE Law) plays an important role in handling digital crime, but its implementation faces obstacles of multi-interpretation norms and limited capacity of the apparatus. Repressive law enforcement has the potential to curb freedom of expression and cause injustice. Therefore, legal reforms are needed that clarify the definition of hate speech and disinformation, improve the digital literacy of the apparatus, and have independent oversight mechanisms. A comprehensive approach that combines legal, technological, and social aspects can create a healthy, democratic, and inclusive digital space, while protecting society from the negative impacts of hate speech and disinformation.

Keywords: Hate-Speech; Disinformation; Digital-Crime

INTRODUCTION

The development of information technology in the last two decades has revolutionized the way humans interact and access information, especially through social media. Platforms such as Facebook, Twitter, Instagram, and TikTok are not only means of personal communication, but also virtual public spaces that influence public opinions, political discourse, and even social behavior. However, this openness of social media also gives birth to a digital paradox: on the one hand it provides freedom of expression, on the other hand it opens a gap for the spread of hate speech and disinformation that is difficult to control. This phenomenon shows that the digital space is not a value-free space, but a conflict field that requires critical regulation and oversight. Studies have shown that

disinformation on social media is directly correlated with increased social tensions and a decline in the quality of democracy.¹

In addition, social media algorithms tend to amplify content that is provocative because it has high pervasiveness, creating so-called *echo chambers* and *filter bubbles*. This increases the possibility of spreading narratives that are exclusive, intolerant, and even trigger radicalism. In Indonesia, this phenomenon is evident in the context of identity politics, especially in the run-up to and during elections. In this context, the spread of hate speech and disinformation is not just a matter of communication ethics, but a real and far-reaching form of digital crime, which demands a firm and measured response to criminal law. So, the urgency of handling this problem lies not only in the technological aspect, but also in strengthening legal norms in regulating social interaction in the digital space.²

In Indonesia's socio-political context, the spread of hate speech and disinformation on social media often manipulates primordial identities such as ethnicity, religion, race, and inter-group (SARA), which are firmly rooted in the structure of society. This magnifies the potential for horizontal conflict and deepens political polarization. The spread of SARA-based hoaxes and hate speech increased sharply during the 2019 election period, and significantly affected public perception of certain candidates and political parties.³ In such a scenario, disinformation is not only a communication issue, but also an instrument of social manipulation used to create fear, reinforce stereotypes, and divide the cohesion of society.

Furthermore, hate speech and disinformation have undermined the function of democracy itself by creating an unhealthy and hateful information environment. When the digital public space is dominated by destructive speech and false information, rational discourse and inclusive political participation are disrupted. This leads to the delegitimization of democratic institutions and the loss of public trust in the political process. As revealed, social media algorithms can narrow the views of individuals and trigger extreme digital tribalism.⁴ In Indonesia, the phenomenon of political buzzers and the use of bots to spread disinformation makes it increasingly clear that this digital crime can no longer be underestimated. Criminal law interventions are needed that are not only repressive, but also adaptive to the dynamics of technology and digital sociology that continue to develop.

The complexity of law enforcement against digital crime, including hate speech and disinformation, lies not only in the technical aspects of digital that are anonymous and cross-jurisdictional, but also in the limitations of the legal instruments used. Law No. 19 of 2016 as an amendment to Law No. 11 of 2008 concerning Information and Electronic Transactions (ITE Law) has actually tried to respond to this challenge, especially through

¹ Andrian, S. (2023). Literasi Digital Dalam Tindak Pidana Penyebaran Berita Bohong dan Menyesatkan Berdasarkan Undang-Undang Nomor 19 Tahun 2016 Tentang Informasi dan Transaksi Elektronik. *Ameena Journal*, 1(4), 340-350.

² Noijs, J. I., Toule, E. R. M., & Latumaerissa, D. (2024). Kebijakan Kriminall Perbuatan Ujaran Kebencian (Hate Speech) Melalui Media Sosial Menurut Hukum Pidana. *PATTIMURA Law Study Review*, 2(1), 139-155.

³³ Sirait, F. E. T. (2019). Ujaran Kebencian, hoax dan perilaku memilih (studi kasus pada pemilihan presiden 2019 di Indonesia). *Journal of Political Research*, 16(2), 179-190.

⁴ Situngkir, F. V., & Istinah, S. R. D. (2020). The Enforcement of Criminal Laws of Hate Speech in Social Media. *Law Development Journal*, 2(4), 542-548.

