

*Research Article***Problems of Legal Implementation of the Criminal Offense of Spreading Fake News and Hate Speech in Papua****Budiyanto^{1*}, Ahmad Masum², Paul Atagamen Aidonojie³, Jamal Aslan⁴**¹Faculty of Law, Universitas Cenderawasih, Indonesia²Faculty of Law, Universiti Islam Sultan Sharif Ali, Brunei Darussalam³School of Law, Kampala International University, Uganda⁴Faculty of Law, Universitas Hasanuddin, Indonesia

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ABSTRACT

Social media users throughout the world are growing rapidly, to the point where they can cause commotion in society, in this case the state is present to overcome the commotion that occurs through a set of special regulations regarding the spread of fake news and hate speech. However, in law enforcement practices, specifically at the Papua Regional Police, there is still misleading between the limits of freedom of opinion and the offense of spreading fake news and hate speech. This research will analyze the strict limits in law enforcement regarding the criminal offense of spreading fake news and hate speech with freedom of expression in Papua. This research uses normative juridical research methods. The research results show that the problem of spreading fake news and hate speech in Indonesia has been regulated in various regulations, but its implementation still does not provide a sense of justice for victims. Judges' sentences tend to be lower than the demands, so the perpetrator's sentence is still too light. Especially related to actions that cause riots or conflict in Papua. So regarding the offense of spreading fake news and hate speech, it is important to reformulate the formulation regarding prohibited acts, criminal liability, types of punishment, and forms of legal settlement. Special minimum sentences need to be clearly regulated for criminal acts that have an impact on conflict and unrest, such as the crime of spreading fake news and hate speech.

Keywords: Fake News; Hate Speech; Crime; Social Media; Legal Outreach**A. INTRODUCTION**

Technological advances, especially the internet, are becoming increasingly popular among most people, even on a global scale. The development of the internet not only has a positive impact on human progress but also brings negative consequences (Azis, 2016). In today's era of

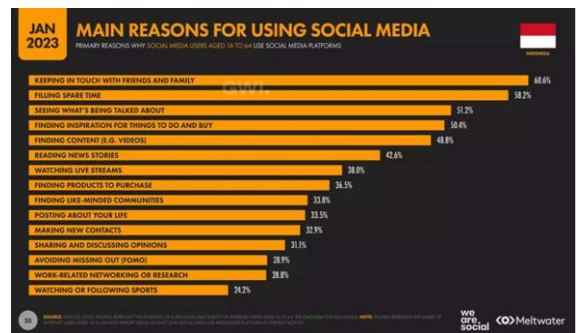
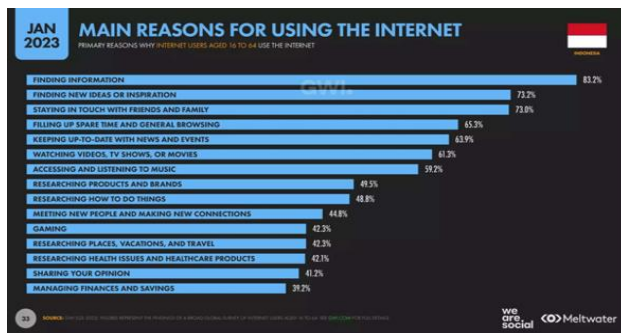
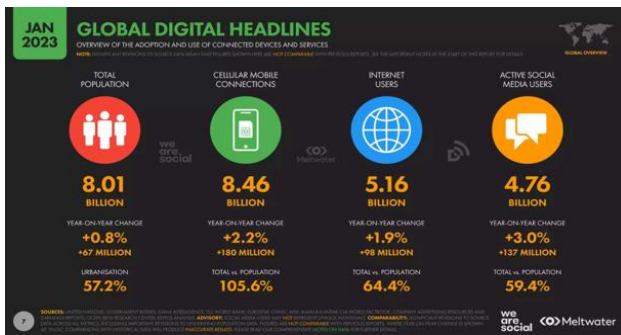
globalization, humans have become a society that greatly depends on technological advancements and developments in all aspects of life. Therefore, with the rise of the internet, it has become very easy for people to communicate with each other without being limited by space and time. People worldwide can now interact and communicate

through the internet, making the world seem like a global village (Siregar, 2020).

