

Criminal Law Implication on the Spread of Hoax News on Social Media in the Perspective of ITE Law

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Entered : October 22, 2024
Accepted : November 23, 2024

Revised : November 20, 2024
Published : November 27, 2024

ABSTRACT

The phenomenon of hoaxes on social media in Indonesia is a major challenge in the digitalization era, with false information often targeting sensitive issues and potentially triggering public unrest. The increase in internet users accelerates and expands the reach of hoaxes, especially on politics, health, and racial issues, which can lead to social instability. To combat this, the Electronic Information and Transaction Law (ITE Law) provides the legal basis for taking action against perpetrators of hoaxes, particularly through Article 28 Paragraph (1), which prohibits the dissemination of false information that is disturbing. However, the effectiveness of the ITE Law is still hampered by the unclear definition of hoaxes, technical challenges in tracking down perpetrators who often use fake identities, and limited capacity of law enforcement. On the other hand, people's low digital literacy increases the risk of inadvertently spreading hoaxes. Therefore, a normative juridical approach is used in this study to analyze the ITE Law regulation and its challenges, as well as to identify the need for integration between law enforcement and improving digital literacy as a strategic step in reducing the spread of hoaxes and maintaining social stability.

Keywords: Digital Hoax Spreading; Effectiveness of ITE Law; Hoax Digital Literacy

INTRODUCTION

The phenomenon of the spread of hoax news on social media is a crucial issue faced in the era of digitalization and information disclosure. Hoaxes, which are false or unsubstantiated information that is deliberately spread, often target sensitive topics that can trigger divisions or concerns among the public. The development of information technology accelerates and expands the reach of information dissemination, including hoaxes, to reach a very wide audience in a short time. Today, hoaxes often touch on strategic issues such as politics, health, religion and economics, all of which have the potential to cause public unrest. In Indonesia, the spread of hoaxes on social media continues to increase, along with the increase in internet users, which now reaches more than 215 million people.¹ Based on data from the Ministry of Communication and Information Technology, the spread of hoaxes in Indonesia has increased rapidly, especially during the COVID-19 pandemic, where unverified information is easily spread

¹ Mahadewi, K. J. (2022). Implikasi Penyebaran Berita Hoaks Kaitannya Dalam Penegakan Hukum Di Indonesia. *Jurnal Publika Pengabdian Masyarakat*, 4(01), 7-17

and has a significant impact.² Hoaxes that are not immediately controlled can create social instability and damage public order, which is contrary to the state's efforts to maintain the security and welfare of society. The spread of hoaxes causes harm to certain individuals or groups, especially if the information disseminated is slanderous or defamatory. Therefore, the spread of hoaxes must be addressed with appropriate measures, in order to safeguard the public interest and guarantee the rights and obligations of individuals under the applicable law.

The negative impact of spreading hoaxes on social media can extend to various aspects of society, including political stability, public health, and social security. In the legal realm, spreading hoaxes is a form of offense that can threaten public order and peace at large.³ Various cases have shown that hoaxes containing racial, ethnic, or slanderous content have created uproar and increased tensions between citizens. In the political context, the spread of false information or propaganda through social media has the potential to create polarization in society and disrupt a healthy democratic process.⁴ In the health sector, hoaxes about medication or vaccinations risk undermining people's trust in legitimate health services, and can even endanger lives. The damage caused by these hoaxes shows the importance of strict legal action to minimize their negative impact. Hoaxes can also harm public or private institutions through defamation or reputational damage, which can result in economic and social repercussions for the concerned parties. Therefore, there is an urgent need to enact strong regulations in order to minimize the spread of false information and maintain national stability and public interest.

