

# Fake News and Hate Speech on social media: How Does a State take care in its response?

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## Abstract

Spreading fake news and hate speech in Indonesia is a criminal act. The spread of fake news is accompanied by utterances of hatred towards someone and tends to have an impact on defamation. The purpose of this research is to find out and analyze (1) current regulations for dealing with fake news and hate speech on social media in Indonesia; (2) comparison of arrangements for dealing with fake news and hate speech between Indonesia and Singapore; (3) arrangements for dealing with fake news and hate speech on social media in Indonesia in the future. This research is normative legal research with statutory approaches, conceptual approaches and comparative approaches. The data analysis technique used is juridical analysis, namely analysis based on theories, concepts and laws and regulations. The results of the study show (1) current arrangements for dealing with fake news and hate speech on social media in Indonesia are regulated in Article 28 paragraph (1) and paragraph (2) and Article 45A paragraph (1) of the ITE Law jo. Amended ITE Law; (2) a comparison of the regulation on dealing with fake news and hate speech between Indonesia and Singapore shows that the regulation on spreading fake news and hate speech as a criminal act in Singapore is more specific than the regulation in Indonesia; and (3) Arrangements for dealing with fake news and hate speech on social media in Indonesia in the future by revising the ITE Law in conjunction with the Amended ITE Law (second revision) so that multiple interpretations no longer occur. Revision of the ITE Law in conjunction with the ITE Law Future changes in the formulation that can reach crimes, especially crimes related to fake news and hate speech, need to include a settlement with restorative justice.

**Keywords:** Arrangement, Fake News, Hate Speech, Social Media.

## 1. Introduction

The presence of mobile phone and computer technology accompanied by the internet network brings enormous changes in the lives of mankind. In addition to the great benefits enjoyed by society, there are

also negative impacts, namely the existence of a form of crime, which is called cyber crime (mayantara crime). The problem is that the freedom to discuss on social media implies several negative impacts. One of them is the presence and increasing

intensity of hate speech and the spread of fake news (Safitri, 2020).

The widespread spread of fake news has caused people's good name and self-esteem to become disturbed and increased SARA conflict in society. Fake news is one of the factors causing the decline of a country, because people become restless and easily provoked by fake news. The low level of information literacy in society in the sense of lack of interest in reading and the ease for people to create fake accounts and sites, so that this is the main cause of fake news easily influencing the public (Novitawati, Parman, & Sabardi, 2019).

The spread of fake news is increasingly worrying, especially in online social media networks where the spread of fake news not only fools the public, but it is also used by certain parties to arouse people's emotions to create divisions in the community, which in turn will destroy national unity (Siswoko, 2017).

This fake news is usually made to gain profit for the news maker. The perpetrators of fake news may not understand what is uploaded online or just for entertainment. The fake news can have an impact on the victims. The impact can provide losses both on a small to national scale, victims such as being deceived by the content of the news. Those who can become victims of the perpetrators of this fake news are people who have access to cyberspace and not a few people who have access directly believe in the content of the news made by the perpetrators of fake news (Asmara, Baskoro, & Sukinta, 2018).

The content of fake news has a very broad impact, which can harm the person who receives the information because the news cannot be justified. In addition, it can also cause harm to a figure who is

considered to have power so that the person is included in the news as if the news is not fake news, because there is a figure who is considered to have influence that is unlikely to provide fake news. If the fake news includes a head of state, it can have an impact on all citizens so that chaos engulfs the country. The magnitude of the impact that can be caused from reporting fake news, is an individual behavior that tends to become a perpetrator of crime in cyberspace. Criminal sanctions against the perpetrators of false news or in criminal law are called criminalization (Asmara et al., 2018).

On the eve of the 2019 Presidential and Vice Presidential Elections, there was also a criminal case of spreading false news (hoax) that ensnared Kivlan Zein, former Chief of Staff of Kostrad. Kivlan Zein is known to be a supporter of one of the Presidential and Vice Presidential candidate pairs in the 2019 Elections and was named as a suspect in a case of fake news and treason by the Police based on the Registered Report Number LP/B/0442/V/2019/Bareskrim. The reported cases are the criminal offense of spreading false news and Law No. 1 of 1946 concerning Criminal Law Regulations (hereinafter referred to as Law No. 1 of 1946) in Article 14 and/or Article 15 against state security / treason, Law No. 1 of 1946 in Article 107 in conjunction with Article 87 and/or Article 163 bis in conjunction with Article 107. On May 30, 2019, Kivlan Zein was detained at Guntur Detention Center after being questioned at Polda Metro Jaya. Kivlan Zein was detained because investigators considered that he had sufficient evidence related to illegal firearms possession (Tim Detikcom, 2019).

