


Criminal Law and Civil Law Accountability for the Spread of Fake News in the Digital Era

Julvina^{1*}, Rufinus Hotmaulana Hutauruk², Lu Sudirman³

^{1,2,3} Faculty of Law, Universitas Internasional Batam, Batam, Indonesia.

 : 2151034.julvina@uib.edu

Corresponding Author*



Abstract

Introduction: Freedom of expression in the digital era without any restrictions indirectly triggers the spread of fake news. The freedom to spread news or broadcasts often transcends legal, cultural and religious boundaries. Therefore, fake news is used as a tool to attack honor and bring down the good name of a person or group.

Purposes of the Research: This research aims to analyze criminal and civil law regulations related to the spread of fake news in the digital era in Indonesia.

Methods of the Research: Through normative legal research methods, this study examines various relevant regulations, including the Criminal Code, Civil Code, and Electronic Information and Transaction Law.

Results Main Findings of the Research: The results of the study show that both criminal and civil laws already have mechanisms to overcome the spread of fake news. In the criminal realm, sanctions are given to perpetrators who spread fake news with a wide impact, such as inciting riots or violating human rights. Related articles in the Criminal Code and the Electronic Information and Transaction Law, such as Article 160 of the Criminal Code and Article 28 paragraph (3) jo. Article 45A paragraph (3) of the Electronic Information and Transaction Law, provides a strong legal basis. Meanwhile, civil law allows aggrieved individuals to claim compensation through the concept of unlawful acts in the Civil Code. A comparison between criminal and civil law shows that these two systems are complementary: criminal law focuses on providing a deterrent effect and protecting the public interest, while civil law places more emphasis on the recovery of individual losses. While existing regulations are adequate to deal with the spread of fake news, increased legal awareness in the community, stronger law enforcement, and more effective prevention mechanisms are needed to deal with the challenges in this digital age.

Keywords: Fake News; Criminal law; Civil law; Digital Age; Law Enforcement.

Submitted: 2024-10-08

Revised: 2024-12-11

Accepted: 2025-03-30

Published: 2025-03-31

How To Cite: Julvina, Rufinus Hotmaulana Hutauruk, and Lu Sudirman. "Criminal Law and Civil Law Accountability for the Spread of Fake News in the Digital Era." PAMALI: Pattimura Magister Law Review 5 no. 1 (2025): 50-61.
<https://doi.org/10.47268/pamali.v5i1.2352>

Copyright © 2025 Author(s)  Creative Commons Attribution-NonCommercial 4.0 International License

INTRODUCTION

Digital innovation has been a major factor in accelerating social and economic change in recent decades. The rapid development of information and communication technology has created a new paradigm in various aspects of life. Various conveniences are well offered, ranging from the way a person accesses information to the way to interact with others.¹ However, behind all the conveniences and benefits offered, the digital era also presents complex challenges, especially related to personal data protection, hoaxes, and defamation.

Freedom of expression in the digital era without restrictions indirectly triggers the increasing spread of fake news. The legal consequences of this action may arise when the

¹ H. S Disemadi et al., "Perlindungan Data Pribadi di Era Digital : Mengapa Kita Perlu Peduli ?," *Sang Sewagati Journal* 1, no. 2 (2023), <https://journal.uib.ac.id/index.php/sasenal/article/view/8579>.

information disseminated proves to be incorrect and detrimental to the other party.² Freedom to disseminate news or broadcast often transcends legal, cultural, and religious boundaries.³ Often, news coverage is used as a tool to attack honor and bring down the good name of a particular person or group. This is a big problem because it has indirectly met the elements of criminal acts.⁴

The spread of fake news is an action that is prohibited because it harms others. However, it turns out that the spread of fake news is triggered by a mistaken view of freedom of expression that has indirectly encouraged individuals to spread false information without control. This has the potential to trigger the emergence of misleading public opinion and even trigger criminal acts.⁵ Based on Articles 14 and 15 of the Criminal Code, everyone is prohibited from spreading fake news, allegedly false news, uncertain, exaggerated, or incomplete news that although there is no malicious intent, has the potential to cause chaos. Based on Article 1365 of the Civil Code, it is stated that every act that causes harm to another person means that the perpetrator must not only be responsible for the losses caused intentionally, but also for losses caused by his negligence or carelessness.⁶ The loss in question is the loss caused by his own actions and the actions of others under his supervision.⁷

This freedom of opinion is also in line with Law Number 40 of 1999 concerning the Press. The Press Law has clearly regulated the rights and obligations of the press, as well as criminal sanctions for anyone who impedes or obstructs press freedom. However, in practice, law enforcement against cases of press freedom violations is often inconsistent. Law enforcement agencies tend to use the Electronic Information and Transaction Law, which has many interpretive articles, to ensnare journalists rather than applying more specific Press Laws.⁸

Based on the results of the research, the Ministry of Communication and Information Technology has found as many as 425 hoax issues that have been circulating in the digital space during the first quarter of 2023. In reality, these problems are much higher than in the first quarter of 2022 which reached 393 hoax issues. Based on the Automatic Information System (AIS) Team, from the Directorate General of Informatics Applications of the Ministry of Communication and Informatics, 147 hoax issues have been detected since January 2023 and in February 2023 117 hoax issues have been found until March 2023, which has increased to 161 hoax issues. The AIS team was specifically formed in January 2018 with the aim of conducting investigation, identification, verification, and validation of all hoax content circulating in the national digital space. The AIS team is supported by AIS machines

² Renza Ardhita Dwinanda, "Penegakan Hukum Pidana Terhadap Penyebaran Berita Bohong Di Sosial Media," *Jurnal Panorama Hukum* 4, no. 2 (30 Desember 2019): 114–23, <https://doi.org/10.21067/jph.v4i2.3902>.