According to an article published in "DataIndonesia.id" and "databoks.katadata.co.id", it is reported that:

- (1) In Indonesia, there will be 167 million active social media users by early 2023. The time spent using social media is around 3 hours 18 minutes, and each day the average is 7 hours 42 minutes (Widi, 2023).
- (2) In Indonesia there are 213 million internet users as of January 2023, and 98.3% of the majority use mobile phones (Annur, 2023).

According to the British media We Are Social as published in inet.detik.com and andik.link that at the beginning of 2023, the total world level of internet and social media users will reach 8.01 billion, using 8.46 billion mobile devices, 5.16 billion Internet users, 4.76 billion active social media users (Haryanto, 2023). Conditions in Indonesia total population 276.4 million, using mobile devices 353.8 million, Internet 212.9 million, active social media 167 million (Riyanto, 2023). Previous data for 2021 was revealed and published in the journal Amanna Gappa, but it is different from the current conditions in 2023 (Jumadi, Malik, & Hanafi, 2021).



Picture 1. World Internet and Social Media Users (Source: Riyanto, 2023)

Meanwhile, the reasons Indonesian citizens use the internet are as follows: 83.2% to find information, 73.2% to seek ideas and inspiration, 73.0% to communicate with friends or family, 65.3% to fill free time, 63.9% to stay updated with the latest news or events, and 61.3% to watch videos, TV shows, films, and more. As for social media usage, the reasons include 60.6% to communicate with friends or family, 58.2% to pass time, 51.2% to learn what others are talking about, and 50.4% to seek ideas, inspiration, or search for products and other information (Jumadi, Malik, & Hanafi, 2021).

Based on the data presented, almost all aspects of people's lives worldwide are influenced by technological advancements, including in the fields of communication, information, electronics, computers, mobile phones, and digital technology. Through the internet, people can engage in a variety of activities that channel their hobbies into creativity and expression. Social media can be used positively, such as creating personal statuses, humorous content, or even engaging in online sales. However, it is sometimes misused, leading to offensive behavior that targets individuals, groups, or communities. The rise of digitalization has accustomed many people to using the internet regularly (Siregar, 2020). With the emergence of various social media platforms like Facebook, Instagram, Twitter, WhatsApp, and YouTube, people across the world have become heavily involved in social media activities, making it a

necessity (Febriansyah & Purwinarto, 2020). This has given rise to a new hobby of using social media to express creativity and share daily activities. Many compete to create viral content, ranging from humorous and admirable posts to those that violate norms of decency and legal boundaries.

Since the 2019 presidential election and leading up to the 2024 election, criminal acts related to the Information and Electronic Transactions (ITE) Law have been a major topic of discussion. Supporters of presidential and vice-presidential candidates have often criticized one another, and this criticism sometimes crosses the line into hate speech or the spread of fake news. Excessive criticism, especially when expressed inappropriately, can offend someone's dignity and self-esteem, leading to legal action. Examples include: (1) Paranormal Ki Gendeng Pamungkas, for spreading hate related to ethnicity, religion, race, and inter-group (SARA) sentiments; (2) Muhammad Tamim Pardede, who insulted the Head of State and police officials in a video, accusing them of supporting communism; (3) The Saracen group, involved in hate speech related to SARA sentiments; (4) Ahmad Dhani, for hate speech against Ahok supporters; and (5) Jonru Ginting, for social media posts involving the imam of the Istiqlal Quraish Shihab Mosque (Febriansyah & Purwinarto, 2020).

Additionally, data from 2018 shows that 3,640 pieces of content containing SARA elements

were identified. Platforms like Facebook, Instagram, Twitter, WhatsApp, YouTube, Telegram, and other social media applications hosted 89 such pieces of content. In March 2021, 125 pieces of content were verified, of which 89 were suspected of being related to hate speech, while the remaining 36 were deemed to have passed verification. This data comes from various events across Indonesia. Nationally, cases of spreading fake news (Berita Bohong, abbreviated BB) and hate speech (Ujaran Kebencian, abbreviated UK) are increasingly troubling the public. These actions, often consisting of false statements intended to provoke or ridicule, can incite unrest and conflict within communities (Lubis, Bahmid, & Suraini, 2019; Triyono et al., 2023). Perpetrators aim to influence readers' emotions, leading to provocation, hatred, and division among religions, ethnicities, races, nations, and even countries (Davina, Suseno, & Haffas, 2022; Muzakir, Adi, & Kusumaningrum, 2023). Swift and decisive action is needed to prevent the widespread spread of such content, which threatens public order and security.