One of the fake news cases that also occurred ahead of the 2019 simultaneous elections was the Ratna Sarumpaet fake news case where the "charade of lies" of the persecution experienced was finally revealed through a press conference. Ratna Sarumpaet claimed not to have been persecuted and confirmed that the bruises on her face were due to a plastic surgery procedure. As a result of spreading false news, based on the South Jakarta District Court Decision Number 203/Pid.Sus/2019/PN.Jkt. Sel, Ratna Sarumpaet was charged with Article 28 paragraph (2) jo Article 45 paragraph (2) and/or Article 35 jo Article 51 paragraph (1) of Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as ITE Law) as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as ITE Law Amendments), and Article 14 and/or Article 15 of Law No. 1 of 1946 on charges of spreading false news that is considered to cause chaos in the community (Mardatillah, 2018).

In addition to fake news, another criminal offense related to the ITE Law jo ITE Law Amendment is hate speech. Hate speech is an act committed by one or more people in the form of incitement, provocation or insult to others in several aspects such as ethnicity, religion, race, gender, skin color, disability, sexual orientation, and many more. Hate speech crimes can be committed in several ways including in religious lectures, campaigns, pamphlets, banners or banners or with the sophistication of existing technology, hate speech can be carried out through social media and other electronic media (Oktiawan, 2021).

In the past, people could only commit insults, defamation and hate speech through written letters or oral speech. However, nowadays, the presence of sophisticated information technology has given new nuances, one of which is the emergence of social media. With the existence of social media, a person can also commit insult, defamation and hate speech through social media networks such as Facebook, Twitter, YouTube, Blogger, Path, Instagram and other social media sites (Muhtarom, 2019).

Hate speech expressed on social media networks can trigger acts of violence and prejudice on the part of both the perpetrators who make these statements and the victims of these actions. Indonesia is one of the countries that adheres to a democratic system where people are given the freedom to voice their opinions. There are many ways that people can express their opinions, because freedom of speech is not only voiced verbally, but also using writing (Parera & Silambi, 2018).

Hate speech in cyberspace occurs because social media users are less wise in expressing their freedom of opinion, often using harsh words in expressing their opinions on social media. The reason for freedom of speech in expressing their opinions regardless of the meaning of their words is that people do not realize that this freedom has rules that govern it. Many people ignore it, even though the abuse of freedom of speech can have bad consequences on the users themselves.

endment. This regulation is often associated with defamation as stipulated in Article 27 paragraph (3) of the ITE Law which stipulates "Every person intentionally and without the right to distribute and/or transmit and/or make accessible electronic information and/or

electronic documents that have insulting content and/or defamation", with criminal penalties stipulated in Article 45 paragraph (3) of the ITE Law Amendment with a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp750,000,000.00 (seven hundred and fifty million rupiah).

The ITE Law in conjunction with the ITE Law Amendment has juridical problems as stated earlier, the provisions in the ITE Law in conjunction with the ITE Law Amendment still contain multiple interpretations, causing legal uncertainty. Criminal law enforcement with the ITE Law in conjunction with the ITE Law Amendments actually creates various legal problems for people who use information technology facilities to express opinions or even criticism in electronic media. This happens because the ITE Law jo ITE Law Amendment does not only regulate the problem of cybercrime as regulated in the convention on cybercrime, but also regulates traditional criminal acts in the form of spreading false news, spreading hate speech and insults using information technology media.

In addition to the problems mentioned above, the ITE Law jo ITE Law Amendment has not regulated the settlement of cases or criminal acts of spreading false news and spreading hate speech using restorative justice (empty norms). So far, the settlement of criminal acts of spreading false news and spreading hate speech has always been resolved through the provisions of Article 27 paragraph (3) of the ITE Law, Article 28 paragraph (2) of the ITE Law and Article 45A paragraph (2) of the ITE Law Amendment which have multiple interpretations and do not reflect justice for the community.

From the provisions of the laws and regulations in overcoming fake news and hate speech mentioned above, to formulate the regulation of overcoming fake news and hate speech in Indonesia in the future, it is necessary to make a comparison with other countries, which in this study is taken from Singapore.

