
**LEGAL PROTECTION OF VICTIMS OF FAKE AND LIE NEWS (HOAX) IN THE ELECTRONIC
TRANSACTION INFORMATION LAW**

Hakni Kusuma Muahammad Reyhan Arkan¹, Hanifah Febriani²¹ Fakultas Hukum, Universitas Muhammadiyah Surakarta (C100190289@student.ums.ac.id)² Fakultas Hukum, Universitas Muhammadiyah Surakarta (hf185@ums.ac.id)

ABSTRACT

Today the pace of information development that no longer recognizes barriers and boundaries, as a result of globalization and technological advances deserves more attention from a legal perspective. Technological progress has a myriad of benefits but also has various challenges that must be faced, in this case the rapid spread of information through social media whose validity or truth cannot be easily determined. Evidence of the negative impact of technological progress can be seen in the many cases caused by the misuse of technology to commit fraud, especially in spreading hoaxes and electronic transactions, so that in this study the focus is on being able to see a legal perspective in protecting victims of fake news and lie (hoaxes). This research was analyzed using normative juridical and qualitative descriptive methods. This study aims to confirm that the basic regulations for the spread of fake or fake news (hoaxes) have been regulated in Law No. 19 of 2016 precisely in article 28 paragraph (1) and article 27 paragraph (3), besides that the author through this research wants to focus on legal protection for victims of fake and fake news (hoaxes) that are in effect at this time, the article besides these rules there are other regulations relating to the spread of fake and fake news (hoaxes), namely article 14 and article 15 of Law No. 1 of 1946, as well as article 311 and article 378 of the Criminal Code. This research will produce answers regarding legal protection that can be sought by victims of spreading fake news and lies (hoax).

Keywords: Fake News (Hoax), Legal Protection, Victim Efforts.

INTRODUCTION

Globalization is directly proportional to technological progress, both have succeeded in eliminating barriers and limitations in socializing, making all information spread easily and quickly. A technological development that is currently owned by almost everyone and cannot be separated from their daily lives is mobile phones or what are often referred to as smartphones. This information technology offers convenience in communicating with anyone and anywhere, which means that the interactions that emerge can be universal in nature where one user does not necessarily know another user, so it can be said that the existence of smartphones has made communication between humans easier.

Science and technology, which continuously improves in providing convenience for humans, has succeeded in stealing the attention of capital owners to expand their business in the world of technology, starting from the many types of smartphones to the variety of contents of smartphones or better known as applications. The applications offered can be in the form of social media such as Instagram, Facebook, Twitter, Line, WhatsApp. Apart from that, it can also be in the form of games and even online shopping applications are also one of the things offered. The offerings of technological advances as above have shifted most of the conventional media by being replaced by print and electronic media (Hanik Chumairoh 2020)¹. The media that is affected is the dissemination of information or news which is currently carried out through online media in the form of news sites, but actually currently news can not only be spread

¹ humairoh, Hanik, Ancaman Berita Bohong di Tengah Pandemi Covid-19, VOX POPULI Volume 3, Nomor 1, Juni 2020, hal.26

through news sites but also by all internet users (Juditha 2018).²

News distribution can be done by anyone and anywhere easily and quickly, of course it also has disadvantages if it is misused by irresponsible people. The spread of fake news or what is often called a hoax is a form of irresponsibility of social media users. Currently, the spread of fake news or lies (hoaxes) has been widely found in Indonesia, this has disturbed the public because they feel disadvantaged by the existence of news that is not the truth is clear, apart from that it is difficult for people to believe which news is true. Even though the public feels disadvantaged by false or fake news (hoaxes), it is often the people themselves who participate in spreading fake or false news (hoaxes), this is due to several factors including:

1. Indonesian society is poorly educated and lacks a sense of democracy.
2. The culture of Indonesian society is basically like to talk so that if you get any information.
3. People in Indonesia are not used to storing data, so when they talk, they often don't use clear data and the truth is unknown³.

This has resulted in many victims of the spread of hoax news circulating among Indonesian society, especially internet and social media users, law enforcement in Indonesia itself is still focusing on the perpetrators of spreading fake and fake news. Until now, there is still very little attention to victims of the spread of hoax news, both in terms of regulations and law enforcement. Meanwhile, these hoax news cases, apart from having a crime aspect, also have a crime victim aspect. Victims in various hoax news cases in Indonesia have not received more attention, even though this is an important matter in law enforcement in Indonesia.

