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**ENFORCEMENT OF THE LAW AGAINST THE PROPAGATION OF
INFORMATION THAT INCITES HATRED OR INDIVIDUAL HOSTILITY BASED
ON ETHNIC, RELIGIOUS, RACIAL, AND INTER-GROUP THROUGH SOCIAL
MEDIA**

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Abstract

In a community life it is undeniable that conflicts can happen anywhere, by anyone, and at any time. The conflict occurs for any reason both least and the greatest and sometimes difficult to solve. In conflict situations, there can be conflicts between individuals, conflicts between groups, and even more complex conflicts, such as conflicts between tribes, religion, race, and inter-group that are subsequently in brief (SARA). The problem raised in this research is why perpetrators commit a criminal offence dissemination of electronic information containing the issue of SARA, how to apply criminal sanctions against perpetrators who spread the issue of SARA through social media based on prevailing laws and regulations, and how judgment of judges against perpetrators of dissemination of information containing the issue of SARA through electronic media. The results of the study showed that the causes of criminal issues spread to the issue of the perpetrators is the hatred of the Lampung people, because the perpetrator has had a dispute understanding of someone who is in Lampung. Differences of thought, disputes between individuals and groups is often the case, but do not necessarily blaspheme, overtake, and harasses with profanity phrases. Social Media was created for the means of communication and not for the event of the blasphemy.

Keywords: conflict, criminal offence, SARA, information dissemination, social Media.

I. INTRODUCTION

The global development of information and communication technology has triggered the growth of cyber communication, both among the government, socio-political institutions, and among the public. The development of communication was characterized by the utilization of new media as communication media. The communication that was initially limited to the personal interaction process in

person, is now growing online through the Internet. One of the widely used Internet-based communications is social media. Social media is an online media. Its users can easily participate, share, and create content including blogs, social networks, wikis, forums, and virtual worlds. A variety of social media is growing, and many people are interested in are Facebook, Myspace, and Twitter, Youtube, and so on. If traditional media uses print media and broadcast media, social media uses the Internet. Thus, social media as a means of communication has the role of bringing people (users) to participate actively by contributing and feedback openly, both to share information and to respond online in a fast time.¹

Indonesia itself is the 6th largest country for Internet users, no denying the people of Indonesia every day always hold a phone at their grasp. With the social media of the people of Indonesia can easily to communicate with each other, and in social media networks also the people of Indonesia can know each other between tribes, races, and groups. Indonesia is the country with the most ethnic groups in the world. There are more than 740 ethnic groups, of which in Papua there are 270 tribes. It means that Indonesia is a nation known for its diversity of tribes and cultures as well as the inherent characteristic of Indonesian people in the world. This diversity is coloring the social process that occurs in every area where the tribe is located, the tribes form patterns within the social structure so that there is a dynamic in its development. From the dynamics that occur, in a community there is an interaction process. This creates a dynamic community condition. One of the logical consequences of social interaction in addition to the associative social process is the occurrence of dissociative social processes, which means the opposition of 2 cultural elements in a society, so that they tend to reorient each other and do not meet each other.²

This social process is dissociative which leads to a negative thing because the process is directing in the direction of conflict in general in the community layer. In a community life it is undeniable that conflicts can happen anywhere, by anyone, and at any time. The conflict occurs for any reason both least and the greatest and sometimes difficult to solve. In conflict situations, there can be conflicts among individuals, conflicts between groups, and even more complex conflicts such as conflict between tribes, religion, race, and the next group in the short (SARA) in a nation. Factual, the conflict can occur in various regions in Indonesia, the pluralist society in its interaction does not always go well, in social interactions often occur, causing social conflict.³

¹ Tesselonicha Leuwol. 2018. "Penerapan Sanksi Pidana Terhadap Pelaku Cyber Crime Yang Menyebarkan Isu Suku, Ras, Agama Dan Antar Golongan (SARA) Melalui Media Sosial Ditinjau Dari Undang-Undang ITE Nomor 19 Tahun 2016". Jurnal Isu Sara, Vol. VII, No. 2, p. 27

² Zulyani Hidayah. 2015. *Ensiklopedi Suku Bangsa di Indonesia*. Pustaka Obor Indonesia, Jakarta, p. 18.

