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# Criminal Accountability for Spreading Hoax News on Social Media in the Construction of Criminal Law

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**Abstract:** *Currently, hoaxes have become a threat to national unity. The number of Hoaxes in 2021 Kominfo has blocked 565,449 hoax content circulating on social media. The criminal responsibility for spreading fake news (hoaxes) is regulated by several laws, including the Criminal Code and the ITE Law. This study aims to describe the spread of hoax news on social media and to examine criminal responsibility for spreading hoax news on social media in criminal law. This type of research is library research. The approach used is a normative approach, the data collection technique is through library research and is carried out online and analyzed using a descriptive-analytical research method. The results of this study indicate that not all news dissemination Hoaxes on social media can be held accountable, as stipulated in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions The spread of hoax news that can be held criminally responsible, namely the spread of hoax news that is done intentionally, defamation, extortion, harming consumers, containing racial elements, and threats of violence. A person can be held criminally responsible for spreading hoax news on social media if he has made a mistake as stipulated in Article 27, Article 28, Article 29 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, so that if the perpetrators of spreading hoax news on social media do not fulfill the elements of the article, then they cannot be held accountable as perpetrators of spreading hoax news on social media.*

**Keywords:** *Criminal Liability, Hoax, Social Media.*

## 1. INTRODUCTION

Indonesian people tend to spread information quickly in the real world and on the internet, regardless of news sources. Therefore, they do not want to investigate news sources that first create or spread false information. This behavior causes a person to believe without questioning



the truth and quickly publish news or information on social media (Aditiawarman, et.al, 2019). Facebook, Instagram, WhatsApp, and even YouTube are examples of social media platforms that can be used to spread fake news or hoaxes (Aditiawarman, et.al, 2019).

Hoax is now a threat to national unity. People who used to live next to each other became polarized due to the spread of hoaxes in society, and this often led to conflict (Ja'far, 2018). The purpose of spreading false reports is to create chaos and instability in society, which is very dangerous. For criminals who spread fake news (hoaxes) so that their actions do not happen again, extreme caution is needed.

The government was overwhelmed and furious with hoax news, and in 2021, Kominfo blocked 565,449 cases of hoax content on social media (Rizkinaswara, 2022). Even though there are legal instruments such as RI Law No. 11 of 2008 concerning Information and Electronic Transactions, Article 28 Paragraph 1, perpetrators of reporting fake news continue to exist every day. Existing equipment and resources are insufficient to support cyber police activities in eradicating hoaxes, both quantitatively and qualitatively (Fadli, 2018). Internet media is also expected to play an active role in eradicating fake news (Fadli, 2018).

Several laws, including the Criminal Code (KUHP) and Law No. 19 of 2016 amended Law No. 11 of 2008 concerning information and electronic transactions, regulate criminal responsibility for spreading false information (UU ITE). Accuracy is needed to identify the correct article, that is, the article that meets all the requirements from a fake news point of view and also goes back to the ongoing legal process to catch the perpetrators of spreading fake news and misleading messages. This is because, apart from the ITE Law and the Criminal Code, other legal provisions regulate false information and criminal sanctions (Korua, 2019).

Concerned about the spread of hoaxes in people's lives, both the government and society have implemented several strategies. For example, the government has built legal barriers by changing laws governing electronic information and transactions, blocking websites that spread hoaxes, enforcing synonyms that spread hoaxes, and establishing cyber creative organizations dedicated to fighting hoaxes. In addition, the community contributes to reducing the spread of hoaxes by providing debunking hoax information. Such as the need to read and follow news sources carefully, and especially not to spread the news too quickly before the truth has been established (Korua, 2019).

Departing from the problems above, the author is interested in discussing it with the title Criminal Responsibility for Spreading Hoax News on Social Media in the Construction of Criminal Law. To examine criminal responsibility for spreading hoax news on social media in criminal law.