Article 27 paragraph (3) and Article 28 paragraph (2).⁵ However, the use of these articles often causes controversy because they are considered multi-interpreted and have the potential to curb freedom of expression. For example, in various cases handled by the authorities, there is often an overlap between legitimate criticism and hate speech, showing that without clear interpretation guidelines, the ITE Law can actually become a repressive tool that is counterproductive to digital democracy.

Furthermore, the enforcement of the ITE Law still faces challenges in terms of law enforcement capacity in understanding the dynamics of the digital world. Many authorities are not equipped with an adequate understanding of digital forensics, making it difficult to track down perpetrators who use fake identities or hide their digital footprints through international networks. On the other hand, Indonesia's legal system has not been fully responsive to these cross-border needs, such as international cooperation in the collection of electronic evidence. According to reports, weak digital evidentiary standards and lack of protection for victims exacerbate inequities in access to justice, especially when violations are committed by anonymous accounts or networks with political forces.⁶ Therefore, a more progressive policy revision and an increase in digital legal literacy among the apparatus are urgent so that the ITE Law is truly effective in tackling digital crime in a fair and proportionate manner.

In the context of countering hate speech and disinformation, the criminal law approach through Law Number 19 of 2016 concerning Amendments to the ITE Law plays a strategic role as a repressive instrument. The provisions in Article 28 paragraph (2) of the ITE Law explicitly prohibit everyone from disseminating information intended to cause hatred or hostility based on SARA. This article is strengthened by Article 45A paragraph (2), which stipulates criminal sanctions of up to six years in prison and/or a maximum fine of one billion rupiah. However, the problem is not only the existence or absence of criminal norms, but how these norms are implemented fairly and proportionately. The use of these articles still often draws criticism because it is considered blunt upwards and sharp downwards where perpetrators from the elite often escape the snares of the law, while ordinary citizens are more easily subject to criminal sanctions without a transparent evidentiary process.⁷

Furthermore, the effectiveness of criminal law in tackling digital crime depends on the synergy between legal certainty and sensitivity to human rights. Criticism from various civil society groups, such as SAFEnet and LBH Pers, shows that the ITE Law is often used repressively to silence political expression or criticism of the government, instead of cracking down on real hate speech. This shows that the criminal law approach cannot stand alone without a more precise reformulation of legal norms and accountable enforcement mechanisms. Therefore, future updates to the ITE Law must consider the clarity of the definition of hate speech and disinformation, as well as strengthen the role of independent supervisory institutions so that the application of criminal law does not become an arbitrary tool of power, but really functions to protect a healthy and democratic digital space.

⁵ Nabilah, W., Putri, D., Octavia, N. A., Rizal, D., & Warman, A. B. (2022). Implikasi Undang-Undang Informasi dan Transaksi Elektronik (UU-ITE) terhadap Kerukunan Kehidupan Beragama di Ruang Digital. *Dialog*, 45(1), 69-80.

⁶ Alkiviadou, N. (2019). Hate speech on social media networks: towards a regulatory framework?. *Information & Communications Technology Law*, 28(1), 19-35.

⁷ Malik, J. A., & Taun, T. (2025). ANTARA HOAKS DAN UJARAN KEBENCIAN: KESENJANGAN PENEGAKAN HUKUM PIDANA DI ERA DISINFORMASI DIGITAL. *Causa: Jurnal Hukum dan Kewarganegaraan*, 12(12), 31-40.

METHOD

This study uses a normative juridical method, which is an approach that focuses on the study of positive legal norms that apply to analyze the phenomenon of hate speech and disinformation on social media from a criminal law perspective. This approach is carried out by examining relevant laws and regulations, such as Law Number 19 of 2016 concerning Information and Electronic Transactions (ITE), the Criminal Code (KUHP), as well as supporting regulations such as the Circular Letter of the National Police Chief No. SE/6/X/2015. The study also uses legislative and conceptual approaches to understand both the normative and theoretical aspects of digital crime. Data sources include primary legal materials (regulations), secondary (legal literature and journals), and tertiary (legal dictionaries and encyclopedias), which are analyzed qualitatively to relate legal norms to digital social reality critically and systematically.