Research with similar phenomena can be seen in several previous studies as written by the first research, namely Zulkarnain, *Studia Sosia Religia* article in 2020 with the title "Hate Speech in Society in Theological Studies". The second research from Dian Junita Ningrum et.al, *Korpus Scientific Journal* in 2018 with the title "Study of Hate Speech on Social Media"(Ningrum, Suryadi, & Wardhana, 2018).

Both studies have similarities and differences with this article. The similarity is that they both study hate speech. Regarding the differences between the two studies, that in the first study only focuses on how hate speech in society according to theological studies and in the second study only focuses on the form of hate speech acts on social media and the types of illocutionary speech acts on netizen comments on Facebook, whereas this article discusses the current arrangements for overcoming fake news and hate speech on social media in Indonesia, a comparison of the arrangements for overcoming fake news and hate speech between Indonesia and Singapore and the arrangements for overcoming fake news and hate speech on social media in Indonesia in the future.

The purpose of this study is to identify and analyze the current arrangements for overcoming fake news and hate speech on social media in Indonesia, comparison of arrangements for overcoming fake news and hate speech

between Indonesia and Singapore and arrangements for overcoming fake news and hate speech on social media in Indonesia in the future.

## 2. Research Methods

In making a scientific work, especially legal research scientific work, it is required to use legal research methods. Legal science seeks to present the law integrally in accordance with the needs of the study of legal science itself, so research methods are needed to obtain a comprehensive research direction (Nurhayati, 2013). This type of research is normative legal research, namely legal research conducted by examining library materials or secondary data as basic material to be researched by conducting a search for regulations and literature related to the problem under study (Daud, 2022). The approach methods used are statute approach (statutory approach), conceptual approach (conceptual approach) and comparative approach (comparative approach). Sources of legal materials consist of primary legal materials, secondary legal materials and tertiary legal materials. In normative legal research, legal materials are collected using literature study techniques. Analysis of legal materials is carried out descriptively qualitative and then deductive conclusions are drawn.

## 3. Results and Discussion

### Current Arrangements for Countering Fake News and Hate Speech on Social Media in Indonesia

In the perspective of positive law, the law is a normative tool that represents the soul and social and legal values in society. The law is a legal device that regulates the implementation of state

activities, regulates the synergy between state institutions, filters in political dynamics, regulates social dynamics, as well as a value system that must be imbued and implemented by every citizen. Article 28 paragraph (2) of the ITE Law Amendment is one of the regulations in Indonesian positive law that is used to limit violating actions on social media related to fake news. Article 28 paragraph (2) of the Amended ITE Law stipulates "every person intentionally and without the right to disseminate information aimed at creating a sense of hatred or hostility of individuals and / or certain community groups based on ethnicity, religion, race and intergroup (SARA)".

The provisions of Article 28 paragraph (2) of the ITE Law Amendment in fact still require an explanation regarding the meaning of hatred and also related to actions that are considered to violate the provisions of the article (RI, 2014). This is useful to prevent violations related to the right to freedom of expression on social media and also not to create the impression of multiple interpretations or vague norms against the provisions of the article in the future. This is based on the fact that there are many actions that are not necessarily considered violations of laws and regulations. In addition, there is also a need for limitations related to actions on social media. This is because every action on social media is likely to influence the public opinion that develops in the community (RI, 2014). One case that has occurred that can be said to be a violation of the right to freedom of opinion and expression is the Prita Mulyasari case against Omni International Hospital (Watie, 2016).

Until now, the existence of fake news has not been clear. Apart from being

multi-interpreted, fake news also causes many losses between individuals and groups. Many people have not realized this, so there are still many who think that fake news is just a trivial matter and there is no criminal act. Fake news in Article 28 paragraph (2) of the ITE Law Changes are still less specific. Supposedly, the article should be detailed again verbatim so that it is easier for readers to understand it. Such as, forms of false news, various kinds of false news, and criminal acts of spreading false news.

The provisions of Article 28 paragraph (2) of the ITE Law Amendment, at present, have been used in resolving cases that occur in the community. However, related to its use, it creates its own problems in society. This is evidenced by the many actions that contain elements of fake news and hatred on social media but cannot be followed up. In addition, many actions that actually do not violate the provisions of the article are considered to have violated the article. This has caused many parties to report each other to the police regarding these acts, which has caused the police themselves difficulties.

The provisions of the article related to this matter still need to be reviewed. Seeing the conditions that currently occur in the community, many still misinterpret and some even do not know the meaning of the article. Proposals related to this matter, namely, the need to create a special chapter for actions that contain violations of SARA elements on social media. In the future, it would be better to use the Police Circular Letter regarding hatred in the future.

