

# Applying Appraisal Analysis to the Judges' Considerations of the Elements of Hate Speech in ITE Law

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**Abstract.** Hate speech is a debatable concept and its being regulated in Electronic Information and Transaction (ITE) law is widely disputed among scholars in Indonesia. This study explores how judges consider the elements of hate speech using UAM CorpusTool software based on an appraisal framework. Two court verdicts comprising 2158 and 2296 words token were used as the data for this study. This study shows that the dominant attitude of the appraisal system toward the evidence is appreciation, with a mostly negative attitude. The use of heteroglossic expand was more prevalent compared to monoglossic system. This study suggests that despite its controversial law, the judges' convictions were firstly sourced through aligning their stance to other voices (e.g. regulations, witnesses, and the defendant) before finally taking their stance and pronouncing the defendant accountable for his crime, appraised as judgment social esteem capacity, as he realizes (knowingly) the consequences of posting hate comments.

**Keywords:** ITE Law, Hate speech, appraisal analysis, judges' consideration, UAM CorpusTool

## 1 Introduction

For various reasons, hate speech cases are contentious. Words may be understood differently depending on the interlocutors' backgrounds and perspectives. Uttering offensive language does not necessarily mean spreading hate speech because not all offensive languages can be classified as hate speech [1] and detecting abusive language is difficult as it is not merely matching the words [2]. In addition, identifying the form and theme of languages in social media which resulted in the form of hate speech acts such as insulting, denouncing, and blaming a prominent figure [3] does not necessarily lead to a prosecution under hate speech law. As stated in a joint ministerial decree (SKB) No. KB 2/VI/2021 [4], hate speech of defamation such as an insult against an individual regulated in ITE Law article 27 (3) is considered as an absolute delict, meaning only if the victim reports the police, the case will be enacted.

Hate speech has gained interest from many scholars to study it from various perspectives [5], yet identifying prosecutable language as hate speech requires understanding the law that regulates it since hate speech laws may differ in different countries. In Britain, religious and racial hate speech are taken differently based on the reasoning that contrary to religion, ethnicity is an inherent characteristic carried since birth. [6]. Hence, while only a threat against religion is prosecutable, hate speech against ethnicity has a wider scale, covering not only a threat but also an insult, and an offensive remark targeted based on ethnicity. In Swedish law, racial hate speech such as the case of hate speech about Roma is only prosecutable under a context beyond political discussion to protect freedom of speech [7].

Like those countries, hate speech is also regulated in Indonesia. In Indonesia, hate speech is regulated under ITE Law No. 11/2008 [8] which was amended to ITE Law No. 19/2016 [9]. Even after its revision, ITE Law still received various controversial responses. Maineké and Nola [10] in their study analyzed the impacts of some articles in ITE Law which are considered as having multi interpretations, namely article 27, article 28, and article 29. The impacts can be seen from its potential harm to freedom of speech and treatment of justice in prosecuting the perpetrators of hate speech. ITE Law. Tutik [11] questions the meaning of the phrase “*rasa kebencian*” (feeling of hatred) in article 28 (2) in ITE Law which was considered as ambiguous and required more explanations. Rohmana [12] examined defamation article in ITE Law against Criminal Code (KUHP) and suggested some solutions on their conflicting items, for example suggesting defamation cases to be proven to cause material consequences. Anam and Hafiz [13], however, stated that the main difference between hate speech and other speeches is intention, among others, intention to discriminate, to cause intolerance, hostility and violence based on ethic, religion. They further recommended that hate speech cases must be evaluated based on some considerations such as the perpetrator profile, the context, the intention, the content of the speech, and the channel of dissemination. Despite its controversy, ITE Law is sustained and used to prosecute hate speech. This then raises a question concerning what criteria of hate speech that can end into a conviction according to Indonesian regulation. Therefore, different from the motivation of previous studies, this study is not attempted formulate typical language form of hate speech nor to criticize the Law. This study examined the reasoning of hate speech prosecution under ITE Law by studying the judges’ considerations on the elements of hate speech by using appraisal framework. This study is intended to provide some insights into the prosecutable hate speech under ITE Law.