DISCUSSION

1. Normative Study of Criminal Law Regulations related to Hate Speech and Disinformation on Social Media

A scientific approach to understanding criminal law regulations on hate speech and disinformation needs to integrate various disciplines, especially legal theory, legal sociology, and communication science. From the point of view of criminal law theory, fundamental principles such as legal certainty and legality promoted by thinkers such as Hans Kelsen and Gustav Radbruch became the main benchmark in assessing the good and bad of a legal norm. Articles in the ITE Law, especially those related to hate speech and false information, are often considered problematic because of the norms that are too vague and subjective, which is contrary to the principle of legal certainty. As explained, criminal law must be clear and firm in order to provide a sense of legal security for citizens, while preventing arbitrary law enforcement.⁸ This lack of certainty raises concerns about the practice of over-criminalization, which can silence freedom of expression, a fundamental right in democracy.

Furthermore, from the perspective of the sociology of law, the approach proposed by Emile Durkheim emphasizes that law is a reflection of social values in society. In the dynamic digital era, society is no longer homogeneous and the control of speech on social media must take into account the plurality and speed of communication that are difficult to control by traditional criminal law. In this context, the theory of Legal Pluralism by Sally Engle Merry shows that formal regulation is not enough if it is not accompanied by social norms and the mechanisms of supervision of society itself. Rigid and repressive criminal laws tend to be ineffective at countering hate speech and disinformation, and can even exacerbate social polarization. This is reinforced by research that finds that repressive approaches to hate speech on digital platforms often trigger backlash and increase the covert spread of problematic content.⁹

From the perspective of communication science and media studies, disinformation and hate speech on social media are phenomena that involve complex and distributed

⁸ Rasubala, J. A., & Kasenda, V. (2024). Penegakan Hukum Main Hakim Sendiri (Eigenrichting) Studi Kasus Tindak Pidana Penganiayaan Dan Pembakaran Terhadap Seorang Wanita Di Kota Sorong. *Lex Privatum*, 13(3).

⁹ Pukallus, S., & Arthur, C. (2024). Combating Hate Speech on Social Media: Applying Targeted Regulation, Developing Civil-Communicative Skills and Utilising Local Evidence-Based Anti-Hate Speech Interventions. *Journalism and Media*, 5(2), 467-484.

information dissemination mechanisms. The Diffusion of Innovations theory by Everett Rogers highlights how information, whether true or false, can spread quickly and widely through social networks. Digital platforms use algorithms designed to increase engagement, which unfortunately also encourages the virality of controversial and provocative content, including hate speech and hoaxes. Despite the legal regulations, the spread of disinformation remains difficult to control due to social-psychological factors such as confirmation bias and echo chambers that reinforce intolerance and misunderstanding.

Empirically, reports from organizations such as SAFEnet and Amnesty International Indonesia indicate that the implementation of the ITE Law has been more often used to criminalize criticism of public officials than to deal with cases of hate speech that damage the social order.¹⁰ This shows the potential for abuse of the law as a political tool. The study underscores the need for legal reforms that not only clarify criminal norms but also include transparent and accountable oversight mechanisms.

At the international level, regulatory approaches to hate speech and disinformation are beginning to shift from a purely criminal approach to a co-regulation and self-regulation model involving cooperation between states, digital platforms, and civil society. For example, the European Commission in its Code of Practice on Disinformation encourages platforms to improve algorithm transparency and promote media literacy. This approach is more adaptive and respects the right to freedom of expression, while prioritizing collective responsibility.¹¹

Within this framework, legal reform in Indonesia must adopt these principles by integrating clear and proportionate aspects of criminal law, restorative approaches, and multisectoral cooperation. The law must be able to adapt to social and technological dynamics, avoid excessive criminalization, and strengthen education and digital literacy as the main prevention strategy.

2. Implementation and Challenges of Law Enforcement against Digital Crime in Indonesia

The implementation of law enforcement against digital crime in Indonesia involves a number of law enforcement agencies such as the Police, the Prosecutor's Office, the Court, and the Ministry of Communication and Information. This process is based on the main regulation, namely Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE), which was later updated with Law No. 19 of 2016, as well as a number of complementary regulations such as the Criminal Code and the Personal Data Protection Law. It is stated that this regulation is actually quite comprehensive normatively, but still faces serious challenges in its implementation in the field.¹² Law enforcement officials, especially through the Directorate of Cyber Crime of the National Police Criminal Investigation Branch, play a central role in handling cyber cases, from

¹⁰ Indaryanto, N. N. (2022). *Rekonstruksi Regulasi Penegakan Hukum Tindak Pidana Penghinaan Dan Pencemaran Nama Baik Melalui Media Sosial Berbasis Nilai Keadilan* (Doctoral dissertation, UNIVERSITAS ISLAM SULTAN AGUNG).