In the circular letter, an understanding is given regarding the forms of hate speech derived from the Criminal Code (hereinafter referred to as the Criminal Code) and also other rules outside

the Criminal Code. The forms are, (a) Insult; (b) Defamation; (c) Defamation; (d) Unpleasant Acts; (e) Provoking; (f) Inciting; and (g) Spreading false news. All of these actions are likely to cause discrimination, violence, loss of life, and social conflict. There are also media in the circular letter that can be used to commit hate speech, namely (1) In speeches of campaign activities; (2) Banners or banners; (3) Social media networks; (4) Expressing opinions on social media; (5) Religious lectures; (6) Mass or print or electronic media; and (7) Pamphlets.

Meanwhile, hate speech in positive law in Indonesia is known as hate speech. The term hate speech actually refers to the act of conveying or expressing words or symbols that are offensive to members of other groups that are different in race, religion, ethnicity, sexual orientation, disability and others (Gertenfeld, 2013). Hate speech is also defined as speech designed to cause hatred based on race, religion, ethnicity or national origin (Rosenfeld, 2003).

In simple terms, it can be interpreted that hate speech is the act of conveying words (thoughts) in public, both oral and written, with the aim of causing hatred to certain groups on the basis of differences in race, religion, ethnicity, even sexual orientation and other differences in identity. So in this case it is clear that what is prohibited by law is the content of statements (content) that can cause hatred / hostility and not freedom of speech.

The provisions of the international Convention on the Elimination of all forms of racial discrimination have been accepted by the General Assembly of the United Nations (UN) in the UN session on December 21, 1965. Because the convention does not conflict with the 1945

Constitution of the Republic of Indonesia (hereinafter referred to as UUD NRI 1945), Pancasila and other existing regulations in Indonesia and also in accordance with the wishes of the Indonesian people in terms of upholding and promoting human rights, Indonesia finally enacted Law Number 29 of 1999 concerning the Ratification of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination.

In order to adopt or transform the convention into national law, hate speech, which we know as hate speech, has also been regulated in statutory provisions, namely the ITE Law jo. ITE Law jo. Article 28 paragraph (2) explains that hate speech is an act of "Intentionally and without the right to disseminate information aimed at creating hatred or hostility of individuals and/or certain community groups based on ethnicity, religion, race, and intergroup (SARA)".

The regulation of hate speech in laws outside the Criminal Code, such as the ITE Law jo. ITE Law, Law No. 40/2008 on the Elimination of Racial and Ethnic Discrimination, the articles directly related to the criminal offense of spreading hate speech are Article 27 paragraph (3) Article 28 paragraph (1) and (2), Article 45 paragraph (1) and paragraph (2), Article 52 paragraph (4). Article 27 paragraph (1) stipulates "Every person intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain insults and/or defamation".

Article 28 paragraph (1) "Every person intentionally and without the right to spread false and misleading news that results in consumer harm in Electronic Transactions". Article 28 paragraph (2) "Every person intentionally and without

right to disseminate information aimed at creating a sense of hatred or hostility of individuals and/or certain community groups based on ethnicity, religion, race and intergroup (SARA)".

Article 45 paragraph (4) "Any person who intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain insults and/or defamation as referred to in Article 27 paragraph (3) shall be punished with a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp750,000,000.00 (seven hundred fifty million rupiah)".

Article 45A paragraph (1) "Any person who intentionally and without right disseminates false and misleading news that results in consumer harm in Electronic Transactions as referred to in Article 28 paragraph (1) shall be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah)". Article 45A paragraph (2) "Any person who intentionally and without the right to disseminate information aimed at creating a sense of hatred or hostility of individuals and / or certain community groups based on ethnicity, religion, race and intergroup (SARA) as referred to in Article 28 paragraph (2) shall be punished with a maximum imprisonment of 6 (six) years and / or a maximum fine of Rp1,000,000,000.00 (one billion rupiah)".

Based on the elements of the criminal offense in the formulation of the articles above, it can be observed that the ITE Law jo. This has juridical consequences because the Criminal Code (WvS) still follows and distinguishes the qualifications of offenses between crimes

and offenses, so this law must still refer to its parent provisions.

