

LEX INFORMATICA THEORY APPROACH AS AN ARCHITECTURE TO PREVENT AND HANDLE HATE SPEECH IN CYBERSPACE

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Abstract

Hate speech that evolves into hate speech can be categorized as a societal outbreak. In conjunction with this, cyber hatred is pertinent to the ongoing technological advancements. The evolution of cybercrime is intricately linked to the growing number of internet users in Indonesia. Hence, based on three key aspects: the proliferation of cyber haters involved in cybercrime, the correlation between cyber hatred and social media, and the acceleration pattern of cyber hatred within the socio-political landscape, this study seeks to investigate the prevention and management of hate speech regulations in Indonesia. The research methodology employed here is normative juridical, utilizing a comparative and statutory approach. The research findings suggest that the widespread practice of hate speech is a consequence of increased media usage. Consequently, this situation prompted the Indonesian National Police to issue Chief of Police Circular Letter Number SE/6/X/2015 on the Handling of Hate Speech. Hate speech has also been codified in the law, as evidenced in Article 28 jis. Article 45 paragraph (2) of Law No. 11/2008 on Electronic Information and Transactions (ITE Law), and in Article 16 of Law No. 40/2008 on the Elimination of Racial and Ethnic Discrimination. In this context, the lex informatica theory approach can be applied to cyberspace architecture, emphasizing the necessity of a legal framework to adapt traditional regulations into the digital realm. Essentially, what is deemed a legal violation in the physical world should also be recognized as a violation of the law in cyberspace.

Keywords: Lex Informatica; Prevention; Handling; Hate Speech; Cyberspace.

INTRODUCTION

Crimes rooted in prejudice initially fall into the category of bias-motivated offenses. Conversely, the concept of hate crimes aims to distinguish offenders driven by emotions such as envy, avarice, political beliefs, and more. Hate speech serves as a catalyst for further hate speech.¹ Hate speech is characterized as expressing hostility towards individuals or collectives due to distinctions in race, ethnicity, religion or faith, social affiliation, skin color, or sexual orientation.² Hate speech is set apart from criminal actions driven by motives like intention, envy, financial gain, political motives, and various other factors. Unlike conventional offenses such as theft, homicide, or robbery, hate speech

carries with it a subjective aspect linked to the attitudes, principles, and personality of the perpetrator.³ The feeling of aversion is frequently employed by wrongdoers as a rationale for their behaviors that result in hate speech.⁴ Hence, it's unsurprising that hate speech often targets marginalized groups due to factors such as their distinctive identities, susceptibility to bias, the way their expression is portrayed, historical circumstances, and the enduring impact of legal consequences.

The transformation of hate speech into a form of hate speech can be categorized as a societal contagion.⁵ Indeed, the proliferation of hate speech demonstrates how rapidly this phenomenon disseminates. One contributing factor is the evolving perspective of the digital realm on the construction of social reality.⁶ This is rooted in the belief that hate speech's essence is contingent on context, presumptions, and perspectives, which can fluctuate depending on their interpretations. The fluid nature of interpreting hate speech places it at the forefront of delicate matters. Given the prevalence of hate speech, the Organization for Security and Co-operation in Europe classifies biases that lead to hatred as various forms, including anti-Semitic, anti-Muslim, anti-Christian, gender-biased, oriented toward sexual orientation, and disability-biased. The connection between hate speech and sexual orientation results in the victimization of individuals with same-sex preferences. This victimization arises due to their limited public exposure, the presence of unmonitored spaces, typically private settings, the ignorance of those responsible, and a limited response from law enforcement authorities.⁷

In more severe instances, hate speech's reach extends to encompass xenophobia, religious discrimination, and ethnic bias on a larger scale⁸ Racial and ethnic tensions are prevalent in conflicts carried out via digital media. To put it succinctly, hate speech no longer confines itself to traditional forms of physical interaction, as these biases are now disseminated through the internet. The transformation of hate speech into an online phenomenon presents challenges in deciphering the boundaries of freedom of expression, legal frameworks, and cultural nuances. Consequently, the existence of the digital realm can jeopardize ten aspects of freedom, namely:⁹ 1) access to information disclosure; 2) financial transparency; 3) censorship of hate speech; 4) restrictions on internet access in education; 5) censorship of digital services; 6) restrictions on the freedom to send and receive information anonymously; 7) encryption restrictions on access; 8) violations of privacy rights; 9) universal access and electronic redlining; and 10) the digital world as a source of satisfaction.

Cyber hate represents a worldwide phenomenon rooted in biases. These biases are aimed at individuals possessing diverse characteristics, leading to a division in the way cyber hate is defined, either as a more regulatory stance or a more speech-centered perspective.¹⁰ The catalyst for cyberhate has the capacity to evolve into a global subculture steeped in racism, serving as a collective identity with repercussions that extend across borders.¹¹ This exclusive characteristic further solidifies the prominence of specific groups within the digital realm, typically rooted in competition and social innovation.¹² Consequently, it is more inclined to steer behavior towards the pursuit of identity validation through social confrontations.

