

## **Investigation and Settlement of Hate Speech Cases in the Perspective of Law Number 1 of 2023 Concerning the New Book of Criminal Law**

Yanto<sup>1</sup>

### **Abstract**

*Freedom of expression in Indonesia is actually guaranteed by the constitution, but freedom of expression needs to have clear boundaries in expressing opinions both on social media and in the real world. To this day, hate speech cases are felt to be more biased towards the right to freedom of expression. The government also regulates hate speech in the law book. The approach used by the author in this research is based on literature study through a statutory approach, a conceptual approach, and an analytical approach. The results of this research show that freedom of opinion can be exercised, but the freedom in question is not unlimited freedom of opinion but rather every opinion must be justified with the truth and without the aim of attacking by expressing feelings of hostility, hatred or contempt towards certain groups or referring to the person in power (President) himself.*

**Keywords:** *Examination, Hate Speech, Perspective, New Criminal Code.*

### **Introduction**

Nowadays we often hear about problems or cases of hate speech in society. The phenomenon of hate speech is one of the serious challenges that Indonesia has been facing in recent years. In this context, social media plays an important role as a forum for spreading messages that incite hatred against certain groups. Some groups or individuals use digital platforms to spread intolerant views, causing polarization in society.

One aspect that complicates the situation is inequality in law enforcement regarding hate speech. While some cases receive legal attention, many also escape scrutiny, creating space for hate speech perpetrators to operate without fear of legal consequences. This creates an environment of intolerance can grow without control.

The phenomenon of hate speech can also damage inter-religious and inter-ethnic harmony in Indonesia. Sometimes, verbal attacks or rhetoric that denigrates a group can trigger social tensions that have the potential to threaten stability and harmony in society. Therefore, a holistic and coordinated approach between government, civil society and social media platforms is needed to tackle this phenomenon.

The role of education is also key in overcoming hate speech. By increasing digital literacy and including the values of tolerance in the education curriculum, society can become better able to read and assess information wisely, as well as develop mutual respect between individuals. Inclusive education can form a mindset that values diversity and reduces the potential for the spread of hate speech

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<sup>1</sup> Judge of the Supreme Court of the Republic of Indonesia

On the other hand, hate speech can be carried out by the public or by public officials. Hate speech is words, behavior, writing or performances that are prohibited because they can trigger acts of violence and prejudice from both the perpetrator and the victim of the act. This means that the perpetrators and victims can be members of the community or public officials.

Based on article 1 paragraph 2 of the 1945 Constitution of the Republic of Indonesia, it is stated that "sovereignty is in the hands of the people and is exercised entirely by the People's Consultative Assembly." The provisions of this article implicitly contain the meaning that the people are the owners of sovereignty, this ownership is also followed by the people as supervisors of the government. If this continues, it will certainly result in restrictions on freedom of expression.

Basically, freedom of expression is a fundamental and important human right in a democratic society. In this context, individuals have the right to express opinions, share information, and convey their ideas without fear of repression or restrictions on the part of the government or certain groups. Freedom of expression is the main pillar for the development of culture, science and democracy itself. However, it should be noted that freedom of expression is not an unlimited right.

Hate speech, which involves spreading messages that attack, demean, or provoke hatred against certain groups based on characteristics such as ethnicity, religion, race, or gender, has become a tense point in discussions of freedom of expression. Although individuals' rights to express opinions must be respected, restrictions need to be implemented to prevent potential damage and social conflict due to hate speech. It is important to strike a balance between protecting freedom of expression and addressing the negative impacts of hate speech.

States have a responsibility to protect their citizens from threats and violence that may arise as a result of hate speech, but must also work to ensure that such restrictions are not misused to suppress legitimate freedom of expression.

Several mass media reports on freedom of expression and hate speech are often interpreted in a partial way, this is based on Indonesia as a Republic-shaped country, the Indonesian Constitution stipulates that the number one person in Indonesia is the President as head of government and also as head of State who exercises his authority and power in accordance with the constitution.

The hate speech articles contained in Law Number 1 of 2023 concerning the Criminal Code are divided into 2 (two), namely hate speech directed at a certain group (general) and those directed at the authorities. Hate speech against society in general or certain groups is contained in Articles 242 to 244 of Law Number 1 of 2023 concerning the Criminal Code. Hate speech against the authorities, in this case the President and Vice President, is contained in Article 218 paragraph 1, Article 219, Article 240 paragraph (1) and Article 241 paragraph (1) of Law Number 1 of 2023 concerning the Criminal Code, which are articles regarding speech. This hatred has received a lot of debate regarding where the strict boundaries are to be able to differentiate between what is called an act of insult, slander, or constructive criticism of certain groups or the performance of the president and vice president in national development, thus the author is interested in discussing articles on hate speech. Contained in Law Number 1 of 2023 concerning the Criminal Code can be studied from the perspective of freedom of opinion (Article 28i of the 1945 Constitution).