Some laws that regulate the spread of hate speech contain several juridical problems, namely:

- 1) Article 156 paragraph (1) of the Criminal Code reads that anyone who publicly expresses hostility, hatred or disparagement (minacthing) against one or several groups of Indonesian people, shall be punished with a maximum imprisonment of four (4) years or a maximum fine of four thousand five hundred rupiahs. In this article, there is a jurisdictional limitation; there is no provision on the subject and criminal responsibility (PJP) of corporations;
- 2) Article 1 of Law Number 1/PNPS of 1965 on Blasphemy stipulates that every person is prohibited from deliberately in public telling, advocating or seeking public support, to carry out an interpretation of a religion adhered to in Indonesia or to carry out religious activities that resemble religious activities of that religion; interpretation and activities which deviate from the main teachings of that religion. (No qualification of offense; does not contain legal subject and PJP other than individual; only recognizes single punishment) (Nurdin, 2017).

Article 18 paragraph (1) of Law No. 40/1999 on the Press (hereinafter referred to as the Press Law) stipulates that any person who unlawfully deliberately commits an act that results in hindering or obstructing the implementation of the provisions of Article 4 paragraph (2) and

paragraph (3) shall be punished with imprisonment of 2 (two) years or a maximum fine of Rp.500,000,000.00 (five hundred million rupiah). The article does not include the determination of the qualification of the offense of Crime or Misdemeanor; there is no additional punishment for corporations that violate); Law Number 40/2008 on the Elimination of Discrimination and Race (There is no qualification of the offense; high fines for corporations are not balanced with changes/special regulations regarding "substitute punishment" for fines (which according to Article 30 of the Criminal Code, the substitute punishment is only confinement for a maximum of 6 months); ITE Law Amendment (there is no qualification of the offense; the fines are quite high: maximum 12 M (for corporation can be 20 M), but there is no change/special regulation on "substitute punishment" of fine (which according to Article 30 of the Criminal Code, the substitute punishment is only confinement for a maximum of 6 months). The regulation of Corporate PJP only exists in the "Elucidation of Article 52 paragraph (4)"; There is no special provision of substitute punishment for fines for corporations; the formulation of Article 52 is very frivolous and unclear).

### **Comparison of Arrangements for Countering Fake News and Hate Speech between Indonesia and Singapore**

One of the countries in Southeast Asia that has regulated the spread of fake news or hate speech as a criminal act is Singapore. This is regulated in several laws in Singapore, namely:

- a. *Section 45 of the Telecommunications Act* (CHAPTER 323) :



“Any person who transmits or causes to be transmitted a message which he knows to be false or forged shall be guilty of an offense and shall be liable to the penalties thereof..

- (a) In cases where the false message or messages made contain any reference to the presence in any place or location of a bomb or other explosive or flammable object, may be fined not exceeding \$50,000 or imprisoned for a term not exceeding 7 years or both; and
- (b) In other cases may be fined not more than \$10,000 or imprisoned for a term not exceeding 3 years or both.".

Based on the provisions in the bag, the disseminator of false news who spreads false news in the communication media can be sentenced to a maximum fine of \$10,000 and/or imprisonment for a maximum of 3 years, while if it involves a bomb, it can be sentenced to a fine of \$50,000 and/or imprisonment for a maximum of 7 years.

- b. *Regulation 8(1) of the United Nations (Anti-Terrorism Measures) Regulations :*

"No person in Singapore and no Singaporean outside Singapore shall communicate or make available to any other person

any information which he knows or believes to be false with a view to inducing him or any other person to the mistaken belief that a terrorist act has been, is being or is about to be committed."

Individuals believed to be guilty of this offense may be fined up to \$500,000 and/or imprisoned for up to 10 years. Based on the above provisions, hoax spreaders who spread false news can be sentenced to a maximum of \$500,000 and or imprisonment of up to 10 years if they spread news that they know to be false regarding terrorism activities.

- c. *Section 499 of the Penal Code (CHAPTER 224):*

"Whoever, by words spoken or intended to be read, or by signs, or by visible representation, makes or publishes any allegation concerning any person, intending to injure, or knowing or having reason to believe that the allegation will injure, the reputation of that person, is said, except in cases hereinafter excepted, to defame that person".