³ A Sugesti et al., "Perlindungan Hukum Terhadap Pelaku Usaha Online Shop Yang Mengalami Kerugian Yang Disebabkan Oleh Konsumen Di Kota Singaraja," *Jurnal Komunitas Yustisia Universitas Pendidikan Ganesha Program Studi Ilmu Hukum* 3, no. 3 (2020).

⁴ Waya Muthia Wardhani dan Fidelis Arastyo Andono, "Implikasi Tanggung Jawab Sosial Dan Lingkungan Terkait Potensi Dugaan Kejahatan Korporasi: Studi Content Analysis Pada Pt Lapindo Brantas Inc.," *Jurnal Akuntansi Bisnis* 10, no. 1 (2018): 54–73, <https://doi.org/10.30813/jab.v10i1.987>.

⁵ E. T. R Ratnawati, "Perlindungan Hukum Bagi Korban Yang Dirugikan Akibat Penyebaran Berita Bohong," *Jurnal Pranata Hukum* 3, no. 1 (2021).

⁶ Firzatullah Zaidan, Kusuma AyuIsdiyana, dan P. Prajna Paramita, "Tanggung Jawab Pelaku Usaha Akibat Penyalahgunaan Pemberian Hadiah Secara Online," *Jurnal Ilmiah Mahasiswa*, 2023.

⁷ M Rasyid, "Tanggung Jawab Perdata Perusahaan Pers Terhadap Kesalahan Pemberitaan Melalui Media Cetak Harian Jurnal Medan," *Universitas Muhammadiyah Sumatera Utara*, 2019.

⁸ Abdurrahkman Alhakim, "Urgensi Perlindungan Hukum terhadap Jurnalis dari Risiko Kriminalisasi UU Informasi dan Transaksi Elektronik di Indonesia," *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (31 Januari 2022): 89–106, <https://doi.org/10.14710/jphi.v4i1.89-106>.

that work 24 hours or 7 days a week non-stop. Therefore, a total of 11,357 hoax issues have been found by the Ministry of Communication and Informatics' AIS Team from August 2018 to March 31, 2023.



Sumber gambar: https://www.kominfo.go.id/content/detail/48363/siaran-pers-no-50hmkominfo042023-tentang-triwulan-pertama-2023-kominfo-identifikasi-425-isu-hoaks/0/siaran_pers

This article was prepared to examine the review of criminal law and civil law accountability for the spread of fake news in the digital era. The preparation of this article is in line with several other research journals such as those compiled by Naavi'u Emal Maaliki and Eko Soponyono in 2021 with the title "Criminal Law Policy in Overcoming Fake News Crimes". The study specifically analyzes the effectiveness of criminal law policies in overcoming the spread of fake news, especially the rules listed in the Criminal Code, Law Number 11 of 2008, Law Number 1 of 1946, and Law Number 19 of 2016.⁹ The next research is a research conducted by Muhammad Feby Andreawan and Safik Faozi in 2022 with the research title "Juridical Review of the Crime of Hoax News Spreading Hate Propaganda". The research focuses on a juridical review of Law Number 19 of 2016 concerning Information and Electronic Transactions, where the focus of the discussion is on the rules used to provide criminal punishment for perpetrators of spreading hoax or lies news in Indonesia.¹⁰ Not only that, a research conducted by Andi Faiz Alfi Wiputra entitled "Settlement of Cases of Spreading Fake News (Hoax) That Harm Consumers on Social Media Through Penal Media" in 2020 specifically discusses the settlement of cases of spreading fake news through penal mediation, where mediation allows both parties to reach an agreement peacefully and faster. and provide opportunities for the perpetrator to correct his mistakes.¹¹

Research in 2022 conducted by Ardianto entitled "Criminal Liability for Journalists in Writing News That Is Not in Accordance with Facts (Hoax)" focuses on discussing the form of accountability of journalists who write news that does not conform to facts or hoaxes.

⁹ Naavi'u Emal Maaliki dan Eko Soponyono, "Kebijakan Hukum Pidana Dalam Menanggulangi Tindak Pidana Berita Bohong," *Jurnal Pembangunan Hukum Indonesia* 3, no. 1 (30 Januari 2021): 59–69, <https://doi.org/10.14710/jphi.v3i1.59-69>.

