

# The Effectiveness Of The Ite Law In Handling Hate Speaking Through Social Media In Batam City

Elan<sup>1</sup>, Situmeang Ampuan<sup>2</sup>, Junimart Girsang<sup>3</sup>  
Fakultas Hukum, Batam International University

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## ABSTRACT

The results of this study explain that the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions is a form of embodiment of the responsibility that must be carried out by the State, to provide maximum protection for all activities using technology. information and communication to be well protected from potential crime and misuse of technology. Such is the rapid development and progress of information technology, which is one of the causes of changes in human life activities in various fields which have directly influenced the birth of new forms of legal action. For this reason, it is hoped that it is hoped that law enforcement officials should need to improve understanding and performance among law enforcement officers in preventing criminal acts of spreading suspected unlawful acts on social media and to the competent government it is necessary to increase resources and facilities and infrastructure in preventing acts that are illegal. can be detrimental to others due to social media. And for the public to be more careful and smarter in internet media, especially social media and it is not easy to spread information that is not yet clear, then people can become smart and wise internet users so that it does not cause problems in internet use .

## ABSTRAK

Hasil penelitian ini menjelaskan bahwa Undang-Undang Republik Indonesia Nomor 19 Tahun 2016 tentang Perubahan atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik merupakan bentuk perwujudan tanggung jawab yang harus diemban oleh Negara, untuk memberikan perlindungan maksimal untuk semua aktivitas yang menggunakan teknologi. informasi dan komunikasi agar terlindungi dengan baik dari potensi kejahatan dan penyalahgunaan teknologi. Demikian pesatnya perkembangan dan kemajuan teknologi informasi, yang merupakan salah satu penyebab perubahan aktivitas kehidupan manusia di berbagai bidang yang secara langsung mempengaruhi lahirnya bentuk-bentuk perbuatan hukum baru. Untuk itu diharapkan aparat penegak hukum perlu meningkatkan pemahaman dan kinerja antar aparat penegak hukum dalam mencegah terjadinya tindak pidana penyebaran dugaan perbuatan melawan hukum di media sosial dan kepada pemerintah yang berwenang perlu meningkatkan sumber daya dan sarana dan prasarana dalam mencegah perbuatan yang melawan hukum. dapat merugikan orang lain karena media sosial. Dan agar masyarakat lebih berhati-hati dan cerdas dalam media internet khususnya media sosial dan tidak mudah menyebarkan informasi yang belum jelas, maka masyarakat dapat menjadi pengguna internet yang cerdas dan bijak sehingga tidak menimbulkan masalah dalam penggunaan internet

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### Corresponding Author:

Elan,  
Fakultas Hukum,  
Batam International University,  
Jl. Gajah Mada, Baloi - Sei Ladi - Batam, Indonesia  
Email: 2052017.elan@uib.edu, ampuan.situmeang@uib.ac.id, junimart.girsang@uib.ac.id

## I. INTRODUCTION

The existence of the state, as an organization in general, is to make it easier for its people to achieve common goals. The state has strong power over its people. Power, in the sense of the ability of a person or a group to influence other people or other groups, in political science is usually considered to have a purpose for the benefit of all its citizens. Thus, the power possessed by a group of people who act as state administrators is solely for the welfare of its citizens. This is where the values of a democratic country lie, where on the one hand the state guarantees the rights of its citizens, on the other hand, citizens must comply with every provision made by the state. Indonesia is a big and rich country. Indonesia is rich in natural resources and has ethnic, linguistic, cultural and religious religions. Indonesia has 17,508 islands with around 1340 tribes and 300 ethnic groups spread from Sabang to Merauke. Furthermore, the religion adopted by the majority of the Indonesian population is Islam. Around 87.2% (about 207 million) of Indonesia's population adheres to Islam. Diversity in Indonesia is like two sides of a coin. On the one hand, it becomes a potential for the development of a more advanced nation. But on the other hand, it can be disastrous if you can't manage it. Managing differences is indeed not easy especially coupled with the development of science and technology (IPTEK) which is growing rapidly. Various information flows more easily with the development of science and technology. Indonesian people are also people who are active in surfing in cyberspace. The growth and development of science and technology makes it easier for someone to find information from the internet.