## **2. RESEARCH METHODS**

This type of research is referred to as library research. Library research is research that is carried out using literature in the form of books, notes, or reports on the results of previous research (Hasan, 2018). This type of library research uses only secondary data in the form of legal documents (Hamzani, 2015). The approach used in this study is normative. A normative approach is an approach that is based on the most important legal materials by investigating the theories, concepts, legal basis, and laws and regulations related to this research. This method is also called the library method because it involves studying books, laws, and



regulations, as well as other documents related to research (Hamzani, 2015). The technique of collecting data online is by quoting sources and websites that discuss criminal responsibility for spreading fake news (hoaxes) on social media. While the data analysis is descriptive. Descriptive method of analysis, namely presenting all existing problems precisely and as clearly as possible (Hamzani, 2015).

### **3. RESULTS AND DISCUSSION**

Fraud is not recognized in law. However, various restrictions govern the spread of fake news. Article 28 paragraph (1) of the ITE Law, it prohibits: "Every person intentionally and without right spreads false and misleading news that results in consumer losses in electronic transactions." Meanwhile, the legal provisions regarding the spread of fake news or hoaxes after the promulgation of the ITE Law are contained in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions Article 28 paragraph (1). Article 45A paragraph 1 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, which reads: "Any person who intentionally and without right spreads false and misleading news that results in consumer losses in transactions Electronics as referred to in Article 28 paragraph (1) shall be subject to imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp. 1 billion."

There are several examples of the spread of hoaxes that end in criminal penalties as follows:

#### **3.1. Ahmad Dhani Became a Suspect Because he was Thought to be Spreading Hatred**

Analysis of the decision of the South Jakarta District Court Number 370/Pid.Sus/2018/PN. Jkt-Sel and the decision of the DKI Jakarta High Court Number 58/Pid.Sus/2019/PT.DKI which decided the hate speech crime case.

##### **a. Defendant's Identity**

The defendant in the criminal case Number 370/Pid. Sus/2018/PN. Jkt-Sel is Dhani Ahmad Prasetyo or commonly called Ahmad Dhani, born in Jakarta on May 26, 1972. The defendant is a Muslim artist whose last education is high school. Jalan Pinang Emas VII D.4 No.7 RT.008/003, Pondok Pinang Village, Kebayoran Lama District, South Jakarta is the address where the defendant lives (Decision of the South Jakarta District Court Number 370/Pid.Sus/2018/PN. Jkt- Cell).

##### **b. Demands**

The Public Prosecutor's indictment against the Defendant in the hate speech case specifically stated that the Defendant was proven to have committed the crime of hate speech as stipulated in Article 45A paragraph (2) in conjunction with Article 28 paragraph (2) of the Republic of Indonesia Law No. 19 of 2016 concerning amendments to the Law -Law Number 11 of 2008 concerning Information and Electronic Transactions junto Article 55 paragraph (1) I of the Criminal Code which reads as follows:



"Anyone who deliberately and without rights, orders to do so, disseminates information aimed at creating feelings of hatred or hostility towards certain individuals and/or groups of people based on ethnicity, religion, race, and inter-group (SARA)." (Decision of the South Jakarta District Court Number 370/Pid.Sus/2018/PN. Jkt-Sel).

In addition, the public prosecutor presented several items of evidence to be confiscated or destroyed. The evidence is in the form of a white-yellow Kingston data Traveler G3 flash drive, screenshots from Dhani Ahmad Prasetyo's Twitter account @AHMADDHANIPRAST and a white-silver Xiaomi Redmi Note 4 smartphone containing an Indosat sim card with the number 085731922219.