¹⁰ Muhammad Feby Andreawan dan Safik Faozi, "Tinjauan Yuridis Terhadap Tindak Pidana Berita Hoax Penyebaran Kebencian," *The Juris* 6, no. 2 (13 Desember 2022): 551–56, <https://doi.org/10.56301/juris.v6i2.628>.

¹¹ Andi Faiz Alfi Wiputra, "PENYELESAIAN PERKARA PENYEBARAN BERITA BOHONG (HOAX) YANG MERUGIKAN KONSUMEN DI MEDIA SOSIAL MELALUI MEDIA PENAL," *Badamai Law Journal* 5, no. 1 (1 Maret 2020): 70, <https://doi.org/10.32801/damai.v5i1.10004>.

Which form of accountability only focuses on the form of criminal liability.¹² Then the last research that became a comparison was a study entitled "The Crime of Spreading False and Misleading News That Results in Consumer Losses in Electronic Transactions" conducted in 2021 by Yuffriska Putri Utami, Roy Ronny Lembong, and Harly Stanly Muaja. The study discusses the form of criminal and civil liability for business actors who spread false and misleading news so that it results in losses to consumers.¹³ Unlike previous studies, this study does not only focus on the discussion of the Electronic Information and Transaction Law but also focuses on the principles of criminal law and civil law which can be used as a means of protecting the rights of people harmed by the existence of fake news spread in cyberspace.

The preparation of this article is expected to be able to provide information and insight as an effort to protect those harmed by the spread of fake news. In addition, it is also expected to contribute in academic and practical terms, especially to increase literary knowledge in the field of law related to criminal and civil liability for print media that contain false or false news. This research is also expected to be a reference for the public and related parties regarding legal responsibility for inaccurate reporting. In addition, this research is expected to enrich legal science and trigger further research in the same field.

Based on the problems that have been presented, the researcher has formulated a problem formulation in the form of: (1) How is the criminal law regulation for the spread of fake news in the digital era in Indonesia?; (2) How is the civil law accountability for the spread of fake news in the digital era in Indonesia regulated?; and (3) How is the comparison of criminal law and civil law in Indonesia in providing legal certainty for the spread of fake news in the digital era in Indonesia?.

METHODS OF THE RESEARCH

This research uses a normative legal method that can be referred to as doctrinal law research. Normative law research is legal research that is conceptualized as what is written in laws and regulations (law in books) and is a study of legal systematics carried out on certain laws and regulations or written laws. The data sources used are primary legal materials in the form of laws and regulations such as the Criminal Code and the Civil Code, secondary legal materials in the form of laws and regulations relevant to the research discussed, namely the Electronic Information and Transaction Law and the Consumer Protection Law as well as tertiary legal materials consisting of reliable journals, articles, materials from the internet, and so on. The technique used in data collection is Library Research.¹⁴ Literature Study Techniques are used to obtain an overview or information about research that is similar and relevant to the problem being researched. Literature Studies are carried out by collecting literature research data and collecting secondary data through searching through online media is needed to complete the research.¹⁵

¹² Ardianto, "Pertanggungjawaban Pidana Terhadap Wartawan Dalam Penulisan Beritayang Tidak Sesuai Fakta(Hoax)," *Journal of Poilosophy* 3, no. 1 (2022).

¹³ Y Utami, R Lembong, dan A Muaja, "Tindak Pidana Menyebarkan Berita Bohong dan Menyesatkan Yang Mengakibatkan Kerugian Konsumen Dalam Transaksi Elektronik," *Lex Crimen* 10, no. 2 (2021), <https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/33095/31293>.

¹⁴ Hari Sutra Disemadi, "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies," *Journal of Judicial Review* 24, no. 2 (30 November 2022): 289, <https://doi.org/10.37253/jjr.v24i2.7280>.

¹⁵ David Tan, "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum," *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 8, no. 8 (2021): 2463-78, <http://jurnal.um-tapsel.ac.id/index.php/nusantara/article/view/5601/3191>.

RESULTS AND DISCUSSION

A. Criminal Law Regulation on the Spread of Fake News in the Digital Era in Indonesia

Fake news is artificial information that is false that does not contain facts, facts, or truths at all. This means that information is in the form of far-fetched news, exaggeration, or unproven rumors. News that contains elements of lies is better known as the word Hoax News or Hoax. According to the Father of Indonesian Communication and Professor at the University of Indonesia, Muhammad Alwi Dahlan, hoax news is information that is deliberately manipulated to provide false recognition or understanding.¹⁶ Hoaxes themselves come from the word hoax in English which means deception or deception.

Hoaxes, can be qualified into several forms, including:¹⁷ 1) Fake News is false information that is formed to replace the original news that aims to falsify or include untruths in a news. Spreaders of fake news tend to spice up their narratives with false information; 2) Clickhoir is a trap link that is strategically placed within a site with the aim of attracting people to enter another site that has been desired by the trap maker. Although the content of the comments in the link is basically in accordance with the facts, the news titles used tend to be hyperbolic and the images chosen are provocative with the aim of attracting the reader's interest; 3) Confirmation Bias is the tendency to impose existing beliefs on new events, so that the interpretation becomes unclear.