The spread of BB and UK has also been observed in Papua, particularly in Jayapura City (the provincial capital), Jayapura Regency, and Keerom Regency. Despite preventive efforts by the local government and police, including public counseling and appeals to use social media responsibly, some people continue to ignore these warnings. Perpetrators often use mobile phones to

access social media due to their affordability and practicality, making them widely popular in Papua. However, unwise social media use and disregard for legal regulations lead to criminal prosecution. Examples include cases of alleged insults on electronic media involving members of the Keerom Regency General Election Commission, a teacher accused of insulting a student, and various cases of creating or spreading hoaxes, provocation, and SARA-related content, which violate the ITE Law. One case involved a video showing a place of worship being burned during a demonstration in Jayapura. This demonstrates the need for social media and online media users to act wisely and responsibly. While social media offers freedom of expression, this freedom must be exercised within the bounds of the law.

In Indonesian society, including in Papua, there is a common misunderstanding that freedom of expression on social media has no limits, with the assumption that social media is a private space. However, in criminal law enforcement, personal rights cannot infringe upon the rights of others. This gap is the focus of this research.

This study differs from previous research on the criminal acts of spreading fake news and hate speech, both nationally and internationally. Previous national research has focused on controlling hoax and hate speech perpetrators (Lubis, 2020), juridical analysis of hate speech on social media (Oktiawan, 2021), and criminal law

policies for dealing with hate speech in cyberspace (Kamalludin & Arief, 2019). International research has explored how hate speech regulation may threaten freedom of expression (Santuraki, 2019) and how freedom of speech is limited by fake news regulations (Jacobs, 2022).

In contrast, this research focuses on analyzing three specific issues: reviewing regulations on criminal cases of spreading fake news and hate speech under the ITE Law, examining the application of criminal provisions in such cases in Papua, and exploring possible criminal law reforms related to fake news and hate speech in Indonesia.

B. RESEARCH METHODS

The primary method used in this research is the normative legal research method (Sonata, 2014). However, empirical legal research methods are also utilized as complementary approaches. The aim is not only to examine legal norms but also to observe responses to the implementation of laws. Data collection involved the use of primary legal materials, such as relevant laws and regulations. Secondary legal materials were gathered from various sources, including books, expert opinions, academic papers, websites, and other relevant documents. The data analysis was carried out using descriptive analysis techniques, wherein the collected data was categorized, processed, and analyzed to draw conclusions and

provide an understanding of the research subjects and objects.

C. RESULTS AND DISCUSSION

1. Regulations on The Criminal Act of Spreading Fake News and Hate Speech in Indonesia

The criminal act of spreading fake news (BB) and hate speech (UK) is dangerous because it violates human rights, the fundamental rights of every individual (Titahelu, 2022). According to Yusrizal et al. (2023), all behaviors that degrade human dignity, whether on an individual level or as a member of society, are prohibited by Allah Subhanahu Wa Ta'ala. The primary objective of Islamic criminal law is to prevent crimes, fostering a peaceful society where religion, life, property, and reputation are protected by law. Therefore, the state must regulate specific provisions to protect human rights and ensure justice, public order, and legal certainty through improved laws (Zulyadi & Hossain, 2022).

Based on the results of literature searches, it is shown that Indonesia has ratified several provisions of international conventions related to criminal acts involving the spread of fake news and hate speech. These include the 1948 UN General Assembly's Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the International Covenant on Civil and Political Rights

(ICCPR) (Isnaini, Rochmawanto, & Winarno, 2020). Furthermore, Indonesia specifically addresses criminal acts related to the spread of fake news and hate speech in its Criminal Code, Law Number 1 of 1946 concerning Criminal Law Regulations (Article 14 paragraphs (1) and (2), Article 15), and the ITE Law (Athifahputih, 2022). The legal basis for prosecuting individuals who create and spread fake news through online media is found in Articles 28 and 45A of the ITE Law (Laowo, 2020). In addition, law enforcement officials also refer to Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination (Saputra, Arjaya, & Sudibya, 2020), Law Number 7 of 2012 concerning the Handling of Social Conflicts, Law Number 1/PNPS/1965 concerning the Prevention of Abuse and/or Blasphemy of Religion (Azhar & Soponyono, 2020), and the Chief of Police's Circular Letter Number SE/6/X/2015 concerning the Handling of Hate Speech. Hate speech is regulated under the Criminal Code and other criminal provisions, including insults, defamation, offensive acts, provocation, incitement, and the spreading of false news (Rahayu et al., 2024).

