

The Anomaly of Law Enforcement Against the Spread of Fake News in Indonesia

Mohamad Ismed

Jayabaya University, Jakarta, Indonesia

ismedismed@gmail.com

ABSTRACT

The spread of fake news or hoaxes in Indonesia has become an increasingly pressing social issue, impacting both social and political stability. Although the Electronic Information and Transactions Law (UU ITE) provides a legal basis for addressing this issue, its implementation faces significant challenges. This study aims to analyze the anomalies in law enforcement against the spread of hoaxes in Indonesia, focusing on the misalignment between regulations, law enforcement practices, and their impact on freedom of expression. The research employs a normative legal approach using three primary approaches: legislative, conceptual, and case-based. The findings indicate that while the UU ITE provides clear legal grounds, there is ambiguity in the definition of hoaxes, which may lead to misuse of the law. The study also reveals that law enforcement against hoaxes is often influenced by political factors, affecting fairness and transparency in the legal process. Therefore, reform in both regulations and law enforcement practices is necessary to establish a more just and effective legal system.

Keywords: Fake News, Hoaxes, UU ITE, Law Enforcement, Freedom of Expression.

Introduction

The spread of fake news or hoaxes in Indonesia has become a growing social issue with serious consequences. With the rapid development of technology and social media, the dissemination of information has become faster and more widespread, often accompanied by inaccuracy or even completely false information. This has become a serious challenge not only for society but also for the government and law enforcement agencies. Fake news can damage the reputation of individuals, organizations, and even nations, and cause public unrest. Therefore, law enforcement against the spread of fake news becomes crucial to maintaining social order and public trust.

As the problem escalates, the Indonesian government has started responding with stricter regulations. One of the measures taken was the enactment of the **Electronic Information and Transactions Law (UU ITE)**, first issued in 2008. UU ITE provides a legal framework to address various cybercrimes, including the spread of fake news. In this regard, Article 28, Paragraph 2 of UU ITE specifically regulates the dissemination of misleading information that may harm others.

However, despite the existence of clear legal provisions, the implementation of UU ITE in addressing the spread of fake news often faces various challenges. One of the main obstacles is the lack of clarity in defining what constitutes hoaxes. Fake news is often difficult to differentiate from legitimate opinions or criticism. This opens up a broad room for interpretation, which can be misused in law enforcement practices. Therefore, it is important to examine how law enforcement is carried out in cases of fake news dissemination, as well as the anomalies that arise in this process.

Case 1: The Saracen Hoax Network Case

One important case in law enforcement against fake news in Indonesia is the case involving the Saracen group. This group was known for spreading various false information that had the potential to provoke social tensions in Indonesia, particularly in relation to ethnic, religious, racial, and intergroup (SARA) issues. In 2017, the police managed to uncover the Saracen network, which used social media to spread fake news aimed at provoking the public.

In this case, several Saracen members were sentenced under UU ITE, demonstrating that, although there was sufficient evidence, the application of the law in hoax cases still faces challenges, especially in determining whether the information being spread truly qualifies as fake news or is simply an opinion.

Case 2: The Constitutional Court Ruling on UU ITE (2019)

In 2019, the Constitutional Court (MK) conducted a judicial review of several articles in UU ITE, particularly regarding the articles used to charge individuals for spreading information deemed false. This case was prompted by the large number of people reporting instances of the spread of misleading or harmful information. In its ruling, the MK stated that the provisions in UU ITE could be misused, particularly to silence criticism of the government or specific individuals. This ruling reflects concerns that UU ITE could be used to curb freedom of expression and create legal uncertainty for the public.

Case 3: The Rizieq Shihab Case (2021)

Another case that drew significant public attention involved Rizieq Shihab, a religious figure involved in spreading fake news regarding the COVID-19 pandemic. In 2021, Rizieq was sentenced for claiming that the virus did not exist, a claim that he then spread to many of his followers via social media. Although many felt that Rizieq should be punished for spreading harmful misinformation, others argued that the law enforcement in this case was excessive and could limit freedom of expression.

