

## Criminal Law Enforcement to Action Criminal Incitement in the Criminal Code: Perspective Sociology of Law

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### ABSTRACT

*The enforcement of criminal law regarding prosecution under the Indonesian Criminal Code (KUHP) is one of the state's efforts to maintain public order and social stability. Incitement, regulated under Article 160 of the Criminal Code, often poses challenges in the context of rapidly evolving social conditions, particularly with the advent of information technology. This article examines the enforcement of criminal law against prosecution from a sociological jurisprudence perspective. Using sociological jurisprudence theories, the article aims to identify social factors influencing the application of law and evaluate the effectiveness of penalties imposed in a broader social context. This research uses a qualitative approach, analyzing relevant literature and case studies.*

**Keywords:** Incitement, Penal Code, Law enforcement, Sociology of law, Freedom of expression

### Introduction

Action criminal incitement is one of the form regulated crime in Article 160 of the Criminal Code aims For prevent occurrence violence or riots that can endanger order general . In in practice , incitement often associated with freedom to express opinions and expressions , which become issue central in public democratic . Enforcement law to incitement need see more from just violation law only, but also must take into account dynamics existing social (Zahra, U, Ismanasyah, & Yoserwan Hamzah, 2024). In perspective sociology law , law is not something detached system from society , but rather something instruments that must be seen in context values social , political , and cultural issues that apply in society. This important Because action incitement often have connection close with condition developing social , such as tension politics , conflict social , or difference a very strong ideology (Durkheim, Emile, 1997).

Enforcement law criminal to action criminal incitement in the Criminal Code (KUHP) is one of the form state efforts to guard order general and prevent occurrence unrest or violence (Arief, Barda Nawawi, 2013). Action criminal incitement arranged in Article 160 of the Criminal Code, which states that goods who is in front general incite others to do violence or unrest can convicted with criminal prison . Although chapter This designed For guard order social, challenges in enforcement still there are, especially along the development of the times and the emergence of social media which is increasingly make it easier distribution speech hatred, slander, and provocation.

this digital era, the phenomenon incitement No Again limited to meetings physique or activities carried out in a way directly. Distribution messages containing incitement can with easy done through social media platforms , online forums, and applications message instant . This is cause arrangement law to action criminal incitement the more complex and challenging , considering How message the Can spread with fast , involving various parties , and can leading to a dangerous situation stability social (Marx, Karl, 2002).

Besides that , incitement often faced with debate between freedom opinion and protection to order general . In system Indonesian law , freedom have an opinion guaranteed by the 1945 Constitution, however freedom This No without limits . Criminal law must ensure that freedom have an opinion No used For damage or damage order general . Example case Speech Hate Speech Involving Social Media, in 2019 , a social media users in Indonesia, which

is known with Twitter account @X, uploaded A posts containing speech hatred and provocation to group certain . Posts the contains words that incite the public do violence to groups that are considered as against politics, no only that post the get Lots responses and comments from netizens, which is increasingly make things worse tension social (Rahardjo, Satjipto, 2006).

In case this, police use Article 160 of the Criminal Code for ensnare perpetrator, remembering that posts the clear contain incitement that can cause riots. Although perpetrator quibble that He only convey opinion personal , court Finally decide that statement the enter in category incitement that can damage order general . Case This describe how social media can become means effective for perpetrator For spread incitement , so that need existence more regulations strict in enforcement law to action criminal incitement in cyberspace. Case Incitement in Contestation Politics , at the time campaign 2014 elections in Indonesia, a figure political famous , say only " Politician A", accused incite mass For do action anarchist in frame protest to results elections that are considered No fair . Politician A, in A his speech , saying that " if results elections No in accordance with will people , then people entitled down to road and roll legitimate government . " This statement was then disseminated by the media, causing mass mobilization that led to riots in several area (Wicaksono, C., Faried, FS, & Putri, HA A,2025).

Case This This led to the application of Article 160 of the Criminal Code, where Politician A was charged with incitement that could disrupt public order. Although Politician A defended himself by arguing that he was only voicing dissatisfaction with the election results, the court ruled that his speech was unlawful because it called people to commit acts of violence. This case illustrates how the crime of incitement often occurs in a political context, where political tensions can trigger crucial legal action. In recent years, Indonesia has experienced a major wave of cases related to the spread of fake news or hoaxes. One such case involved an individual named "Suspect Y", who posted fake news about a planned rebellion by a certain group in an area. This news spread quickly through social media and instant messaging applications, causing anxiety among the local community. As a result, from distribution hoax this, citizen become panic and it happened riots in several a point triggered by an irrational fear based on (Saputra, MR I, 2024).

After done investigation , the police charged Suspect Y with Article 160 of the Criminal Code, considering that the information disseminated clearly incited the public to commit acts that disrupt public order. Suspect Y claimed that he only passed on the information he received without verifying its truth, but the court still sentenced him in accordance with applicable legal provisions, considering the enormous social impact. This case shows how the dissemination of information containing incitement, even if done without malicious intent, can still be subject to criminal penalties under Article 160 of the Criminal Code, especially in the increasingly digital era. prone to to distribution hoax (Martono, 2022).

