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**JURIDICAL REVIEW HATE SPEECH LAW NO. 11 YEAR 2008 JUNCTO LAW
NO. 19 OF 2016 CONCERNING ELECTRONIC INFORMATION AND
TRANSACTIONS IN PROVIDING COMMUNICATION ETHICS EDUCATION
IN SOCIAL MEDIA**

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Abstract

Social media is an online media, which makes it easy for us to communicate openly; social media is able to shift conventional mass media in spreading the news. Through social media everyone gets an expression space that is free and easy to communicate, free to express, criticize and share on social media. But in its journey social media provides a space of freedom that transcends boundaries and strikes norms and ethics. Now the easier it is for someone to do hate speech in the form of provocation, incitement, or insult to other individuals or groups in terms of various aspects such as race, color, ethnicity, gender, disability to sexual orientation, citizenship and religion on social media. The legal rules regarding hate speech are regulated in Article 310 and 311 of the Criminal Code and Law Number 40 of 2008 Law Number 11 of 2008. Building good ethics on social media is the rule of law that social media users can know and understand the limitations in communicating on social media so as to create good, polite, responsible and civilized communication ethics.

Keywords: Hate Speech, Ethics, Social Media, Information and Electronic Transactions.

I. INTRODUCTION

In the era of globalization, the development of Telecommunication and Informatics (IT) is growing rapidly. Technology makes distance no longer a significant problem in communication. Social media is one of the innovations in information and communication technology that allows us to be able to interact and share information at any time with everyone without having to face-to-face (Cyber Public Room). The emergence of social media shifts the mass media that do not rely a lot on the internet in their activities such as television, radio, newspapers and so on. Social media is a site that provides a place for users to interact with each other online without time and distance. In the current era of globalization, social media is a basic necessity for some people whose activities cannot be released on the internet or online. Currently there are many types of social media ranging from Friendster, Facebook, Twitter, Instagram, and Path and so on, who indulge social media users to choose which social media is suitable. Social media has the same function which is equally used to establish online communication.

Social media is an online media, with its users can easily participate, share and create content including blogs, social networks, wikis, forums and the virtual world. Blogs, social networks and wikis are the most common forms of social media used by people throughout the world. Progress in communicating through social media brings changes in the fabric of life in society. Social media is an online media that makes it easy for us to communicate openly and social media is able to shift conventional mass media in spreading the news. Through social media, every person gets a free and easy space of expression to communicate and share on social media, which sometimes cannot be channeled in the real world. Social media has removed the barriers to communicating by making a world without space and time. Without large costs, expensive tools that social media users can do on their own can freely edit, add and update text, images and videos. In social media users can post personal opinions or images or videos that will be responded to in the form of likes and even can become viral on social media. This has become the advantage of social

media because users do not need to publish in newspapers or magazines to be seen by many people.

Gaining free expression space sometimes social media users forget the right ethics of opinion and communication. When this happens there is a phenomenon about social media users who in communication sometimes do not refer to the norms that exist in the community and tend to be unethical. Dropping other people and spreading false news without clear facts. This is caused by various kinds of interests ranging from political interests, hatred towards one group, just looking for sensation and business competition. Nowadays, the news which is uncertain is easy to spread on social media is easily and is aggravated by the people who accept the news that come in unambiguously without first being tested.

This phenomenon has begun to unsettle social media users, moreover lately it has become a hot ball, an expression of hate speech which has begun to cause inconvenience in social media and conflict. Though the Indonesian nation as a nation that has a well-known cultural and ethical polite and courteous in communicating. Supposedly norms in good communication not only applied in the real world but also when in social media. Freedom protected by law and human rights must be directly proportional to courtesy and not cause conflict between citizens. It must be fostered by the realization that freedom of opinion in a democratic society is freedom that is responsible and ethical. Based on the background of the problem above, then the problem can be formulated as follows: What is meant by hate speech, how is the rule of law related to hate speech in social media and how to build good ethics in communicating on social media.

