

# Hate Speech or Xenophobia Law Violation

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**Abstract.** Information technology that is developing at this time will make it easier for people to know or communicate remotely in various parts of the earth instantly in seconds, though. The facilities can be used starting from radio, television, telephone, mobile phone, telegram, facsimile, and the internet. The ease of using the internet and having a positive impact, However, in the subject of law, particularly criminal law, it also has a negative effect, generating a radical shift in criminal justice research especially hate speech crimes. The Incitement Offenses are Handled is based on the Code of Criminal Procedure, Law No. 11 of 2008, Law No. 40 of 2008, Law No. 7 of and Regulation of the Head of the National Police of the Republic of Indonesia No. 8 of 2013. In terms of evidence, they revealed whether someone's actions could depend on the facts regulated, be classified as inciting violence in the Criminal Procedure Code. The ITE Law has formulated what can be used as evidence in examining xenophobia cases on social media, only that there is still confusion.

**Keywords:** Hate Speech; Violation; Law

## 1 Introduction

The rapidity of social media encourages changes in the identical pattern of cyber society and the distribution of information that has been categorized in traditional media. The way of identity that occurs in the cyber press has changed from anonymity to being more personal. Users are encouraged to publish unique content such as personal data from their date of birth, gender, belief, the inclusion of a photo of themselves, and so on to provide space to interact on the network. Netizens see their social media pages as their own zone. The pattern of information distribution no longer takes place passively, as has happened in traditional media such as newspapers, television, and radio. Society is seen as consumers and the media as producers and distributors of information. In the cyber world, users play an active role in mass media production, distribution, and discussion [1].

The phenomenon of freedom of information creation and distribution in social media causes free control of information content spread among netizens. It triggers the emergence of fake news, often referred to as hoaxes, and information containing xenophobia. Data collected by the Ministry of Information and Communication Technology states claims there are up to 800,000 sites in Indonesia When it comes to spreading falsehoods and hateful. [2].

Information technology that is currently developing will make it easier for people to know or communicate remotely in various parts of the world in real-time, even in seconds. Facilities that can be used starting from radio, television, telephone, mobile phone, telegram, facsimile, and the last is the internet. The ease of using the internet and having a positive impact, However, in the subject of law, particularly in criminal law, also has a negative effect, producing a radical shift in the study of crime, particularly technology-related crimes [3].

The negative influence of technological developments that affect the outcome of criminal acts or crimes is evidenced by the data described by the Kapolda Metro Jaya, which during the COVID-19 pandemic that hit all countries, including Indonesia, caused a very significant increase in the level of crime in cyberspace.

Incitement is a banned word, conduct, writing, or performance in the legal context as it might core to acts of Racism and brutality on the side of the offender in response to the victim's remark. Articles 310, 311, 315, 317, and 318 of the Criminal Code control xenophobia activities against others and are included in Book I of the Criminal Code Chapter XVI. Meanwhile, certain articles limit insults or defamation of a government, organization, or group: Insults directed against foreign heads of state (Articles 142 and 143 of the Criminal Code); Insults to a group of people/groups/organizations (Articles 156 and 157 of the Criminal Code; Article 143 of the Criminal Code); 3). Insulting religious authorities (Articles 177 and 178 of the Criminal Code); 4). Insulting religious officials (Articles 177 and 178 of the Criminal Code); Contempt for Indonesia's current power (Pasal 207 and Article 208 of the Criminal Code) [4].

Communication ethics in social media in Islam, there are several rules. First, you have to be persistent. Second, don't spit on your privacy too vulgarly. Third, make friends on social media only with people you know. Fourth, don't bring up new information to SARA, pornography, and xenophobia [5]. The prohibition of willfully and without rights disseminating, sending, and making available Electronic Information and Electronic Documents has been regulated in Article 27 of Law Number 11 of 2008 about Digital Transactions and Information. to four charges or substances, namely: [6]

- a. the charge that violates decency;
- b. gambling payload;
- c. charge of insults and defamation and;
- d. extortion and threats.