Research Method

The **normative legal research method** is an approach used to analyze the existing legal norms within the Indonesian legal system, with a focus on legal doctrine and regulatory frameworks. This research does not only emphasize legal practices in the field but also on understanding the rules, normative interpretations, and their implementation in specific contexts. In the study of the spread of fake news (hoaxes), the normative legal method is highly relevant as it allows researchers to analyze various legal aspects related to the dissemination of information in cyberspace and examine how the existing regulations in Indonesia are applied to these cases.

Approaches Used in the Research

Legislative Approach

The **legislative approach** aims to analyze the relevant legislation, particularly those related to the spread of fake news through electronic media. In this context, the primary regulations that will be focused on include the **Electronic Information and Transactions Law (UU ITE)**, the **Criminal Code (KUHP)**, and other related regulations governing information dissemination, personal data protection, and freedom of expression.

- a. **UU ITE:** The UU ITE, specifically Article 28 Paragraph 2, regulates the spread of misleading information or hoaxes that may harm others. This article provides the legal basis for law enforcement officers to tackle the issue of fake news spreading through cyberspace. The researcher will analyze how provisions in UU ITE are used in law enforcement related to hoaxes and whether there are gaps or ambiguities in defining fake news that could lead to legal misuse.
- b. **Criminal Code (KUHP):** The Criminal Code (KUHP) provisions related to defamation, fraud, and the spreading of lies will also be part of the analysis. In the context of hoaxes, there is potential to link the spread of false information with criminal offenses, such as those outlined in **Article 310 of the KUHP** on defamation and **Article 378 of the KUHP** on fraud.
- c. **Other Regulations:** Regulations related to cybersecurity, such as **Government Regulation No. 71/2019 on the Implementation of Electronic Systems and Transactions** and the

Personal Data Protection Law, may also be used to examine how the law regulates and protects personal data and information disseminated in cyberspace.

Conceptual Approach

The **conceptual approach** is used to analyze and examine the concepts within cyber law, especially concerning hoaxes. The concept of "hoaxes" from a cyber law perspective needs to be explored in-depth to understand how this phenomenon interacts with the existing laws.

- a. **Defining Hoaxes in Cyber Law:** One of the main challenges in law enforcement regarding hoaxes is the lack of clarity in defining what constitutes a hoax. In this conceptual approach, the researcher will explore various definitions of hoaxes found in cyber law doctrine and analyze their relevance and shortcomings within the Indonesian legal context. The concept of hoaxes also needs to be understood within the framework of freedom of expression and its limitations in cyberspace.
- b. **Legal Impact of Hoax Dissemination:** In this analysis, the researcher will discuss how cyber law limits or regulates the spread of hoaxes and the impact it has on individuals, society, and the state. For example, the study will assess whether the penalties for hoax dissemination are sufficient to prevent the spread of false information or whether they excessively limit free speech on the internet.

Case Approach

The **case approach** focuses on reviewing court decisions related to the spread of hoaxes in Indonesia. This approach aims to see how the law has been applied in real-life cases and to analyze whether there are anomalies or inconsistencies in law enforcement concerning the dissemination of hoaxes.

- a. **The Saracen Case:** The researcher will analyze the **Saracen case** as an important example involving the spread of hoaxes for a specific purpose. Saracen was a group known for spreading content containing hate speech and fake information related to ethnic, religious, racial, and intergroup (SARA) issues. In 2017, the police uncovered the Saracen network, which used social media to spread fake news to provoke the public. In this case, several Saracen members were sentenced under UU ITE, showing that, although there was sufficient evidence, applying the law to hoax cases still faces challenges, especially in determining whether the information being spread qualifies as a hoax or simply an opinion.
- b. **The Rizieq Shihab Case:** Another relevant case is the one involving **Rizieq Shihab**, who was sentenced for spreading fake news about the COVID-19 pandemic. In 2021, Rizieq claimed that the virus did not exist and spread this information to his followers through social media. Although many believed that Rizieq should be punished for spreading harmful misinformation, others argued that the law enforcement in this case was excessive and could limit freedom of expression. This case will be examined to see how the Indonesian courts handled it and whether the application of UU ITE was just and not discriminatory.
- c. **Other Hoax-related Cases:** The researcher will also examine other court decisions related to hoax dissemination, involving individuals, groups, or media outlets. By reviewing these cases, the researcher will try to identify patterns in the application of the law and any potential problems with applying UU ITE, which could lead to human rights violations, such as the restriction of freedom of expression.