³ *Ibid*, p. 19.

The potential of conflict is always in every society, especially the community that is heterogeneous, either in terms of ethnicity (ethnic group), socio-economic, or religion. However, in a heterogeneous country, the potential for opposition is greater and easily invites conflict. Conflicts often occur due to differences in interests among community communities. But as technology and time evolves, many individuals or even irresponsible groups are utilizing the Internet mass media that is supposed to be a positive information dissemination tool misused to be the dissemination of negative information moreover the information invites divisions between individuals one with another, even groups one with the other. One of the most committed criminal acts of today is the abuse of computer technology, which has risen to become a crime in cyberspace or better known as Cyber Crime. Cyber Crime is a term that refers to the activity of crimes with computer or computer networks into tools or targets, and where the crime.⁴

Among other things is the dissemination of Sara's issues by the people who do not have a sense of responsibility to act arbitrarily by spreading hatred among those who like to use social media networks. It is viewed more broadly that SARA's understanding is a variety of views and actions based on identity sentiments relating to heredity, religion, nationality or ethnicity and class. Any act involving violence, discrimination and harassment that is based on self-identity and group can be said to be SARA's actions. In Cyber Crime criminal acts that are targeted by the perpetrator is crimes committed against others, in order to ruin the good name. In this case there are three approaches to maintaining security on the Internet, first is the technological approach, both the social-culture-ethics approach, and the three legal approaches. To overcome the security of interference technological approach is absolutely done, because without a network security will be very easily compromised or accessed illegally and without rights.

Seeing the legal facts as they exist at this time, the impact of the development of science and technology that has been abused as a means of this crime becomes extremely important to be anticipated how its legal policy, so that Cyber Crime can be done with criminal law, including in this case is the system of application of Pidananya sanctions. The governing law of Cyber Crime is Law No. 11 of 2008 on information and electronic transactions which is currently changed into law No. 19 of 2016 on electronic information and Transactions (hereinafter abbreviated as). With this countermeasure as well as the adoption of Cyber Crime criminal sanctions is younger to overcome. As for the governing law, it is governed in various rules of Perundang-undangan with the Act No. 19 of 2016 about Electronic Information and Transactions article 45 Letter (a) paragraph (2). The Code of Criminal law is contained in article 156 and article 156 letter (a).⁵

⁴ Barda Nawawi Arief. 2006. *Tindak Pidana Mayantara dan Perkembangan Kajian Cyber Crime di Indonesia*. Rajawali Pers, Jakarta, p. 25.

⁵ *Ibid*, p. 27.

One of the cases of criminal offence dissemination of information that incited hatred or hostility based on the issue of SARA was on verdict No. 900/Pid. Sus/2018/PN. Tjk. Alleged that the defendant Suyanto Bin Ismangun proved legally and conclusive guilty of committing a criminal offence "deliberately and without the right to disseminate information intended to cause a sense of individual hatred or hostility To impose a criminal offence against the defendant therefore with imprisonment for 1 (one) Year 8 (eight) months, establishing a period of arrest and detention has been undertaken by the defendant was deducted entirely from the criminal being dropped. Based on the background of the research problem above, the issue of this research is why perpetrators commit the criminal offense of electronic information containing ethnic, religious, racial, and inter-group issues? How is the implementation of criminal sanctions on criminal acts spreading the issues of ethnic, religious, racial, and inter-group (SARA) through social Media based on prevailing laws and regulations? How does the judge's consideration of the criminal offense of information dissemination containing ethnic, religious, racial, and inter-group issues through electronic media?

The research methodology used is a normative juridical approach and empirical approach. A normative juridical approach is an approach by studying the rules, norms, rules, related to the problems that will be researched through the library research, the legal sciences, especially the problems of the parties in the proceedings, the opinion of the law scholars and the prevailing laws and regulations. This approach is intended to collect a wide range of rules, theories and literature that closely relate to the problems that will be researched. The empirical approach is by researching and collecting primary data obtained directly through research into the objects of research by observation and interviewee interviews related to the issues discussed in the study.