The ease of using the internet and all supporting applications make it very easy for users to express their feelings, whether like, sad, or even hate. This means that anyone can be the perpetrator of xenophobia. To control individual behavior so as not to cross the line, which can later lead to crime, it is necessary to have rules that regulate all their behavior; in this case, criminal law or criminal justice has a significant role above all else. Criminal law is many regulations that are part of positive law containing prohibitions and requirements determined by the state or other powers authorized to determine illegal rules. Criminal threats accompany the prohibition or necessity, and if this is violated, the state has the right to make demands, impose penalties, and carry out crimes [7].

Court system is primarily a system of judicial power to enforce criminal legislation, which is realized or implemented through four (four) subsystems: investigative power (by the investigating agency/institution); Prosecution power (by the public prosecutor's agency/institution); The capacity to try and impose a crime (by the judiciary); and the ability to carry out the offense (by the implementing/execution apparatus). The four stages/subsystems constitute The integrated criminal justice system is an integrative criminal law enforcement system. For each component, the integrated system is built on a legal foundation. [8].

From this general explanation, it can be seen that xenophobia crimes can be said anywhere without us realizing it. Criticism of certain things, if not maintained in such a way, will be brought into the realm of xenophobia or hate speech. From this phenomenon in the article, the article tries to examine the mechanism of proof in the crime of xenophobia will be discussed, as well as how criminal justice perceives the crime of xenophobia.

## 2 Research Methods

This research is classified as qualitative research, while the approach this research takes a normative legal approach. The normative juridical process refers to the legal norms contained in the laws and regulations and religious regulations and the legal standards that exist in a society that discuss the laws and regulations related to the issues to be addressed, namely the crime of xenophobia. [9]

## 3 Results and Discussion

### 3.1 Positive Legal Perspective on the Process of Handling Hate Speech

The police have a role in the judicial process, namely playing a part in the investigation process to detention operation. The police have the power to investigate, arrest, and imprison people. The public prosecutor can also only carry out his function if the submission of the examination results from the investigator has been completed. The public prosecutor can make an indictment based on the investigator's examination results based on the minutes of the investigation examination. Likewise, demands can be adapted to the minutes of the Police investigators.

After that, there is a prosecution process, Specifically, the public prosecutor's conduct of referring the case to the appropriate District Court, in the case and in the manner prescribed by the Criminal Procedure Code, with a request that it be inspected and determined by a judge in a court session. Prejudice is defined as an act of expression by an individual or organization that is intended to provoke, instigate, or insult another individual or group on the basis of race/ethnic features, identity, disability, gender identity, and country are all factors to consider, religion, or other factors. Xenophobia is defined as any speech, conduct, either in literature or in practice that is illegal because it might provoke acts of social conflict, abuse, or prejudice, whether from the offenders or the victim's declaration of the victim action. [10].

It is by the laws and regulations governing xenophobia, starting with the Letter circulated of the Chief of Police Number: SE/06/X/2015 concerning Incitement and Its Handling, the Code of Criminal Procedure, Law No. 11 of 2008 with relation to data and Electronic Transactions, and Law No. 40 of prepared by the ministry Discrimination based on race and ethnicity must be abolished., that criminal cases involving xenophobia are handled. [11].

Articles 156, 157, 310, 311, and 28jis. Article 45 paragraph (2) of Law No. 19 of 2016 with relation to data and electronic transactions and Article 16 of Law No. 40 of 2016 about the abolition of racial and ethnic prejudice are the articles that regulate actions regarding Xenophobia based on the Chief of Police's Circular Letter No: SE/06/X/2015 against an individual, entity, or organization. [12]

- a. According to Article 156 of the Criminal Code, anybody who openly displays emotions of enmity, hate, or contempt toward one or more groups of Indonesians faces a maximum penalty of four years in prison or a fine of 4,500 rupiahs.
- b. "Whoever disseminates, shows, or pastes public essays or paints, the contents of which contain the expression of a sense of animosity, dislike, or disgrace of people or organizations of Indonesians, with the intent that the contents are known to the public, is punishable by a ultimate incarceration of two years and six months or a maximum A fine of Rp. 4,5 million has been imposed," according to paragraphs (1) and (2) of Article 157 of the Criminal Code. (2) If the offender commits the crime while performing his search and