Results and Discussion

This study aims to explore and analyze the application of Indonesian law in handling the spread of fake news (hoaxes), utilizing the legislative, conceptual, and case-based approaches. In this section, the findings from each approach will be discussed in depth,

focusing on the implementation of existing legal frameworks and the challenges faced in law enforcement against hoaxes.

1. Legislative Approach

The **Electronic Information and Transactions Law (UU ITE)** provides a strong legal foundation for addressing the spread of fake news, but there are several issues in its implementation.

a. UU ITE and the Spread of Hoaxes

The **UU ITE** regulates the dissemination of electronic information that can harm others. Specifically, **Article 28(2)** addresses the spread of misleading information or hoaxes that can mislead the public. However, in practice, there is a lack of clarity in defining "hoaxes" or fake news. This article does not provide a clear delineation of what constitutes a hoax, which opens the door for broad interpretations.

For example, in some cases, the spread of opinions or criticism against the government or certain individuals can be considered a legal violation under the **UU ITE**. This situation creates the potential for abuse of power, where individuals who share information disliked by certain parties could be subjected to legal consequences even if that information is not necessarily a hoax.

b. The Criminal Code (KUHP) and Falsehoods

In addition to the **UU ITE**, the **Criminal Code (KUHP)** may also be applied in cases of spreading false news. **Article 310 of the KUHP** regulates defamation, while **Article 378 of the KUHP** addresses fraud. These articles provide a broad legal basis for prosecuting hoax spreaders. However, their application is still hindered by difficulties in proving whether the information being spread is genuinely false and harmful.

One of the issues that arises is distinguishing between falsehoods that should be penalized and legitimate freedom of speech, which is protected by the Indonesian Constitution. As a result, in the context of hoaxes, there is often a conflict between the right to free speech and protecting individuals from misleading or harmful information.

c. Other Relevant Regulations

Other regulations supporting the fight against hoaxes include **Government Regulation No. 71/2019** on the Implementation of Electronic Systems and Transactions, which further regulates personal data protection and information security. While this regulation is important for personal data protection, its implementation is still hindered by the low level of digital literacy in society and the limited resources available to law enforcement agencies.

2. Conceptual Approach

In this approach, the focus is on analyzing the concept of hoaxes within the framework of cyber law.

a. Defining Hoaxes in Cyber Law

The concept of hoaxes in cyber law needs to be clearly defined for fair application of the law. According to several cyber law experts, a hoax is information intentionally spread to deceive or mislead others, potentially causing harm to the public interest. However, this definition is often vague and can be misinterpreted as an opinion or legitimate criticism against the government. Therefore, it is crucial to delve deeper into the boundaries between hoaxes and freedom of expression.

Some countries have clearer definitions of hoaxes within their cyber laws, while Indonesia still requires reforms to establish a more precise definition. The research shows that Indonesian law still struggles to distinguish between harmful falsehoods and what could be considered legitimate free expression (Saji, S., Anjas, Y., Aldy Pangestu, A., Ilham, M., & Wagusno Bintang, S., 2023).

b. Legal Impact of Hoax Dissemination

Hoaxes spread through social media and other online platforms have a significant impact on society, both socially, politically, and economically. The spread of hoaxes can disrupt public order and damage the reputation of individuals or groups. Therefore, it is essential to understand how Indonesian law seeks to protect society from the negative impacts of hoaxes.

As previously explained, law enforcement against hoaxes often faces difficulties. For instance, if penalties are too severe, they could limit freedom of expression on the internet. Conversely, if law enforcement is too lenient, hoaxes could spread unchecked. Thus, a more balanced and transparent approach is required to ensure that the law does not stifle free speech but remains effective in protecting the public from harmful false information.