Provisions regarding general insults are regulated in the Criminal Code under Articles 310, 311, 315, 317, 318, 320, and 321. Meanwhile, special insults are addressed in the Criminal Code starting from Articles 134, 136 bis, 137, 142, 142a, 143, 144, 154, 154a, 155, 156, 156a, 157, 177 numbers 1 and 2, 207, 208, and 503 (Chazawi,

2016). Special insults are also regulated outside the Criminal Code, specifically in Law Number 32 of 2002 concerning Broadcasting, Article 36 paragraph (5), paragraph (6), and Article 57, letters d and e. Furthermore, the ITE Law regulates these matters in Article 27 paragraph (1), which addresses decency, paragraph (3) which covers elements of insult, and paragraph (4) which concerns extortion/threats. Additionally, Article 28 paragraph (1) of the ITE Law relates to the spread of false news and misinformation causing harm to consumers, while paragraph (2) addresses the creation of hatred and hostility based on SARA (Guntara, 2017).

The actions regulated by Article 28 paragraph (2) of the ITE Law include: 1) victims affected by SARA-related content, 2) creating images of figures considered sacred in a religion but which contradict their original depiction, 3) writing insults against a religious holy book, 4) disseminating personal information that violates norms of decency, and 5) acts containing SARA elements committed on social media (Alberta & Putri, 2021). The criminal provisions refer to Article 45 paragraph (1) of the ITE Law concerning morality, paragraph (3) concerning insults/defamation, and paragraph (4) concerning extortion/threats (Situmorang, Dharmajaya, & Putra, 2017). Regarding misleading information causing consumer harm, reference is made to Article 45A paragraph (1) of the ITE Law (Utami, 2021).

This relates to the opinion of Pujiyono Suwadi, Reda Manthovani, and Alizza Khumaira Assyifa (Suwadi, Manthovani, & Assyifa, 2023) in the *Journal of Law and Sustainable Development*, stating that "The ITE Law was created to ensure the security and privacy of electronic transactions, as well as provide legal guarantees for users of such technology." Online shopping will remain popular with consumers, especially with attractive advertising and low prices. However, if consumers are not careful, they may become victims of fraud due to misleading advertisements. Zulham highlighted this in the *Journal of Law and Sustainable Development*, stating that misleading or deceptive advertising is a significant issue in online shopping (Zulham, 2023). This is because advertisements often play a key role in attracting consumers to a product (Kuswanto, Pratama, & Ahmad, 2020). Furthermore, actions involving SARA are addressed in Article 45A paragraph (2) of the ITE Law.

The principle is that general insults, as regulated in the Criminal Code, are directed at individuals, while special insults are directed at institutions or entities, such as the government, religion, flags, and national symbols. The crime of spreading fake news through social media often intersects with freedom of speech. In this context, it is important for law enforcement to have a correct understanding to ensure that defamation and insult laws are not misused to suppress freedom of

expression and opinion. The legal basis for applying these crimes includes: the act must be prohibited by law, the act must disrupt public order, health, morals, or national security, the act must infringe on the rights and freedoms of others or damage their reputation, and the act must not conflict with Indonesia's democratic system (Nur & Susanto, 2021).

In the current legal landscape, with the enactment of Law Number 1 of 2023 concerning the Criminal Code (referred to as the New Criminal Code), legal provisions must now be adjusted to align with this new regulation. However, the New Criminal Code will not come into force for the next three years. Once it takes effect, according to Article 622 paragraph (1) of the New Criminal Code, several articles of the ITE Law will be revoked, including Article 27 paragraphs (1) and (3), Article 28 paragraph (2), Articles 30, 31 paragraphs (1) and (2), Article 36, Article 45 paragraphs (1) and (3), Article 45A paragraph (2), Article 46, Article 47, and Article 51 paragraph (2). In addition, Article 622 paragraph (10) of the New Criminal Code specifies articles that will replace those revoked in the ITE Law, such as Articles 407, 441, 243, 332, and Article 258 paragraph (2) of the New Criminal Code.

