

# Perpetrators of Spreading Hoaxes Through Social Media During the 2019 Presidential Election in Indonesia

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## Abstract

**Introduction:** The spread of hoaxes on social media during elections in Indonesia has become a troubling phenomenon and threatens the integrity of democracy.

**Purposes of the Research:** This study aims to examine the legal arrangements in the Electronic Information and Transactions Law and criminal liability for perpetrators of spreading hoaxes on social media during elections.

**Methods of the Research:** The research method used is normative juridical research with a legislative approach and qualitative analysis of secondary data in the form of legal documents, literature, and previous research results.

**Findings of the Research:** The results show that the Electronic Information and Transactions Law provides a strong legal basis to take action against the perpetrators of hoax distribution with quite severe criminal threats. However, the implementation of this law still faces challenges, especially in terms of law enforcement and public education on digital literacy.

**Keywords:** Hoax; Social Media; Election; Criminal Liability; Digital Literacy.

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## INTRODUCTION

The State of Indonesia is a State of Law, This provision is stated in Article 1 paragraph (3) of the fourth amendment to the 1945 Constitution (hereinafter abbreviated as the 1945 Constitution), stating that "The State of Indonesia is a State of Law", thus all aspects of life, whether in the social, political, cultural, and economic fields, are regulated and limited by applicable legal standards.<sup>1</sup> The significant impact of globalization on human life in the era of contemporary globalization, where everyone is heavily dependent on the internet, especially social media, is the cause of this changing process. Mr. Soerjono Soekanto explained that various changes in society have arisen along with technological advances.<sup>2</sup>

This change basically starts with the way public communication is carried out every day. For example, communication that is usually done face-to-face is now only done through social media. The technological advancement of the global computer network known as the internet has resulted in a new world called cyberspace.<sup>3</sup> The emergence of internet technology that is increasingly rapid has given birth to new types of crimes, such as defamation, data manipulation, espionage, sabotage, and provocation. This cybercrime, known as cybercrime, has not received enough attention from the government to keep up,

<sup>1</sup> Ali, Ahmad. *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence)*. (Jakarta: Kencana Prenada Media Grup, 2010).

<sup>2</sup> Soekanto, S. *Pokok-pokok Sosiologi Hukum*. (Jakarta: Rajawali Press, 1980), p. 87-88.

<sup>3</sup> Raharjo, A. *Cybercrime: Pemahaman dan Upaya Pencegahan Kejahatan Berteknologi*. (Bandung: Citra Aditya Bakti, 2002), h. 91.

making it difficult to control.<sup>4</sup> A 2018 report from the Ministry of Communication and Information Technology showed that around 800,000 websites in Indonesia were indicated to be spreading hoaxes. Only 44.19 percent of Indonesians do not know about hoax news, according to DailySocial research. 73% of respondents always read all the information, but only 55% always verify its accuracy. Research conducted by DailySocial and Jakpat Mobile Survey Platform on the spread of hoaxes and actions taken when receiving hoaxes shows that social media is the place where hoaxes are most often spread. Instagram (29.48%), WhatsApp (56.55%), and Facebook (82.25%). Some perpetrators spread false information because they don't know if it's true or not. Understanding and understanding of information, media, and digital literacy can reduce misinformation. Information literacy is a person's ability to know when and how to search, find, analyze, evaluate, and communicate information well. It is a necessary process for an individual or group to solve a problem. Because of the various types of information sources that are growing rapidly in today's era, information literacy is also very important. Information literacy is also the ability to think critically and logically, so people do not easily believe in the information they obtain before making an evaluation.<sup>5</sup>

Information or news that contains things that are uncertain or not true are called hoaxes. According to the Oxford Dictionary (2017), hoaxes are hoaxes intended to deceive or entertain. In Indonesian, "hoax" can be interpreted as fake news, fake news, or lies. However, in the English dictionary, "hoax" means jokes, false stories, and deceptions. The Criminal Code, Law Number 1 of 1946 concerning Criminal Law Regulations, and Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law of the Republic of Indonesia Number 11 of 2008 concerning Information and Electronic Transactions (hereinafter abbreviated as the ITE Law) are laws that regulate the criminal act of spreading fake news (hoaxes).<sup>6</sup> Article 28 paragraph (1) of the Electronic Information and Transaction Law stipulates a criminal threat of six years and a fine of one billion rupiah for spreading hoax news, even if it is just a prank or sent. However, the threat of punishment does not directly reduce the spread of political hoax news.<sup>7</sup>