Individual motivations in creating and spreading fake news are very diverse. Starting from attempts to manipulate public opinion, actions driven by mere pleasure, to actions that are loaded with unfair competition. In the digital era, where people are highly dependent on digital media to obtain information, the spread of fake news also utilizes digital platforms such as social media to achieve a wider reach, by seeing the great potential for an impact that harms others, therefore the law then regulates the act of spreading fake news or hoaxes as a criminal offense so that there are several provisions in the criminal law that contain prohibitions spread of fake news, including: 1) Article 160 of the Criminal Code jo. Article 28 Paragraph (3) jo. Article 45A paragraph (3) Number 1 of 2024 Electronic Information and Transaction Law: Article 160 of the Criminal Code states that "Whoever in public orally or in writing incites to commit an act punishable, to resist public power by violence or to refuse to comply with legal regulations or lawful orders given under laws and regulations, sentenced to imprisonment for a maximum of six years or a fine of up to Rp. 4,500." Although basically this article is a regulation for the criminal act of sedition, this article can also ensnare those who spread false news if the incitement given to someone to commit a criminal act is based on a lie, because the dissemination of disguised fake news is called propaganda. In addition to the provisions of Article 160 of the Criminal Code, almost similar and clearer regulations regarding fake news are also contained in Article 28 Paragraph (3) jo. Article 45A paragraph (3) of Law Number 1 of 2024 concerning the Law on Electronic Information and Transactions which states that "a maximum of 6 years in prison and/or a maximum fine of IDR 1 billion shall be imposed on each person who deliberately disseminates Electronic Information and/or Electronic Documents that he knows contains false notices that cause unrest in the community". This article in the Electronic Information and Transactions Law is also similar to the general provisions in Article 171 of the Criminal Code (no longer applicable) which states that "Whoever, by

¹⁶ M. U Batoebara dan B. S. Hasugian, "Isu Hoaks Meningkatkan Menjadi Potensi Kekacauan Informasi," *Device : Journal Of Information System, Computer Science And Information Technology*, 4, no. 2 (2023).

¹⁷ Batoebara dan Hasugian.

broadcasting false news or notifications, deliberately publishes trouble among the people, shall be punished with imprisonment for a maximum of ten years." 2) Article 390 of the Criminal Code concerning the Prohibition of Fake News in the Context of Creating a Healthy Business Competition Law: A healthy business climate is a condition where business actors get the widest possible certainty, opportunity, protection, and business support, in this article it is stated that "Whoever with the intention of benefiting himself or others unlawfully, by broadcasting false news that causes the price of merchandise, funds or securities to decrease or increase is threatened with imprisonment for a maximum of two years." The fake news can be in the form of manipulation regarding the badness of competitors or manipulation of the excess of goods sold by themselves. Based on the type, this article tends to fake news and/or miss information type hoax news; 2) Article 311 paragraph (1) of the Criminal Code concerning the Prohibition of Fake News in the Context of Legal Protection of Human Rights; Human Rights are a set of rights inherent in every individual from birth, without any comparison of race, color, sex, language, religion, political or other opinions, social origin or property and status. Human Rights are rights that are inherent in every human being and cannot be taken away. This means that everyone is entitled to these rights, regardless of the acts or treatment they receive or do. This right is universal, meaning that all human beings in the world have the right to it.¹⁸ Human rights are natural rights inherent in every individual as a divine gift. This right is universal and inalienable, as it is an inherent part of dignity.¹⁹

One of the forms of human rights mentioned by the constitution is the right to protection of their honor and dignity as stated in Article 28G paragraph (1) of the 1945 Constitution. The constitutional mandate is implemented through article 311 of the Criminal Code, the nature of this article states that "If the person who commits the crime of defamation or written defamation is allowed to prove what is alleged to be true, does not prove it, and the accusation is made contrary to what is known, then he is threatened with defamation with a maximum prison sentence of four years". Other arrangements regarding the protection of the honor and dignity of fake news are as stipulated in article 27A jo. Article 45 paragraph (4) of the Law Number 1 of 2024 states that "every person who deliberately attacks the honor or good name of another person shall be sentenced to a maximum of 2 (two) years in prison and/or a maximum fine of Rp400,000,000.00 (four hundred million rupiah) for any person who deliberately attacks the honor or good name of another person by alleging something, with the intention that it is publicly known in the form of Electronic Information and/or Electronic Documents carried out through the Electronic System". The crime of attacking honor and dignity with false news can be categorized as fake news, post-truth, and/or information biased.

B. Civil Law Regulation on the Spread of Fake News in the Digital Era in Indonesia

There are two legal remedies in civil law that can be taken by individuals who feel aggrieved to be able to sue the perpetrator to be responsible, namely based on a default and/or unlawful act. When examined from the emergence of the right to sue, in an unlawful act, the right to claim compensation for unlawful acts does not need to be warned or summoned. The aggrieved party can immediately obtain the right to claim compensation, because the aggrieved party and the person who made the loss did not have a previous civil

¹⁸ D. G. S Mangku, "Pemenuhan Hak Asasi Manusia kepada Etnis Rohingya di Myanmar," *Perspektif Hukum* 21, no. 1 (2021).