Therefore, until the New Criminal Code takes effect, the existing provisions remain applicable. Some controversial articles in the New Criminal Code have the potential to suppress journalists and erode the democratic values that have long been

upheld in Indonesia. The New Criminal Code introduces the threat of repressive criminal penalties for individuals who criticize public officials or the government, including the president, without any defense allowed even if the allegations are proven true. Two key articles of concern in the New Criminal Code relate to press freedom: the prohibition on broadcasting and spreading fake news, which carries a maximum sentence of two years in prison, and the criminalization of spreading unverified, exaggerated, or incomplete news, also punishable by imprisonment.

2. Implementation of the Law on the Criminal Offense of Spreading Fake News and Hate Speech in Papua

Repressive efforts, such as law enforcement measures, are taken to address the criminal act of spreading fake news and hate speech. This issue has become a significant concern, particularly in Jayapura City, where there is high engagement with social media and online platforms. The use of social and online media has become a daily necessity for almost all sectors of society, from officials to ordinary citizens. People are rarely seen without their gadgets (cell phones), and almost every activity involves using or operating them. Many social media users regularly create content or status updates for various purposes. However, some find themselves facing legal consequences for posting inappropriate content, with those found guilty subject to punishment.

According to research, all cases involving fake news and hate speech were examined and prosecuted under the ITE Law. The number of cases handled by the Jayapura District Court was as follows: 4 cases in 2022, 9 cases in 2021, 4 cases in 2020, 6 cases in 2019, and 7 cases in 2018. In contrast, as of 2023, no cases have been transferred to the Jayapura District Court. Interviews revealed that in a case of alleged defamation via electronic media in Keerom Regency, both parties agreed to resolve the matter amicably (interview with the Head of the Criminal Investigation Unit of Keerom Police) (Zakaruddin, 2023). In Jayapura Regency, the reported cases were resolved through mediation or peaceful settlement between the perpetrator and the victim (interview with the Head of the Community Development Unit of Jayapura Police) (Arjana, 2023). In Sarmi Regency, a reported case of defamation via electronic media did not progress to the investigation stage due to insufficient evidence and the absence of SARA-related elements (interview with the Head of the Criminal Investigation Unit of Sarmi Police) (Usman, 2023).

Overall there are 7 classifications of cases, namely: first, cases regarding insults and/or defamation, totaling 11 cases, namely: (a) Case number: 529/Pid.Sus/2022/PN Jap, the perpetrator was sentenced to 7 months; (b) Case number: 479/Pid.Sus/2022/PN Jap, the perpetrator was sentenced to 6 months; (c) Case number:

334/Pid.Sus/2021/ PN Jap, the perpetrator was sentenced to 4 months; (d) Case number: 302/Pid.Sus/2021/PN Jap, the perpetrator was sentenced to 6 months; (e) Case number: 111/Pid.Sus/2021/PN Jap, the perpetrator was sentenced to 6 months; (f) Case number: 458/Pid.Sus/ 2020/PN Jap, the perpetrator was sentenced to a fine of 50 million rupiah subsidiary to 6 months' imprisonment; (g) Case number: 614/Pid.Sus/2019/PN Jap, the perpetrator was sentenced to 3 months; (h) Case number: 351/Pid.Sus/2019/PN Jap, the perpetrator was sentenced to 2 months; (i) Case number: 721/Pid.Sus/2018/PN Jap, the perpetrator was sentenced to 7 months; (j) Case number: 372/Pid.Sus/2018/PN Jap, the perpetrator was sentenced to 8 months and a fine of 75 million rupiah or imprisonment for 3 months; and (k) Case number: 373/Pid.Sus/2018/PN Jap, the perpetrator was sentenced to 6 months and a fine of 100 million rupiah or imprisonment for 1 month.

Second cases containing elements of SARA, totaling 6 cases, consisting of: (a) Case number: 353/Pid.Sus/2021/PN Jap, the perpetrator was acquitted of the charges; (b) Case number: 293/Pid.Sus/2021/PN Jap, the perpetrator was sentenced to 6 months; (c) Case number: 239/Pid.Sus/2021/PN Jap, the perpetrator was sentenced to 1 year and 6 months; (d) Case number: 208/Pid.Sus/2021/PN Jap, the perpetrator was sentenced to 1 year; (e) Case number:

16/Pid.Sus/2020/PN Jap, the perpetrator was sentenced to 10 months in prison and a fine of 50 million rupiah; and (f) Case number: 660/Pid.Sus/2019/PN Jap, the perpetrator was sentenced to 2 years.