Cyber hate is pertinent in the context of contemporary technological advancements. The utilization of cyber hate channels has transitioned from websites, blogs, and news outlets instigated by particular groups to popular social media platforms like Facebook, YouTube, Instagram, Twitter, and WhatsApp¹³ Interestingly, cybercrime in Indonesia has progressed from traditional computer-based offenses to crimes that are facilitated or enabled through computer technology¹⁴ One could argue that the prevalence of cybercrime in Indonesia resembles the way traditional crimes have evolved through computer usage. Consequently, it's not astonishing that cyber hate has emerged as a prominent manifestation of cybercrime. This shift in cybercrime is closely intertwined with the growing population of internet users in Indonesia.¹⁵ This apprehension arises from the rapid growth in the number of social media users in Indonesia, which has been consistently increasing year by year. Between 2019 and 2020, there was an addition of 12 million new users, followed by a further 10 million increase in 2021. By 2022, the total count of social media users in Indonesia had reached 191.4 million, marking a 12.6% rise from the previous year. One contributing factor to the potential exposure to cyber hate in Indonesia is the prevalent use of the internet for communication purposes, particularly messaging (24.7%) and social media activities (18.9%).¹⁶

Given the recognition of the issue highlighted above, the research's primary objective is to investigate the extensive prevalence of online hate speech in Indonesia. This, in turn, underscores the necessity for a robust legal framework to tackle this issue effectively. The absence of a comprehensive and consistently enforced set of laws pertaining to these matters necessitates legislators to establish regulations prohibiting hate speech. This step would enable the government to prevent, prosecute, and eradicate hate speech within the digital realm. The aim of implementing such regulations is to prevent errors in safeguarding individuals and enforcing the law.

Taking into account three critical factors—namely, the substantial presence of cyber hate within cybercrime, the connection between cyber hate and social media, and the increasing trend of cyber hate within the socio-political context—the central inquiry revolves around the regulation of hate speech in Indonesia. Consequently, the author intends to investigate the current formulation of guidelines aimed at preventing and penalizing hate speech in the digital sphere.

RESEARCH METHODS

The research approach employed in this study is of a normative juridical nature, and the data sources utilized can be categorized as secondary sources, which encompass: i) Primary legal materials, constituting legally binding documents like the Criminal Code (KUHP), Law No. 19 of 2016 amending Law No. 11 of 2008 regarding Electronic Information and Transactions. ii) Secondary legal materials, including texts that offer interpretations and insights into primary legal materials, such as scholarly doctrines, academic writings by experts, journals, and other scholarly publications. iii) Tertiary legal materials, encompassing references and explanations for both primary and secondary

legal materials, such as general dictionaries, legal glossaries, encyclopedias, and internet resources relevant to the research.

This study employs both a comparative approach and a statutory approach. The analysis of data is carried out in a descriptive-qualitative manner. The research design utilizes descriptive analytics, which entails elucidating data to gain a comprehensive understanding of specific legal occurrences within society, facilitating analysis based on pertinent regulations.¹⁷

DISCUSSION

Lex Informatica Theory as Legal Architecture in Cyberspace

Reidenberg employs the concept of "lex informatica" as a technological framework to manage the dissemination of information and mandate or restrict specific activities on technological platforms.¹⁸ The concept emerged regarding the manipulation of technical standards as a means to influence and regulate behavior within a system.¹⁹ Put differently, Lex Informatica also addresses the notion that technological capabilities and system usage guidelines can be utilized to govern the conduct of participants in order to safeguard their users. Consequently, regulations are established to deter specific user actions and to penalize any aberrant behavior.²⁰

From the 1990s onwards, the internet has consistently promoted the alignment of user behavior with recommender systems, which aim to display posts and advertisements tailored to individual interests and preferences.²¹ Moreover, Trachtman elaborates that due to the happiness technology brings, there is a proclivity to attribute the transformations witnessed in sovereignty, statehood, jurisdiction, and legal matters to the influence of cyberspace.²² According to Trachtman, this occurrence calls for the development of more robust institutional remedies, including enhanced collaboration among national, regional, and global regulators to effectively govern the internet.

Stemler clarifies that Lex Informatica is founded on standards and principles because: 1) It has the capacity to prevent undesired activities by structurally designing the system. 2) It can shape user behavior through self-monitoring and feedback mechanisms. 3) It can gather insights from conducted activities, aiding parties in promptly attaining regulatory objectives. 4) It enhances the process of auditing platform activities.