¹⁹ S Winarsi et al., "Constitutional Internet Blocking: Sebuah Upaya Preemptif terhadap Digital Authoritarian dalam Perspektif Negara Hukum Demokratis," *Jurnal Suara Hukum* 5, no. 2 (2023).

legal relationship. Meanwhile, in default, the right to claim compensation due to default arises from Article 1243 of the BW which in principle requires a statement of negligence (somasi), because the legal relationship between the victim and the harmmaker is based on an agreement.²⁰ Referring to Article 1320 of the Civil Code, an agreement must meet 4 elements in order to be said to be valid, namely agreement, capability, regarding a certain matter, and a halal cause. The four elements of the agreement apply cumulatively, meaning that if one of the elements is not met, it causes the agreement to become invalid.

It is at this stage that the responsibility for spreading fake news in civil law is accommodated. The first provision that can be used as the basis for accountability for the spread of fake news in civil law is the non-fulfillment of the legal conditions of the agreement. This situation is as stipulated in Article 1266 of the Civil Code, that "Void conditions are always considered to be included in a reciprocal agreement, if one of the parties does not fulfill its obligations. In such a case the consent is not null and void, but the annulment must be requested from the Court". One of the legal conditions of the agreement is the existence of an element of agreement.

Juridically, without the agreement of the related parties, it is certain that there will be no binding relationship. Binding oneself to each other actually has the meaning of awareness to recognize each other's rights and obligations (subjective element as stated in Article 1320 of the Civil Code). Precisely because there is awareness from the parties, an alliance arises in the form of acknowledging each other's rights and obligations and then submitting to what is agreed upon (the principle of post-sunt servanda). Therefore, the word agreement can also be interpreted as awareness to guarantee each other's certainty of fulfillment of their respective rights and obligations. However, the existence of such an agreement is not considered to occur when there is a defect in the will.

Defects in the will occur when a person performs a legal act, but his desire to perform the act is not completely sincere or free. One of the forms of defect of will is cheating/deception, which is the intentionality of a person who with his will and knowledge misleads or misleads others. Fraud is one of the defects of will that can cause the nullity or cancellation of an agreement. The condition for the cancellation of the agreement due to fraud/fraud if there is real deception (deliberately hiding the facts so that mistakes arise) and/or the deceived party will not be able to make the agreement if there is no deception. The situation where those who spread fake news as a deception in order to convince someone to agree to an agreement is included in the type of Clickhoir and/or missing information when done using digital means.

The second regulation regarding the spread of false, false, or hoax news in civil law is regulated in Article 1365 of the Civil Code as a form of Unlawful Act. Unlawful Acts (onrechtmatige daad) are acts that are contrary to the rights and obligations that have been regulated by the Law,²¹ in other words, Unlawful Acts are likened to Unlawful Acts.²² Meanwhile, in a broad sense, Unlawful Acts are defined as acts that not only violate written

²⁰ Itok Dwi Kurniawan et al., "Aspek Keperdataan Perbuatan Melawan Hukum Pada Perkara Pencemaran Nama Baik Dalam Era Perkembangan Teknologi Dan Informasi Guna Reformulasi Penegakan Hukum," *Jurnal Global Citizen : Jurnal Ilmiah Kajian Pendidikan Kewarganegaraan* 11, no. 2 (2 Desember 2022): 68-74, <https://doi.org/10.33061/jgz.v1i2.6743>.

²¹ Bing Waluyo, "Kajian Terhadap Perbuatan Melawan Hukum Berdasarkan Pada Pasal 1365 Kitab Undang-Undang Hukum Perdata," *Cakrawala Hukum: Majalah Ilmiah Fakultas Hukum Universitas Wijayakusuma* 24, no. 1 (11 Maret 2022): 14-22, <https://doi.org/10.51921/chk.v24i1.186>.

²² Abdurrahman Alhakim et al., "Revisiting Indonesian Legal Framework for Juvenile Justice: Ensuring Procedural Rights for Assault Offenders," *International Journal of Law Reconstruction* 8, no. 1 (2024): 56-75, <https://doi.org/10.26532/ijlr.v8i1.36261>.

rules that are contrary to the subjective rights of others and the legal obligations of the perpetrator, but also acts that violate unwritten principles and rules such as decency, propriety, thoroughness, and prudence that should be possessed by the perpetrator in the social life in society.²³

Unlawful Acts in the context of criminal law are also called *wederrechtelijk*. Although different, Unlawful Acts in the context of civil law (*onrechtmatige daad*) and in the criminal context (*wederrechtelijk*) still have some similarities in concepts, namely both act contrary to prohibitions or necessity and equally contain the sanctions given to the perpetrators of Unlawful Acts.²⁴ The existence of such an equation is what causes a tangent between the concept of fraud in civil law and criminal law, namely in the actions of perpetrators who violate laws and regulations and/or do not carry out the agreed achievements. The act of spreading false news with the aim of committing fraud in the realm of civil law is seen as a violation of the perpetrator's legal obligations and the subjective rights of others.