In addition, the Public Prosecution Service submitted evidence of confiscation and destruction via suspension to the Rhode Island Department of Communications and Information Technology. Evidence in the form of 1 (one) HP provider XL simcard with number 081760009999, 1 (one) email address with the name adpsocmed@gmail.com and password, and 1 (one) Twitter account with the owner's name DHANI AHMAD PRASETYO@AHMADHANIPRAST and password. The Public Prosecutor's latest demand is for Defendant Dhani Ahmad Prasetyo alias Ahmad Dhani to pay a court fee of Rp. 5,000,- (Five thousand rupiah) (Decision of the South Jakarta District Court Number 370/Pid.Sus/2018/PN. Jkt-Sel).

### **c. Decision**

Amar Decision of the South Jakarta District Court Number 370/Pid.Sus/2018 PN. Jkt-Sel on January 24 2019 tried the Defendant by stating that Dhani Ahmad Prasetyo alias Ahmad Dhani was legally found guilty of making hate speech. The defendant violated Article 45A paragraph (2) and Article 28 paragraph (2) of Law Number 19 of 2016 concerning Amendments to RI Law Number 11 of 2008 concerning Information and Electronic Transactions, "Intentionally and without rights, ordering information intended to create feelings of hatred or hostility towards certain individuals and/or community groups based on ethnicity, religion, race and intergroup (SARA). Defendant Dhani Ahmad Prasetyo alias Ahmad Dhani was sentenced to 1 (one) year and 6 (six) months in prison by the South Jakarta District Court. In addition, the South Jakarta District Court ordered the detention of the defendant (Decision of the South Jakarta District Court Number 370/Pid.Sus/2018/PN. Jkt-Sel).

Whereas the DKI Jakarta High Court decision number 58/Pid.Sus/2019/PT.DKI on March 11 2019 shows that the court approved the cassation request from the Public Prosecutor and the Defendant. On January 28, 2019, the DKI Jakarta High Court also amended the South Jakarta District Court Decision Number 370/Pid.Sus/2018/PN. Jkt-Sel, is being petitioned for cassation, as far as the defendant's sentence is concerned.

The DKI Jakarta High Court decided that the defendant Dhani Ahmad Prasetyo aka Alias Ahmad Dhani was legally and convincingly proven guilty of committing the crime of hate speech based on Article 45A paragraph (2) in conjunction with Article 28 paragraph (2) of the Republic of Indonesia Law Number 19 of 2016 concerning Amendments to Laws -Law Number 11 of 2008 Concerning Information and Electronic Transactions:

"Deliberately and without rights, ordering to do so, spreading information aimed at creating feelings of hatred or hostility towards certain individuals and/or groups of people based on ethnicity, religion, race and inter-group (SARA)". The defendant Dhani Ahmad



Prasetyo alias Ahmad Dhani has been sentenced to 1 (one) year in prison by the DKI Jakarta High Court. In addition, the DKI Jakarta High Court ordered the detention of the defendant.

### **3.2. Hoax News About Pigs Spreading in 2021**

Analysis of the decision of the Depok District Court Number: 314 /Pid.Sus/2021/PN.Dpk

#### **a. Defendant's Identity**

Adam Ibrahim Alias Adam Bin H. Luki, who was born in Bogor on August 18, 1977, is a defendant in criminal case number 314/Pid.Sus/2021/PN.Dpk. The defendant is a Muslim businessman with Madrasah/Pesantren education. Jalan Masjid Syamsul Iman Rw. 002 Rw. 004 Bedahan Village, Sawangan District, Depok City, where Defendant lives. Or, according to the KTP: Jalan Masjid Al Mukhlisin No. 62 Rt. 004 Rw. 006 Bedahan Village, Sawangan District, Depok City (Decision of the Depok District Court Number: 314/Pid.Sus/2021/PN.Dpk).