The ongoing interplay among users, technology, and legal frameworks results in norms that are in a constant state of evolution, adapting alongside shifts in both law and technology.²³ Technology has the capacity to limit specific undesirable actions, and website design can act as a deterrent, prohibiting users from engaging in particular activities like accessing specific content or even viewing certain user profiles.²⁴ Kerr highlights in his article that shifts in the utilization of technology to fulfill societal requirements can disturb the equilibrium of established policies. Simultaneously, the application of technology by criminals creates fresh avenues or methods for committing offenses that are more cost-effective, convenient, and pose a lower risk of detection.²⁵ Boyd proceeded to clarify that affordability can be influenced by the surrounding

conditions.²⁶ Moreover, Boyd elaborated on the distinction between social media as a digital environment and physical public spaces. This distinction implies that online content has a more enduring presence and a broader reach compared to offline interactions. This convenience provides social media users with the potential to utilize it for both positive and negative intentions.²⁷ Franks continued by highlighting that factors such as anonymity, amplification, the challenge of erasing digital footprints, and the public nature of cyberspace will magnify the consequences of online harassment. Perpetrators frequently exploit the convenience of the digital realm to engage in harassment.²⁸ Therefore, within the digital realm, the affordability factor has created new capabilities and prospects while eliminating limitations for individuals who engage in sexual harassment.

Lex Informatica Theory Approach to Prevent and Handle Hate Speech in Cyberspace

In the realm of hate speech, those who commit such acts are driven by prejudiced biases. There exist three distinct categories of hate speech perpetrators: those who are motivated by amusement or a sense of thrill, those driven by strong sentiments toward specific individuals or groups, and those who are motivated by a desire to improve the world.²⁹ Based on this categorization, hate speech perpetrators can be categorized by their motivations as defensive, vengeful, or prejudiced. The typology of hate speech perpetrators encompasses various conditional factors, both psychological and environmental, that influence and drive their actions.³⁰ Nevertheless, the media's capacity to disseminate hate speech remains quite restricted, leading to the expansion of the typology of online hate.

Cyber haters constitute a segment of cybercrime research in Indonesia that has not been given dedicated attention.³¹ Furthermore, the socio-political context within Indonesian society plays a significant role in shaping the dynamics of cyber haters. The internalization of prejudices by perpetrators and their expression in supportive environments are closely linked to the escalation of online hatred. This is evident in various ways, including the disproportionately high number of cyber hatred cases compared to other forms of cybercrime. Indicators of this phenomenon include a significant surge in cybercrime during 2017-2018, along with statistical data indicating a concurrent increase in provocative content dissemination, which became more dominant during the same period. In contrast, other types of cybercrimes remained relatively stable and less frequent, falling into the category of computer-facilitated crimes. This shift from conventional crimes to prejudice-based offenses manifests through activities such as insults, defamation, the spread of hoaxes or fake news, provocation, and blasphemy. Ethnicity tends to be a common basis for prejudice in the context of cyber hatred. In essence, despite the widespread use of the internet in Indonesia, there is a noticeable gap in digital literacy that lags behind the high number of internet users.³²

Certainly, hate expressed online remains a form of hatred, and it is reasonable to apply traditional laws to online conduct. However, this assertion overlooks the unique nature of cyberspace, where it is constantly accessible to others, akin to international waters in the

ocean but without temporal limitations when one seeks to navigate this space.³³ Hence, the challenge lies in assessing the harm endured by a victim in cyberspace, particularly when the harassment isn't a direct encounter. The prevailing viewpoint, which opposes this notion, underscores the difficulty in comprehending the true nature of threats in the digital realm. In contrast to the immediacy of a physical confrontation, online threats, especially when they aren't communicated directly to the victim, may appear temporally distant due to potential delays between the issuance of a message and its receipt by the victim. Consequently, terms like cyber offense, cyber theft, cyber violence, and cyber obscenity (including hate) are employed to emphasize the link between unlawful behaviors in the physical and virtual worlds.³⁴

The societal discussion surrounding cyber hate in Indonesia represents an imbalance in the power dynamics, which has the capacity to lead to variations in the definition of criminal activity.³⁵ Cyber hate, irrespective of its associated social manifestations and behaviors, carries a significant and far-reaching influence. Consequently, the examination of cyber hate has the potential to encompass diverse areas within criminological research.

Therefore, hate speech legislation, which aligns with the specific requirements and values of each society, may lose its significance if hate finds novel avenues to disseminate and transcend national borders.³⁶ Within the digital realm, various communication channels such as email, chat platforms, online forums, message boards, websites, and blogs are all employed to disseminate or share messages of hate directed at both individuals and groups.³⁷ The initial response of the Government was to extend the laws designed for addressing online hate to encompass offline instances of hate as well.