II. DISCUSSION

A. The understanding and legal basis for the dissemination of information that incites inter-ethnic, religious, racial, and inter-group hostility

One of the most committed criminal acts of today is the abuse of computer technology, which has risen to become a crime in cyberspace or better known as Cyber Crime. Cyber Crime is a term that refers to the activity of crimes with computer or computer networks into tools or targets, and where the crime is happening. Among other things is the dissemination of issues involving the tribe, religion, race and inter-group or commonly abbreviated (SARA) by the people who have no sense of responsibility so as to act arbitrarily by spreading hatred among people who like to use social media networks. It is viewed more broadly that SARA's

understanding is a variety of views and actions based on the identity of heredity, religion, nationality or ethnicity and class. Any act involving violence, discrimination and harassment that is based on self-identity and group can be said to be SARA's actions.

In a community life it is undeniable that conflicts can happen anywhere, by anyone, and at any time. The conflict occurs for any reason both least and the greatest and sometimes difficult to solve. In conflict situations, conflicts can occur among individuals, conflicts between groups, and even more complex conflicts such as ethnic, religious, racial, and inter-group conflicts. Any act involving violence, discrimination and harassment that is based on self-identity and group can be said to be the act of SARA.⁶

In the criminal law in Indonesia is an investigation of how the reasons for sitting is an investigation of the reasons for the reason of the occurrence of the criminal event contained in article 156 of the Penal Code and 156 letter (a) of the penal CODE in the possibility of the creation of SARA in it. The articles are intended to maintain or protect or warrant "equality" as one of human rights and prevent discrimination. Meanwhile, according to Seno Adji, "before the independence of this chapter Dimksudkan to eradicate our nationality and independence, this chapter is a Haatzai-artikelen insertion that is not favored, in which the object of the deeds in this article is the deed of the population, which among others is different because of religion, while in the Netherlands itself is rejected and channeled through other Similarly, the opinions of Seno Adji, "New in the independent nature and in the state of Pancasila, where the confession of the Godhead the Almighty cannot be separated with religion, applied the designation of the President of the Republic of Indonesia number 1 year 1965 about abuse and blasphemy, which seems to receive a welcome response to the Indonesian society".⁷

The effectiveness of the article can certainly be seen from at least two sides, namely the arrangement and application/enforcement. By arrangement, the formulation of this article has been assessed enough. Meanwhile, in the implementation or enforcement aspect of the article, it depends on each case or in other words, the implementation of the article is relatively difficult to measure its effectiveness.

B. Factors causing a criminal offence to disseminate electronic information containing ethnic, religious, racial, and inter-group issues.

In conventional and digital media, hate speech is often found. Social media

⁶ Lilik Mulyadi. 2007. *Kekuasaan KeHakiman*. Bina Ilmu, Surabaya, p. 25.

⁷ Hasbulah. 2011. "Agama dan Etnis di Pentas Politik Lokal (Tinjauan Terhadap Penggunaan Simbol Agama dan Etnis dalam Pilkada)". *Jurnal Ushuluddin*, Vol. XVII, No. 2, p. 39.

does facilitate people to express their ideas, but social media can also incarnate into a master's feeding weapon and some people have to deal with the law as they spill their aspirations, their heads and their feelings toward certain parties. Hate speech can be said to be part of hate criminality, it is formulated as an act of inciting others to hate a certain party, not only based on SARA, but also based on disability or sexual orientation. Can be seen in the case of hate speech by Donald Trump that objectify those who are identity as immigrants or women. Not infrequently hate speech is targeted to more than one identity inherent in the object, Ahok for example the target of hate speech partly because of him a Chinese and Christian.

Based on the results of the interview with B. Panggabean as an investigator at Polresta Bandar Lampung, actually not without reason or just a person's interest in creating speech or hate crime, the main factors that motivate a person to make or perform hate speech, is a bad prejudice against a particular person or group. This prejudice could be formed from the socialization and interaction carried out continuously by the family, school or university environment, friends of the same, or people around the perpetrators of hate speech. No matter the track record or the positive things that have been done or made by the object of hatred, without the mercy of the perpetrator will judge the person or group.