Legal protection for victims has actually been regulated in various statutory regulations, Law No. 13 of 2006 concerning Protection of Witnesses and Victims; and Government Regulation No. 44 of 2008 concerning Providing Compensation, Restitution and Assistance to witnesses and victims. Even though there are regulations related to victim protection, including the Civil Code. Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. In several cases, the victims' losses were very large, so far the victims had not received attention. However, these regulations do not clearly and specifically provide legal protection rules for victims of social media hoax news cases in Indonesia. In fact, law enforcement efforts and legal certainty are an important part of a democratic country and rule of law like Indonesia.

OnIn this research, the author wants to focus on restoring the rights of victims resulting from fake news or fake news (hoaxes) for which legal protection can be sought through civil law and the ITE Law. Based on the background that has been described, the author raises the title "LEGAL PROTECTION OF VICTIMS OF FAKE NEWS AND LIES (HOAX) IN THE ELECTRONIC TRANSACTION INFORMATION LAW". So the aim of this research is to provide readers with an understanding of the legal protection efforts that can be taken by victims of fake news or hoaxes to restore their rights through criminal law, civil law and the ITE Law.

RESEARCH METHODS

The method used in this research is a normative juridical method, namely a method that examines, inventories, and analyzes, as well as understanding law as a system of regulations or positive norms in legislation that regulates human life.⁴ Specifically, this research uses descriptive research to analyze existing problems and then present them descriptively, where this research uses primary data, secondary data and tertiary data. All existing data was analyzed using synthetic analysis, from the results of this

² Juditha, Christiany, Interaksi Komunikasi Hoax di Media Sosial serta Antisipasinya, Jurnal Pekommas, Vol. 3 No. 1, April 2018, hal.31

³ Juditha C. Hoax Communication Interactivity in Social Media and Anticipation (Interaksi Komunikasi Hoax di Media Sosial serta Antisipasinya). J Pekommas [Internet]. 2018;3(1):31–44

⁴ Mamudji S. Penelitian Hukum Normatif dan Sebuah Tinjauan Singkat. Jakarta: Rajawali; 2015

analysis the necessary conclusions were drawn so that it is hoped that the results of this research can be a complementary reference.

RESULTS AND DISCUSSION

LEGAL PROTECTION FOR VICTIMS OF FAKE NEWS AND LIES (HOAX)

According to Satjipto Raharjo, legal protection can be interpreted as providing protection for human rights, people who are disadvantaged can enjoy all the rights that can be provided by law.⁵ In other words, legal protection is protection that is given either preventively or repressively, verbally or in writing to legal subjects. In legal terms, legal protection is defined as *recht ius*, *recht* meaning *rectum* which means guidance, demands or governance. While *ius* means to regulate or rule, both are based on authority.⁶

Legal protection is protection given to someone who feels disadvantaged by another person. This protection is intended so that people can use and enjoy their rights that have been given by law. Legal protection is also interpreted as legal measures that must be provided by law enforcement officers in their duties to provide a sense of security to the community both mentally and physically from various disturbances and threats from any party. There are two types of protection, namely preventive legal protection and repressive legal protection. Preventive legal protection is protection that is used as a prevention before a violation is committed, this is carried out by the government in the form of statutory regulations which become signs or restrictions in order to carry out a necessity or obligation.⁷, the second protection, namely repressive legal protection, is protection given if a violation or dispute has occurred. This protection takes the form of sanctions such as fines, imprisonment and additional penalties.

Legal protection also applies to social media users, where currently fake news or fake news (hoaxes) are increasingly common which cause harm to the victims. Fake news or fake news (hoax) itself is a statement or statement regarding data that is disseminated widely so that it becomes the topic of discussion for many people, even though the information is not true. In Indonesian, hoax means fake news, false information, or false news. Meanwhile, in English, hoax means making fun, lying and deceiving or deceiving⁸.