Referring to the provisions of Article 1365 of the Civil Code, "Every act that violates the law and brings harm to another person, obliges the person who caused the loss due to his fault to replace the loss", from this article there are 3 elements of the Act of Law, namely the existence of errors, the existence of violations of the law and the existence of losses that can be proven to occur due to the wrongdoing that violates the law, Of course, the element of error here can refer to intentional or negligent acts, while the element of violation of the law is the act of spreading false news which is certainly contrary to laws and regulations. As stipulated in Article 1373 of the Civil Code which states "In addition, the person who is insulted can also demand that in the verdict it is also stated that the act that has been committed is an act of defamation. If he demands that the act be declared to be defamatory, then the provisions in Article 314 of the Criminal Code regarding the prosecution of defamatory acts apply. If requested by the offended party, the verdict will be posted in a public place".

C. Legal Review of Criminal and Civil Law Liability in Indonesia in Providing Legal Certainty

Basically, the spread of fake news in criminal and civil contexts in providing legal certainty has several points of similarity and differences. For the same, the spread of fake news regulated in criminal law and civil law both prohibit and consider the spread of fake news as a reprehensible act and prohibited by law. This prohibition is in order to protect some of the rights of people who are disturbed or harmed by fake news, as for the differences between the regulation of liability for fake news in the context of criminal law and civil law, including:

Aspects	Civil law	Criminal law
Types of Fake News	Article 1372 of the Civil Code: Contempt	Chapter XVI of the Criminal Code, namely Insult, includes several articles that contain Pollution, False

²³ Indah Sari, "Perbuatan Melawan Hukum (Pmh) Dalam Hukum Pidana Dan Hukum Perdata," *Jurnal Ilmiah Hukum Dirgantara* 11, no. 1 (2020): 53–70, <https://doi.org/10.35968/jh.v11i1.651>.

²⁴ Sri Laksmi Anindita dan Eriska Fajrinita Sitanggang, "Penyelesaian Sengketa Bedrog (Penipuan) Dalam Perjanjian Jual Beli Kayu: Onrechtmatige Daad Atau Wederrechtelijk? (Studi Kasus: Putusan Mahkamah Agung Nomor: 449K/PID/2001)," *Jurnal Hukum & Pembangunan* 52, no. 1 (31 Maret 2022), <https://doi.org/10.21143/jhp.vol52.no1.3334>.

	Article 1373 of the Civil Code: Defamation	Suspensions, and Pollution of the Dead
Losses Caused	Losses are usually more specific to a person or one individual who has suffered material losses. However, this loss does not rule out the possibility that it can also be felt by many people. For example, a business actor whose trade has become quiet due to slander from competitors.	The losses experienced are more focused on the rights of the community at large, both material and immaterial. For example, the disruption of the public interest due to riots, the injury of human rights, and the loss of consumer rights.
Penalty	Articles 1372-1373 of the Civil Code: The sanctions given lead to compensation either material, immaterial, or return to the original condition.	Chapter XVII of the Criminal Code: Sanctions given for the spread of fake news lead to corporal punishment (imprisonment) to provide a deterrent effect. In addition, Article 311 Paragraph (1) of the Criminal Code also regulates Written Defamation that leads to defamation. Deep Article 311 Paragraph (1) of the Criminal Code regulates the prison sentence of a maximum of 4 years. Article 311 Paragraph (2) of the Criminal Code also regulates additional penalties in the form of revocation of rights.

In practice in society, the approach to accountability for the spread of fake news varies because it can be held criminally and/or civil accountable. But usually, criminal liability will be applied when the person who spreads fake news harms the public indirectly or directly but initially does not cause material damage, for example riots due to fake news. The application of a criminal approach to the spread of fake news, for example, carried out by Ratna Sarumpaet, who has been legally and convincingly proven guilty of committing the crime of broadcasting false notifications, deliberately publishing trouble among the

people.²⁵ Meanwhile, the application of liability for spreading fake news in civil law is applied if the person who spreads the news actually causes harm to one or several people. For example, the case of Tomy Winata's lawsuit against Tempo for defamation in its news.²⁶

CONCLUSION

Providing legal certainty for the application of criminal law and civil law consistently and fairly can provide legal certainty for the community. This legal certainty is important to build public trust in the legal system and encourage them to act in accordance with applicable norms. Criminal law and civil law accountability are two important pillars in providing legal certainty in the case of spreading fake news in Indonesia. Consistent and fair application of the law, as well as efforts to increase legal certainty, can help build a more informative and responsible society, in handling cases of spreading hoax news, law enforcement officials who eradicate fake news (hoax) include the Police which as a state tool has a position in providing protection, protection, and services to the community. In addition, the Ministry of Communication and Informatics can also be a party that participates in tackling the spread of fake news (hoaxes) effectively and efficiently. To prevent false reports, the government needs to increase resources and equipment to the public who disseminate information on internet media, especially social media, more carefully and wisely, and it is not easy to spread information that is not clear/certain of the truth. So the public will become wise netizens in the use of social media.