Appraisal framework has been used in numerous studies. Appraisal analysis has been used to study many different genres of text such as news texts [14] to uncover various sentiment analysis such as the bias of the appraisers and the authors, the type of the attitude and manner in expressing sentiment. Appraisal analysis also has been applied to study stances in discourses, such as threatening discourse [15], institutional discourse [16]. In addition, although applying appraisal framework to evaluate various texts provide some challenges as elaborated by Fuoli [17], appraisal framework has been also used to study the language in legal contexts such as a study on criminal court discourse by Dai and Zou [18] which has been claimed to be useful to provide new insights in studying legal texts from the perspective of linguistics. In addition, the study of closing arguments in rape trial using appraisal analysis was able to reveal how the defendant and the victim were portrayed by lawyers, how at the end they used language that can show their attempt to show their credibility in depicting their version of the event [19]. This research also used appraisal framework, particularly attitude and engagement appraisal system. However, different from the previous studies, this study applies appraisal analysis to study the judges’ considerations in hate speech cases. The result of the

study is hoped to contribute to the understanding of hate speech regulated under ITE Law, particularly article 28 (2) of ITE Law. The main research questions guiding this study is “How are the judges interpretations and stances reflected in their‘ considerations of the element of hate speech cases against article 28 (2) of ITE Law? The answer to this question would be obtained through the following questions on appraisal analysis: (1) What are the attitude resources of appraisal framework in the judges‘ considerations of the elements of hate speech cases? (2) What are the engagement resources in the judges‘ considerations of the elements of hate speech cases?

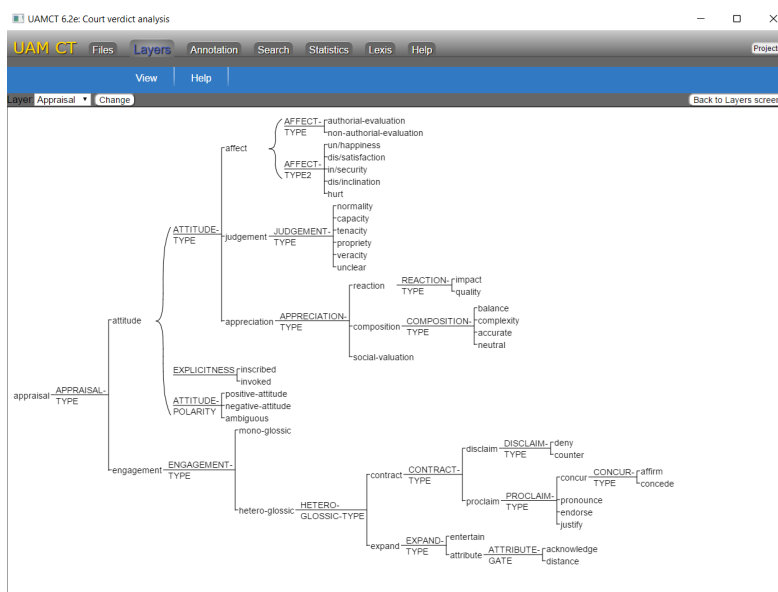
## 2 Method

This research is conducted using the appraisal analysis framework by Martin and White [20]. The data used in this study are two court verdicts (CV) published on the Supreme Court’s website <https://putusan3.mahkamahagung.co.id/>. Those CV were retrieved by typing hate speech in the search box and selected based on the type of hate speech; namely hate speech against religion, namely Islam. This study focused on examining the judge’s consideration in evaluating the element of hate speech cases against religion, focusing on their evaluation of the fulfilment of the elements of hate speech as stated in ITE Law article 45A paragraph 2 and article 28 (2). As formulated in a Decree of Chief Justice of Supreme Court Indonesian Republic No. 44/KMA/SK/III/2014 [21], the judges’ considerations began after the statements of the witnesses, expert witnesses, and the narration of the events or the facts were revealed during the trial. In this consideration, the judges examined whether the defendant could be proven guilty of committing hate speech against SARA as regulated in the ITE Law by assessing the fulfilment of the elements of hate speech cases.

The two court verdicts (CV) selected can be described as follows: (1) they were both hate speech cases against Article 45A paragraph 2 and Article 28 (2) Electronic Information and Transaction (ITE) Law No. 11/2008, which was amended into ITE Law No. 19/2016. (2) The hate speeches were both directed against religion (in this case Islam), (3) The words token in the judges’ consideration of the elements of hate speech as stated in Article 28 (2) ITE law is about the same, 2158 and 2296 words token (4) In both cases, the perpetrators were convicted with no more than 12 months jail punishment. (5) The words token for the word “menimbang” (consider) stated in the panel of judges’ consideration are 22 tokens in CV 1 and 31 tokens in CV 2. This number neither equally indicates the number of evaluative items nor elements of hate speech presented in their reasoning. Therefore, further investigation using appraisal analysis by Martin and White was carried out to determine how the judges evaluated or considered the hate speech cases against the elements of hate speech as stated in articles 45A and 28 (2) ITE Law before rendering their decision.