Hate speech is carried out continuously in an environment where a person lives can be understood also as an effort to form cohesiveness in a group or commonly called social cohesion, the greater the level of conformity or social influence to express hatred, the greater the power to drop a particular group. While based on research and interviews in the Lampung high attorney, Rosman Yusa said that the factors affecting a person committing a criminal issue of the event are a conflict or a factor of disappointment in the particular action that the object takes, which triggers a status maker or hate speech maker to assert negative things about it. In these cases, hate speech makers feel a conflict with a certain tribe, then this can be said revenge motive of hate speech to the object. So, hate speech makers no matter what the news of lying or opinion does, if it can channel the desires of his dislike, all these things are considered legitimate by him to read and share.

According to Hasmy and Syamsudin, as a judge in the state court of class 1A of Tanjung Karang, ethically spreading the issue of SARA is a bad deed, can even be considered disturbing the rights of others or other groups. For people who uphold ethics, they condemn the existence of this SARA issue, and are even going to be hit with real facts. Raising the facts, will make the existence of the issue weaker, because an issue is merely the news of the wind is unclear references.

C. Application of criminal sanctions against perpetrators of criminal acts spreading ethnic, religious, racial, and inter-group issues through social Media

Criminal sanctions are a kind of sanctioned sanctions that are threatened or imposed on acts or perpetration or criminal acts that may interfere with or harm the public interest. Usually criminal sanction is a means of rehabilitating a person's behavior from a distorted good, but not infrequently as a threat of deviant behavior from the human being. In the year 2018, there was a criminal offence case that caused the hatred or hostility of the individual based on the tribe, religion, race and intergroup and the perpetrator was successfully arrested and tried. In this case the author raises one of the cases in Sidorejo Village Sidomulyo district of South Lampung Regency and because the residence of most witnesses domiciled in Bandar Lampung, the defendant was arrested in Rutan Way Hui Bandar Lampung, then the District Court of Tanjung Karang authorized to examine the matter on July 16, 2018.

Deeds for criminal liability, must contain mistakes. Mistakes in the sense of error forms can also be said to be errors in the juridical sense, which is an intentional (*dolus* or *Opzet*) or misconduct (*culpa*). In the case of the ruling No. 900/Pid. Sus/2018/PN. TJK What was done by the defendant Suyanto Bin Ismangun included a deliberate mistake. Wrongful mistake perpetrators of criminal acts according to Wirjono Prodjodikoro: In theory of Intent (*Opzet*) is to want and know (*Willens en wettens*) deeds made consist of 2 (two) theories:

1. The theory of wills (*Wilstheroie*), the will to manifest the Unsu-element of criminal acts in the law.
2. Knowledge theory or picture (*voorstellings Theorie*), perpetrators can imagine the occurrence of the consequences of his deeds.

Most criminal acts have an intentional or *opzet* element. This deliberate has 3 (three) kinds, namely:

1. Deliberate intent (*Oogmerk*)
It can be said that the perpetrator really wants to achieve the cause that is the reason for a criminal penalty threat.
2. The deliberate intent of the certainty (*Opzet Bij Zekerheids-Bewustzinj*)
This kind of deliberate, if the perpetrator with his deeds is not aiming to achieve the consequence that is the basis of delict, but he knows correctly that the consequences will surely follow the deed.
3. The possibility of the conversion of the possibilities (*Opzet Bij Mogelijkheids-Bewustzijn*) Other things with the blatantly intentional not accompanied by a shadow of certainty will occur, but it is only imagined a possibility of the consequence.⁸

⁸ Leden Marpaung. 2009. *Proses Penanganan Perkara Pidana*. Sinar Grafika, Jakarta, p. 295.

Electronic information and transactions are one thing that cannot be separated with the community today, it can be said it is already a part of life. Therefore, in the establishment of rules that concern the Government need to give full participation to social groups or individuals in the community, so it can form a legal product that reflects the sense of fairness and meet the expectations of society. But in changes to the Act No. 19 of 2016 about Electronic Information and Transactions, there is still little shortage and still potentially inflict evil in cyberspace, and arguably change of the Act No. 19 of 2016 about Electronic Information and Transactions is always closed from the view of the Community, the provisions of the same as the PENAL code that is still able to reach the deeds done with the Internet media, the articles in the ITE law is still a multitaqir, and the existence of the closure of access to content that is deemed to be charged violation of laws that are deemed to restrict freedom in.