REFERENCES

- Alhakim, Abdurrahman. "Urgensi Perlindungan Hukum terhadap Jurnalis dari Risiko Kriminalisasi UU Informasi dan Transaksi Elektronik di Indonesia." *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (31 Januari 2022): 89–106. <https://doi.org/10.14710/jphi.v4i1.89-106>.
- Alhakim, Abdurrahman, Emiliya Febriyani, Winsherly Tan, dan Rufinus Hotmaulana Hutaeruk. "Revisiting Indonesian Legal Framework for Juvenile Justice: Ensuring Procedural Rights for Assault Offenders." *International Journal of Law Reconstruction* 8, no. 1 (2024): 56–75. <https://doi.org/10.26532/ijlr.v8i1.36261>.
- Anindita, Sri Laksmi, dan Eriska Fajrinita Sitanggang. "Penyelesaian Sengketa Bedrog (Penipuan) Dalam Perjanjian Jual Beli Kayu: Onrechtmatige Daad Atau Wederrechtelijk? (Studi Kasus: Putusan Mahkamah Agung Nomor: 449K/PID/2001)." *Jurnal Hukum & Pembangunan* 52, no. 1 (31 Maret 2022). <https://doi.org/10.21143/jhp.vol52.no1.3334>.
- Ardianto. "Pertanggungjawaban Pidana Terhadap Wartawan Dalam Penulisan Beritayang Tidak Sesuai Fakta(Hoax)." *Journal of Poilosphy* 3, no. 1 (2022).
- Batoebara, M. U, dan B. S. Hasugian. "Isu Hoaks Meningkatkan Potensi Kekacauan Informasi." *Device : Journal Of Information System, Computer Science And Information Technology*, 4, no. 2 (2023).

²⁵ A. F Mamuaja, "Pertanggungjawaban Pidana terhadap Penyebaran Berita Bohong (HOAX) melalui Media Sosial menurut UU No. 11 Tahun 2008 yang Sudah Diubah Menjadi UU No. 19 Tahun 2016," *Lex Crimen* 10, no. 3 (2021), [https://doi.org/Mamuaja, A. F. \(2021\). Pertanggungjawaban Pidana terhadap Penyebaran Berita Bohong \(HOAX\) melalui Media Sosial menurut UU No. 11 Tahun 2008 yang Sudah Diubah Menjadi UU No. 19 Tahun 2016. Lex Crimen, 10\(3\).](https://doi.org/Mamuaja, A. F. (2021). Pertanggungjawaban Pidana terhadap Penyebaran Berita Bohong (HOAX) melalui Media Sosial menurut UU No. 11 Tahun 2008 yang Sudah Diubah Menjadi UU No. 19 Tahun 2016. Lex Crimen, 10(3).)

²⁶ M Gultom dan I. Karina, "Tinjauan Kriminologis Terhadap Tindak Pidana Penghinaan di Muka Umum," *Jurnal Prodil Hukum* 1, no. 2 (2024), <https://ejournal.ust.ac.id/index.php/JPH/article/view/3877>.

- Disemadi, H. S, L Sudirman, Girsang, dan M Aninda. "Perlindungan Data Pribadi di Era Digital: Mengapa Kita Perlu Peduli?" *Sang Sewagati Journal* 1, no. 2 (2023). <https://journal.uib.ac.id/index.php/sasenal/article/view/8579>.
- Disemadi, Hari Sutra. "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies." *Journal of Judicial Review* 24, no. 2 (30 November 2022): 289. <https://doi.org/10.37253/jjr.v24i2.7280>.
- Dwinanda, Renza Ardhita. "Penegakan Hukum Pidana Terhadap Penyebaran Berita Bohong Di Sosial Media." *Jurnal Panorama Hukum* 4, no. 2 (30 Desember 2019): 114–23. <https://doi.org/10.21067/jph.v4i2.3902>.
- Gultom, M, dan I. Karina. "Tinjauan Kriminologis Terhadap Tindak Pidana Penghinaan di Muka Umum." *Jurnal Prodil Hukum* 1, no. 2 (2024). <https://ejournal.ust.ac.id/index.php/JPH/article/view/3877>.
- Kurniawan, Itok Dwi, Muhammad Rustamaji, Ismawati Septiningsih, Zakki Adlhiyati, dan Itok Dwi Kurniawan. "Aspek Keperdataan Perbuatan Melawan Hukum Pada Perkara Pencemaran Nama Baik Dalam Era Perkembangan Teknologi Dan Informasi Guna Reformulasi Penegakan Hukum." *Jurnal Global Citizen : Jurnal Ilmiah Kajian Pendidikan Kewarganegaraan* 11, no. 2 (2 Desember 2022): 68–74. <https://doi.org/10.33061/jgz.v11i2.6743>.
- Maaliki, Naavi'u Emal, dan Eko Soponyono. "Kebijakan Hukum Pidana Dalam Menanggulangi Tindak Pidana Berita Bohong." *Jurnal Pembangunan Hukum Indonesia* 3, no. 1 (30 Januari 2021): 59–69. <https://doi.org/10.14710/jphi.v3i1.59-69>.
- Mamuaja, A. F. "Pertanggungjawaban Pidana terhadap Penyebaran Berita Bohong (HOAX) melalui Media Sosial menurut U No. 11 Tahun 2008 yang Sudah Diubah Menjadi UU No. 19 Tahun 2016." *Lex Crimen* 10, no. 3 (2021). <https://doi.org/10.1016/j.lexcrimen.2021.03.001>.
- Mangu, D. G. S. "Pemenuhan Hak Asasi Manusia kepada Etnis Rohingya di Myanmar." *Perspektif Hukum* 21, no. 1 (2021).
- Muhammad Feby Andreawan, dan Safik Faozi. "Tinjauan Yuridis Terhadap Tindak Pidana Berita Hoax Penyebaran Kebencian." *The Juris* 6, no. 2 (13 Desember 2022): 551–56. <https://doi.org/10.56301/juris.v6i2.628>.
- Rasyid, M. "Tanggung Jawab Perdata Perusahaan Pers Terhadap Kesalahan Pemberitaan Melalui Media Cetak Harian Jurnal Medan." *Universitas Muhammadiyah Sumatera Utara*, 2019.
- Ratnawati, E. T. R. "Perlindungan Hukum Bagi Korban Yang Dirugikan Akibat Penyebaran Berita Bohong." *Jurnal Pranata Hukum* 3, no. 1 (2021).
- Sari, Indah. "Perbuatan Melawan Hukum (PMH) Dalam Hukum Pidana Dan Hukum Perdata." *Jurnal Ilmiah Hukum Dirgantara* 11, no. 1 (2020): 53–70. <https://doi.org/10.35968/jh.v11i1.651>.
- Sugesti, A, C. N Ardhya, S. J Setianto, dan Muhamad. "Perlindungan Hukum Terhadap Pelaku Usaha Online Shop Yang Mengalami Kerugian Yang Disebabkan Oleh