And the criminal provisions are contained in Section 499 of the Penal Code, namely: "Anyone who slanders another person will be punished with imprisonment for a period that can be extended to 2 years, or with a fine, or with both". Based on the above provisions,

hoax spreaders who spread false news and are aware that the news can harm others can be punished with a fine and/or imprisonment for a maximum of 2 years.

d. *Section 26 of the Internal Security Act (CHAPTER 143):*

*"Every person who, by word of mouth or in writing or in any newspaper, periodical publication, book, circular, or other printed publication or otherwise disseminates any false report or makes any false statement likely to cause public alarm, shall be guilty of an offense under this section"*

Violators can be punished with a prison fine of up to \$1,000 and/or up to 1 year<sup>12</sup>. Based on the above provisions, hoax spreaders who spread false reports or news that cause public alarm are punishable by a maximum fine of \$1,000 and/or a maximum imprisonment of 1 year.

e. *Section 4 (1) of the Sedition Act (CHAPTER 290):*

“Every person who:

- (a) Do or attempt to do, or make preparations to do, or conspire with any person to do, any act which has or would, if done, have a seditious tendency;
- (b) Saying any abusive words;
- (c) Printing, publishing, selling, offering for sale, distributing or reproducing any publication of an inflammatory nature; or

- (d) Distributing a publication of a seditious nature shall be guilty of an offense and shall be liable on conviction for a first offense to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 3 years or to both, and, for a subsequent offense, to imprisonment for a term not exceeding 5 years; and any hard copy publication found in the possession of such person or used in evidence at his trial shall be forfeited and may be destroyed or disposed of by direction of the court."

Based on the above provisions, any hoax spreader who commits or attempts to commit, or makes preparations to commit, or conspires with anyone to commit, make publications that spread seditious false news can be sentenced to a maximum fine of \$5,000 and/or a maximum imprisonment of 3 years (maximum imprisonment of 5 years if it is a repetition).

Based on the description of hoax regulation as a criminal act in Singapore, a comparison can be made with hoax as an act in Indonesia. The comparison between the two is listed in the table below:

**Table 1****Comparison of Hoax Regulation as a Criminal Act in Singapore and Indonesia**

<b>Types of Hoaxes</b>	<b>Singapore</b>	<b>Indonesia</b>
1. Dissemination of false news and hate speech that can cause chaos among the community	<p>1. Set out in Section 499 of the Penal Code. The elements are Any person who spreads false news and hate speech, and the perpetrator realizes that the news can cause harm to others.</p> <p>2. Set out in Section 4(1) of the Sedition Act. The elements are Any person, attempts to commit or publishes or disseminates false news that may incite others.</p>	<p>1. Regulated in Law No. 1 of 1946 concerning Criminal Law Regulations. The elements that must be met are false news and hate speech, causing disturbances, and the perpetrator realizes or at least understands that the false news can cause disturbances in the community.</p>
2. Dissemination of false news and hate speech in online media or communication media	<p>1. Set out in section 45 of the Telecommunications Act. The elements are, Any person, spreading false news and hate speech which he knows to be untrue. If it is about a bomb, then the punishment is greater.</p>	<p>1. Regulated in Article 45A of the ITE Law jo ITE Law Amendment. The elements are Every person, who spreads false and misleading news, resulting in consumer losses in electronic transactions. It is not explained whether hoax spreaders who do not realize that the news they spread is untrue can be convicted or not. There is also no clear specification of the phrase "false and misleading news".</p> <p>2. Article 27 paragraph (3) of the ITE Law which stipulates "Every person intentionally and</p>

		without the right to distribute and/or transmit and/or make accessible electronic information and/or electronic documents that contain insults and/or defamation", with the criminal penalty stipulated in Article 45 paragraph (3) of the ITE Law Amendment with a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp750,000,000.00 (seven hundred and fifty million rupiah).
3. Spreading fake news and hate speech about terrorism	1. Set out in Regulation 8(1) of the United Nations (Anti-Terrorism Measures) Regulations. The elements are Any person, spreading false news about terrorism, knowing that the news is false.	Not specifically regulated
4. Dissemination of false news and hate speech resulting in public alarm	1. Set out in Section 26 of the Internal Security Act. The elements are Any person, making false reports or false news, causing public alarm.	Not specifically regulated

**Source:** Author's Processed Data Year 2023

**Future Arrangements for Countering Fake News and Hate Speech on Social Media in Indonesia**

Some of the issues with the ITE Law jo. Article 27 to Article 29 of the ITE Law in the Cybercrime chapter, as well as Article 26, Article 36, Article 40, and

Article 45. The issues include legal interpretation, where the formulation of articles in the ITE Law *jo.* The amended ITE Law is not strict and imprecise and creates legal uncertainty (multiple interpretations). The polemics caused by the ITE Law *jo.* ITE Law Amendment occurred again. It should be noted that the ITE Law has already been revised, namely in 2016 with the birth of the ITE Law Amendment. If this revision is re-enacted, the ITE Law will be revised for the second time.