Related to the 2019 Presidential Election, fake news has become an arena for contestation between political opponents that is disseminated through social media. This fact was conveyed by Ministry of Communication and Information which stated that there were 62 fake news related to the 2019 Presidential Election (Ministry of Communication and Information, 2019) and all of them led to political contestation in the 2019 election, especially in the presidential election.<sup>8</sup> Freedom is the foundation for everyone to actualize themselves as a form of democratization, including in terms of politics. In Indonesia, the constitution guarantees individual freedom, which shows how popular democracy is. However, in the end, this freedom further clarifies the differences in identity (religion, ethnicity, language, gender, etc.) in Indonesia, especially related to the nation's political issues. In the 2019 General Election, fake news and disinformation about various things, such as crime, economics, and national politics, were widely circulated. Negative campaigns are also spread through social media with the aim of influencing the choices of voters. The spread

<sup>4</sup> Suhariyanto, B. *Tindak Pidana Teknologi Informasi (Cybercrime)*. (Jakarta: Grafindo Persada, 2014), p. 3.

<sup>5</sup> Wibowo, S. *Literasi Informasi*. (Lampung: Perahu Litera, 2018)

<sup>6</sup> Juditha, C. Interaksi Komunikasi Hoax di Media Sosial Serta Antisipasinya. *Jurnal Pekommas*, 3 no 1 (2018), p. 31.

<sup>7</sup> Mutiara, I. 62 Hoax Pemilu 2019 Teridentifikasi Kominfo, Ini Daftarnya, <https://news.detik.com/berita/d-4368351/62-hoax-pemilu-2019-teridentifikasi-kominfo-ini-daftarnya>. Accessed in September 14 2019.

<sup>8</sup> Sosiawan, E. A., & Wibowo, R. Kontestasi Berita Hoax Pemilu Presiden Tahun 2019 Di Media Daring Dan Media Sosial. *Jurnal Ilmu Komunikasi*, 17, no. 2 (2020): 133-142.

of misleading information and fake news can influence voters' choices and cause them to make wrong decisions during elections. Negative campaigns can also exacerbate the situation by triggering prejudices and stereotypes against a group or individual, thus exacerbating divisions in society.<sup>9</sup>

The rapid development of information technology and social changes have a significant impact on people's lives. This encourages the need for legal adjustments, including criminal law, to keep up with the times. Therefore, rules were made related to criminal acts and their criminal sanctions. The provision of criminal sanctions is carried out based on the provisions applicable in the relevant laws. The main purpose of providing criminal sanctions is to provide a deterrent and suffering effect to the perpetrators of criminal acts. In addition, criminal sanctions also serve as a warning for the public not to commit crimes or violations, as well as to encourage them to always be careful in their actions.<sup>10</sup>

Based on the above background, the author identifies problems related to legal arrangements in the ITE Law against perpetrators of *spreading hoaxes* through social media during elections in Indonesia and criminal liability for perpetrators of spreading hoaxes through social media during elections in Indonesia. So this research aims to find out the legal arrangements in the ITE Law against the perpetrators of *spreading hoax news* on social media during the election in Indonesia, as well as to find out the criminal liability for the perpetrators of *spreading hoax news* on social media during the election in Indonesia.<sup>11</sup>

## METHODS OF THE RESEARCH

Research methods are systematic procedures for gathering scientific or scientific knowledge. Research methods serve as a model for developing science. However, the research method is the way to do it. Research techniques usually refer to how to conduct research. Legal research methods are methods that involve searching, recording, formulating, and analyzing research objects, data sources, and legal entities. The type of legal research used in this study is normative legal research, which involves research on library materials (secondary data), or library law research. This study uses legal analysis. The purpose of this technique is to analyze legal materials with the aim of studying the concepts and applications of terms used in legislation. This study collected data using the library research method. This method is carried out by reading, citing, and recording books or other references, as well as studying laws and regulations. The process of writing this thesis involves a qualitative analysis of the materials that have been collected. Basically, data processing is the process of systematizing legal information; This is done by classifying the information to simplify the analysis process.