The Ministry of Communications and Information Technology revealed that internet users in Indonesia currently reach 63 million people. Of that number, 95 percent use the internet to access social networks. The most accessed social networking sites are Facebook and Twitter. Indonesia is ranked as the 4th largest Facebook user after the USA, Brazil and India. Indonesia is ranked as the 5th largest Twitter user in the world. Indonesia's position only lost to the USA, Brazil, Japan and England. Based on the data above, it shows that access to information is getting easier. There is so much information in cyberspace, both positive and negative. Invalid or negative information sometimes creates an attitude of cursing, dropping and spreading hatred. This if left unchecked will trigger conflicts in society. All that happens because of a lack of understanding of differences.

In Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it is stated that the State of Indonesia is a state of law. Indonesia is a country based on law (Rechtsstaat) not based on mere power (Machtsstaat). The substance of this article is the result of the third amendment to the 1945 Constitution. Article 28I paragraph (5) of the 1945 Constitution also stipulates that in order to uphold and protect human rights in accordance with the principles of a democratic rule of law, human rights are implemented.

concept of the rule of law is so important, that Indonesia needs to express and emphasize the idea of a rule of law in various articles in its basic norm , namely the 1945 Constitution. The idea of a rule of law raises various implications, among others, that all norms and legal products under it must also be in harmony with these basic norms. This rule of law concept also requires all state apparatus (legislative, executive and judicial) to act in accordance with applicable legal norms . According to Abdul Latif, one of the elements in a state of law is that government is carried out based on the law (the principle of legality) where the power and authority of the government is solely determined by the Constitution or the Act. People's political life and behavior contain characteristics such as the government being careful in carrying out its duties, the parliament is very vocal in controlling and playing a role in politics, the public does not hesitate to criticize, and respect for the rights of citizens. This communication process, of course, begins with the government, who changes attitudes from those who are always on top of being listeners for public complaints, so that they are able to criticize social problems or government performance.

## II. RESEARCH METHODS

Based on the formulation of the problem above, the specification of this research is to apply sociological normative legal research, namely normative legal research methods supported by empirical / sociological legal research . The data collection technique in this research is for primary data conducted by documentary studies and interviews and for secondary data carried out by studies of primary, secondary and tertiary legal materials. The analytical method used in this study is a qualitative analysis method, namely all data obtained or collected are edited, processed and arranged systematically and then analyzed qualitatively in order to obtain clarity of the problems to be discussed.

## III. RESULTS AND DISCUSSION

Cybercrime comes from the word cyber which means cyberspace or the internet and crime which means crime. In other words , cybercrime is all forms of crime that occur in cyberspace or the internet. Cybercrime is a crime committed by using computer technology as the main crime tool. Cybercrime is a crime that utilizes the development of computer technology, especially the internet. Cybercrime is defined as an unlawful act that utilizes computer technology based on the sophistication of the development of internet technology. In some literature, cybercrime is often identified as a computer crime. Andi Hamzah in the book *Criminal Aspects in the Computer Sector* (1989) defines: "crimes in the computer field in general can be interpreted as illegal computer use." Cybercrime is a crime committed by using computer technology as the main crime tool.

other words , Cybercrime is a crime that utilizes the development of computer technology, especially the internet. Thus Cybercrime is defined as an unlawful act that utilizes computer technology based on the sophistication and development of internet technology. From some of the definitions above, computer crime is defined as an unlawful act committed by using a computer as a means/tool or a computer as an object, either to gain profit or not, to the detriment of other parties. In summary, computer crime is defined as an unlawful act committed using sophisticated computer technology. Cyber activities are virtual activities that have a very real impact, even though the evidence is electronic.