In Indonesian laws and regulations, the term hoax is not recognized, but there are several regulations relating to fake news, including the ITE Law, where Article 28 paragraph (1) of Law No. 19 of 2016 (UU ITE) specifically regulates fake or false news (hoax) which can result in consumer losses in electronic transactions. Then another article also regulates the dissemination of fake news or hoaxes, namely in article 27 paragraph (3) of Law No. 19 of 2016 (UU ITE).

Table 1. Legislative regulations

Law No. 19 of 2016 (UU ITE)	
article 27 paragraph (3)	Article 28 paragraph (1)
"any person who intentionally, and without having the right, distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents which contain insulting and/or defamatory content."	"Every person who deliberately and without having the right to spread false and misleading news which then results in harm to consumers"

⁵ Raharjo, Satjipto. 2000. Ilmu Hukum. Bandung: PT. Citra Aditya Bakti.

⁶ Faiz P. Teori Keadilan Jhon Rawls. J Konstitusi. 2009;6(1):131–146.

⁷ Sitorus, Richo Fernando . 2018. "Perlindungan Hukum Pemegang Kartu Uang Elektronik ketika Hilang". Jurnal Novum, Volume 3 Nomor 1:1-6.

⁸ Christiany Juditha, 2018, Interaksi Komunikasi Hoax di Media Sosial serta Antisipasinya, Jurnal Pekommas, Vol. 3 No. 1, hal. 31.

A person who becomes a victim of false or fake news (hoax) will usually experience losses not only materially but also mentally, the victim will experience a crisis of self-confidence and trust in other people. For this reason, efforts to protect victims who are harmed by false or fake news (hoaxes) must receive more focus.

CRIMINAL LIABILITY

Article 378 of the Criminal Code states, "Anyone who, with the intention of unlawfully benefiting himself or another person, by using a false name or by deception or a series of lies, encourages another person to hand over something to him, or to give him a debt to write off a receivable." "For fraud, he is threatened with a maximum prison sentence of 4 years," this means that actually, without being specific, it is false or fake news (hoax), but just committing identity falsification and a series of lies to gain profit can already be subject to this article.

The criminal elements of false or fake news (hoax) are contained in various regulations, namely in article 390 of the Criminal Code, although the formulation is slightly different from article 28 paragraph (1) of Law No. 19 of 2016 which uses the words "false and misleading news" then in article 390 of the Criminal Code uses the language "broadcasting false news". The two are considered different because the words lie and mislead have different meanings, where "spreading fake news" focuses on the action while "misleading" is interpreted to mean the consequences of the action carried out. For this reason, although these articles have the same domain, they are different, so that in order to be able to prove that there has been a violation of article 28 paragraph (1) of Law No. 19 of 2016 and then a criminal sentence must be met, the following elements must be met:

1. Every person, meaning anyone who commits this act, can be punished;
2. Doing it intentionally and not based on one's rights;
3. Spreading false and misleading news, it is necessary to pay attention to the use of the word "and" which means that these actions must be carried out simultaneously, not just one or the other;
4. Resulting in consumer losses in electronic transactions.

If someone has fulfilled the elements of a violation in this article, the perpetrator can be held criminally liable as regulated in article 45 A paragraph (1) which reads: "Every person who intentionally and without right spreads false and misleading news which results in consumer losses in Electronic Transactions as intended in Article 28 paragraph (1) shall be punished with imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of IDR 1 billion."

If you pay attention to the fourth point, the element that makes a person violate Article 28 paragraph (1) of the ITE Law, is that it must cause consumer losses in electronic transactions, whereas not all cases that happen to victims of fake news or hoaxes will cause such losses. , therefore responsibility from criminal law can also be an alternative.

CIVIL LIABILITY

The parameters for determining victims in cases of spreading false or fake news (hoaxes) themselves can be seen based on various aspects and also on statutory provisions, for example in Law No. 31 of 2014 concerning witness and victim protection, which states that someone who is considered a victim is including those who experience physical and spiritual suffering, up to material suffering. Physical consequences mean that the victim experiences physical or bodily harm caused by the spread of fake news or hoaxes, for example violence, abuse and discriminatory treatment. Then the losses felt are economic or material elements such as loss of property due to the spread of the news.