## Research Methodology

The research approach used by the author in conducting this research is normative juridical. This normative juridical approach is research carried out by collecting research data through document study or literature study which is used to solve research problems.

## Results and Discussion

Where is the boundary between acts of hate speech and the right to freedom of opinion in Law Number 1 of 2023 concerning the Criminal Code as guaranteed in Article 28i of the 1945 Constitution?

Hate Speech is words, behavior, writing or performances that are prohibited because they can trigger acts of violence and prejudice, whether from the perpetrator of the statement or from the victim of the action. Meanwhile, slander based on the KBBI is words that are lies or are not based on the truth that are spread with the intention of insulting someone, such as praying for someone else's good name or harming someone else's honor. Based on news media data, there is an increase in crime cases related to hate speech. People often become victims or perpetrators of crimes as a result of hateful messages spread through social media and other online platforms.

First, there appears to be a correlation between the increase in hate speech and acts of violence in society. Various cases of physical and verbal violence are often motivated by harsh and provocative words posted online. The news media frequently reports on these incidents, creating tensions between societal groups. Second, hate speech can also trigger discrimination and intolerance. Society becomes divided based on differences in ideology, religion, ethnicity, or sexual orientation. Media reports illustrate how disapproval of certain groups can lead to rejection, exclusion, and even verbal and physical violence.

Third, the influence of the media in spreading hate speech is increasingly worrying. Mass media and online platforms often become a means for individuals or groups to spread hate messages quickly and widely. In some cases, the existence of these platforms can exacerbate conflicts and increase the risk of criminal acts. Fourth, this phenomenon is also reflected in increasing distrust and tension between society and security forces. Cases of hate speech often spark conflict with authorities, complicate law enforcement efforts and give rise to social instability.

Fifth, the impact of hate speech on crime increasingly complicates the government's efforts to build a harmonious and civilized society. The emergence of social tensions and violence in society can harm the stability of the country and hinder socio-economic development. All of these problems are very likely to arise from hate speech or we could also call it slander. Basically, from the definition of slander above, slander is closely related to the element of insult contained in Article 310 of the Criminal Code which regulates that insult is an act of attacking someone's honor or good name. The crime of defamation (*smad*) according to Article 310 of the Criminal Code is formulated as "intentionally attacking a person's honor or good name by accusing him of committing a certain act (*bepaald feit*) with the real aim (*kennelijk doel*) of broadcasting the accusation to the general public (*ruchtbaarhedi geven*). Now it is said to be an act of "intentionally attacking someone's honor or good name", while the following words can be considered to be specific to the nature of the criminal act of blasphemy (*smaad*).

Hate speech can be divided into two, namely hate speech aimed at certain groups and hate speech aimed at the authorities. Hate speech for certain groups can be seen in Articles 242 to 244 of Law Number 1 of 2023 concerning the Criminal Code; Hate speech against the Authority, namely in the form of criminal acts of defamation/insults against the authority (in this case the President), is regulated in Article 218 paragraph 1, Article 219, Article

240 paragraph (1) and Article 241 paragraph (1) of Law Number 1 of 2023 concerning Criminal Code. In general, the criminal act of insulting the Ruler (President) also includes *smaad* (verbal insults), *smaadschrift* (written insults), *laster* (slander), *eenvoudige beledigin* (ordinary insults), and *lastrijke aanklacht* (false complaints or reports).

Every individual who lives in a legal state has the same freedom of opinion which is constitutionally stated in Article 28 e paragraph (3) of the 1945 Constitution. Furthermore, in Article 28i paragraph (1) it is stated that, in essence, freedom of thought and conscience is a right. Human rights that cannot be reduced under any circumstances.

Nowadays, with the development of technology, every individual has freedom of opinion, both in print and online media, to express their feelings freely to the general public or to judge and criticize the authorities, whether the President or Vice President, but the freedom referred to in Article 28 e paragraph 3 and Article 28 i paragraph (1) of the 1945 Constitution as mentioned above is not unlimited freedom of opinion but rather every opinion must be justified with the truth and without the aim of attacking by expressing feelings of hostility, hatred or contempt towards certain groups or referring to the person of the ruler (President) itself.

## Conclusion

The freedom referred to in Article 28 e paragraph (3) of the 1945 Constitution and Article 28 I paragraph (1) of the 1945 Constitution is not freedom of opinion without limits but rather every opinion must be justified with the truth and without the aim of attacking by expressing feelings of hostility, hatred or insult to certain groups or refers to the person of the ruler (President) himself.

## Suggestion

Every Indonesian citizen has human rights including the right to freedom of opinion, but this freedom of opinion is not without morals but must be in accordance with the eastern customs of the Indonesian nation. Thus, according to the author there needs to be understanding from all Indonesian citizens to be able to give opinions politely and those opinions can to be accountable for the truth and not to attack or ridicule a person or a particular group.

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