Third, There are 8 cases regarding acts that violate morality, namely: (a) Case Number: 112/Pid.Sus/2021/PN Jap, the perpetrator was sentenced to 1 year and 6 months; (b) Case Number: 365/Pid.Sus/2020/PN Jap, the perpetrator was sentenced to prison for 2 years and 10 months; (c) Case Number: 683/Pid.Sus/2019/PN Jap, the perpetrator was sentenced to 2 years; (d) Case Number: 40/Pid.Sus/2019/PN Jap, the perpetrator was sentenced to 1 year and 2 months; (e) Case Number: 225/Pid.Sus/2018/PN Jap, the perpetrator was sentenced to 2 years and a fine of 1 billion rupiah or imprisonment for 1 month; (f) Case Number: 159/Pid.Sus/2018/PN Jap, the perpetrator was sentenced to 2 years and a fine of 1 billion rupiah or 3 months in prison; (g) Case Number: 129/Pid.Sus/2018/PN Jap, the perpetrator was sentenced to 1 year and 10 months; and (h) Case Number: 56/Pid.Sus/2018/PN Jap, the perpetrator was sentenced to 6 months and a fine of 1 billion rupiah or 1 month in prison.

Fourth, the case of the distribution of BB which is detrimental to consumers, totaling 2 cases, namely: (a) Case Number: 396/Pid.Sus/2022/PN Jap, the perpetrator was sentenced to 1 year and 2 months, subsidiary to 3 months in prison, and

subsidiary to a fine of 500 million rupiah, and (b) Case Number: 86/Pid.Sus/2021/PN Jap, the perpetrator was sentenced to 7 months and a fine of 100 million rupiah, subsidiary to 1 month in prison. Fifth, the case of pornographic content, namely Case Number: 436/Pid.Sus/2020/PN Jap, the perpetrator was sentenced to 10 years and a fine of 6 billion rupiah. Sixth, the case regarding what appears to be authentic data, namely Case Number: 694/Pid.Sus/2022/PN Jap, the perpetrator was sentenced to 3 years and a fine of 500 million rupiah, subsidiary 1 month. Seventh, case of extortion and/or threats, namely Case Number: 575/Pid.Sus/2019/PN Jap, the perpetrator was sentenced to 1 year and 6 months and fined 100 million rupiah.

Based on these 7 case classifications, it is evident that the issue of spreading fake news and hate speech in Papua has been addressed within the applicable legal framework. According to the results of interviews conducted, the Jayapura City Police Department (Polresta Jayapura Kota) has implemented three measures to deal with ITE crimes: pre-emptive, preventive, and repressive measures. This approach aligns with the publication in the *Journal of Law and Economic Development*, Volume 10, Number 1, 2022 (Athifahputih, 2022).

First, pre-emptive efforts involve police actions to carry out their duties by prioritizing a persuasive approach, including appeals, community development, socialization, and education aimed at

avoiding social conflict (Quinn, 2019). In other words, pre-emptive efforts are aimed at detecting and preventing criminal acts from occurring in the first place. Similarly, Rino Sun Joy et al. noted in their scientific journal that the East Kalimantan Regional Police Criminal Investigation Directorate implemented pre-emptive measures to prevent criminal acts of spreading fake news (hoaxes) through counseling, outreach on social media and in person, and creating banners or posters to encourage the public to be more discerning and intelligent when accessing news (Joy, Anzward, & Wulan, 2019).

Second, preventive efforts involve direct actions taken by the police to prevent conditions that could lead to social conflict, such as conducting patrols in conflict-prone areas or carrying out cyber patrols. Currently, members of the Subdirectorate of the Special Criminal Investigation Directorate of the Papua Regional Police (Dit Reskrimsus Polda) are intensively conducting cyber patrols on social media, as many personnel now have skills and expertise in ITE. This initiative is in response to the increasing spread of SARA-related content on social media in Papua, particularly in provincial and district capitals. Cyber patrols target accounts suspected of spreading hate speech or provocative content to prevent further escalation of ITE crimes. Enhancing human resources in the field of ITE within the Papua Regional Police aligns with similar preventive efforts carried out by the East

Kalimantan Regional Police, including collaboration with stakeholders.

