

# ISLAMIC CRIMINAL LAW AND INDONESIAN LAW FOR THE HOAX REPORTING

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## ABSTRACT

Hoax is a word used to denote a false proclamation, to deceive or to outsmart the reader or hearer to believe in something, whereas the false creator of the news knows that the news is false. One of the most common examples of false news is to claim a thing or an event with a different title from the actual item or event. The research of hoax reporting according to criminal law and Islamic criminal law is a very interesting discussion; especially during these recent years that there are many hoax phenomena happened along with the Increase of the Internet access in society. On the perspective of Indonesian law, the perpetrators of hoax news dissemination have violated Article 28 paragraph 1 of Law Number 11 Year 2008 on information and electronic transaction. Islam does not want its followers do the false words unless an objective and a true word. In the perspective of Islamic criminal law, the spread of hoax news is an act that leads to the preaching of lies and defamation. Sanction for the perpetrators of hoax news spread or false news in Islamic criminal law is *takzir* (punishment). From the aspect of the legal determination, the perpetrator of the crime of spreading the hoax news is entirely submitted to *ulil amri* (government) about type and sanction. In principle, the act of spreading the hoax news is a violation according to both laws, in Islamic law as well as in Indonesian law.

Keywords: hoax, takzir, Indonesian law.

## I. INTRODUCTION

Internet encourages the emergence of many new phenomena among users. Today, people can easily produce news either individually or in-group without having to engage with major media companies. As David T. Hill notes (Hill, 2017), in contrast to previous alternative sources (such as shortwave radio or overseas television), Internet is completely interactive. This means that people do not only “read” but also “write” on Internet. They participate in a two-way information exchange processes, which is really an “alternative” to other news structures that only allow one-way information flow. On Internet, people can be able to fabricate news directly without being filtered by the government.

Online journalism is a contextualized journalism, because it is capable to combine the capabilities of digital multimedia, online interaction, and its ordinary features. However, through this accessibility to the Internet, a news that is decided important or not, is based on something that readers click or visit on the Internet. The rapidly information cycle also makes the present news to be fast, consistent but incomplete and instantaneous. The possibility of news

manipulation becomes widespread because of the absence of the standard rules that become the reference of journalists. News can be done by anyone, including news on engineering, manipulation, over-preaching, simplification and even forgery (Holiday, 2012).

With the proliferation of personal websites which content is filled by parties with various backgrounds, the credibility of citizen journalists who are said to be of free of value are also being questioned because of the absence of a circumstance constraint or a parameter to be used as a rule. The absence of validity of news written by the citizen journalists has lead to the emergence of hoax phenomenon.

Indonesia's Cable News Network (CNN) said that the data presented by the Ministry of Communication and Information, there were 800 thousand sites in Indonesia which indicated as spreading false news and hate speech (Pratama A. B., 2016). During 2016, the Ministry of Communication and Information has blocked 773 thousand sites based on 10 groups. The ten groups contain elements of pornography, illegal fraud/trade, drugs, gambling, and radicalism, violence on children, Internet security, and Intellectual Property Rights (IPR) (Jamaluddin, 2016). Of that amounts, the most is the element of pornography.

The research of hoax preaching is important because of the weak of the law enforcement. This is due to various factors that affect the process of the law enforcement on hoax news. The legal substance in this case is clear that the hoax report violates Article 28 paragraph 1 of Law Number 11 Year 2008 on information and electronic transaction (Maskum, 2017). In term of the law enforcement officers, technically, in carrying out legal actions against perpetrators, it is deemed less effective because it does not provide deterrent effect. In Islamic law, hoax is an act that leads to the preaching of lying and slander. In al-Quran chapter *al-Hujurat* verse 6 (Translated by Minister of Religion of the Indonesian Republic) mentioned that clarification must be done before receiving the truth of the news. This shows that Islam is giving primary attention to the validity of the news (Mo'tasim, 2017).

This research aims to analyze and compare between the viewpoint of Islamic criminal law and the Indonesian law about the hoax reporting. This research obtains the source of information from books, journals and literature related or relevant to the objectives of the research. The method used is descriptive method in order to obtain detailed data regarding the hoax publication in Indonesia from the perspective of Islamic criminal law.

## **II. THEORETICAL REVIEW**

### **A. Cyber Space and Online Media**

Elmer-Dewitt mentioned that Internet or virtual world is a shadow space where the data of the computer resides (Dewitt, 1993). On January 26, 2017, a research firm entitled "We Are Social" conducted a research on Internet usage activity worldwide. The research found, the number of Internet users in Indonesia reached 132.7 million users. As many as 69 percent of Indonesian users still access the Internet via mobile devices, and the others access through desktops and tablets. The growing number of Internet users is also in line with the increasing number of users of social media services (Pratama A. H., 2017).

The general definition of the online media is all types or media formats that can only be accessed via Internet, which contains text, photos, video, and sound. In general, online media can also be interpreted as a means of communication online. With the general definition of the online

media, so the email, mailing list, website, blog, *WhatsApp*, and social media can be categorized as online media (Alejandro, 2010).

## **B. Hoax**

False news is news that is not in accordance with the truth. Briefly, hoax information is incorrect information. In Cambridge Dictionary (2011), hoax means a joke. The term hoax is used for fake news, urban legend, rumor and deceptive lie. In essence, hoax is created to deceive many people by fabricating a piece of news to impress the truth (Silverman, 2015).

The behavior of the hoax preaching over the Internet is strongly influenced by both individual and group, from low to high educated, and well-structured (Shoemaker & Reese, 1996). There is clear difference between the one who has a special skill in using search engine and the one who has not skill in using search engine (Lazonder, 2000). Individual who has more experience in utilizing search engines will tend to be more systematic in doing searches than those with little experience.