¹¹ Alianinggrum, N. N., Almadinah, B., & Pertiwi, A. K. (2023). Penyaringan Fakta dan Tanggung Jawab Jurnalisme Digital: Menghadapi Tantangan Disinformasi pada Pemilu 2024. *Journal of Social Contemplativa*, 1(2), 129-146.

¹² Handoyo, B., Husamuddin, M. Z., & Rahma, I. (2024). Tinjauan Yuridis Penegakkan Hukum Kejahatan Cyber Crime Studi Implementasi Undang-Undang Nomor 11 Tahun 2008. *MAQASIDI: Jurnal Syariah dan Hukum*, 40-55.

reporting to the judicial process. However, as noted, there is a gap between the normative framework and institutional capacity, which leads to the low effectiveness of law enforcement against digital crime.¹³

One of the main challenges is the limitations in the technical aspects of digital forensics. Limited trained human resources, lack of supporting tools, and lack of standardization of forensic procedures are major obstacles in cybercrime investigation.¹⁴ This is exacerbated by the ever-evolving dynamics of technology, such as the use of end-to-end encryption, VPNs, and the dark web, which make it difficult to track down criminals. In the aspect of proof, digital evidence tends to be fragile and easy to manipulate, so it cannot always meet the principles of formal legal proof. The importance of the application of chain of custody in the collection of digital evidence to maintain the integrity of evidence, but this practice has not been fully understood or carried out by law enforcement officials in Indonesia.¹⁵

In terms of regulations, a number of articles in the ITE Law are considered multi-interpreted and vulnerable to abuse. Articles such as Article 27 paragraph (3) on defamation and Article 28 paragraph (2) on hate speech have been used to silence criticism and expression of civil society, even in contexts that should be protected by the principle of freedom of opinion. This phenomenon shows the existence of "overcriminalization" in digital law, where unclear provisions have the potential to harm citizens.¹⁶ The use of criminal law to crack down on online expression is often inconsistent with human rights principles, particularly as stipulated in Article 19 of the International Covenant on Civil and Political Rights, which has also been ratified by Indonesia.

In response to these problems, various reform efforts have been made. The government and the House of Representatives have prepared interpretive guidelines for the articles of the ITE Law to avoid excessive criminalization. In addition, increasing the capacity of law enforcement officials through training, cooperation with international institutions, and the development of digital forensic laboratories continues to be sought. According to a report by the Institute for Community Studies and Advocacy (ELSAM, 2023), synergy between legal reform and technical capacity building is very important so that law enforcement is not only effective from a technical point of view, but also fair from a human rights perspective. In addition, supervision from independent institutions such as Komnas HAM, the Ombudsman, and civil society participation are needed so that the digital space remains a free but responsible arena.

3. Recommendations and Alternative Legal Approaches to Address Hate Speech and Disinformation in a Proportionate and Equitable Manner

In facing the challenges of hate speech and disinformation in the digital era, a legal approach is needed that is not only repressive, but also proportionate, fair, and upholds

¹³ Laksito, J., Idris, M. F., & Waryanto, A. (2024). Hak dan Kewajiban Negara dalam Mengatasi Kejahatan Lintas Batas di Era Digital: Pendekatan Analisis Normatif. *Hakim: Jurnal Ilmu Hukum dan Sosial*, 2(4), 774-790.

¹⁴ Saputra, E., Pratama, S. A., & Ramadhani, K. O. (2025). Law enforcement challenges against online gambling using social media networks. *Journal of Intellectuals and Scholars*, 2(5), 7789-7801.

¹⁵ Baroto, W. A. (2024). Advancing Digital Forensic through Machine Learning: An Integrated Framework for Fraud Investigation. *Asia Pacific Fraud Journal*, 9(1), 1-16.

¹⁶ Irrynta, D., & Prasetyoningsih, N. (2023). An Analysis of Freedom of Speech: Whether the Indonesian Electronic Information and Transactions Law is Contradictory. *SASI*, 29(2), 200-213.

human rights. Legal reform is a crucial first step, especially by revising regulations that have been multi-interpreted such as several articles in the Electronic Information and Transaction Law (UU ITE) and the Criminal Code. The multi-interpretation articles in the ITE Law have been used to silence criticism of the government, which has the potential to erode freedom of expression.¹⁷ Therefore, it is necessary to reformulate with more specific legal definitions of hate speech and disinformation, as well as with restrictions that protect political expression, public criticism, and academic activity. In addition, through dangerous speech theory, it emphasizes that not all hate speech must be punished; Only speech that is proven to be at high risk of inciting violence needs to be legally intervened in.¹⁸ At the same time, the drafting of new laws specifically regulating hate speech and disinformation is also a viable alternative, balancing protection for vulnerable groups with guarantees for freedom of expression.