Third, repressive measures are used as the final step in implementing criminal law policies in Papua. The aim is to uphold justice for those proven to have committed the crimes of spreading false news and hate speech. Given that Papua is a province prone to conflict and riots, especially in Jayapura City, repressive measures are chosen as a last resort to protect society from potential chaos or conflict, and specifically to safeguard the rights of victims. Consequently, the police act only based on complaints from the public or victims. This approach aligns with the ITE Law, which states in Constitutional Court Decisions Number 50/PUU-VII/2009 and Number 2/PUU-VII/2009 that crimes of insult and defamation in the realm of Electronic Information and Electronic Transactions are not merely criminal acts. This is intended to uphold the principles of legal certainty and public justice. Therefore, if no prior complaint is made, cases involving the distribution of fake news and hate speech will not be processed by the Jayapura City Resort Police, Keerom Resort Police, or Jayapura Resort Police (Jayapura Regency). Members of the general and special Criminal Investigation Unit (Sat Reskrim) perform their duties according to the National Police Chief's Circular Number SE/06/X/2015 concerning the Handling of Hate Speech, which states that if the case involves the ITE Law, the authority lies with the Criminal

Investigation Unit. This is consistent with research conducted by the Central Java Regional Police, which reveals that violations of the Criminal Code are managed by the general Criminal Investigation Unit, while violations of laws outside the Criminal Code are handled by the special Criminal Investigation Unit (Hariyawan & Supeno, 2020). After receiving complaints, members of the Criminal Investigation Unit of the Papua Regional Police, along with the Criminal Investigation Unit of the Jayapura City Police, conduct security measures and process the crime scene (TKP), gather information, and locate witnesses and evidence. Once all information and evidence are collected, the investigator, with the assistance of assistant investigators, performs arrest, detention, search, and confiscation. If the investigation and examination file is deemed complete, it is then submitted to the prosecutor's office for further prosecution, where the indictment and demand letter are prepared before the case is handed over and examined by a judge during the court trial process.

In the process of handling cases in court, it was noted that the sentences given to perpetrators were considered too lenient, with some even being acquitted, such as in Case Number 353/Pid.Sus/2021/PN Jap. It appears that the judge's decisions do not align with the criminal penalties specified in the ITE Law, which prescribes a maximum of 4 to 6 years' imprisonment.

According to Article 14 of Law Number 1 of 1946 concerning Criminal Law Regulations, the maximum prison term is 3 to 10 years. Criminal sanctions should serve as a guideline for imposing appropriate punishments on perpetrators. However, the lack of a specific minimum penalty in the sanctions results in very low prosecution and sentencing outcomes. The severity of the sentence depends on the evidence presented during the trial, the prosecutor's demands, and the judge's decision. Therefore, a joint commitment from all criminal justice institutions—the police, prosecutor's office, and courts—is necessary to enforce maximum penalties to deter perpetrators (Budiyanto, 2017).

It must be acknowledged that law enforcement issues are influenced by several factors: legal factors, law enforcement, facilities and infrastructure, society, and culture (Soekanto, 2012). For comparison, similar research indicates that law enforcement against the spreaders of fake news and hate speech in the North Maluku Regional Police is inadequate due to obstacles and challenges at each stage of the judicial process and juridical technical problems (Jumadi, Malik, & Hanafi, 2021). Similarly, East Kalimantan Regional Police officers are perceived as not being sufficiently firm in handling fake news (hoaxes) and hate speech, with only a few perpetrators being processed and punished. This suggests that similar problems exist in law enforcement in Papua and other regions in Indonesia. Each factor is

interrelated and affects the overall success or failure of law enforcement. Regarding sentencing, even though judges have their own reasons and considerations, the sentences often tend to be lower than the demands, leading to potential injustice for victims. Dissatisfaction may arise among those who seriously criticize perpetrators for causing disruption. If judges impose sentences that match the demands, both victims and the community are likely to feel that justice has been served. Consequently, imposing stringent criminal sanctions is crucial for deterring perpetrators and encouraging behavioral improvement.