Hoax news is increasingly difficult to block although in 2016 Indonesian government had blocked 700 thousand sites, but every day we can see the hoax news continues to appear. In January 2017 the government blocked 11 sites containing negative content, but the blocking case did not reach the court. Some cases in Indonesia related the hoax news has taken its toll. One of which is hoax news of kidnapping children who have been scattered in some social media and has caused people being more alert to strangers (Jamaluddin, 2016).

## **C. Takzir (Punishment)**

*Takzir* (punishment) is derived from the word *azzara* which means to prevent and reject; *Addaba* means to educate; *Azzama wa al-waqqara* means to respect and honor; And *a'ana wa qawwawa nas ara* means to help or strengthen. The word *takzir* is more popular in use to indicate the meaning of giving lesson and penalty (Mo'tasim, 2017).

## **D. Recursive Audience Pattern**

Since the emergence of Internet and the phenomenon of convergence, the pattern of news consumption by audiences is transformed in a new one that is much more flexible and tailored to the needs of the newsreaders. There is also a change in the pattern of information sources consumed, which was previously linear becoming recursive (Jamaluddin, 2016). This is because the recipient of mass information also acts as a conveyer of information to other audiences via Internet media.

# **III. HOAX NEWS ON THE PERSPECTIVE OF ISLAMIC CRIMINAL LAW AND INDONESIAN LAW**

## **A. Legal Basis of the Illegality of the Hoax News in Islamic Criminal Law.**

In *al-Qur'an* chapter *al-Hujurat* verse 6, it is mentioned (Translated by Minister of Religion of the Indonesian Republic) about the need to clarify before accepting news. The first thing to do is to clarify the news. It is also mentioned that a thorough examination of the news done to prevent disaster for the others. Hoax in Islamic law is included in the act of false speech. A false speech in Islam is one of the great sins that must be avoided. According to *al-Quran* chapter *al-Ahzab* verse 24 (Translated by Minister of Religion of the Indonesian Republic), it is mentioned that those who lie are rewarded with the punishment of God both in the world and in the hereafter.

The one who spreads the false news is categorized as hypocrite as firmly suggested in the Prophet's tradition narrated by Abu Hurairah RA: "The signs of the hypocrite are three. They are, a person who lies when he/she speaks, when he/she promises, he/she flips, and he/she gets the trust (*amanah*), he/she betrays (The Hadith, n.d.). Islam gives special and serious attention to these cases, so that people are cautious and always wary of hypocrite in both of the context of *aqidah* and the context of *muamalah* in a social life.

## **B. The Elements of Hoax Crime in Indonesian Law**

In the Law of the Republic of Indonesia Number 11 year 2008 on information and electronic transaction Article 28 Paragraph 1 explains that every person intentionally and without right to disseminate false and misleading news resulting in damages, is punishable by imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp 1,000,000,000.00 (one billion Rupiah).

An act is considered as a crime if its elements have been fulfilled. In the Law of the Republic of Indonesia Number 11 year 2008 on information and electronic transaction Article 28 Paragraph 1 requires the following elements:

1. Everyone: is those who referred to the perpetrator of the hoax lie.
2. Mistake: "Intentionally" which can be interpreted as a form of deliberate and unlawful propagation of false and misleading news proven by doing in the case of executing the offense threatened in that article.
3. Against the law without right here is to be construed as against the law ie without any right of his/her own (*zonder eigen recht*). It is contrary to the law in general (*in strijd met het recht in het algemeen*), contrary to the one's personal rights (*in strijd meteer anders subjectieve recht*), and contrary to the objective of law (*tegen het objectieve recht*). It is also classified as unlawful and in contrary to the private rights.
4. Act: spreading about somebody, which is not in line with the facts.
5. Object: lie news is synonymous with false news. It means that the broadcasted news contains an untrue fact, a misleading nature, and an interpretable thing. Because the formula uses the word "and" means that both elements must be met for punishment. Namely spreading false news (not in accordance with the real thing) and misleading (causing someone to think wrong/misunderstanding). However, if the false news does not cause a person to have a false view, it cannot be punished
6. Constitutive effect: it results consumer losses in his/her electronic transaction. It is for any form of loss, not only a material loss, but also immaterial losses, such as feeling of anxiety, being embarrassed, being stressed, losing of hope to get pleasure or profit and etc. This last element requires false and misleading news that results in a loss of consumer.

Article 45 Paragraph (2) fulfills the elements:

1. Everyone means every perpetrator.
2. "Intentionally and without any rights to disseminate false and misleading news". Intentionally can be understood by intentionally spreading false news proven in the conduct of the offense threatened in that article.
3. "Causing consumer losses in his/her electronic transaction". What results in consumer losses in electronic transaction are all forms of loss, not only material losses but also immaterial. For example, feeling of anxiety, being embarrassed, being stressed, lossing of hope to get pleasure





electronic transactions. Therefore it is necessary to give sanction against the perpetrators of the false news spread. The criminal sanctions for the perpetrators of the hoax news spread are contained in Article 45a that prison sentence is of 6 (six) years imprisonment and/or a fine of not more than Rp. 1,000,000,000.00 (one billion Rupiah).

In the perspective of Islamic criminal law, violating Article 28 Paragraph 1 of Law Number 11 Year 2008 about information and electronic transactions is an action. It leads to lying, slander. And the sanctions for the perpetrators of the hoax news spread in Islamic criminal law is *takzir*. In concerning with the legal determination for the perpetrator of the crime of spreading the hoax news is entirely submitted to *ulil amri*. In principle, the act of spreading the hoax news is a violation in term not only from the perspective of religious norms but also Indonesian law.

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