To analyse the data, this study used UAM CorpusTool6, a software designed to annotate texts using multiple coding schemes (layers), perform basic statistical analysis, and visualize the results [22]. This software is available free at <http://www.corpustool.com/index.html>. UAM CorpusTool has been proven to help conduct appraisal analysis to explore the language of evaluation in interview programs [23], analysing persuasive reasons in crowdfunding to compare strategies in successful and unsuccessful projects [24].

The procedure of analysing the data began after uploading the text. Before the process of annotating, the schemes layer was determined. UAM CorpusTool has provided appraisal analysis schemes, which can be adjusted for the study. For this study, we focused on attitude and engagement as follows.



**Fig. 1.** Coding Schemes (layers): Attitude and Engagement

After the coding schemes were determined, the annotating process was started by highlighting propositions containing evaluative words, phrases and clauses (appraisal items) and choosing the categories from the layers. As particular propositions were highlighted, the categories of appraisal analysis appeared at the bottom of the text, which can then be selected. In determining the code (layer) for particular propositions, theories on each segment of appraisal analysis were frequently visited to minimize confusion in coding. In addition, the annotation between the two texts was also re-examined to ensure consistency in tagging similar items. This analysis can be seen in the following figure (figure 2).

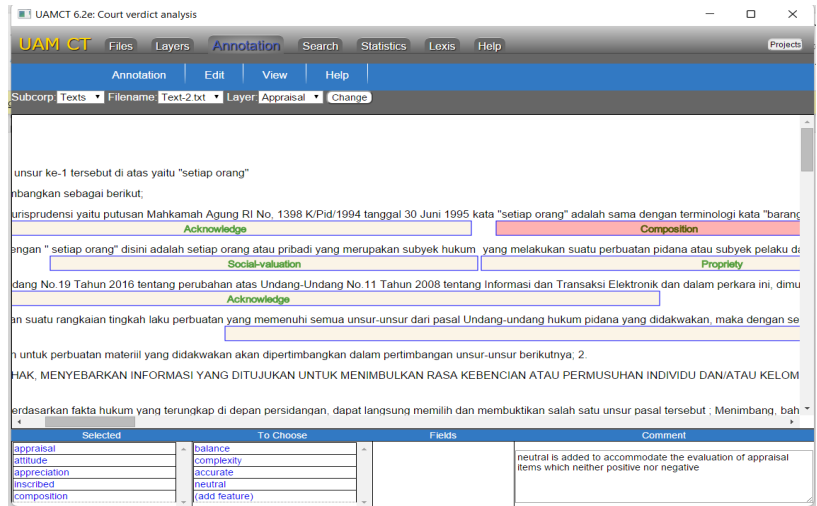


Fig. 2. Annotating the texts

After the text was annotated based on the designed appraisal system, the results of the analysis appeared when the statistics window was clicked. The number of annotations was automatically calculated and presented as shown in figure 3.