The Electronic Information and Transaction Law (ITE Law) No. 11/2008, which was revised through Law No. 19/2016, is the main legal instrument in Indonesia to address the spread of hoaxes on social media. This regulation is set to provide legal certainty for the public against criminal acts in the digital world, including the dissemination of false or misleading information. Article 28 Paragraph (1) of the ITE Law prohibits everyone from spreading false information that can cause harm or public unrest. Under this law, perpetrators of hoaxes can be subject to criminal sanctions in the form of imprisonment of up to six years or a fine of up to one billion rupiah, depending on the impact of the hoax. Although the ITE Law has a strong foundation, its implementation in the field often encounters obstacles, both in terms of technicalities and interpretation by law enforcement officials. Several cases show that there are different interpretations among judges, prosecutors, and investigators regarding the boundaries between spreading hoaxes and freedom of expression. In addition, the vagueness in the formulation of several articles in the ITE Law often causes confusion in the application of the law, especially on sensitive issues such as insults or defamation. Therefore, the effectiveness of the ITE Law as a legal umbrella in dealing with hoaxes is an issue that needs to be studied more deeply, especially in maintaining a balance between the interests of public security and the protection of human rights.

² Azizah, M. (2024). Strategi Dinas Komunikasi Informatika Dan Statistik Dalam Pencegahan Informasi Hoax Di Media Sosial (Studi Pada Dinas Komunikasi Informatika Dan Statistik Provinsi Lampung). *KOMVERSAL*, 6(2), 296-310

³ Haqqani, M. I. (2023). Pemanfaatan Media Sosial Instagram Oleh Bhabinkamtibmas Guna Mengantisipasi Penyebaran Hoax Pemilu 2019 di Polres Banyumas. *Police Studies Review*, 7(11), 297-372

⁴ Febriansyah, F., & Muksin, N. N. (2020). Fenomena Media Sosial: Antara Hoax, Destruksi Demokrasi, dan Ancaman Disintegrasi Bangsa. *Sebatik*, 24(2), 193-20

On the other hand, the low level of digital literacy among the public is one of the factors that support the rampant spread of hoaxes in Indonesia.⁵ Many social media users tend to easily believe in the information received without verifying the source, thus contributing to spreading hoaxes unintentionally. This is a challenge for the government in forming a smart and wise society in consuming information in the digital era. Several efforts have been made by the government and related institutions to improve digital literacy, including through anti-hoax campaigns, media literacy training, and cooperation with digital platforms.⁶ Nonetheless, an optimal level of digital literacy has not yet been achieved, and people are still vulnerable to false information disseminated through the internet. Therefore, improving digital literacy is important to support the effectiveness of the ITE Law in preventing the spread of hoaxes in a sustainable manner. Adequate digital literacy can equip people with the critical ability to assess the truth of information before sharing it with others. In addition, good digital literacy will also strengthen the community's resistance to the negative impact of false information, thus preventing unnecessary conflicts. The integration of legal approaches and digital literacy education is a strategic step in creating a healthy information ecosystem in the digital era.

METHOD

The normative juridical method in researching the Electronic Information and Transaction Law (ITE Law) is used to understand how legal regulations in Indonesia regulate and take action against the spread of hoax news on social media. This method begins with a statutory approach, which analyzes the main articles in the ITE Law, especially Article 28 Paragraph (1), which stipulates the prohibition of spreading false information that can cause public unrest. Next, a conceptual approach is used to examine legal concepts in the ITE Law, such as the boundaries between freedom of expression and the spread of hoaxes, as well as defamation, so as to better understand the scope and legal restrictions in the ITE Law. After that, a comparative law approach is applied by comparing the ITE Law with similar regulations in other countries, to gain insight into the effectiveness of regulations in various jurisdictions and see potential improvements to the ITE Law. Finally, a case approach is taken by analyzing court decisions related to the spread of hoaxes in Indonesia, to see how the articles of the ITE Law are interpreted and applied in practice. This normative juridical approach aims to evaluate the effectiveness of ITE Law in addressing the spread of hoaxes on social media and provide a foundation for better policy recommendations in facing the legal challenges of the digital era.

RESULTS AND DISCUSSION

1. Effectiveness of the ITE Law in Cracking Down on the Spread of Hoaxes

The Electronic Information and Transaction Law (ITE Law) has become a crucial legal basis in tackling the spread of hoax news in Indonesia, especially on social media.