However, legal reform will not be effective without increasing the capacity of law enforcement officials. Studies show that many errors in the application of criminal law to hate speech occur due to the lack of understanding of the social context and human rights principles of the authorities.¹⁹ Intensive human rights-based training is needed for police, prosecutors, and judges to be able to distinguish between harmful hate speech and legally protected expression. In addition, clear technical guidelines are needed in digital law enforcement, so that the principles of proportionality and presumption of innocence are applied consistently. This is in line with the principles in the Rabat Plan of Action, which emphasizes the importance of six criteria in assessing hate speech: context, speaker's status, intent, content, form of dissemination, and possible impact.

Furthermore, in order for the law enforcement process to be not biased and repressive, it is necessary to establish an independent supervision mechanism. Institutions such as the Digital Enforcement Supervisory Commission or strengthening the functions of Komnas HAM and the Ombudsman of the Republic of Indonesia in the digital context can be a check and balance mechanism against deviant law enforcement. The importance of independent supervisory institutions to prevent human rights violations by the state in the process of moderation and digital law enforcement. Civil society involvement is also very important, not only as a supervisor, but also as a partner in drafting a code of ethics, developing a content reporting system, and implementing digital literacy that fosters critical awareness of information.

Non-criminal approaches such as restorative justice are also feasible in cases of hate speech and mild disinformation. This approach has been empirically proven in a variety of contexts, as research shows, can reduce recidivism, improve social relationships, and increase victim satisfaction. Restorative justice provides a space for dialogue between perpetrators and victims, focusing on rehabilitation, not punishment.²⁰ On the other hand, collaboration between governments and digital platforms is essential to build a

¹⁷ Sari, A. P., Munawar, A., & Rahmathoni, L. Y. (2023). Analisis Hukum terhadap Perlindungan Whistleblower dalam Mendukung Kebebasan Berpendapat di Indonesia. *Jurnal Hukum Lex Generalis*, 4(7).

¹⁸ Mahdori, M. (2023). *Ujaran Kebencian Sara Pada Konten Media Sosial: Kajian Linguistik Forensik= Hate Speech" Sara" On Social Media Content: Forensic Linguistic Study* (Doctoral dissertation, Universitas Hasanuddin).

¹⁹ Febriansyah, F. I., & Purwinarto, H. S. (2020). Pertanggungjawaban Pidana Bagi Pelaku Ujaran Kebencian di Media Sosial. *Jurnal Penelitian Hukum De Jure*, 20(2), 177-188.

²⁰ Ginting, Y. P., Ozora, A., Santoso, F. T. M., Sadikin, J. M., & Marceliani, R. (2024). Upaya Penyelesaian Tindak Pidana melalui Upaya Restorative Justice dengan melibatkan Keluarga Pelaku/Keluarga Korban. *Jurnal Pengabdian West Science*, 3(04), 410-428.

transparent, accountable, and participatory content moderation system. The recommendations of the Special Rapporteur on Freedom of Expression (UN, 2018) report encourage countries and platforms to jointly develop a non-arbitrary content removal mechanism and guarantee the right of appeal for users.

By combining legal reform, capacity building of the authorities, independent oversight, and alternative approaches based on human rights and education, the countering of hate speech and disinformation can be carried out proportionately, fairly, and democratically, without sacrificing civil liberties as a key pillar of the rule of law.

CONCLUSION

Countering hate speech and disinformation on social media requires a comprehensive and balanced legal approach, integrating normative aspects, implementation, and regulatory reform that is proportionate and fair. Current criminal law regulations, especially in the ITE Law, still face obstacles in the form of multi-interpreted norms and the potential for excessive criminalization that threatens freedom of expression. The implementation of law enforcement is also constrained by technical limitations, apparatus capacity, and gaps between normative rules and practices in the field. Therefore, legal reform that prioritizes certainty and clarity of norms, increasing the capacity of human rights-based law enforcement officials, and establishing an independent oversight mechanism is very important. Alternative approaches such as restorative justice and collaboration between governments, digital platforms, and civil society also need to be developed so that the handling of hate speech and disinformation cases is not only legally effective, but also upholds the principles of democracy and civil liberties. Thus, these efforts can create a safe, responsible, and inclusive digital space.

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