Responsibility in the Big Indonesian Dictionary (KBBI) is defined as an obligation to bear everything, if something happens then it can be blamed or sued and brought to justice.⁹ Meanwhile, according to Black's Law Dictionary, responsibility itself has three meanings, namely:

- a. An obligation a person is bound by law or justice to perform
- b. The condition of being liable for any possible or actual loss.
- c. Conditions that create an obligation to perform an action immediately or in the future.

⁹ <https://kbbi.web.id/tanggung%20jawab>

Responsibility in the world of law itself is better known as legal liability, where in the legal dictionary there are two terms to describe responsibility, namely, liability and responsibility. The meaning of the two has a slight difference, namely that liability is a broader legal term that refers to almost all risks or responsibilities, which are certain, which includes the entire character of rights and obligations, both actual and potential losses, threats, crimes, or other conditions that give rise to obligations that must be fulfilled under the law. An obligation that must be accounted for based on the law, including decisions, abilities, skills and abilities, is the definition of Responsibility. Black's Law Dictionary defines legal liability as "Liability which court recognizes and enforces as between parties litigant". In its use, the term liability refers more to legal responsibility, namely responsibility for lawsuits caused by legal subjects who commit a mistake, while the term responsibility refers to political responsibility.¹⁰

Article 1365 of the Civil Code states that "every unlawful act which brings harm to another person, requires the person whose fault it was to cause the loss, to compensate for the loss", which means that even though it is not regulated in an agreement, if someone commits an act which harms another person then Based on this article, legal relations will still arise so that people who feel they have been harmed can ask the party who harmed them to be responsible¹¹. This detrimental act is called an unlawful act, namely an act that violates the law carried out by someone and because the act causes harm to other people.

Hoge Raad's decision on January 31 1919 made the definition of unlawful acts broader, where in his decision Hoge Raad stated that an unlawful act is an act or omission that is or is contrary to morality or social life towards other people or objects, while whoever because his fault as a result of his actions has caused harm to other people, he is obliged to pay compensation¹²

In law, there are 3 (three) categories of unlawful acts, namely as follows¹³:

- a. intentionally committing an unlawful act;
- b. without any fault in the unlawful act (there is no element of intention or negligence)
- c. there is an element of negligence in committing an unlawful act.

The model of legal responsibility is as follows:¹⁴

- a. The responsibility contained in article 1365 of the Civil Code is responsibility for elements of error (intentional and negligent).
- b. the element of error, especially negligence, is held accountable as contained in article 1366 of the Civil Code.
- c. Article 1367 of the Civil Code which states absolute responsibility, namely responsibility without fault.

Efforts that can be made by victims as a result of the spread of fake or false news (hoax) can be through civil law as explained above in Article 1365 of the Civil Code, so that civil lawsuits carried out by victims as a result of the spread of fake or false news (hoax) are either based on Victims of unlawful acts will receive restitution for the losses they suffer.

CONCLUSION AND SUGGESTION

Cases regarding the spread of fake or fake news (hoaxes) are currently starting to increase, because the increasingly rapid development of technology also means that many individuals are using it to commit crimes. The increase in these cases will certainly result in a large number of victims, so there must be regulations that are able to reduce the number of cases of spreading fake news (hoaxes) and are able to protect and restore the rights of victims due to the spread of fake news or lies (hoaxes). The government's efforts to deal with this problem have started to get serious where the government has formed the basis

¹⁰ Ridwan H.R., *Hukum Administrasi Negara*, Raja Grafindo Persada, Jakarta, 2006, hal. 335-337

¹¹ AZ Nasution, *Hukum Perlindungan Konsumen*, cet.2, Diapit Media, Jakarta, 2002, hal.77

¹² M.A. Moegni Djodjodjo, *Perbuatan Melawan Hukum*, cet.2, Pradnya Paramita, Jakarta, hal 25-26.

¹³ Munir Fuady, *Perbuatan Melawan Hukum*, cet.1, CitraAditya Bakti, Bndung, 2002, hal.3.

¹⁴ *ibid*

for regulations for those who spread fake news or lies (hoaxes), these regulations are Law Number 11 of 2008 which has been updated based on the needs and developments of the times so that they are more relevant to dealing with problems. Existing, these changes are in Law No. 19 of 2018 6 Article 28 Paragraph (1) and Paragraph (2). And there are also provisions for spreading hoaxes or other fake news which are also outlined in Law Number 1 of 1946 Article 14 and Article 15.