II. DISCUSSION

A. The meaning of hate speech

Is an act of communication carried out by an individual or group in the form of provocation, provocation, or insults to other individuals or groups in terms of various aspects such as race, color, ethnicity, gender, sexual orientation, citizenship, religion, etc. In the legal sense, hate speech is a word, behavior, writing, or show that is prohibited because it can trigger acts of violence and prejudice either from the perpetrators of the statement or the victims of the act. Hate Speech is a prohibited word, behavior, writing, or performance because it can trigger acts of violence and prejudice either from the perpetrators of the statement or the victims of the act. Websites that use or apply Hate Speech are called Hate Sites. Most of these sites use Internet Forums and News to reinforce a certain point of view.

Elements of hate speech:

1. All actions and efforts, both direct and indirect, that is, there are two inseparable meanings, namely: A. various forms of human behavior both oral and written (for example speech, writing, and drawing). B. the action is intended so that other people or groups do what we recommend / suggest. These actions are active support, not just one-time actions aimed directly at targets.
2. One based on hatred based on race, religion, religious beliefs, convictions / beliefs, racial, sectarian, skin color, ethnicity, gender, people with disabilities, and sexual orientation.
3. That is incitement against individuals or groups in order to prevent discrimination, violence, disappearances of life and / or social conflict.

Hate speech can be done through various media, among others: 1) In the oration of campaign activities, 2) Banners, 3) Social media networks, 4) Public opinion submission (demonstration), 5) Religious talks, 6) In print or electronic media, 7) Pamphlet. In the world of social media, 'hater' is a term for a hater, and a number of haters are called 'haters'. Hate basically arises because of many things, among others: differences of opinion, social / political / cultural jealousy, lack of sportsmanship in dealing with defeat, offense, dissatisfaction and so on. We can analyze why a hater vents his hatred on social media. If we talk from the positive side, someone hates to vent emotions in his heart and expect to be heard and want the world to know about his hatred for someone or about something and hope for a change that makes him satisfied. When speaking negatively, the outburst of hatred on social media is his self-effort for self-satisfaction which frees him from the hatred that makes him uncomfortable. Usually this is done by individuals who do not know the consequences and consequences. They do not know that there are laws that have clauses which can bring them to justice.

Resentment is fostered and began to bloom among the people in which Indonesia is a nation that is known for its polite, friendly and religious people because of a shift in values. With social media a person can freely express their hatred by hiding behind cyberspace, they can appear anonymous, profiles and fake names this is made easy with easy media tools, websites, viral viral links and photo editing facilities that are very easy and spoil them. Previously, outbursts of hatred could not be expressed freely in public because of fear of being caught and would be a negative conversation about his actions. Hate Speech is an act that is not based on social order in society, but it also has an impact on social conflict in society. Therefore hate speech needs to be dealt with quickly and appropriately so social conflicts do not occur. The reality is that in multicultural societies conflict is very likely, but a conflict can be overcome with.¹

The development of social media in Indonesia is increasing, the people are spoiled with all the conveniences and free space to just give

¹ H. Yadiman dan Rycko Amelza Dahniel. 2013. *Konflik Sosial Dan Anarkisme*. Yogyakarta. Andi Offset. p. 14

information, get information opinions and criticize. Social media life has increasingly shown immaturity for users of social media, currently social media is not a medium for exchanging information and establishing silaturahmi but shifting media triggers conflict and noise. Many behaviors of social media users are very much beyond the limits of reasonableness, manners and ethics that are well-known to be inherent in Indonesian society. Starting from posting hoaxes and becoming viral, up to quarreling and bullying in comments of each post or column that has tended to offend and insult someone or groups and expressions of hate speech (hate speech) is rife and begins to fret. To be understood together, Indonesia has laws that regulate bullying and hate speech.

The Role of Social Media in Hate Speech

Data on internet trends and social media 2019 in Indonesia according to Hootsuite:

Total Population (total population): 268.2 million (up 1% or around 3 million population from 2018), Unique Mobile Users: 355.5 million (down 19% or around 83 million from 2018), Internet users: 150 million (up 13% or around 17 from 2018), Active Social Media Users: 150 million (up 15% or around 20 from 2018) and Mobile Social Media Users: 130 million (up 8, 3% or about 10 from 2018). Speaking of the average daily time spent by Indonesians to access the internet from any device, it is noted that users in Indonesia spend a variety of time, with the following details: Average daily time using the internet through any device: 8 hours, 36 minutes, average daily time using social media through any device: 3 hours, 26 minutes, the average daily tv viewing time (broadcast, streaming and video about requests): 2 hours, 52 minutes and on average each time spent getting music: 1 hour, 22 minutes.²