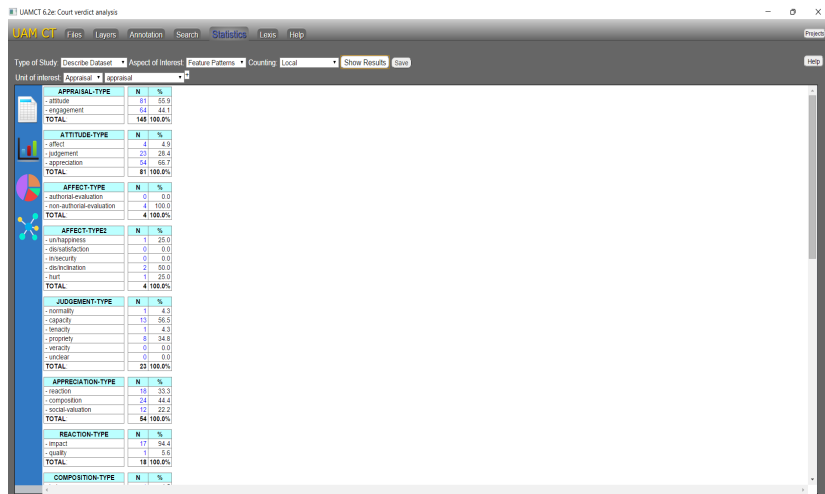
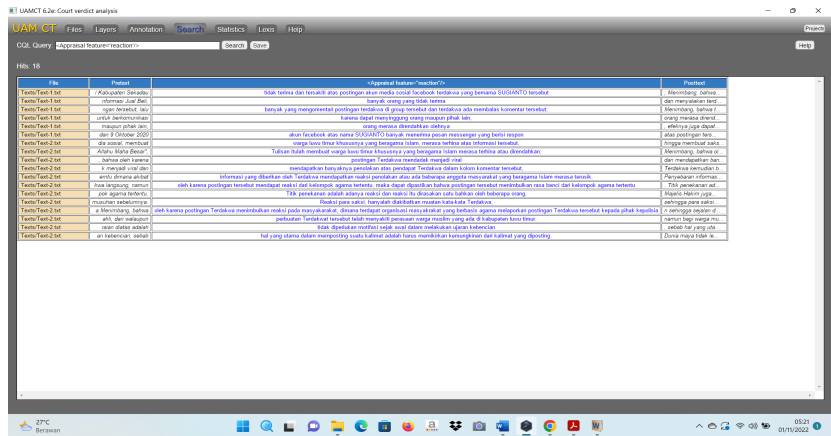


Fig. 3. Visualizing the basic statistics of the annotation (in number and percentage)

To reexamine the details of annotated propositions, the researchers clicked the number of appraisal category to find out the details of those propositions which had been grouped under the selected category (figure 3). This can be further classified to provide information about who appraises (the appraiser) what (the appraised) with what words, phrases, and clauses (appraisal items). Hence, the examination can be more comprehensive.



| File          | Pretext          | Text  | Posttext            |
|---------------|------------------|---|---------------------|
| TentuTentuDot | /Kategori-Sandhu | Sila terima dan terima atas postingan atau media sosial facebook tersebut yang bernama SUGANTO tersebut | Harusnya, bahwa     |
| TentuTentuDot | /Kategori-Sandhu | bagaimana yang saya bisa terima   | dan memulainya saat |
| TentuTentuDot | /Kategori-Sandhu | yang tersebut itu   | Menanggapi, bahwa z |
| TentuTentuDot | /Kategori-Sandhu | bagaimana yang postingan tersebut di grup tersebut dan media yang tersebut tersebut                     | yang media sosial   |
| TentuTentuDot | /Kategori-Sandhu | bagaimana dengan postingan tersebut   | yang postingan saat |
| TentuTentuDot | /Kategori-Sandhu | bagaimana dengan postingan tersebut   | yang postingan saat |
| TentuTentuDot | /Kategori-Sandhu | bagaimana dengan postingan tersebut   | yang postingan saat |
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| TentuTentuDot | /Kategori-Sandhu | bagaimana dengan postingan tersebut   | yang postingan saat |
| TentuTentuDot | /Kategori-Sandhu | bagaimana dengan postingan tersebut   | yang postingan saat |
| TentuTentuDot | /Kategori-Sandhu | bagaimana dengan postingan tersebut   | yang postingan saat |
| TentuTentuDot | /Kategori-Sandhu | bagaimana dengan postingan tersebut   | yang postingan saat |

Fig. 4. The details of the grouped annotations

The results were then interpreted and discussed to determine how the judges appraised the elements of hate speech and the implication of the judges' evaluation which may reflect the weight of considerations in penalizing the perpetrators of hate speech.

### 3 Results and Discussions

Before presenting the results of the study, the two hate speech cases are shortly described to give the context of the cases.

CV 1: In the first data/court verdict, the defendant was reported as a preparator of hate speech against Islam. After watching the news about the rallies staged in front of Regional Legislative Councils (DPRD), the defendant posted a comment in a Facebook group account *“Ngapai nok yg demo orng islam ? “Emng bodoh kitak islam tuk* (Why moslem people who are rallying? Stupid indeed those moslems.). The defendant attached that comment above a picture of demonstration staged in front of DPRD. This comment went viral and he was then reported as committing hate speech against Islam.