## RESULTS AND DISCUSSION

### A. Legal Arrangements in the Law on Information and Electronic Transactions Against Perpetrators of Spreading Hoaxes Through Social Media During Elections in Indonesia

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<sup>9</sup> Lestari, S. (2018). Peran Teknologi Dalam Pendidikan Di Era Globalisasi. *EDURELIGIA: Jurnal Pendidikan Agama Islam*, 2 no. 2 (2018): 94-100.

<sup>10</sup> Al Walidah, I. (2017). Tabayyun Di Era Generasi Milenial. *Jurnal Living Hadis*, 2 no. 2 (2017): 317-344.

<sup>11</sup> La Ode Angga et al., "Effectiveness of Law Number 41 the Year 1999 in the Case of Illegal Logging in Maluku Province," *Cepalo* 3, no. 2 (2019): 141-52, h. 2. <https://doi.org/10.25041/cepalo.v3no2.1848>.

In this digital era, the spread of false information or hoaxes has become a worrying phenomenon, especially in the context of elections in Indonesia. Social media platforms such as Facebook, Twitter, Youtube, Instagram, and Tiktok have become fertile fields for hoax spreaders to launch their actions. The speed of information technology development is the main factor behind the rampant spread of hoaxes. These misleading content can spread easily and quickly through various social media platforms, reaching millions of users in a short period of time. The manipulation and virality techniques used by hoax spreaders are increasingly diverse and sophisticated. They utilize various social media features, such as algorithms that prioritize sensational content, to capture the public's attention and spread their lies widely. The negative impact of the spread of this hoax is undeniable.

At that time, actions taken by social media users were considered hate speech. According to the Criminal Code, insults, defamation, blasphemy, unpleasant acts, provocation, incitement, and the spread of false news (hoax) are all criminal acts.<sup>12</sup> The Government of Indonesia has established positive laws and laws that prohibit the dissemination of hoax information as stated in Law Number 1 of 1946 concerning Criminal Law Regulations and Law Number 19 of 2016 concerning Amendments to Law Number 19 of 2016 concerning Information and Electronic Transactions.<sup>13</sup> Fake news (hoax) not only has an impact on social relations between individuals, but can also affect the balance of social relationships and the social system as a whole. Hoaxes can trigger changes in attitudes, values, and behaviors among community groups, resulting in changes in community institutions. In this digital era, social media has become a new forum for the public for state leaders. Unlike the old method where people had to be members of the House of Representatives or representatives of the people first or hold demonstrations in front of the presidential palace, now the public can communicate directly with the president through social media.

The rise of the spread of fake news (hoax) has prompted the government to take decisive steps. The Indonesian National Police has not remained silent and has issued legal threats to the perpetrators of spreading hoaxes. However, this decisive step was accompanied by concerns from some who saw it as a potential threat to freedom of speech. The Minister of Communication and Information, Rudiantara, responded to these concerns by stating that the government can suppress the spread of hoaxes by blocking websites that are proven to spread false information. Rudiantara emphasized that fake news that circulates every day can have a big impact and endanger society. Therefore, decisive steps need to be taken to combat hoaxes and protect the public from misleading information.<sup>14</sup> In addition, the government has established rules and policies to prevent the spread of hoax or fake news. They make strict sanctions for those who use the internet in an inappropriate or negative way, in Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE), hoax fake news is regulated in Article 28 Paragraph (1) and Paragraph (2).<sup>15</sup> The purpose of the ITE Law is to protect the public from the adverse effects of the spread of false and misleading information in the digital world. The spread of hoaxes on social media can cause material and immaterial losses, including causing chaos and social unrest. As a result, the

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<sup>12</sup> Parulian, H., & Putranto, R. D. (n.d.). *Pidana Ujaran Kebencian Melalui Media Sosial Ditinjau Dalam Perspektif Undang-Undang Nomor 19 Tahun 2016 Tentang Perubahan*.

<sup>13</sup> Kurniawati, Y. R. (2020). *Pertanggungjawaban Pidana Atas Penyebaran Berita Bohong (Hoax) Di Media Sosial*. *Dinamika*, 26 no. 4 (2023): 422-437.

<sup>14</sup> Ahmad Ziruddin, Kholilur Rahman, & Maulidi, M. A. *Merawat Negara Hukum*. (Guepedia. 2023).