- Konsumen Di Kota Singaraja." *Jurnal Komunitas Yustisia Universitas Pendidikan Ganesha Program Studi Ilmu Hukum* 3, no. 3 (2020).
- Sumriyah. "Cacat Kehendak (Wilsgebreken) sebagai Upaya Pembatalan Perjanjian dalam Persepektif Hukum Perdata." *Simposium Hukum Indonesia* 1, no. 1 (2019).
- Tan, David. "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum." *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 8, no. 8 (2021): 2463–78. <http://jurnal.um-tapsel.ac.id/index.php/nusantara/article/view/5601/3191>.
- Utami, Y, R Lembong, dan A Muaja. "Tindak Pidana Menyebarkan Berita Bohong dan Menyesatkan Yang Mengakibatkan Kerugian Konsumen Dalam Transaksi Elektronik." *Lex Crimen* 10, no. 2 (2021). <https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/33095/31293>.
- Waluyo, Bing. "Kajian Terhadap Perbuatan Melawan Hukum Berdasarkan Pada Pasal 1365 Kitab Undang-Undang Hukum Perdata." *Cakrawala Hukum: Majalah Ilmiah Fakultas Hukum Universitas Wijayakusuma* 24, no. 1 (11 Maret 2022): 14–22. <https://doi.org/10.51921/chk.v24i1.186>.
- Wardhani, Waya Muthia, dan Fidelis Arastyo Andono. "Implikasi Tanggung Jawab Sosial Dan Lingkungan Terkait Potensi Dugaan Kejahatan Korporasi: Studi Content Analysis Pada Pt Lapindo Brantas Inc." *Jurnal Akuntansi Bisnis* 10, no. 1 (2018): 54–73. <https://doi.org/10.30813/jab.v10i1.987>.
- Winarsi, S, X Nugraha, A. R Nathalia, dan M. E Laurentius. "Constitutional Internet Blocking: Sebuah Upaya Preemtif terhadap Digital Authoritarian dalam Perspektif Negara Hukum Demokratis." *Jurnal Suara Hukum* 5, no. 2 (2023).
- Wiputra, Andi Faiz Alfi. "Penyelesaian Perkara Penyebaran Berita Bohong (Hoax) Yang Merugikan Konsumen Di Media Sosial Melalui Media Penal." *Badamai Law Journal* 5, no. 1 (1 Maret 2020): 70. <https://doi.org/10.32801/damai.v5i1.10004>.
- Zaidan, Firzatullah, Kusuma AyuIsdiyana, dan P. Prajna Paramita. "Tanggung Jawab Pelaku Usaha Akibat Penyalahgunaan Pemberian Hadiah Secara Online." *Jurnal Ilmiah Mahasiswa*, 2023.

Conflict of Interest Statement: The author(s) declares that research was conducted in the absence of any commercial or financial relationship that could be construed as a potential conflict of interest.

Copyright: © AUTHOR. This work is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License. (CC-BY NC), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

PAMALI: *Pattimura Magister Law Review* is an open access and peer-reviewed journal published by Postgraduate Program Magister of Law, Universitas *Pattimura*, Ambon, Indonesia.