⁵ Sahilanada, Z. N., & Jumino, J. (2021). Kemampuan Literasi Digital Anggota Pers Mahasiswa Hayamwuruk Fakultas Ilmu Budaya Universitas Diponegoro dalam Merespon Hoax. *Anuva: Jurnal Kajian Budaya, Perpustakaan, dan Informasi*, 5(1), 89-99

⁶ Pratiwi, C. S., Usman, U., & Rohayati, W. (2024). Sosialisasi Literasi Digital Bagi Masyarakat Kecamatan Alam Barajo Kota Jambi Jelang Pemilu 2024. *Rambideun: Jurnal Pengabdian Kepada Masyarakat*, 7(1), 120-128.

Article 28 paragraph (1) of the ITE Law, which prohibits the dissemination of information that can mislead or harm other parties, and Article 45A paragraph (1), which regulates criminal sanctions against perpetrators of hoaxes, provide a clear basis for law enforcement officials to take action against perpetrators.⁷ Before the existence of the ITE Law, the spread of hoaxes tended to be left without a clear legal basis, so the spread of false information could be done without fear of legal consequences. However, after the ITE Law was implemented, there was a significant change in terms of countering hoaxes, although it was not fully effective. The ITE Law provides stronger legal instruments to take action against perpetrators of hoaxes, which were previously difficult to reach by law. However, the effectiveness of the implementation of the ITE Law can still be questioned, especially in relation to the obstacles in proof and the limited resources owned by law enforcement officials. Many hoax perpetrators use anonymous accounts or fake identities, making the tracing and prosecution process more complicated. While the ITE Law provides a clear legal basis, the challenges in its implementation require more attention to ensure the law can be applied effectively.

Prior to the implementation of the ITE Law, the spread of hoaxes in Indonesia had no clear regulation and was often considered a social problem that could not be addressed legally.⁸ At that time, the public was not fully aware of the potential dangers of circulating hoaxes, while perpetrators of spreading false information were not faced with strict legal sanctions. The spread of hoaxes at that time was easier to do, because there was no law that specifically regulated criminal acts related to the spread of false information. With the advent of the ITE Law, there has been a significant increase in the prosecution of the spread of hoaxes, where perpetrators can be subject to criminal sanctions based on the applicable provisions. However, despite the clearer legal action against the spread of hoaxes after the ITE Law was implemented, the number of hoaxes circulating on social media still remains high.⁹ This shows that although the ITE Law provides sanctions against hoax spreaders, the number of false information spread has not decreased significantly. The implementation of the ITE Law in this case focuses more on sanctioning the perpetrators, but prevention through public awareness and education is still very much needed to reduce the overall circulation of hoaxes. Thus, despite improvements in law enforcement, the effectiveness of ITE Law in tackling hoaxes is not yet fully adequate.

The implementation of ITE Law in tackling the spread of hoaxes faces various challenges that affect its effectiveness. One of the main obstacles is the lack of clarity in legal interpretation, especially in determining what can be categorized as a hoax.¹⁰ This leads to frequent differences in interpretation between one case and another, which in turn blurs the line between freedom of speech and the dissemination of false information that harms others. Another obstacle is the difficulty of proving hoax cases involving digital media, given that many perpetrators use anonymous accounts or false identities to spread

⁷ Lestari, A. K. A., & Sari, D. M. (2020). Efektivitas Penerapan Undang-Undang Ite Terhadap Pelaku Penyebaran Hoaks Covid-19 Di Media Sosial. *Jurnal Transformasi Administrasi*, 10(02), 198-211.

⁸ 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

⁹ Mufid, F. L., & Hariandja, T. R. (2019). Efektivitas Pasal 28 Ayat (1) UU ITE tentang Penyebaran Berita Bohong (Hoax). *Jurnal Rechtsens*, 8(2), 179-198.