<sup>15</sup> Manurung, C. *Penerapan Sanksi Pidana Terhadap Pelaku Penyebaran Berita Bohong (Hoax) Dalam Undang-Undang No 19 Tahun 2016 Tentang Informasi Dan Transaksi Elektronik Menurut Maqashid Syari'ah* (PhD thesis, Universitas Islam Indonesia, 2023).



perpetrators of spreading hoaxes can be subject to fairly severe criminal sanctions in accordance with applicable laws.<sup>16</sup> Then the criminal provisions are regulated in. The government is encouraged to take firm steps in combating the spread of hoaxes by utilizing the provisions of Article 40 paragraph (2a) of Law Number 19 of 2016 concerning Information and Electronic Transactions. This article requires the government to prevent the dissemination of information and electronic documents that have illegal content. Hoaxes, as misleading information and potentially harmful to the public, are clearly prohibited by law. Therefore, the government is authorized to order operators of electronic systems, such as social media platforms, to cut off access to information and electronic documents that contain hoaxes and violate the law.<sup>17</sup>

## B. Criminal Liability for Perpetrators of Spreading Hoaxes During Elections in Indonesia

Criminal liability in foreign languages is referred to as criminal liability. The definition of criminal liability is that a person can be blamed for the unlawful acts he committed, so that he can be held criminally liable (*verwijbaardheid*).<sup>18</sup> Criminal liability is a field of criminal law along with crimes, penalties, and punishments. Criminal liability is an important point in criminal law. Criminal liability can basically be accounted for to a criminal perpetrator, but must meet the following 4 (four) elements of requirements:<sup>19</sup> 1) There is an action (*commission or omission*) by the perpetrator; 2) Who fulfills the formulations of the offense in the Law; 3) The action is unlawful; 4) The perpetrator must be accountable.

Many other political and social issues arose during the April 17, 2019 Presidential General Election, disturbing the calm of the community. For example, the authorities are very concerned about the problem of seven ballot bottles that were voted. Not only that. It turns out that there are many reasons for those who make fake news. Other sources support the dangers of hoaxes, ranging from funny actions to cornering the country's leaders. Hoaxes have entered the political world, threatening the unity and unity of the nation. Hoax makers are considered as parties who harm others. cause hatred or hostility towards certain individuals or groups of people based on Ethnicity, Religion, Race, and Inter-Group. The perpetrator can be sentenced to a maximum of ten years in prison.

**Table 1.1 Hoax Cases on Social Media in Indonesia**

No	Case	Perp	Year	Problem	Law	Verdict
1	Hoax 7 ballot containers were stolen.	Bagus Bawana Putra	2019	Spreading false news about 7 ballot containers being voted for	Electronic Information and Transaction Law Article 28 paragraph 1: Dissemination of misleading and troubling	2 years in prison

<sup>16</sup> Sitorus, M. R. J. A. (n.d.). Pertanggung Jawaban Pidana Terhadap Pelaku Menyebarkan Berita Bohong Dan Menyesatkan Yang Mengakibatkan Kerugian Dalam Transaksi Elektronik. "pasal 45A ayat (1) dan (2) Undang- Undang ITE Tahun 2016".

<sup>17</sup> Kurniawati, Y. R. Pertanggungjawaban pidana atas penyebaran berita bohong (hoax) di media sosial. *Dinamika*, 26, no. 4 (2020): 422-437.

<sup>18</sup> Mertha, I. K., et al. *Buku Ajar Hukum Pidana* (Fakultas Hukum Universitas Udayana, Denpasar, 2016), p. 145

<sup>19</sup> Atmasasmita, R. *Perbandingan Hukum Pidana*, (Bandung: Penerbit Mandar Maju, 2000), p. 67

					information to the public.	
2.	Ratna Sarumpaet's persecution hoax	Ratna Sarumpaet	2019	Hoax of persecution due to plastic surgery	Article 14 of Law Number 1 of 1946	2 years in prison
3.	Fake news that causes trouble	Anan Sanan Bin Sarkim	2019	Spreading false information	Article 14 of Law Number 1 of 1946	1 years in prison
4.	Hoaxes cause public unrest	Nurdianto	2019	Fake news on social media	Article 14 of Law Number 1 of 1946	1 years in prison
5.	Hoaxes related to public unrest	Muhammad Amir Muksin	2020	Election-related hoax	Article 15 of Law Number 1 of 1946	1 year 1 month in prison
6.	Hoax News that threatens public order	Sugeng Priyanto	2019	Fake news that causes anxiety	Article 14 of Law Number 1 of 1946	1 years in prison
7.	Election hoax and public unrest	Kisan Tri Bowa	2021	Fake news on social media	Article 14 of Law Number 1 of 1946	1 years in prison