The magnitude of the effects caused by the spread of fake news and hate speech, the government has made regulations that can ensnare the perpetrators of the spread of fake news and hate speech with criminal sanctions. Hate speech is regulated in Article 28 of the ITE Law. Article 28 of the ITE Law reads:

- (1) Every Person intentionally, and without the right to spread false and misleading news that results in consumer harm in Electronic Transactions.
- (2) Every person intentionally and without the right to disseminate information aimed at creating a sense of hatred or hostility of individuals and/or certain community groups based on ethnicity, religion, race, and intergroup (SARA).

In the ITE Law *jo.* ITE Law Amendment, it is explained that hate speech aims to deceive, cause hatred or hostility of individuals and/or certain community groups based on ethnicity, religion, race, and intergroup (SARA).

The crime of spreading false news and hate speech and misleading are prohibited acts regulated in Article

27 Paragraph (3) and Article 28 paragraph (1), and paragraph (2) of the ITE Law *jo.* ITE Law Amendment. Criminal provisions for those who violate Article 27 paragraph (3) are contained in Article 45 paragraph (3), while for those who violate Article 28 paragraph (1), and (2) are contained in Article 45A paragraph (1) and (2) of the ITE Law Amendment.

Article 27 paragraph (3) of the ITE Law *jo.* ITE Law Amendment reads "Every person intentionally and without the right to distribute and/or transmit and/or make accessible Electronic Information and/or Electronic Documents that contain insults and/or defamation".

Article 28 paragraph (1) of the ITE Law *jo.* ITE Law Amendment reads "Every person intentionally and without the right to spread false and misleading news that results in consumer harm in Electronic Transactions".

Article 28 paragraph (2) of the ITE Law *jo.* ITE Law Amendment reads "Every person intentionally and without the right to disseminate information aimed at creating a sense of hatred or hostility of individuals and / or certain community groups based on ethnicity, religion, race and intergroup (SARA)".

Pasal 45 ayat (3) UU ITE *jo.* UU ITE Perubahan berbunyi "Setiap Orang dengan sengaja dan tanpa hak mendistribusikan dan/atau mentransmisikan dan/atau membuat dapat diaksesnya Informasi Elektronik dan/atau Dokumen Elektronik yang memiliki muatan penghinaan dan/atau pencemaran nama baik sebagaimana dimaksud dalam Pasal 27 ayat (3) UU

ITE *jo.* UU ITE Perubahan dipidana dengan dengan pidana penjara paling lama 4 (empat) tahun dan/atau denda paling banyak Rp. 750.000.000,00 (tujuh ratus lima puluh juta rupiah).

Article 45A paragraph (1) of the ITE Law *jo.* ITE Law Amendment reads "Every person intentionally and without the right to distribute false and misleading news that results in Article 45 paragraph (3) of the ITE Law *jo.* ITE Law Amendment reads "Every person intentionally and without the right to distribute and/or transmit and/or make accessible Electronic Information and/or Electronic Documents that contain insults and/or defamation as referred to in Article 27 paragraph (3) of the ITE Law *jo.* ITE Law Amendment shall be punished with a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 750,000,000.00 (seven hundred fifty million rupiah). consumer losses in electronic transactions as referred to in Article 28 paragraph (1) shall be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah)."

Article 45A paragraph (2) of the ITE Law *jo.* ITE Law Amendment reads "Every person intentionally and without the right to disseminate information aimed at creating a sense of hatred or hostility of certain individuals and/or community groups based on ethnicity, religion, race and intergroup (SARA) as referred to in Article 28 paragraph (2) shall be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah)."

It becomes a necessity, if the government, in this case the Indonesian National Police, does not take firm action against the perpetrators of the spread of fake news and hate speech. There are many laws and regulations that can ensnare the perpetrators of spreading fake news and hate speech, so that the perpetrators can be subject to multiple articles, with maximum penalties. This is done to provide a deterrent effect for the perpetrators of the spread of false news and hate speech.

There are still provisions in the ITE Law *jo.* ITE Law Amendments that are still multi-interpretive. The resolution of the problem of spreading false news and hate speech is always tied to articles that have multiple interpretations, namely Article 27, Article 28 and Article 29 of the ITE Law *jo.* ITE Law Amendments. These articles seem to be frightening provisions, even used as a means to take revenge, silence criticism, win a case or even become a political weapon. Meanwhile, the Criminal Code requires the regulation of the spread of false news and hate speech by regulating it as an offense or crime, but laws outside the Criminal Code do not include the qualifications of the offense. Therefore, in the future it is necessary to establish legislation that regulates the spread of fake news and hate speech.