Thus, the subject of the perpetrator must be qualified as a person who has actually carried out legal actions by the Police in this case the cybercrime unit using parameters based on the UN congressional documents: *The Prevention of Crime and The Treatment of Offlenderes in Havana, Cuba in 1999* and in *Vienna, Austria in 1999. 2000*, states that there are 2 terms Cyber Crime: first , cyber crime in a narrow sense is called computer crime: any illegal behavior directed by means of electronic operation that targets the security of computer systems and the data processed by them. , cyber crime in a broader sense (in a broad sense) is called computer related crime: any illegal behavior committed by means on relation to, a computer system offering or system or network, including such crime as illegal possession in, offering or distributing information by means of computer system or network . Indonesia does not yet have a special law/cyber law that regulates cybercrime. However, there are several other positive laws that are generally accepted and can be imposed on cybercrime perpetrators, especially for cases that use computers as a means, including through social media which is basically regulated in Article 27 paragraph (3) in conjunction with Article 45 paragraph (3) of Law Number 19 of 2016, the offense of defamation is regulated in Article 27 paragraph (3) which reads as follows: "everyone intentionally and without rights distributes and/or transmits and/or make accessible Electronic Information and/or Electronic Documents containing insults and/or defamation." Criminal sanctions for someone who violates this Article is regulated in Article 45 paragraph (3) which reads as follows: "any person who knowingly and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have charge of insult and/or defamation as referred to in Article 27 paragraph (3) shall be punished with imprisonment for a maximum of 4 (four) years

and/or a fine of a maximum of Rp. 750,000,000.00 (seven hundred and fifty million rupiah ). The elements of Article 27 paragraph (3) of the ITE Law are as follows:

- a. Each person;
- b. Purposely;
- c. Without rights;
- d. Distribute and/or transmit and/or make accessible Electronic Information and/or Electronic Documents;
- e. Has insulting and/or defamatory content

Based on Law Number 19 of 2016 concerning Information and Electronic Transactions, only Article 27 paragraph (3) regulates defamation. However, this article invites a lot of debate in the community, some parties support this article and some other reject this article. Those who refuse to say that this article limits one's freedom of opinion in cyberspace, the press also rejects this article because they think that with this article their freedom of opinion online news is restricted. The thing that needs to be emphasized here is that the offense of insulting in Article 27 paragraph (3) of the ITE Law is subjective as well as Article 310 of the Criminal Code. The point is that the feeling of having been attacked by someone's honor or reputation is only with the victim. It is the victim who can determine which part of the electronic information has attacked honor or name good. However, this subjective assessment must be balanced with more objective criteria. In terms of questioning content that is suspected of containing insults or defamation, there are several things that must be studied, namely:

- a. In the content in question there must be a clear identity of the person being insulted. The identity must refer to a certain natural person, not to a legal person, to people in general, or to a group of people based on ethnicity, race, religion, or between groups. The identity can be in the form of a photo (image), username, curriculum vitae of a person, or other information related to the particular person in question.
- b. In the event that the identity in question is not the original identity, it is necessary to determine that the identity does refer to the victim, and not to another person.
- c. Even though this identity is not the original identity, it is generally known that the identity refers to the person in question (the victim) and not to another person. This principle is important, because considering the essence of this crime is to attack someone's honor or good name to be known by the public.

More objective criteria for assessing the relationship between the content of information or electronic documents that are considered insulting or defamatory of a person and the victim can be established based on the content and context of each case. The content in question can be assessed from a language perspective, while the context can be assessed from a social and psychological perspective. If we look at the elements of Article 27 paragraph (3) of Law Number 19 of 2016 concerning Electronic Information and Transactions, then there are several things that can cause problems, namely

- a. The formulation of Article 27 paragraph (3) of the ITE Law can create legal uncertainty (*rechtsonzekerheid*) because it is very vulnerable to the interpretation of whether a protest, statement of opinion or thought is a criticism or insult to the president and/or vice president.
- b. The formulation of a formal offense in Article 27 paragraph (3) of the ITE Law which is ambiguous, vague, and too broad is detrimental to constitutional rights as guaranteed in Article 28F of the 1945 Constitution.
- c. Article 27 paragraph (3) of the ITE Law has systematically prohibited broadcasting by giving severe sanctions to those who are deemed not to have the right to distribute, transmit, and provide access to the internet.