Theoretical framework of *lex informatica* is employed in the architecture of cyberspace to emphasize the significance of the *lex informatica* framework when attempting to adapt legal structures to the digital realm. This framework posits that actions considered legal violations in the physical world should also be deemed as such in cyberspace. Joel Reidenberg defines *lex informatica* as a technological framework that governs the flow of information, imposing requirements or prohibitions on technological platforms,³⁸ which can be manipulated to regulate behavior within a system.³⁹

In Indonesia, hate speech cases encompass a wide range of offenses, such as defamation, harassment, libel, incitement, and threats directed at both individuals and groups. It extends to issues like restricting religious practices for minority communities and entangling with identity politics. Hate speech has emerged as a significant issue in the realm of social media usage among Indonesians. Consequently, this situation prompted the Indonesian National Police to issue Chief of Police Circular Letter Number SE/6/X/2015, addressing the handling of hate speech.⁴⁰ Hate speech has also been addressed and governed by legal provisions, including Article 28 jis, Article 45 paragraph (2) of Law No. 11/2008 concerning Electronic Information and Transactions (ITE Law), and Article 16 of Law No. 40/2008 regarding the Elimination of Racial and Ethnic Discrimination.

Nonetheless, these measures have not proven effective in curbing the proliferation of hate speech on social media platforms. Currently, there is no dedicated legal framework in Indonesia specifically addressing hate speech. In accordance with the circular letter, the content of hate speech is confined by specific limitations, encompassing criminal offenses such as insults, defamation, blasphemy, libel, offensive behavior, incitement, dissemination of false information, and any actions aimed at or capable of causing discrimination, violence, loss of life, and/or social conflicts.

These limitations encompass factors like ethnicity, religion, religious sect, beliefs, race, intergroup dynamics, color, ethnicity, gender, disabilities, and sexual orientation. Various channels are utilized for the dissemination of hate speech, including campaign activities, banners, social media platforms, public speeches or demonstrations, religious sermons, print and electronic mass media, and pamphlets. Perpetrators may comprise individuals from any background, with a particular focus on those inciting violence.

In summary, despite certain challenges, criminal law continues to offer protection for individuals in the online realm. Consequently, the Indonesian National Police introduced the Virtual Police on February 23, 2021, following the issuance of Chief of Police Circular Letter Number SE/2/11/2021, which emphasized the importance of fostering an ethical culture to establish a clean, healthy, and productive digital space in Indonesia. The creation of the Virtual Police unit was in response to President Joko Widodo's directive for the National Police to exercise caution when applying the provisions of the ITE Law. Broadly, Virtual Police (sometimes referred to as Internet Police or Cyber Police) can be defined as law enforcement or government agencies tasked with overseeing the internet to combat various forms of cybercrime.⁴¹

The introduction of the Virtual Police aims to educate the public about cases that could lead to charges under the ITE Law when it comes to social media activities. Furthermore, the establishment of the Virtual Police is part of the National Police's initiative to ensure security and order in the digital realm, fostering a clean, healthy, and productive online environment. In essence, the formation of this virtual law enforcement unit is primarily geared toward combating negative content and disinformation, while also serving as a platform for educating the public about the ITE Law.

If the Virtual Police were to apply the concept of restorative justice in their efforts to control and prevent the proliferation of hate speech and disinformation, success would not be solely measured by the apprehension of suspects or the acquisition of evidence. Instead, it would be assessed by their ability to prevent crimes by addressing the interests of both the perpetrators and the victims, with an emphasis on the most disadvantaged parties, as well as the overall public interest.

Restorative justice prioritizes the establishment of fairness and equilibrium between those responsible for the offenses and the individuals affected by them. This approach holds unless the content of hate speech possesses the potential to incite divisions along lines of ethnicity, religion, race, and ideology, leading to radicalism and separatism that may harm the unity and integrity of the Indonesian nation.

CONCLUSION

The extensive prevalence of hate speech, as indicated by the surge in social media usage, presents numerous challenges. Nonetheless, criminal law still holds the potential to safeguard individuals in the digital realm. In response to this situation, the Indonesian National Police issued Chief of Police Circular Letter Number SE/6/X/2015 addressing the handling of hate speech. Additionally, hate speech has been subject to legal regulation, as evident in Article 28 jis, Article 45 paragraph (2) of Law No. 11/2008 concerning Electronic Information and Transactions (ITE Law), and Article 16 of Law No. 40/2008 regarding the Elimination of Racial and Ethnic Discrimination. In connection with these developments, the *lex informatica* theoretical approach can be applied to the architecture of cyberspace to underscore the significance of a legal framework for translating conventional regulations into the digital realm. This perspective asserts that actions deemed violations of the law in the physical world should also be considered violations of the law in cyberspace. The pervasive and rapid expansion of hate speech on social media has the potential to escalate into open conflicts and threaten national unity if left unaddressed. One effective strategy to counteract the dissemination and proliferation of hate speech is the establishment of a cyber-law enforcement unit known as the Virtual Police.

Foot Notes

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