From these phenomena, several issues are addressed: How does legal sociology influence law enforcement against the crime of incitement in a constantly evolving social context? And is law enforcement against the crime of incitement in Indonesia sufficiently effective in preventing social unrest without compromising freedom of expression? Based on this context, this article aims to discuss law enforcement against the crime of incitement from a legal sociology perspective, which takes into account the influence of social, political and cultural factors. implementation law (M, MY D, Addinul, A., Sipahutar , H. J, Wismar, H. , , Sari, AN, & Saragih , G. M, 2023) .

## Research Method

Study This use approach qualitative with method descriptive analytical approach qualitative chosen Because study This aim For understand more in phenomenon enforcement

law to action criminal incitement in sociological perspective of law. Method descriptive analytical used For analyze And describe in a way details as well as deep factors social , political , and culture Which influence enforcement law to action criminal incitement in Indonesia. The data sources in this study consist of secondary data, which include:

1. Studies literature containing books , articles journals and reports related research with law criminal , incitement , and theories sociology law .
2. Cases relevant laws , both those that have been decided by the court or those who are currently in the legal process , to give description real about How law implemented in case incitement .
3. Regulation legislation that regulates action criminal incitement , including Article 160 of the Criminal Code and regulations other related .

The data that collected and then analyzed use approach analysis content , namely with inspect in a way in-depth document content laws , regulations , and decisions court relevant to see pattern or trend in implementation law to action criminal incitement (Soekanto, Soerjono, 1983).

## **Results and Discussion**

### **Sociological Theory of Law in Criminal Law Enforcement**

Sociological legal theory views law as a social phenomenon that not only regulates individual behavior but is also influenced by social conditions in society. In the context of the crime of incitement, law enforcement must consider how the law interacts with existing social norms. Some relevant sociological legal theories in this regard are:

- a. Consensus Theory (Emile Durkheim) which focuses on the importance of social agreement in maintaining order.
- b. Conflict Theory (Karl Marx) which highlights how law often functions to defend the interests of dominant groups in society.
- c. Legal Theory as a Tool of Social Control (Max Weber), which views law as an instrument to control social tension.

### **The Crime of Incitement in the Criminal Code**

Article 160 of the Criminal Code states that anyone who publicly incites others to commit violence or riots is subject to criminal penalties. In practice, this article is often used in cases involving hate speech, provocation, or the dissemination of information that incite social conflict. However, law enforcement against these crimes often faces challenges, particularly in the context of developments in information technology and social media.

Proper law enforcement against the crime of incitement must take into account human rights, particularly freedom of expression, which often conflicts with the state's interest in maintaining public order. Therefore, the application of the incitement article must be selective and take into account the context. social Which there is (Pratiwi, V,2023). Social Factors Influencing the Enforcement of the Law on Incitement From a legal sociology perspective, several social factors can influence the enforcement of the law against the crime of incitement, including:

- a. Politics: Tension political What happens in a country often influences how the law is applied. In a polarized political climate, incitement can be used as a tool to attack the opposing side.
- b. Technology and Social Media: Developments in information technology and social media accelerate the spread of inflammatory messages. Therefore, the law must keep pace with current developments to keep up with law enforcement against incitement.

- c. Culture And Mark Social : Values culture that develops in society also influences how acts of incitement are received. In a more tolerant society, incitement may more easily be considered as freedom of opinion.

### Effectiveness of Law Enforcement against Incitement

Law enforcement against the crime of incitement must consider whether the sanctions imposed will create a deterrent effect or actually worsen the social situation. In this regard, sociological theories of law propose various perspectives on how law enforcement can affect social relations within society. Overly harsh laws against the crime of incitement may actually exacerbate social polarization and exacerbate tensions between different groups. Conversely, if the law is too lax in dealing with incitement, it can reduce its effectiveness in maintaining public order. Therefore, law enforcement against the crime of incitement must be carried out with a wise approach and be sensitive to existing social conditions.

### Conclusion

Enforcement law criminal to action criminal incitement in the Criminal Code must take into account various factor social, political, and technological developments in society. Based on existing problems, as follows is solution or answer For second problems faced: Sociology law show that law No only just formal rules, but must customized with condition social a society that always changed. In matter this, role sociology law is very important For ensure that enforcement law to action criminal incitement implemented with notice values growing social. With thus, the law can accepted by society, not only as instrument power, but also as tool For create justice social. For ensure enforcement effective law, it is necessary existence balance between freedom opinion and protection to order general . Implementation chapter incitement must done in a way selective and wise, with consider context existing social solutions. Solutions for increase effectiveness enforcement law is with update regulations that govern use of social media in spread information that can inciting, as well as increase supervision to distribution speech hatred online.

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