Even though the granting of these rights has no clear meaning and arrangement. Experts provide opinions regarding Article 27 paragraph (3) of Law Number 19 of 2016 concerning

Information and Electronic Transactions, as follows: According to Rudi Rusdiah said that: "that Article 27 paragraph (3) of the ITE Law can cause legal uncertainty because the meaning is too general, brief and not detailed. Judging from the principles and objectives of a law, each article and paragraph must be certain, clear, and have detailed material and substance to provide legal certainty.

Articles and paragraphs of the ITE Law a quo have multiple interpretations and legal uncertainty, so that the a quo Law can be used for various motives, including commercial, by unilaterally interpreting it to punish other parties with very heavy sanctions, namely with a fine of billions of rupiah and six years in prison. Whereas Article 27 paragraph (3) of the ITE Law is very overlapping and can take advantage of personal interests and commercial purposes. Meanwhile, the articles and paragraphs a quo regarding insults and defamation have been promulgated in more detail in 11 articles and/or paragraphs of the Criminal Code and Article 5 of Law Number 40 of 1999 concerning the Press." According to Ronny Wuisan, he said , "that in Article 27 paragraph (3) of the ITE Law there is no term for the definition of distributing so that it will lead to multiple interpretations. The ITE Law should explain, especially in Article 1 of the general provisions of the ITE Law at all, the term is not explained and even more strangely, Article 27, Article 28 and so on are related to prohibited acts, while the terms distributing, transmitting are not quoted consistently. In the formulation of Article 27 paragraph (3) of the ITE Law, the term distributes, transmits, while Article 28 paragraph (2) uses the word spread, which is confusing and will cause ambiguity.

As a result, it creates multiple interpretations, ambiguity and will lead to legal uncertainty." Because it is considered that there are many shortcomings in this article, there are parties who conduct a Judicial Review to the Constitutional Court, the reason for conducting a Judicial Review of Article 27 paragraph (3) of Law Number 11 of 2008 as revised by Law Number 19 of 2016 concerning Information and Electronic Transactions, are:

- a. Article 27 paragraph (3) of the ITE Law creates legal uncertainty, injustice, discrimination, fear, insecurity in distributing information as a human right.
- b. The content of Article 27 paragraph (3) of the ITE Law is contrary to the 1945 Constitution in particular Article 28D paragraph (1), Article 28F, Article 28G paragraph (1) and Article 28I paragraph (2)

Articles of defamation in the Criminal Code can be used to ensnare perpetrators of spreading electronic information containing insults and or defamation . Through Decision Number 50/PUU-VI/2008.

#### IV. CONCLUSION

After taking data and discussing it, it is concluded as follows: That the existence of the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions is a form of embodiment of the responsibility that must be carried out by the State, to provide maximum protection for all activities using information and communication technology in the country to be properly protected from potential crime and misuse of technology. Such is the rapid development and advancement of information technology, which is one of the causes of changes in human life activities in various fields which have directly influenced the birth of new forms of legal action. That with the increasing number of actions that are considered unlawful on social media, it is proven that there are so many problems that arise and not a few have to bear the consequences until serving the law in prison. In addition, law enforcement that has been implemented so far is still running in place and has not shown significant progress because the dynamics that continue to develop can influence and make the law enforcement process no longer easier and simpler, but on the contrary it becomes more complex, difficult and difficult. quaint. That the State of Indonesia desperately needs qualified, organized and structured law enforcement officers to unite communities that specialize in handling all types of

cyber crimes. Without an organized and structured law enforcement in the field of information technology, it will be difficult to ensnare cyber criminals.

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