Data from the internet and social media trends listed above shows that internet users and social media in Indonesia are developing very rapidly and

² <https://andi.link/hootsuite-we-are-social-indonesian-digital-report-2019/>

are leading to changes in civilization and people's lifestyles in modern society (digital era). The rapid use of technology in the world makes it easier for digital society to carry out activities. Technological developments also have an impact on the use of mass media, especially social media. Nowadays social media is not only used as a communication and outreach platform, but now social media is used for political, government and so on. This change brings the role of social media in the dissemination of information to the wider community and brings pengaruh in shaping public opinion and thinking and indirectly the role of social media can shape the construction of social reality of information or events very easily done through the internet and social media, so that the role of social media in shaping public opinion is very large towards an event. It takes correct information not news that is not true because in social media makes the world of cyber people communicate without face to face.

The development of social media is like a double-edged knife. On the one hand social media provides a great benefit to the development of information for the wider community but in addition social media provides a space of freedom that goes beyond borders and crashes into norms and ethics. Now it's easier for someone to give hate speech on social media. Phenomenon of hate speech has occurred in Indonesia (ethnicity, religion, politics, culture, etc.). The use of Information Technology, media and communication has changed the behavior of people and human civilization globally.³

The role of social media in the hate speech is huge and causes anxiety and rumbles. Now social media is no longer a place to get information, share information and silaturahmi events but is shifted into a means of utterance of hatred that attacks both individuals and groups. Hate speech is a scourge in social media today along with the development of technology and freedom of opinion and public expression. Speeches of hatred undermine the democratic order and freedom of opinion and expression in public because hate speech raises conflict and noise. The words of hatred that occur in Indonesia become a hot ball and must be considered by the government,

³ Abdul Wahid dan Mohammad Labib. 2005. *Kejahatan Mayantara (cyber crime)*. Bandung. Refika Aditama Inc. p. 33

law enforcement officers and the public about this hate speech not becoming increasingly developed and given space.

Hate speech is very dangerous because:

1. Humiliating human beings because humans are God's creation and no one without exception has the right to humiliate humanity and humanity.
2. Impact on conflict because hate speech is incited to antagonize people or groups which in turn can cause conflict. This conflict can be between individuals and extends into horizontal conflicts and vertical conflicts.
3. Can have an impact on the extermination of the group because this expression of hatred can create stereotyping, stigma, exclusion, discrimination and violence. If not dealt with and dealt with seriously, it can lead to collective hatred, which can be in the form of ethnic slaughter, burning of villages or expulsion of groups that become targets of hate speech.

The speech of hatred must be taken seriously by the Indonesian people today so that it does not develop and become an accommodation of interests that want to undermine our democratic order which has been so painstakingly established. Because the danger of hate speech cannot be underestimated in 1966 the UN issued the International Covenant on Civil and Political Rights (ICCPR) which prohibits "hate campaigns against nationalities, races and religions that are incitement to acts of hostility, violence and discrimination". Hate speech should not be used as propaganda to achieve an interest that can threaten the integrity, diversity and brotherhood of the Indonesian people.

Hate speech if not handled properly, then becomes a threat to Indonesian democracy and our sole diversity. The Indonesian nation is a diverse nation with diverse ethnic, ethnic, racial and religious cultures that work together and together build the Indonesian nation. Hate speech is spread without

obstacles in Indonesia and without firm action from the government can be a threat. For this reason, it is necessary to discipline and provide ethical education in communicating on good social media. If this condition is left without action then this condition provides an opportunity for the transformation of a number of hardliners to shift the issue from the struggle of armed war to armed war of words.

B. The Rule of Hate Speech on Social Media

Article 28 paragraphs (2) everyone intentionally and without the right to disseminate information intended to incite hatred or hostility of certain individuals and / or groups of people based on ethnicity, religion, and race and intergroup. Article 45 paragraph (2) Every person who fulfills the elements referred to in Article 28 paragraph (1) or paragraph (2) shall be sentenced to a maximum imprisonment of 6 (six) years and / or a maximum fine of Rp 1,000,000,000 (one billion rupiahs). Law Number 11 Year 2008 juncto Law Number 19 Year 2016 substantially contains 2 (two) main points, namely: first the problem of electronic information and second of electronic transactions.

Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination. Article 4: Racial and ethnic discriminatory acts in the form of: a. treat discrimination, exclusion, restriction, or election based on race and ethnicity, which results in the revocation or reduction of recognition, acquisition or exercise of human rights and basic freedoms in equality in the civil, political, economic, social and cultural fields; or b. show hatred or hatred towards people because of racial and ethnic differences in the form of acts: 1. make writing or pictures to be placed, posted, or distributed in public places or other places that can be seen or read by others; 2. making speeches, expressing, or making certain words in public places or other places that can be heard by others; 3. wearing something on him in the form of objects, words, or pictures in public places or other places that can be read by others; or 4. carrying out deprivation of life, ill-treatment, rape, obscene acts, theft with violence, or deprivation of liberty based on racial and ethnic discrimination. Article 16 Any person who intentionally shows

hatred or hatred towards others based on racial and ethnic discrimination as referred to in Article 4 letter b number 1, number 2, or number 3, shall be liable to a maximum imprisonment of 5 (five) years and / or a maximum fine of IDR 500,000,000 (five hundred million rupiah).

In the perspective of Human Rights in expressing public opinion Human Rights are basic rights inherent in human beings as creatures of God Almighty that must be protected. Definition of Human Rights, based on Article 1 Item 1 of Law Number 39 of 1999 concerning Human Rights (HAM) is a set of rights inherent in the nature and existence of humans as God's creatures and is a gift that must be respected, in uphold and protected by the State, the law, the Government, and everyone for the sake of honor and protection of human dignity and dignity. These rights are inherent in him as a human being, and apply to every member of humanity without regard to separating factors such as race, religion, color, caste, creed, gender or nationality.⁴

According to KOMNAS HAM Hate speech is a special concern and must be taken seriously because: 1. contradicting the Republic of Indonesia's foundation, Pancasila which emphasizes on the unity of Indonesia and humanity that is just and civilized. 2. Contrary to the Indonesian motto, namely *Bhinneka Tunggal Ika* which since the founding of the Indonesian people has become the motto of unifying the nation. Article 28J Paragraph (1) everyone is required to respect the human rights of others in the orderly life of the community, nation and state. Article 28J Paragraph (2) In exercising their rights and freedoms, every person is obliged to submit to the limitations stipulated by the Law with the sole purpose of guaranteeing recognition and respect for the rights of freedom of others and to fulfill fair demands in accordance with moral considerations, values religious values, security, public order in a democratic society. In expressing an opinion in the public domain is a human right guaranteed in Article 28 of the 1945 Constitution, "Freedom of association and assembly, expressing thoughts

⁴ Robert Haas, et al. 1998. *Hak-Hak Asasi Manusia dan Media*. Jakarta. Yayasan Obor Indonesia. p.13

verbally and in writing and so forth are determined by law". Freedom of expression is the right to seek, receive and spread ideas and information.⁵

Besides that, law enforcement for alleged acts of hate speech also refers to the Criminal Code: First: Article 156 of the Criminal Code. Whoever publicly declares hostility, hatred or contempt of one or several groups of the Indonesian people, is threatened with a maximum imprisonment of four years or a maximum fine of four thousand five hundred rupiah. The words of the groups in this article and the following chapters mean that each part of the Indonesian people is different from one or several other parts because of race, country of origin, religion, place, origin, ancestry, pride or position according to the constitutional law. Whereas Article 156a reads: To be sentenced to a maximum of five years imprisonment, whoever deliberately publicly issues or commits an act, a. Which is basically hostility, abuse or desecration of a religion that is embraced in Indonesia, b. With the intention that people do not follow any religion, which is based on the Godhead.

Second: Article 310 paragraph (1) of the Criminal Code concerning pollution; Anyone who deliberately attacks the honor or good name of a person, by accusing one thing, he meant clearly so that it is known publicly, threatened with pollution, with a maximum imprisonment of nine months or a maximum fine of three hundred rupiah. Article 310 paragraph (2) of the Criminal Code concerning written pollution; If this is done with a writing or picture that is broadcast, displayed or posted in public, then the person who is guilty, for written pollution, is liable to a maximum of one year and four months imprisonment or a maximum fine of three hundred rupiahs.