CV2: After watching the riot between terrorist suspects and the counterterrorism police officers at the National Police Mobile Brigade Headquarters (Mako Brimob) that killed some of the police officers and a detainee, the defendant posted some comments in a Facebook group. In his comments, he discussed ISIS and HTI in which he stated *“dari ciri-ciri khas mereka selalu mengumandangkan takbir ‘Allah maha besar”* (Their distinctive characteristic is they always proclaim takbir (shouts of Allahu Akbar or God is great) “God is the greatest”). This comment then went viral and received strong protests from Islamic groups, and the defendant was reported to the police as having spread hate speech against Islam.

### 3.1 Results

#### 3.1.1 Attitudinal Resources

The attitudinal resources of each CV is presented in table 1 as follows.

**Table 1.** Attitudinal resources of CV 1 and CV 2

| Attitude          |                   | CV 1 |       | CV 2 |       |
|-------------------|-------------------|------|-------|------|-------|
| Type              | Affect            | 2    | 4.4%  | 2    | 5.6%  |
|                   | Judgment          | 13   | 28.9% | 10   | 27.8% |
|                   | Appreciation      | 30   | 66.7% | 24   | 66.7% |
| Explicitness      | Inscribe          | 32   | 94.1% | 27   | 93.1% |
|                   | Invoke            | 2    | 5.9%  | 2    | 6.9%  |
| Attitude Polarity | Positive Attitude | 12   | 36.4% | 8    | 29.6% |
|                   | Negative Attitude | 19   | 57.6% | 17   | 63.0% |
|                   | Ambiguous         | 2    | 6.1%  | 2    | 7.4%  |

Table 1 shows that the highest percentage of appraisal resources is appreciation both in CV 1 and CV2 with 66.7% appreciations in CV1 and 66.7% in that of CV2. In terms of explicitness the appraisal items were appraised explicitly (inscribed), with 94.1% in CV1 and 93.1% in CV2. In addition, the most attitude polarity is a negative attitude in both CVs. They are 57.6% in CV1 and slightly higher at 63.0% in CV2. Comparing the results of the types of attitudinal resources, the number suggests that judges put more weight on evaluating things, processes, or state of affairs as indicated in appreciation resources. This was mostly done by explicating their evaluation of the items, processes, or conditions of affairs.

Further examination under the subsystem of appreciation resources, the evaluation of composition is prevalent in CV 1, with 55.2%. Meanwhile, in CV2, 50% is reactions (table 2).

**Table 2.** Appreciation resources of CV 1 and CV 2

| Appreciation |                  | CV 1 |       | CV 2 |       |
|--------------|------------------|------|-------|------|-------|
| Type         | Reaction         | 6    | 20.0% | 12   | 50.0% |
|              | Composition      | 17   | 56.7% | 7    | 29.2% |
|              | Social Valuation | 7    | 23.3% | 5    | 20.8% |

#### 3.1.1 Engagement Resources

This engagement appraisal system indicates the sources of attitude whether the judges position themselves without allowing dialogical exchange by making their own assertions (monogloss) or negotiating and acknowledging dialogical differences by either contracting or expanding.

**Table 3.** Engagement resources of CV 1 and CV 2

| Engagement |                | CV 1 |       | CV 2 |       |
|------------|----------------|------|-------|------|-------|
| Type       | Mono-glossic   | 10   | 26.3% | 11   | 42.3% |
|            | Hetero-glossic | 28   | 73.7% | 15   | 57.7% |

Table 3 shows that engagement resources of both CVs are mainly hetero-glossic engagement with the number is slightly higher in CV1 (73.7%). Meanwhile, in CV2 hetero-glossic engagement is 57.7%. Further analysis of the hetero-glossic engagement in both CVs indicates that the subsystem of hetero-glossic is hetero-glossic expand with 60.7% in CV1 and 73.3% in CV2 (Table 4).

**Table 4.** Hetero-glossic resources of CV 1 and CV 2

| Hetero-glossic |          | CV 1 |       | CV 2 |       |
|----------------|----------|------|-------|------|-------|
| Type           | Contract | 11   | 39.3% | 4    | 26.7% |
|                | Expand   | 17   | 60.7% | 11   | 73.3% |

## 3.2 Discussions

### 3.2.1 Appraisal Analysis of Element “*Any person*”

As stated in the court verdicts, the appraiser (panel of judges) in two hate speech cases appraised the defendants (the appraised) in relation to the element of hate speech in article 28 (2) ITE law. The first part will discuss how the panel of judges appraised the first element “any person” of ITE Law. Based on the analysis using appraisal framework, the examples of sub categories of Attitude, namely judgment and appreciation, were identified. The following table describes how the judges as the appraisers evaluated this element.