#### **b. The forms of spreading fake news by the defendant are**

- 1) The defendant testified that the resident had lost money at the residence;
- 2) The defendant fabricated and claimed that the fake pig or *Babi Ngepet* or *Pesugihan* pig was responsible for the loss of money at the residence;
- 3) The defendant misinterpreted that piglets could be caught later by carrying out rituals or conditions according to recommendations and instructions, such as buying musk oil and agarwood with money;
- 4) The defendant lied "Here.....the person has turned into a pig.. he immediately got naked and caught", the defendant ordered the witness to catch the pig in its natural state, but it was the pig that the defendant bought;
- 5) Using a loudspeaker, the defendant pretended to give information to residents who saw a live black pig by conveying the following statement: "Sir, ladies, and gentlemen, if or maybe someone lost their family last night at around 00.20 WIT, a pig was successfully arrested";
- 6) In front of the crowd, the defendant stated that he and several residents had caught a sow (*Babi Ngepet*) or a pig with a human form by catching a pig naked;
- 7) The defendant also explained that if he was not naked when catching pigs, the pigs would not be seen and caught, and during the process of catching pigs, he was naked and could see the pigs. In addition, the defendant testified that the pig that was first caught looked very big, but as time went on, the pig got smaller and disappeared, and there was no evidence that it was the person who had changed; and
- 8) The defendant spread misleading information or news about the artificial pig design (*Babi Ngepet*) or *Pesugihan* pig. The intention and purpose of the defendant were to gain fame and become viral because he managed to catch a show (*Babi Ngepet*) or *Pesugihan* pig, even though the news or announcement was a hoax carried out by the defendant himself (Depok District Court Decision Number: 314 /Pid.Sus/2021 /PN. Dpk).





**c. Demands**

The Public Prosecutor's indictment against the Defendant in terms of spreading fake news specifically stated that the Defendant was proven to have committed the crime of spreading fake news as stipulated in Article 14 paragraph (1) of the Law of the Republic of Indonesia Number 1 of 1946 concerning Criminal Law Regulations, which reads: " Whoever, by broadcasting false news or notifications, deliberately causes disturbance among the people, shall be punished with a maximum imprisonment of ten years.

The public prosecutor also presented several items of evidence to be confiscated, destroyed, or returned. Evidence in the form of 1 (one) memory card with a capacity of 4 GB, 1 (one) photo sheet of 1 (one) pig, 1 (one) unit of a blue Xiaomi Redmi brand mobile phone, 1 (one) black tasbih necklace with a broken string, 1 (one) Set of Active Speaker Sound System brand Bare Tone black, 1 (one) unit Samsung brand cellphone in blue, 1 (one) unit infinix cellphone (Decision of Depok District Court Number: 314 /Pid.Sus/2021/PN.Dpk).

**d. Decision**

In decision number 314/Pid.Sus/2021/PN.Dpk, the Depok District Court sentenced him to four years in prison. Because the perpetrator has been legally and proven to have committed a crime by deliberately causing public anger through the spread of fake news. The decision against the defendant was based on paragraph 1 of Article 14 of Law Number I of the Republic of Indonesia of 1946 which regulates Criminal Law (Depok District Court Decision Number: 314/Pid.Sus/2021/PN.Dpk).

In determining the guilt of the defendant in Decision Number 314/Pid.Sus/2021/PN.Dpk, the panel of judges stated that the defendant was legally and convincingly proven to have committed the crime of broadcasting fake news which caused public unrest. The court decided that the defendant violated Article 14 paragraph (1) of Law No. 1 of 1946. The sentence handed down by the panel of judges was far more severe than the prosecutor's demands. During the trial, the public prosecutor requested that the defendant be sentenced to three years in prison (Decision of the Depok District Court Number: 314/Pid.Sus/2021/PN.Dpk).

**3.3. Hoax Ratna Sarumpaet in Decision Number: 203/Pid.SUS/2019/PN.Jkt.Sel.**

According to Decision Number 203/Pid.SUS/2019/PN.Jkt.Sel, the spread of false news by the defendant is detailed in two articles. First, Article 14 of Law Number 1 of 1946 concerning Criminal Law Regulations, for allegedly deliberately causing chaos. Second, paragraph 2 of Article 28 of the ITE Law.