The complexity of cybercrime still requires reform in the ITE Law *jo.* ITE Law Amendment, especially related to criminalization so that it becomes clear and answers the problems. Such as the relationship between the criminal provisions of the

ITE Law jo. ITE Law Amendment with criminal provisions in other laws, differentiating formulations and elements between cyber dependent crime and cyber enabled crime. Furthermore, the process of proof involving the two types of cybercrime; response to actual cybercrime.

In revising the ITE Law jo. ITE Law Amendment is a legislative review as an open legal policy when the 1945 Constitution as the highest legal norm does not regulate or does not provide clear limits on what and how certain material must be regulated by law. Another way is to prepare arguments and constitutional arguments to re-examine to the Constitutional Court the articles in the ITE Law jo. ITE Law Amendments that are considered problematic and contrary to the 1945 Constitution (judicial review). Law enforcement initiated by the police must prioritize restorative justice.<sup>1</sup>

If there are substances in the law that have the character of *haatzai artikelen*, with the character of articles with multiple interpretations, they can be changed and can be revised. Revision by revoking or adding sentences, or adding explanations in the law. Guidelines for the implementation of the ITE Law jo. ITE Law This amendment is not a new legal norm. This revision is an opportunity to thoroughly update this legislation.

#### 4. Conclusion

Based on the discussion that has been stated above, it can be concluded that first, the regulation of countering fake news and hate speech on social media in Indonesia is currently regulated in the ITE Law jo. ITE Law Amendment. For the dissemination of false news is regulated in Article 28 paragraph (1) and paragraph (2) of the ITE Law jo. ITE Law Amendment. Criminal liability for the perpetrators of spreading false news refers to the provisions of Article 28 paragraph (1) and Article 45A paragraph (1) of the ITE Law jo. ITE Law Amendment in the form of imprisonment for a maximum of six years and/or a maximum fine of one billion rupiah. For the spread of hate speech, it is currently regulated in Article 28 and Article 45 paragraph (2) of the ITE Law jo. ITE Law Amendment. Second, a comparison of the regulation of countering fake news and hate speech between Indonesia and Singapore shows that the regulation of the spread of fake news and hate speech as a criminal act in Singapore is more specific than the regulation of the spread of fake news and hate speech in Indonesia. Singapore itself regulates the spread of false news and hate speech in 5 (five) laws and regulations, while Indonesia only regulates in 2 (two) laws and regulations. Some of the regulations on the spread of false news and hate speech that are specifically regulated in Singapore but not specifically regulated in Indonesia are the spread of false news and hate speech about bombs, the spread of false news and hate speech about terrorism activities, the spread of false news and hate speech about public facilities (public alarm). The regulation of the dissemination of false news and hate speech through social media

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<sup>1</sup> Bayu Dwi Anggono, *Diskusi Publik UU ITE: Penghinaan/Pencemaran Nama Baik Menurut KUHP, UU ITE, RKUHP*, Diambil dari: <https://jogja.kemenkumham.go.id/berita-kanwil/berita-utama/>, diakses tanggal 9 November 2022.

in Singapore contains the element that the perpetrator realizes or reasonably suspects that the dissemination of false news and hate speech that he spreads is false news containing hate speech, while in Indonesia in the ITE Law jo ITE Law Amendment there is no such element. Third, the regulation of countermeasures against fake news and hate speech on social media in Indonesia in the future can be criminalized if fake news and hate speech contain content of immorality, gambling, defamation, extortion, threatening on the basis of hostility of individuals or certain groups of people based on ethnicity, religion, race and class. Articles 27 to 29, which are often used to ensnare the perpetrators of spreading false news and hate speech, are considered to be multi-interpretive so that the ITE Law jo ITE Law Amendment can be revised again (second revision) by revoking or adding sentences, or adding explanations in the law so that there is no more multi-interpretation. This revision is a momentum as an opportunity to thoroughly update the ITE Law in conjunction with the ITE Amendment Law. The revision of the ITE Law in conjunction with the ITE Law Amendment in the future in its formulation can reach crimes, especially crimes related to fake news and hate speech on social media. The revision of the provisions on the spread of false news in the ITE Law jo ITE Law Amendments in the future needs to include a settlement with restorative justice.

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