¹⁰ Yuda, Z. A. W., Rahmasari, H., & Gunawan, T. A. (2024). EFEKTIVITAS DAN PENERAPAN HUKUM PIDANA TERHADAP CYBERCRIME DI INDONESIA. *Causa: Jurnal Hukum dan Kewarganegaraan*, 4(10), 61-70

false information. Proving hoax cases that occur in cyberspace requires adequate technology and cooperation between institutions that have access to digital data, which is often constrained by various technical factors. This shows that the ITE Law, although providing a strong legal basis, still faces obstacles in its application in the field, especially related to the problem of proof and tracking of perpetrators. Therefore, it is necessary to strengthen the capacity of law enforcement officials and improve the ITE Law to ensure that law enforcement against the spread of hoaxes can be carried out more effectively and consistently.

Although the ITE Law is an important law enforcement tool in tackling hoaxes, preventive efforts through improving digital literacy are also very important in reducing the circulation of hoaxes. Digital literacy helps people to be smarter in selecting and verifying the information they receive, so they can voluntarily avoid spreading hoaxes. The government and educational institutions play an important role in educating the public on how to recognize fake news, the importance of checking sources, and the negative impact of spreading hoaxes. Effective digital literacy programs can be the first barrier before the spread of hoaxes progresses further, as people who have a good knowledge of how to use information technology will be more cautious in disseminating information. Thus, while law enforcement through the ITE Law is necessary to take action against perpetrators of hoaxes, prevention based on public awareness is also very important to reduce the spread of hoaxes. Digital literacy can serve as a reinforcement to reduce the number of hoaxes in circulation and minimize the chances of spreading false information. Therefore, tackling hoaxes does not only rely on legal aspects, but also involves educational efforts to form a wiser and more aware society in interacting online.

2. The Impact of Hoaxes on Public Order and Social Stability

The spread of hoaxes on social media has a very significant impact on public order and social stability, covering various dimensions, including political, social and cultural. In the political context, hoaxes are often used to manipulate public opinion and create tension between different support groups. During election periods, for example, false information spread with a specific purpose can cause confusion among voters, damage the reputation of candidates, and trigger divisions between supporters. This shows that hoaxes not only serve as a tool to damage certain individuals or groups, but also as a weapon that can dramatically change political dynamics. Political tensions caused by the spread of hoaxes can have a wide-ranging impact on the stability of the country, undermine the democratic process, and reduce the level of public trust in the existing political system.¹¹ In this case, the ITE Law becomes a very important legal tool in tackling the spread of hoaxes that can disrupt social order and democracy in Indonesia. In addition to the impact on politics, the spread of hoaxes also has serious consequences in the social field, especially in terms of relationships between individuals and community groups. Hoaxes that target sensitive issues such as ethnicity, religion, race and inter-group relations (SARA) can often trigger hatred and prejudice, leading to social divisions.¹² Hoax issues related to a particular religion or ethnicity, for example, can cause inter-group riots, exacerbate inter-ethnic tensions, and increase negative sentiments among the public.

¹¹ Farid, A. S. (2023). Strategi Komunikasi Pemerintah Daerah dalam Mengatasi Penyebaran Hoaks dan Hate Speech pada Pemilihan Umum di Mandailing Natal. *Journal of Islamic Communication Studies*, 1(2), 51-64.

¹² Bakri, S., Zulhazmi, A. Z., & Laksono, K. (2019). Menanggulangi hoaks dan ujaran kebencian bermuatan isu suku, agama, ras, dan antargolongan di tahun politik.

Communities that previously lived in social harmony can suddenly be divided by false information that manipulates their perceptions of other groups. Therefore, it is important for the government to take the spread of hoaxes seriously, as the impact on social stability is huge. The ITE Law can play an important role in tackling the spread of racially charged information, thereby minimizing social unrest caused by hoaxes.

Hoaxes circulating in times of crisis, such as during the COVID-19 pandemic, can worsen the situation and add to the difficulty in overcoming existing problems. Health-related false information, such as false claims about vaccines or alternative treatments that are not proven to be effective, can cause public doubts about government policies and undermine crisis management efforts. In line with research the spread of hoaxes in these health emergency situations can also cause unnecessary panic, exacerbate uncertainty, and hamper the collective efforts of the community in dealing with the crisis¹³. In the case of a pandemic, for example, hoaxes related to vaccines or medical treatments can undermine public trust in health authorities, which in turn worsens the situation. Therefore, ITE Law serves as an important tool in addressing the spread of hoaxes that have the potential to harm society at large, especially in the context of a health crisis.