Perpetrators of spreading fake news (hoaxes) can be subject to article 27 paragraph (3) of Law No. 19 of 2016. These regulations still focus on the accountability that will be borne by the perpetrators while providing restoration to the rights of victims who have been deprived or harmed by the perpetrators. has not yet been in the spotlight, where the restoration of victims' rights in Law No. 16 of 2016 (UU ITE) can only be done if the loss suffered by the victim is related to electronic transactions, if the loss is related to something else then the ITE Law is still not relevant for restoring the victim's rights. Legal protection for victims of fake news or hoaxes can be achieved through civil law, namely the victim can file a lawsuit, either a lawsuit for breach of contract or a lawsuit for an unlawful act, so that the victim will get their rights restored, if the victim experiences suffering or material loss, then through a civil lawsuit. the victims will get their rights back.

REFERENCES

1. Kitab Undang-Undang Hukum Perdata
2. Kitab Undang-Undang Pidana
3. UU ITE
4. Soraja, alga & anas Muhammad.(2021). "PERLINDUNGAN KORBAN DALAM KASUS PENYEBAR". *Prosiding Seminar Nasional & Call for Paper "Peran Perempuan Sebagai Pahlawan di Era Pandemi"*, vol.8, No.1, agustus
5. Iskandar, hardian & wardana dodji jaya.(2021). "PENINGKATAN KESADARAN HUKUM TERHADAP ANAK KORBAN BERITA HOAX DI SMA MUHAMMADIYAH 8 CERME KABUPATEN GRESIK". *DedikasiMU (Journal of Community Service)* . vol.3, No.2, juni
6. Ratnawati, erna tri rusmala(2021). "PERLINDUNGAN HUKUM BAGI KORBAN YANG DIRUGIKAN AKIBAT PENYEBARAN BERITA BOHONG". *PRANATA HUKUM*. Vol. 3, No. 1, Februari
7. Haridhy fajriatul tivani & mustakin(2022). "TANGGUNG JAWAB PT. TELKOMSEL ATAS KERUGIAN PELANGGAN AKIBAT TINDAKAN PIHAK KETIGA DALAM PENYEBARAN INFORMASI YANG MENYESATKAN (Suatu Tinjauan Menurut Pasal 1365 KUH Perdata)". *JIM Bidang Hukum Keperdataan*. : Vol. 6, No.1 Februari
8. Juditha C. (2018). "Hoax Communication Interactivity in Social Media and Anticipation (Interaksi Komunikasi Hoax di Media Sosial serta Antisipasinya)". *J Pekommas [Internet].;* Vol.3, No.1:31–44
9. Mamudji S. (2015). "Penelitian Hukum Normatif dan Sebuah Tinjauan Singkat". Jakarta: Rajawali.
10. Raharjo, Satjipto. (2000). Ilmu Hukum. Bandung: PT. Citra Aditya Bakti.
11. Faiz P. (2009) "Teori Keadilan Jhon Rawls. *J Konstitusi*";6(1):131–146.
12. Sitorus, Richo Fernando . (2018). "Perlindungan Hukum Pemegang Kartu Uang Elektronik ketika Hilang". *Jurnal Novum*, Volume 3 Nomor 1:1-6.
13. Christiany Juditha, (2018), "Interaksi Komunikasi Hoax di Media Sosial serta Antisipasinya", *Jurnal Pekommas*, Vol. 3 No. 1, hal. 31.
14. Ridwan H.R. (2006), "Hukum Administrasi Negara", Raja Grafindo Persada, Jakarta, hal. 335-337
15. AZ Nasution. (2002), "Hukum Perlindungan Konsumen", cet.2, Diapit Media, Jakarta, hal.77
16. M.A. Moegni Djojodirdjo, "PerbuatanMelawan Hukum", cet.2, Pradnya Paramita, Jakarta, hal 25-26.
17. Munir Fuady. (2002), "Perbuatan Melawan Hukum", cet.1, CitraAditya Bakti, Bndung, 2002, hal.3.
18. APA: "tanggung jawab". 2016. Pada KBBI Daring. Diakses 06 Mei 2023, <https://kbbi.web.id/tanggung%20jawab>