Third: Article 311 of the Criminal Code (1) if the person committing crime of pollution or written pollution is permitted to prove the truth of his accusation but he cannot prove it, and the accusation is carried out contrary to what he knows, and then he is threatened for committing slander with a maximum jail sentence of four year. Hate speech even if only in the form of words and actions in the form of communication carried out

⁵ Rhona K.M. Smith, et al. 2008. *Hukum Hak Asasi Manusia*. Yogyakarta. PUSHAM UII Yogyakarta. p. 116

by individuals or groups in the form of incitement, provocation, or insults to other individuals or groups in terms of various aspects such as religion, race, ethnicity, skin color, gender, sexual orientation, disability Citizenship, and others that trigger divisions and noise should be dealt with firmly and seriously. If the act of hate speech is not handled seriously, effectively and efficiently by referring to the provisions of the legislation, then the act of hate speech raises the potential for widespread social conflict and is likely to cause disunity, social conflict, violence, violent discrimination and loss of life.

Handling Procedure

Hate speech is often spoken / expressed through social media and the perpetrators often invite virtual citizens (netizen) to participate in spreading information containing hate speech. And the impact, naturally, which is obtained from the spread of hate speech is spread and widespread considering that the spread carried out on social media is done massively so that it needs to be and the procedures for handling and joint attention. It is also necessary to regulate police procedures in handling cases based on hate speech so as not to cause discrimination, violence, loss of life and or widespread social conflict. First, each National Police officer is expected to have an understanding and knowledge of forms of hatred. Second, police personnel are expected to be more responsive or sensitive to the symptoms in the community that have the potential to cause criminal offenses. Third, each National Police personnel conduct an analysis of the situation and conditions in their environment. Especially those related to hate speech. Fourth, each National Police personnel report to their respective leaders the situation and conditions in their environment, especially those related to acts of hate speech.

In carrying out its duties the National Police refers to the Circular of the National Police Chief Number SE/06/X/2015 concerning Hate Speech which refers to the previously elucidated articles (Article 156 of the Criminal Code, Article 157 of the Criminal Code, Article 310 of the Criminal Code, Article 311 of the Criminal Code, Article 28 paragraph (2) jls. Article 45

paragraph (2) of Law Number 11 Year 2008 is concerning about Information and Electronic Transactions and Article 16 of Law Number 40 Year 2008 concerning the Elimination of Racial and Ethnic Discrimination.

Criminal acts of hate speech can be in the form of the Criminal Code (KUHP) and other criminal provisions outside the Criminal Code, a. Insult; b. Defamation; Defamation; d. Unpleasant deeds; e. Provoke; f. Incite; g. Spreading false news and all the above actions have a purpose or can have an impact on discrimination, violence, loss of life, and / or social conflict. Furthermore, in letter (g) Circular Letter Number SE/06/X/2015 stated: The hate speech referred to above, aims to incite and incite hatred towards individuals and / or groups of people, in various communities that are distinguished from aspects of: 1) Tribe; 2) Religion; 3) Religious flow; 4) Confidence or trust; 5) Race; 6) Between groups; 7) Skin color; 8) Ethnicity; 9) Gender; 10) People with disabilities; 11) Sexual orientation.

The Indonesian National Police is required to take preventative measures if acts are found that have the potential to lead to criminal acts of hate speech, including: a) Monitor and detect as early as possible the seeds of dissension in the community. b) Approach parties suspected of committing hate speech. c) Bringing together parties suspected of committing hate speech with victims of hate speech. d) Seek peace solutions between the parties to the conflict and provide an understanding of the impact that will arise from the expression of hatred in the community. If preventive action has been taken but the settlement cannot be completed then it can be done through law enforcement in accordance with the law as outlined earlier.

Building Good Ethics in Communicating on Social Media Communication Ethics

Ethics means moral while etiquette means manners. Ethics and etiquette regulate human behavior normatively which is to provide norms for human behavior which means to state what should be done and should not be done. Ethics is the science of norms, values and moral teachings. Moral teaching teaches how people should live. The ethics of mass

communication or it can also be called the ethics of the press according to Sobur is a moral philosophy that is the science of the rules that govern press behavior. Furthermore, press ethics is moral awareness, which is the knowledge of good and bad, right and wrong, right and not right. In essence, the press has an obligation to be responsible for the information he disseminates in the mass media to the public. So press ethics is essentially a rule of how the press communicates as a source or communicator.