Furthermore, the impact of spreading hoaxes is not only short-term, but can damage the social bonds that have been formed in society in the long run. The distrust generated by hoaxes can exacerbate social polarization, build walls of separation between certain groups, and undermine existing social solidarity. When hoaxes succeed in creating distrust between individuals or groups, the values of togetherness and unity that are very important for the life of the nation are threatened. This can worsen the quality of social relations and reduce collective consciousness in facing social challenges. A society that is divided and no longer trusts each other will face difficulties in working together to build a better country. Therefore, strict enforcement of the ITE Law against the spread of hoaxes is essential to protect social integrity and maintain solidarity between communities, as well as ensure that social order is maintained.

It is important to note that while ITE Law is an important instrument in tackling the spread of hoaxes, law enforcement efforts must be balanced with other preventive efforts. Raising public awareness about the dangers of spreading hoaxes and the importance of verifying information before sharing it is crucial to reduce the negative impact of hoaxes on public order and social stability. Massive digital literacy education programs need to be promoted to improve people's intelligence in sorting and selecting information they receive through social media. Good digital literacy will help people to be more critical in consuming information, reduce the potential spread of hoaxes, and prevent wider social damage.¹⁴ Thus, while the ITE Law is crucial for law enforcement against perpetrators of hoaxes, prevention through public education is equally important to maintain public order and social stability in the long term.

¹³ Marta, R. F., Bharata, B. S., Pamungkas, A. T., Pramesti, O. L., Harrison, A., Robin, P., ... & Sarwono, B. K. (2023). Strategi Media Komunikasi di Masa Pandemi

¹⁴ Juliswara, V., & Muryanto, F. (2022). Model Penanggulangan Hoax Mengenai Berita Covid 19 untuk Pengembangan Literasi Digital Masyarakat di Indonesia. *JIIP-Jurnal Ilmiah Ilmu Pendidikan*, 5(7), 2587-2596

3. Constraints and Challenges in the Implementation of the ITE Law against the Spread of Hoaxes

The implementation of the ITE Law in addressing the spread of hoaxes in Indonesia faces a number of major challenges that require serious attention from the government and law enforcement officials. One of the main challenges is the unclear definition of what constitutes a “hoax” in the legislation. Although the ITE Law includes provisions governing the dissemination of false information, interpretations of the concept of hoaxes often vary from case to case.¹⁵ This can lead to discrepancies in law enforcement, where cases that should be strictly prosecuted are overlooked, while others may receive excessive treatment. This lack of clarity adds to the challenge of ensuring consistency in the application of the law, which may ultimately reduce the effectiveness of the ITE Law itself. For example, cases involving hate speech are often questioned as to whether they fall under the category of hoaxes, as they are often opinions expressed within the realm of free speech. This has led to confusion among the public and law enforcement regarding the boundary between freedom of speech and the dissemination of information that harms others.

In addition to the unclear definition, one of the significant obstacles in enforcing the ITE Law related to hoaxes is the difficulty in proving cases involving cyberspace.¹⁶ The spread of hoaxes is often done through anonymous accounts or fake identities, making it difficult for authorities to identify the perpetrators and prove that the act constitutes a criminal offense. In cases where perpetrators use technology to hide their digital footprint, law enforcement officials face major challenges in collecting valid and reliable evidence. Collected data, such as IP addresses or other digital traces, are sometimes insufficient to prove the malicious intent behind the spread of hoaxes. In addition, collecting and processing digital evidence requires specialized skills and sophisticated technological devices, which are not always available in every region. This slows down the legal process and makes prosecuting perpetrators of hoaxes more difficult, despite the clear provisions of UU ITE.