- the similar crime has not been punished in the previous five years, the offender may be prevented from conducting additional searches.
- c. Article 310 paragraphs (1), (2), and (3) of the Criminal Code more specifically regulates attacks on someone's honor or good name, which are further held as follows: (1) Anyone who willfully damages someone's integrity or good character by alleging a matter in such a way that it is known to the public is charged with libel and faces a maximum sentence of nine months in jail or a maximum fine of 4,500 rupiahs. (2) The threat of written libel is punishable by a maximum of one year and four months in jail or a maximum fine of four thousand and five hundred rupiahs if done using text or photos broadcast, exhibited, or posted in public. It is written defamation or written defamation if the conduct is carried out in the public interest or because one is forced to defend oneself.
  - d. If the individual who commits the crime is libel or written defamation is permitted to show Is what's being said true, but does not, and the accusations is made opposing to what is featured, then Article 311 of the Criminal Code paragraph (1) applies. He faces a punishment that is as harsh as possible of four years in jail for defamation.

In addition to the Code of Criminal Procedure, Law Number 11 of 2008 concerning Information and Electronic Transactions was formed, which was later amended and issued by Law Number 19 of 2016 about Information and Electronic Transactions (Electronic Information and Transactions). The EIT Law is concerned with criminal offenses that are part of xenophobia. Xenophobia is also prohibited in Indonesia by Law No. 40 of 2008 the International Day for the Reduction of Institutional racism, which defines it as "expressing animosity or enmity toward persons because of racial or ethnic differences in the form of actions: 1) making writings or photos to be put, pasted, or circulated 2) giving speeches, expressing, or flinging immoral comments, 3) murder, molestation, rape, indecent crimes, and stealing with violence

### **Crime of Hate Speech or Hate Speech**

Indonesia is a legal state that protects the rights of freedom of opinion of its citizens as regulated in the 1945 Constitution of the Republic of Indonesia, namely Article 28 and Article 28E paragraph (3); the freedom of opinion can be exercised orally or in writing which can be stated in various media forms. Given the development of growing technology, it is easier for someone to express opinions using multiple media, both social media and chat communication media. A person can express his belief in the form of typing or videos that can be uploaded on any platform to express his thoughts and emotions [13].

Hate speech is often defined as an expression or act of attacking and encouraging violence in society. Unfortunately, the increasingly sophisticated technology and the increasing number of platforms or social media that the public can use have contributed to an increase in cases of hate speech. The easier and cheaper it is to use the internet, the public awareness factor does not support it. There are still many ignorant people who don't care about what he says or posts on his social media, and even many people who unwittingly spread fake news or the truth is not clear.

The act of showing that a unlawful event happened, and that the accused was found guilty is the one who committed it, thus he must be held accountable, is known as evidence. Evidence is an issue that arises throughout the course of a trial. The destiny of the accused is determined by the evidence. If the outcomes of the evidence, as judged by the law, are insufficient to show the defendant's guilt, the defendant is freed from penalty. On the other hand, if the evidence under Article 184 of the Criminal Procedure Code establishes the defendant's guilt, the defendant is found guilty. He will be condemned to prison. [8] If the prerequisites are satisfied, such as valid

evidence and a judge's conviction, a person can be convicted of this offence. To indict someone for hate speech, two pieces of evidence are required, just as they are for other criminal offences. The judge must be based on reliable evidence that has been evaluated for accuracy prior to the trial. If it is thought that it is in acceptable condition, that a criminal conduct has been performed, and that the defendant is legally entitled to do so, it will be considered legitimate and flawless evidence.

If we look at the Regarding offensive speech, the Chief of Police issued Requirements Relating Number SE/6/X/2015 there is still a mix of xenophobia with defamation, insults, and slander. Comments. Then the ITE Law will be used against xenophobia crimes. Article 42 explains that the investigation of criminal acts as referred to in this law is carried out based on the Crimes Act Code's requirements and the terms of this legislation. [12].