The forms of spreading false information by the accused are:

- a. The defendant told that he was going to Bandung, but he went to the Special Surgery Hospital for medical treatment to repair or remove his face;
- b. The defendant used his iPhone to take several photos of his bruised and swollen face after undergoing medical surgery. After completing his hospitalization, he returned home. During the trip, the criminal sent the witness numerous photos of his bruised and swollen face via WhatsApp;
- c. Upon returning home the defendant asked many witnesses to go into the bedroom of the perpetrator. The defendant later revealed to me, while crying, that he was beaten by an unknown person whose face was covered in cuts and swelling;



- d. The defendant also emailed multiple pictures of his swollen and injured face to additional witnesses;
- e. The accused met with one of the witnesses at a hotel and, with tears in his eyes, reported that he had been beaten by many people. In addition, the witness also provided several photos of his enlarged and flabby face;
- f. The defendant again emailed the witness with a bruised and injured face with the statement, "This country is becoming more and more wild and desolate";
- g. The defendant requested that another witness invite one of the other witnesses to his residence. After the witness arrived at the defendant's residence, the defendant testified that "his older brother was abused" and gave a chronology of the abuse himself by showing a photo of his bruised and swollen face on his mobile phone; and
- h. Finally, at the request of one of the defendant's assistants, the defendant met with one of the spectators and told him that he was swollen and bruised because an unknown person attacked him, and said the same thing to another person. individuals who have the same ideas or struggles as the defendant (Decision Number: 203/Pid.SUS/2019/PN.Jkt.Sel).

The defendant was found guilty of falsifying information and was sentenced to 10 years in prison. The defendant allegedly violated Articles 1 and 2 of the 1946 Criminal Procedure Code, as well as Articles 28 and 45 of the Electronic Information and Transactions (ITE) Law concerning the dissemination of false crime reports.

With a decision numbered 203/Pid.Sus/2019/Pn.Jkt.Sel, the South Jakarta District Court sentenced him to two years in prison. Because the perpetrator has been legally and proven to have committed a crime by intentionally causing public anger by spreading fake news. According to the decision, the defendant was charged with two articles, the first being Article 14 of Law Number 1 of 1946 concerning Criminal Law Regulations, because he was charged with deliberately causing chaos. Second, paragraph 2 of Article 28 of the ITE Law. The defendant was sentenced to two years in prison, less than the six years demanded by the prosecutor (JPU).

The court determined the defendant's violation of the factors considered by the judge in Decision Number 203/Pid.Sus/2019/Pn.Jkt.Sel had reached the level of cassation. The defendant was found guilty at the South Jakarta District Court with Decision Number 203/Pid.Sus/2019/Pn.Jkt.Sel The panel of judges stated in their decision that the defendant had been legally and convincingly proven to have committed an intermediary crime. The court decided that the actions of the defendant against Article 14 paragraph (1) of Law No. 1 of 1946 proved. The judge determines the length of detention for the defendant by subtracting the time spent in detention and orders the defendant to continue detention for the calculated period. The judge's sentence was much lighter than the prosecutor's (JPU) demands. The public prosecutor requested that the defendant be sentenced to six years in prison during the trial (Decision Number: 203/Pid.SUS/2019/PN.Jkt.Sel).

#### **4. CONCLUSION**

Although many laws regulate the spread of hoaxes, there is a lot of hoax news currently circulating, so the current law does not have the desired effect. To convict the perpetrators of spreading false news, law enforcers must be precise in determining which article is appropriate



in dealing with cases of spreading false news, meaning that after committing a crime the spreader of false news must fulfill all elements and return to the legal events that have occurred so that the effect of punishment can be shown according to the error that has been made. Because the impact of hoax news is very large and often it can lead to both vertical and horizontal conflicts, as in cases of hoax news that occurred in the cases of Ahmad Dhani, *Babi Ngapet*, and Ratna Sarumpaet.

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