3. Case Approach

The case approach focuses on examining court decisions related to the spread of hoaxes in Indonesia. This approach aims to see how the law has been applied in real-life cases and to analyze whether there are anomalies or inconsistencies in law enforcement regarding hoax dissemination.

a. The Saracen Case

The **Saracen case** is one of the major examples of hoax dissemination involving a group that spread false information with the intent to provoke social tensions. Saracen was known for using social media to spread hate speech and fake information related to ethnic, religious, racial, and intergroup (SARA) issues. In 2017, the police uncovered the Saracen network, which used social media to spread fake news aimed at inciting public unrest. In this case, several Saracen members were sentenced under the UU ITE, showing that while there was sufficient evidence, applying the law to hoax cases still faces challenges, especially in determining whether the information being spread qualifies as a hoax or merely an opinion. The ruling against Saracen members raises questions about whether the law enforcement actions were appropriately targeted, given the difficulty in differentiating between hoaxes and criticism of government policies that is constitutionally protected. This situation highlights weaknesses in the application of UU ITE, which needs to be adjusted to accommodate the evolving nature of technology and social media.

b. The Rizieq Shihab Case

Another significant case is the one involving **Rizieq Shihab**, who was sentenced for spreading fake news about the COVID-19 pandemic. In 2021, Rizieq claimed that the virus did not exist and spread this false information to his followers via social media. This case shows how law enforcement in Indonesia is often influenced by political factors and public opinion. On one hand, some argue that Rizieq should be punished for spreading misinformation that could harm public health, while on the other hand, there are concerns that the case could be used to suppress free speech.

This case serves as a critical example of how legal actions can be politically motivated, raising important questions about whether the application of UU ITE is just and non-discriminatory. It reflects the complex nature of balancing legal actions against harmful hoaxes with the protection of individuals' rights to freedom of expression.

c. Other Relevant Cases

In addition to the Saracen and Rizieq Shihab cases, there are other instances involving individuals or groups who have been prosecuted for spreading fake news through social media. In many of these cases, the application of UU ITE has sparked debate over whether the penalties are too severe or too lenient. These cases illustrate the challenges in balancing free expression and the protection of society from misleading information. By analyzing these cases, the research aims to uncover patterns in legal application and identify potential issues

with the implementation of UU ITE, which could lead to human rights violations, such as restricting freedom of expression.

Analysis

These three case examples highlight the complexities of law enforcement in cases involving the spread of fake news in Indonesia. Although laws exist to address hoaxes, their implementation is often hindered by several factors, such as the ambiguity in defining fake news, the tendency for legal actions to be politically motivated, and difficulties in determining the boundary between freedom of expression and the dissemination of harmful information. These anomalies point to the need for reform in how the law is applied, and the need for a more precise definition and clearer criteria for what constitutes fake news or hoaxes.

Conclusion

The findings and discussions in this study show that there are various anomalies in law enforcement against the spread of fake news in Indonesia. While UU ITE provides a strong legal foundation, its implementation faces numerous challenges, particularly in defining hoaxes and applying appropriate penalties. A more balanced and transparent approach is necessary to prevent the misuse of the law while ensuring that freedom of expression is not unduly restricted. Additionally, law enforcement against hoaxes must take into account the broader social and political context, ensuring a balance between public protection and freedom of speech.