Technological developments have made a shift in thinking. The ease, breadth and freedom of using the internet has made users start to 'let go' in the appropriateness of acting on social media because information can spread quickly and massively. Ethics in the use of social media must be considered and understood because the impact is very fast and difficult to predict, especially in content that violates ethics, values in society, culture and legal norms. Do not let the use of communication through social media without being based on good communication ethics can change the social order that has been built.

Social media users are given the freedom to share information or communicate with anyone using social media. But that does not mean freedom that has no ethics that limits what is permissible or not. As a users must know and understand ethics that must be used in using social media. In order to make users feel comfortable and reduce crime and conflict. Ethics is about how humans should do, whether good or bad deeds. As a study of philosophy, ethics is defined as the science of what is good and bad and about moral rights and obligations. Using social media there are very important ethics which some must understand and do among others.

First: Ethics in communicating among people on social media sites, when we do communication we often forget ethics. In social media the language used is not a standard language such as in mass media, magazines, television and others. Because it does not use standard language, without us knowing, either intentionally or not, we use abusive and inappropriate words to communicate on social media. We should still use appropriate, appropriate and polite words in our communication on social media accounts. Second: Avoid the spread of SARA and Pornography; it is wiser if

we do not spread information related to SARA (Tribe, Religion and Race) and pornography on social media. It's better to spread useful things that don't cause conflict between people. Because since Indonesia was built, it was built with diversity in which all elements of ethnicity, religion and race merged into one and the same interests and goals.

Third: Checking the truth of the news, news that is defamatory or expressions of hatred towards others, which lately is often on social media, should not be accepted unconsciously without finding out whether the information is accurate based on facts. Because sometimes the news that is spread aims to bring down the names of competitors with news that is engineered, making noise, sensation or to invite someone or a group to hate someone or group or agency. Therefore, social media users are required to be smart and wise in capturing information, we are obliged and responsible for what information we want to share or distribute to social media. If we want to participate in disseminating information that we can have good, we do a cross-check of the truth of the information first and then we continue. We share and are responsible for all information that we submit on social media because that information can lead public opinion about the information we have conveyed.

Fourth: Appreciating the work of others, when disseminating information such as photos of writings or videos of others, it helps us to include sources of information that we take as a form of appreciation for someone's work.

Fifth: Don't overly spill your personal information; in using our social media as users we must be wiser in informing our privacy or personal life. Don't over-indulge and share personal matters that are sensitive and very personal on social media.

Sixth: Use the means of communication on social media wisely that is sharing information and obtaining information and a means of friendship with users of social media. Because social media has shifted the conventional media that have existed in society now, the digital era has dominated every layer of society ranging from urban and rural communities. Now all information is very easy to get without distance and time limit.

III. Conclusion

The development of social media has brought problems that have recently begun to be unsettling and have started to cause a stir and conflict. Indeed the utterance of hatred which contains elements of SARA (religion, ethnicity, race and class) can be muted and acted decisively so as not to become widespread and become a culture in communicating on social media. In Indonesia hate speech has been clearly regulated in Law Number 11 of 2008 concerning Information. The provisions of the laws and regulations governing criminal liability against perpetrators of hate speech are: a. Article 156 of the Criminal Code b. Article 157 of the Criminal Code c. Article 310 of the Criminal Code d. Article 311 of the Criminal Code e. Article 28 paragraph (2) jis. Article 45A paragraph (2) of Law Number 19 Year 2016 concerning Information and Electronic Transactions f. Article 16 of Law Number 40 Year 2008 concerning Elimination

It is hoped that with the rule of law, law enforcement officials will be able to work professionally, honestly and be responsible for the utterances of hatred that are currently rife in Indonesia. It is hoped that with the legal rules of social media users can know and understand the limitations in communicating on social media so as to create a good, polite and responsible communication ethic. Freedom space on social media can be well utilized and civilized users of social media are created. Ethics in communicating on social media should be able to build good communication that can enhance the democratic order and our brotherhood. The use of polite language without bringing hatred in it will surely develop civilized communication on social media.

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