**Table 5.** Appraisal Analysis of the Element “Any Person”

| Element of hate speech | Appraisal items  | Appraiser                 | The appraised            | Appraisal system |          |              |
|------------------------|--|---------------------------|--------------------------|------------------|----------|--------------|
|                        |  |                           |                          | Affect           | Judgment | Appreciation |
| Any person             | <i>Subjek hukum</i>  | Judges                    | Defendant                |                  |          | +Val         |
|                        | <i>Perbuatan pidana</i>  | Judges                    | Defendant                |                  | -Pro     |              |
|                        | <i>Dimintai pertanggung jawaban atas segala tindakannya</i>  | Judges                    | Defendant                |                  |          | +Val         |
|                        | <i>dapat hadir, sanggup mendengarkan, mengikuti persidangan, memberikan tanggapan, memberikan jawaban dengan baik dan lancar</i> | Judges                    | Defendant                |                  | +Cap     |              |
|                        | <i>Benar diri terdakwa</i>   | Judges                    | The defendant's identity |                  |          | +Comp        |
|                        | <i>Membenarkan</i>   | The defendant & witnesses | The defendant's identity |                  |          | +Comp        |
|                        | <i>Lengkap termuat</i>   | Judges                    | The defendant's identity |                  |          | +Comp        |

In appraising “any person”, the judges referred to the defendant. The judges described the defendant “*setiap orang atau pribadi yang merupakan subjek hukum*” (CV 1 & CV2) (every person or individual who is a legal subject or legal person). Although the appraisal items of *subjek hukum* is descriptive, in certain context descriptive and neutral language may function to be evaluative [17]. In the context of law, a legal subject or a legal person that can be an individual or corporation is an entity a holder of rights and responsibilities before the law [25] [26]. Based on that explanation, the judges’ appraisal towards the defendant in the element of any person as a legal subject or legal person is appreciation: valuation: positive. They considered the defendant as a thing (entity) that was evaluated positively (bearers of rights and responsibility).

To further explain the element of “Any person”, the judges stated that the defendant was “*subjek hukum yang melakukan suatu perbuatan pidana*” (legal subjects who committed criminal act). The judges used the term of “*perbuatan pidana*” instead of the other term, “*tindak pidana*”. This lexis “*perbuatan pidana*” according to Prof. Moeljatno as quoted by Lisi [27] is a criminal act that violates the law committed by a person. Consequently, he is punishable for it. Therefore, this lexis is related to a person’s behaviour that is morally wrong

(criminal act). In appraisal framework, this can be analysed as judgement: social sanction: propriety: negative.

In addition to evaluating the defendant as the doers of a criminal act, the judges also evaluated the defendant as they stated “*subyek pelaku... yang dapat dimintai pertanggungjawaban atas segala tindakannya*” (who can be demanded responsibility for his/her action). Again, the judges considered the defendant as an entity (legal subject) who was considered as being able to be taken accountable for his action. In appraisal framework, it is classified as appreciation: valuation: positive. In other words, the defendant was considered an entity that was appreciated positively in terms of his state of accountability for what he did. This statement is then elaborated in other part of the consideration, stating “...*dapat hadir, sanggup mendengarkan, dan mengikuti jalannya persidangan serta dapat memberikan tanggapan terhadap keterangan saksi-saksi, serta memberikan jawaban-jawaban atas pertanyaan Hakim dengan baik dan lancar*” (CV1) (during the trial the defendant was present, could listen and followed the trial as well as responded to the witnesses’ statements accordingly, as well as provided answers to the judges’ questions well and fluently). This statement refers to the judges evaluating the defendant’s behaviours during the trial. The defendant was considered a capable person of listening and responding to the witnesses’ and the judges’ statements and questions. Therefore, this statement indicates the example of judgement: social esteem: capability.