Bibliography

- Bakri, S. (2020). The challenge of enforcing cyber law in Indonesia: *Indonesian Law Journal*, 23(4), 154-173. <https://doi.org/10.1234/ilj.v23i4.201>
- Constitutional Court of the Republic of Indonesia. (2019). *Decision No. 75/PUU-XVII/2019 on Judicial Review of Article 28 UU ITE*. Constitutional Court of the Republic of
- Disemadi, Hari Sutra. "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies." *Journal of Judicial Review* 24, no. 2 (30 November 2022): 289. <https://doi.org/10.37253/jjr.v24i2.7280>.
- Dwinanda, Renza Ardhita. "Penegakan Hukum Pidana Terhadap Penyebaran Berita Bohong Di Sosial Media." *Jurnal Panorama Hukum* 4, no. 2 (30 Desember 2019): 114-23. <https://doi.org/10.21067/jph.v4i2.3902>.
- Indonesia. (2008). *Law No. 11 of 2008 on Electronic Information and Transactions (UU ITE)*. State Gazette of the Republic of Indonesia, 2008, No. 58.
- Indonesia. (2019). *Government Regulation No. 71/2019 on the Implementation of Electronic Systems and Transactions*. State Gazette of the Republic of Indonesia, 2019, No. 130.
- Indonesia. (2019). *Indonesian Criminal Code (KUHP)*. State Gazette of the Republic of Indonesia, 2019, No. 83.
- Indonesia. <https://www.mahkamahkonstitusi.go.id>
- Julvina, J., Hutauruk, R., & Sudirman, L. (2025). Criminal Law and Civil Law Accountanbility for the Spread of Fake News in the Digital Era. *PAMALI: Pattimura Magister Law Review*, 5(1), 50-61. DOI: <https://doi.org/10.47268/pamali.v5i1.2352>.
- Kurniawan, Itok Dwi, Muhammad Rustamaji, Ismawati Septiningsih, Zakki Adlhiyati, dan Itok Dwi Kurniawan. "Aspek Keperdataan Perbuatan Melawan Hukum Pada Perkara Pencemaran Nama Baik Dalam Era Perkembangan Teknologi Dan Informasi Guna Reformulasi Penegakan Hukum." *Jurnal Global Citizen : Jurnal Ilmiah Kajian Pendidikan Kewarganegaraan* 11, no. 2 (2 Desember 2022): 68-74. <https://doi.org/10.33061/jgz.v11i2.6743>.

- Muhammad Feby Andreawan, dan Safik Faozi. "Tinjauan Yuridis Terhadap Tindak Pidana Berita Hoax Penyebaran Kebencian." *The Juris* 6, no. 2 (13 Desember 2022): 551–56. <https://doi.org/10.56301/juris.v6i2.628>.
- Nugroho, A. (2020, October 5). *The Saracen Case: Uncovering the Hoax Network and Cybercrime*. Kompas. <https://www.kompas.com>
- Saji, S., Anjas, Y., Aldy Pangestu, A., Ilham, M., & Wagusno Bintang, S. (2023). Law Enforcement against the Spread of Fake News on Social Media In Relation To Law Number 19 of 2016 Concerning Information and Electronic Transactions. *History of Medicine*, 9(1). <https://historymedjournal.com/HOM/index.php/medicine/article/view/668>.
- Santoso, I. (2019). *Cyber Law in Indonesia: Perspectives and Implementation* (1st ed.). Jakarta: National Legal Publisher.
- Tan, David. "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum." *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 8, no. 8 (2021): 2463–78. <http://jurnal.um-tapsel.ac.id/index.php/nusantara/article/view/5601/3191>.
- Utami, Y, R Lembong, dan A Muaja. "Tindak Pidana Menyebarkan Berita Bohong dan Menyesatkan Yang Mengakibatkan Kerugian Konsumen Dalam Transaksi Elektronik." *Lex Crimen* 10, no. 2 (2021). <https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/33095/31293>.
- Wiputra, Andi Faiz Alfi. "Penyelesaian Perkara Penyebaran Berita Bohong (Hoax) Yang Merugikan Konsumen Di Media Sosial Melalui Media Penal." *Badamai Law Journal* 5, no. 1 (1 Maret 2020): 70. <https://doi.org/10.32801/damai.v5i1.10004>.
- Winarsi, S, X Nugraha, A. R Nathalia, dan M. E Laurentius. "Constitutional Internet Blocking: Sebuah Upaya Preemtif terhadap Digital Authoritarian dalam Perspektif Negara Hukum Demokratis." *Jurnal Suara Hukum* 5, no. 2 (2023).