Furthermore, expert testimony is evidence in the Criminal Procedure Code that can be adapted into proving xenophobia cases. This is important because not everyone understands technology. Most people only understand the basics of using existing technology, but not all understand the ins and outs. Expert evidence, according to Article 1, number 28 of the Rules of Crimes Act, is information presented by a person with specific competence on issues essential to lighten a criminal issue that has to be investigated.

Expert evidence, on the other hand, is defined in Article 186 of the Criminal Procedure Code as what an expert says in a court session. After a witness or expert has finished delivering testimony, the court may require them to swear or promise, according to Article 160 paragraph (4) of the Provisions Of Section. Article 179 of the Code Of Process in criminal cases, on the other hand, states that "All the directly effect above for eyewitness accounts impose to those who offer expert witness, given that they take an oath or promise to give the clearest possible information," and "everyone who is asked for his opinion as a judicial medical expert, a doctor, or other expert is obliged to provide expert testimony for the sake of justice," and "all of the meet stated and implied needs above for witness testimony pertain to those who give expert witness." It is, in fact, based on their knowledge of the field of expertise.

Expert testimony in revealing xenophobia crimes is a very prominent piece of evidence in the proof because only specific experts understand technology. In the criminal evidence system, expert testimony will determine whether the defendant is guilty or not, even though the strength of the evidence of expert testimony is free, which means it is very dependent on the judge. Still, expert evidence in court practice is vital in criminal proof. However, it should be remembered that even though an expert can be seen as not an ordinary person because he has knowledge that is not shared by others, the expert must still uphold justice in giving his testimony. There should be no interference from other parties that will affect his testimony.

Article 1, number 28 of the Rules of Crimes Act or other regulations, if we look at it, it does not explain what is meant by "special expertise" possessed by expert witnesses. Still, let's look at it from an empirical perspective or its application to the reality of this particular skill. It can be interpreted as knowing an expert in a specific field as indicated by the study or experience. Furthermore, the Experts presented at the trial are generally experts investigators have questioned in the investigation process. In dealing with xenophobia crime, for example, technology experts or people who have extensive knowledge in the field of technology and informatics can be presented.

Expert testimony in xenophobia crime is there research that examines whether specialist testimony from the police or the investigators themselves is allowed? According to the analysis carried out by the police, they may become expert witnesses because cybercrime carries out 2 (two) functions, namely the investigation function and the investigation function, and there is technical assistance for investigations and investigations.

This technical assistance is in the form of a digital forensic laboratory which consists of several parts such as general digital forensics using analysis output and so on, self-phone forensics, audio-video forensics (to find out what tool to use for recording, whether it has been edited or not, you can check in meta the data, deleted files can be recovered, password recovery, for example, A has a hard drive, then the hard drive is encrypted, and the encryption can be cracked. If A destroys his cellphone, the data can still be obtained using a technology called chip-off, voice analysis, and so on. -other). Expert testimony from the police will not affect the investigation results.

Expert testimony from the police does not come from the investigators themselves but from other institutions within the police institution, such as forensic doctors, computer forensics, and others who are in the police force. Experts from the police will be independent and will not side with the police institution. Experts from the police are summoned by fulfilling formal and material requirements, such as taking an oath in advance, using an official letter from the Criminal Investigation Agency for cybercrime (the same as summoning an expert from an outside party).

#### **4 Conclusion**

The Basic Law, Law No. 11 of 2008, Law No. 40 of 2008, Law No. 7 of 2013, and the Guideline of the Head of the Indonesian Police Service is the country's federal agency. No. 8 of 2013 govern the treatment of xenophobia offences. Handling is carried out only with investigations and investigations through clarifications that are carried out by asking for information from experts; after sufficient evidence, members of the Ditreskrimsus begin to make coercive efforts, for example, to arrest the perpetrator or the suspect, after the witness's testimony which was carried out after the examination. From the testimony of the suspect himself is strong enough, the Ditreskrimsus member will raise the status of the suspect to be a suspect. In carrying out a case title to increase the quality of a suspect to a suspect, members of the Ditreskrimsus confiscate the evidence after being declared suspicious. Later the prosecutor will return it to the members of the Ditreskrimsus to be corrected according to the prosecutor's suggestion. Still, if it is complete, the prosecution process will continue in court.

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