Further, the judges also perceived the defendant’s identity by cross-checking with the report (CV1 & CV2) and witnesses’ testimonials (stated in CV 2 only) whether the defendant presented before the trial was the right person. The judges perceived that the defendant’s identity matched the person who was presented before the trial stating that the defendant’s identity “*benar diri terdakwa*” (is the defendant himself) (CV2), “*lengkap termuat*” (completely written) (CV1). In addition, the witnesses also “*membenarkan*” or confirm the accuracy of the defendant’s identity. The judges’ and the witnesses’ perception of the defendant’s identity as accurate is identified as appreciation: composition: positive in appraisal framework.

Based on the elaboration on the appraising items in the element of any person above, at least three aspects of any person, which in this case refer to the defendant, were evaluated by the judges. First, the capacity of the defendant, which can be inferred from the appraisal items that he is healthy enough to stand the trial (e.g., he was able to attend and respond to questions fluently and clearly). His accountability, that is, he is considered as *subjek hukum* who has rights and responsibility and is accountable if proven guilty of committing a hate speech. Finally, the accuracy of his identity.

Having evaluated the element of any person, the judges then evaluated whether the defendant committing a criminal act as stated in the indictment. Therefore, the judges proceeded to examine the fulfilment of the following element.

### 3.2.2 Appraisal Analysis of the Element “knowingly and without authority disseminates information...SARA”

After evaluating the first element, the judges examined the following element before announcing their verdict. All pieces of evidence were then evaluated to determine whether they were coherently connected to one other and met the relevant criterion as stated in the

indictment of hate speech before reaching a verdict [28]. The following table (table 6) describes the evaluative languages (appraisal items) that indicate how the judges, the defendant, witnesses, and expert witnesses appraised the elements of hate speech, among others, the element of knowingly, information, electronic information, and the defendant's comments in social media.

**Table 6.** Appraisal Analysis of the Element "Knowingly and without authority disseminates information...SARA"

| Element of hate speech  | Appraisal items  | Appraiser                  | The appraised                            | Appraisal system |                |                         |
|---|--|----------------------------|--|------------------|----------------|-------------------------|
|   |  |                            |  | Affect           | Judgment       | Appreciation            |
| Knowingly and without authority disseminates information... SARA" | <i>melakukan perbuatan dengan menghendaki dan mengetahui akan akibat yang terjadi</i>                                      | Judges                     | Knowingly                                |                  | +Cap           |                         |
|   | <i>Kesengajaan sebagai maksud, kepastian, dan kemungkinan</i>  | Judges                     | knowingly                                |                  |                | Composition: Complexity |
|   | <i>Terdakwa di depan persidangan menyadari akibat tulisannya dapat saja membuat orang lain yang membacanya tersinggung</i> | Judges                     | The defendant, knowingly                 |                  | +Cap           |                         |
|   | <i>Tulisannya dapat saja ...yang membacanya tersinggung;</i>   | Defendant                  | The defendant's comments on social media |                  |                | Reaction: -Impact       |
|   | <i>banyak yang mengomentari postingan, banyak yang tidak terima</i>  | witnesses                  | The defendant's comments on social media |                  |                | Reaction: -Impact       |
|   | <i>memiliki arti, dapat dipahami</i>   | Judges                     | information                              |                  |                | +Comp: meaningful       |
|   | <i>Tulisan, suara, foto, gambar dst, yang dapat dilihat, diakses</i>   | Judges                     | Electronic information                   |                  |                | Composition             |
|   | <i>Warga LW merasa terhina atas informasi tersebut, terhina, tersakiti, tersinggung, direndahkan</i>                       | Witnesses & Expert witness | The defendant's comments on social media |                  |                | Reaction: -Impact       |
| <i>bodoh, ISIS, HTI</i>   | Defendant  | Islam                      |  |                  | +Comp<br>-prop |                         |

The judges evaluated the element knowingly with reference to the theory of *kesengajaan* (knowingly) as stated by Moeljatno and *memori penjelasan (memorie van toelichting)* as quoted by Erlandi [29] knowingly is appraised as an entity consisting of complexity components because it comprises *kesengajaan sebagai maksud, kepastian, dan kemungkinan* (knowingly as intentionality, certainty, and possibility). Having knowledge of circumstances in which the defendant realizes his act (in this case posting hate comments) will or may result in consequences prevented by Law can be tested subjectively to meet the *mens rea* requirement [30]. This is appraised as appreciation: reaction: impact. The judges also appraised the element information which can be classified into appreciation: composition: meaningful. Only information that has meaning and can be understood will bring some consequences. The consequence of the hate comments from the defendant is appraised as appreciation: reaction: impact. The impact was negative as seen from the appraisal items such

as *tulisannya dapat saja...yang membacanya tersinggung, banyak yang tidak terima* (his post could ...the readers felt offended, many protested).