Another obstacle faced in the implementation of ITE Law is the limited capacity of law enforcement officials in dealing with cybercrime cases, including the spread of hoaxes on social media.¹⁷ The speed of development of information technology that continues to grow makes the task of law enforcement officials more complex and challenging. The rapid and widespread dissemination of information through digital platforms makes monitoring and law enforcement more difficult. The limited number of officers with expertise in cyber law and information technology exacerbates the situation, as they are not enough to handle the increasing number of hoax cases. In addition, the large number of different digital platforms, each with different technical characteristics, makes it more difficult for law enforcement officials to effectively monitor and tackle the spread of hoaxes. Therefore, it is important to increase the human resource capacity of

¹⁵ Harsya, R. M. K., Wamafma, F., Sakmaf, M. S., & Triyantoro, A. (2024). Regulasi Konten Online dan Dampaknya terhadap Hak Kebebasan Berbicara di Platform Digital di Indonesia. *Sanskara Hukum dan HAM*, 3(01), 43-52

¹⁶ Rohmy, A. M., Suratman, T., & Nihayaty, A. I. (2021). UU ITE dalam Perspektif Perkembangan teknologi informasi dan komunikasi. *Dakwatuna: Jurnal Dakwah dan Komunikasi Islam*, 7(2), 309-339.

¹⁷ Nabila, A. P., Manabung, N. A., & Ramadhansha, A. C. (2024). Peran Hukum Internasional Dalam Menanggulangi Cyber Crime Pada Kejahatan Transnasional. *Indonesian Journal of Law*, 1(1), 26-37.

law enforcement officers, as well as strengthen cooperation between relevant agencies, so that law enforcement related to hoaxes can be carried out more efficiently and effectively.

Although the ITE Law provides a strong legal basis for tackling hoaxes, the challenges faced indicate that law enforcement related to the spread of hoaxes requires broader support, both in terms of infrastructure and in terms of deeper policies. One important step that can be taken is to increase education and training for law enforcement officers on information and communication technology, as well as ways to identify and handle cybercrime cases professionally. This is important so that law enforcement officers not only understand the substance of the law in the ITE Law, but also have a deep understanding of the technology used in spreading hoaxes. It is also important to develop a more effective reporting system for the public, so that they can easily report cases of hoax spreading to the authorities. By improving the capacity of law enforcement officers and a more efficient reporting system, it is expected that law enforcement related to hoaxes can be carried out more quickly and accurately.

On the other hand, although the challenges in implementing the ITE Law are very real, it does not mean that there are no solutions to overcome them. One solution that can be applied is to revise or improve the ITE Law itself, especially related to a clearer and more concrete definition of hoaxes. The government needs to ensure that regulations related to hoaxes are able to keep up with the times and technology, and provide a clearer space for freedom of speech without sacrificing public order. This could include adding more detailed provisions on the criteria for hoaxes and how to distinguish hoaxes from legitimate opinions or criticisms. This will not only create legal certainty, but also ensure that the ITE Law remains relevant and effective in facing the challenges of the ever-evolving development of information technology. In addition, cooperation with digital platforms and internet service providers also needs to be strengthened so that they can play a more active role in preventing the spread of hoaxes, for example by developing information verification systems and engaging users to be more careful in disseminating information

CONCLUSION

The ITE Law is an important legal instrument in addressing the spread of hoaxes in Indonesia, especially in the context of social media. Grounded in articles that regulate sanctions against perpetrators of false information dissemination, ITE Law provides a strong legal basis for cracking down on hoaxes. However, while the law has clarified the prosecution of hoaxes, its effectiveness has not been maximized, mainly due to difficulties in tracking down perpetrators who use fake identities or anonymous accounts. Another obstacle is the unclear interpretation of the definition of hoax, which has led to different interpretations in certain cases. In addition, technical challenges and limited capacity of law enforcement officers complicate effective law enforcement efforts. On the other hand, in addition to enforcement, improving people's digital literacy is crucial to build awareness in verifying information before sharing it. Capacity building of the authorities and cooperation with digital platforms are also needed to strengthen the implementation of ITE Law. Therefore, although the ITE Law plays an important role, comprehensive educational efforts and legal improvements are still needed to effectively reduce the spread of hoaxes.

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