D. Judge considerations against perpetrators of dissemination of information containing ethnic, religious, racial, and inter-group issues through electronic Media

In determining the achievement of a verdict that contains justice, the certainty of the law and the benefit to the party concerned is required the basis of the judge's consideration in determining the verdict or punishment. Therefore, the judgment of the judge must be done in a good, thorough, and thorough way in determining or examining a matter as a matter of consideration in disconnecting a thing. In punitive or ruling, the judges do so base on the theory or results of related research to achieve maximum results. This is because the decision of the judge is important in achieving a legal certainty, where the judge is a law enforcement officer whose decision is permanent and a benchmark to achieve a legal certainty.

The judge in the examination of a case also requires proof, where the result of the evidence is used as a matter of consideration in breaking things. Proof is the most important stage of examination in the trial. The evidence aims to obtain assurance that an event or fact submitted is happening, in order to obtain the true and righteous judgment. The judge was unable to impose a verdict before real for him that the event or fact was happening, namely evidenced by the truth, so that there was a legal relationship between the parties.

Moreover, the judge's consideration should also include the following things:

1. The subject matter and the matters acknowledged, or the evidence is not denied.
2. The existence of a juridical analysis of the ruling on all aspects concerning all the facts/things proved in the trial.
3. The existence of all parts of the claimant's petitum must be considered/tried one after another so that the judge can draw conclusions about the

proved/not and can be granted the claim in the ruling Amar.⁹

Based on the results of the interview with Hasmy as the judge in the District Court class 1A Tanjung Karang, he stated that the criminal act committed by Suyanto Bin Ismangun has violated the provisions of article 45A paragraph (2) Jo article 28 paragraph (2) Act No. 19 of 2016 about Electronic Information and Transactions containing the elements of each person intentionally and without the right to disseminate information intended to elicit the hatred or hostility of individuals and or specific groups of people based on ethnic , religion, Race and Intergroup (SARA). Based on the explanation above, the judge still severs the defendant with article 45A paragraph (2) Jo article 28 paragraph (2) of Act No. 19 of 2016 about Electronic Information and Transactions, because it is the only thing that makes a post containing the elements of SARA.

III. CONCLUSION

Based on the above explanation and the discussion in the previous chapter, the conclusion that can be taken is in the spread of the issue of SARA there are three criteria of the perpetrator, the first is individual or individual, second is group and the third is the institution. A person or group or institution that commits criminal issues of SARA consists of several factors, i.e. a bad prejudice to a particular individual or group, the environment in which one is likely to promote social cohesion, cooperation with a particular person, only to seek sensation, to corner an individual or group, and also to complain between one group and another. Divided into two parties, the first is the party who deliberately committed a criminal offence issue of SARA, and the second is the one who does without the idea of what it is done is a criminal act. According to ruling No. 900/Pid. Sus/2018/PN. TJK The factor that encourages the defendant to make the post is because of the hate factor against the Lampung people, because the defendant once had a dispute with someone who is in Lampung. The advice that can be given to the community is in today's society especially for users of social media networks need to have feelings of mutual respect to each other and to know how to use social media well so as not to cause conflicts of laws that can pose problems between tribes, religions, races and between groups more specifically in our own country Indonesia. Social media ethics for a multiethnic society is indispensable, although social media can be emotionally immutable and even a conduit that can heal people. However, keep in mind social media is amazingly easy and keep in mind the spread is amazingly easy anyway. The risk of unfamiliarity ethics can lead to legal issues. Mutual respect and not prejudice against the individual with each other are one way to minimize the crime of the SARA issue. Differences of thought, disputes between individuals and groups is often the case, but do not

⁹ Lilik Mulyadi. 2007. *Op. Cit.*, p. 136.

necessarily blaspheme, overtake, and harasses with profanity phrases. Social Media was created for the means of communication and not for the event of the Blasphemy

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