The judges, as the appraisers, appraised the element of hate speech mostly through dialogic exchange of engagement resources. They used heteroglossic expand appraisal system (table 3 & table 4) by acknowledging Law theories, regulations, ITE Law as shown in the appraisal items, such as *R. Soesilo dalam penjelasan Pasal 390 KUHP, dalam ketentuan UU RI No. 19 tahun 2016*. In addition, the judges also acknowledge the defendant's testimonial (*terdakwa di depan persidangan menyadari akibat dari tulisannya...*), expert witness statements (e.g. *menurut pendapat ahli, ahli berpendapat*), witnesses' statements (e.g. *berdasarkan keterangan para saksi*). From the perspective of appraisal framework analysis, This dialogic exchange implies the judges allowed the stances of others as the reference of the judges' considerations in evaluating the facts revealed during the trial.

Instead of predominantly imposing their own opinions (monoglossic engagement), the judges position themselves by aligning with others' views regarding the cases. Nevertheless, it is finally the judges' stance that persists as the judges, in these hate speech cases, are convinced that all pieces of evidence lead to a conviction.

### 3.2.3 Implications of Judges' Considerations on the Elements of Hate Speech against article 28 (2) of ITE Law.

Based on the discussions of the findings in the previous sections, the judges' interpretations toward prosecutable hate speech against article 28 (2) of ITE Law was predominantly appreciation composition and reaction. The appreciation composition sourced from the evaluation of defendant as an entity of bearers of rights and responsibilities and that they were judged as having the accountability of spreading information which was understood by the witness and confirmed by the expert witnesses as containing hatred against religion (Islam). In addition, the hate comments elicited strong reactions from muslim groups as they felt, among others, insulted, and hurt by the hate comments. This could be the answer to the questions about "rasa kebencian" as stated by Tutik [11]. When hate comments caused strong protests and the targeted groups felt insulted, the defendant could be convicted. Therefore, it apparently sufficient to say that when hate speech went viral in social media (as in it received many negative reactions (comments) from the netizens or targeted groups), it is possible that the hate speech could then be reported and prosecuted under ITE Law.

In addition, the evaluation on element defendant knowingly is important in judges' considerations. This is related to the accountability of the defendant. As stated by Culpeper [31], [32] the key element in intentionality is the ability to predict the impacts of the actions or "foreseeability". Therefore, although the initial intention of the defendant might not be to incite hatred towards targeted groups, he might be convicted if he was aware of the consequences of his speech. As Haugh stated [33] the speakers are morally accountable for what they mean in their words.

## 3 Conclusion

Despite its controversy, ITE Law has been used to prosecute hate speech. Analyzing how judges consider the elements of the study should provide understanding on the implementation

of prosecutable hate speech. The elements of hate speech evaluated through appraisal analysis by the judges showed that at least three aspects of any person, which in this case refer to the defendant. First, the capacity of the defendant, which can be inferred from the appraisal items that he is healthy enough to stand the trial. His accountability, that is, he is considered as *subjek hukum* who has rights and responsibility and is accountable if proven guilty of committing a hate speech. Finally, the accuracy of his identity. Other elements of hate speech were appreciated mostly through attitude appreciations composition and impact. It means that the appraisal objects were not mainly human behaviours but an entity or process. As seen from the appraisal items and the appraised comprising of parts of elements of hate speech such as knowingly, information, the defendant's comment. As for engagement, the judges allow stances from others through engagement heteroglossic expand before at the end the judges took their own stance and announced their verdict. The results of this study contribute to the understanding of ITE Law through the lense linguistic analysis of appraisal framework. However, this study could be improved by also covering another subsystem of appraisal framework, namely graduation. Therefore, future study covering all subsystem of appraisal framework with more data could provide more in depth examination on judges' considerations or reasonings in evaluating hate speech cases. Another interesting study comparing racial and religious hate speech using appraisal framework to see whether they are evaluated differently could also be done in the future.

**Acknowledgments.** The authors would like to extend gratitude to Saudi Fund for Development of Universitas Negeri Jakarta and the Rector of Universitas Negeri Jakarta. This study is a part of a dissertation which is funded by Saudi Fund for Development of Universitas Negeri Jakarta.

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