**Source:** This table is processed from website sources such as, Kompas.com.

Verdict on the Spread of Hoax News on Social Media Number 6 / PID / 202 PT TJK, There is a spread of Hoaxes on social media uploaded by the defendant. There is a post from the Instagram account @tombak.sumatra\_scorpions in the form of 3 videos containing that people say that if the Public Election Commission has set the server as if 01 has won 57%, then the Defendant downloads the first account @2019gantipresiden 1 video and from the @tombak.sumatra account as many as 2 videos. Then the Defendant downloaded the 3 videos using the instasafe downloader application, then the Defendant saw in the video that he was conducting a meeting/meeting activity that discussed the issue of the Election Commission's server in Singapore, where the server had been set to win one of the pairs of Presidential candidates. After that, about 1 (one) hour later, the Defendant posted 3 videos that the Defendant had downloaded from the @tombak.sumatra\_scorpions Instagram account on the Defendant's facebook account with the account name Rahmi Zainudin Ilyas with the caption: Astaghfirullah, Everything is revealed on the Greatness and Power and Will of Allah alone. The Post/Writing can cause trouble in the community, because the General Election Commission is seen as unprofessional and cheating to win one of the Paslons. Unrest in the community can manifest in public distrust in the General Election Commission, to the possibility of inviting People Power. The potential for the widespread dissemination of the video is very reasonable because the video is posted to social media and youtube media that is easily accessible to cyber visitors, then allows it to be copied and

disseminated, which also means that the scale of hatred of certain groups of people towards the General Election Commission can increase. In the decision, the judge charged the defendant to pay perkara fees in both levels of justice, which was at the appeal level of IDR sevesar. 2,500 (two thousand five hundred).

According to criminal law, only people who are capable of being held accountable in criminal law can be held accountable or convicted of criminal acts. The state and capacity of one's soul (*versdelikje vermogens*) are the basis of the ability to be responsible. Determining whether a person or suspect can be held accountable for a criminal act is the goal of criminal liability, which in foreign languages is known as terms such as *teorekenbaarheid*, criminal responsibility, or criminal liability.<sup>20</sup>

Law Number 19 of 2016 concerning Electronic Information and Transactions and the Criminal Code regulates criminal liability for perpetrators of spreading false information. Talk about the criminal consequences that can be accepted by individuals who spread false information and/or fake news (*hoax*). The provisions contained in Article 28 paragraph (1) of Law Number 19 of 2016 concerning Information and Electronic Transactions determine whether individuals who spread false information or fake news can be subject to criminal sanctions or whether they can be subject to criminal sanctions for doing so.

## CONCLUSION

In the digital era, the spread of fake news (*hoax*) through social media has become a big problem that can damage the social, political, and democratic order in Indonesia. Hoaxes can damage reputations, manipulate public opinion, trigger division, and threaten political stability, especially in the context of elections. Technological advances make it easier to spread hoaxes which are often carried out in an organized manner through social media. The Indonesian government has established policies and laws, such as the Electronic Information and Transaction Law, to tackle hoaxes and sanction spreaders of fake news. Countering hoaxes requires cooperation between the government, related institutions, social media platforms, and the public to avoid the adverse effects of misleading information. Accountability for the perpetrators of the crime of spreading hoaxes on social media during the presidential election involves various legal aspects regulated in the Electronic Information and Transaction Law and the Law on the Dissemination of Hoax News. Perpetrators can be subject to sanctions such as imprisonment and fines according to the type of offense committed, such as defamation and insult. Legal proceedings involve gathering evidence such as text, images or digital recordings to support a case. The government and relevant institutions have an important role in enforcing the law to protect the public from negative impacts

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<sup>20</sup> Dwinanda, R. A., & Suryanto, B. V. H. Penegakan Hukum Pidana Terhadap Penyebaran Berita Bohong Di Sosial Media. *Jurnal Panorama Hukum*, 4, no. 2 (2019).

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