The obstacles encountered in implementing the ITE Law in Papua share similarities with and differ from previous research. These can be outlined as follows:

- a. Legal Substance Issues: There is overlap in the application of the law. Currently, cases of fake news and hate speech apply only the provisions of the ITE Law Articles 45 paragraph (1), 45A paragraph (2), 27 paragraph (3), and 28 paragraph (2). Insults are addressed under the Criminal Code Articles 310 paragraphs (1) and (2), 311 paragraph (1), 315, 317, 318, Articles 320-321, and Articles 134, 136 bis, 137, 142-144, 142a, 154, 154a, 155-157, 207-208, with insults against religion covered by Articles 156a and 177 (1st and 2nd). Cases are currently limited to applying these provisions based on whether the perpetrator used online media or

- not.
- b. Limited Supervision: There is inadequate oversight of cases involving the spread of fake news and hate speech. The increasing volume and intensity of online content created by users make it difficult for officers to manage and sort cases effectively. Therefore, significant time and resources are required to identify and address relevant cases, and insufficient evidence may lead to the perpetrators evading justice, damaging the reputation of the police.
 - c. Insufficient Facilities and Infrastructure: There is a lack of facilities and infrastructure for investigating and examining cases of fake news and hate speech, particularly in forensic laboratories at the city and regency police levels. This hampers the effective prevention and handling of cases involving sophisticated technology (Hariyawan & Supeno, 2020).
 - d. Public Lack of Knowledge: Many individuals become victims or suspects in fake news and hate speech cases due to a lack of understanding of how to use the internet and social media wisely. Misunderstandings, lack of maturity, and the pursuit of instant fame often lead people to engage in provocative behavior, making them susceptible to becoming perpetrators or suspects (Hariyawan & Supeno, 2020).
 - e. Insufficient Socialization: There is a lack of socialization by various parties and stakeholders

regarding ethical social media use. This results in many people uploading harmful, offensive, or insulting content, leading to difficulties in preventing and addressing such issues without immediate education and community development.

There is a noticeable trend of problematic behavior among community groups using the internet and social media. A lack of legal awareness and adherence to regulations contributes to the increasing number of perpetrators and victims of fake news and hate speech. Therefore, there needs to be a heightened awareness and compliance with legal regulations to maintain order and security in society.

3. Criminal Law Reform as an Alternative to Create a New Perspective in the Future Implementation of COP-26 Towards COP-27 in International Policy Instruments

Law enforcement officials are prone to making mistakes or errors when implementing legal norms. These mistakes often stem from misinterpreting or misapplying the articles of the law, leading to human rights violations. The decision in Case Number 353/Pid.Sus/2021/PN Jap demonstrates an error in interpreting and applying the law to suspects and defendants. Each institution within the criminal justice system—namely the police, the prosecutor's office, and the courts—should coordinate and provide feedback to each other to prevent errors in the implementation of the

law.

The fundamental reasons for the importance of criminal law reform are: (1) the substance of criminal law is outdated or no longer relevant to current developments, (2) criminal law provisions are not aligned with the principles of reform, (3) law enforcement no longer effectively delivers justice, and (4) criminal law fails to ensure public security. In this context, criminal law reform should focus on: (1) formulating and defining prohibited acts, (2) determining the elements of offenses and criminal liability, and (3) establishing the form and type of criminal sanctions for those who commit offenses (Najih, 2014). Therefore, criminal law reform aims to address current problems, thus minimizing future errors in legal implementation.

Criminal law reform must also adhere to several principles, including the rule of law, constitutional principles, and democratic principles (Najih, 2014). This suggests that legal reforms should ensure that the state is actively protecting citizens' human rights from violations by any party. Through state officials, the government must create conditions that are safe, orderly, and promote public welfare. With regard to addressing the crime of spreading fake news and hate speech in Papua, there are two approaches that can be considered: non-penal and penal measures.

Non-penal measures seem more suitable for the situation in Papua. Although non-penal and penal approaches can be implemented

simultaneously, it is advisable to prioritize the non-penal approach first. This is because Papua is a conflict-prone area, and a non-penal approach is deemed more effective. Additionally, Papuans still uphold and respect their customs and culture. There are often differences in the interpretation of values between Papuan customary law and state law. The majority of the population in Papua prefers customary law as an alternative means of conflict resolution, such as in cases of tribal disputes, rather than resorting to criminal law. Based on a survey of 510 respondents, the following classifications were observed: the first group, consisting of 357 respondents (70%), preferred customary law as an alternative to resolving cases, the second group, consisting of 51 respondents (10%), preferred criminal law (state law) as the only way to resolve legal cases in Papua, and the third group, consisting of 102 respondents (20%), preferred either customary law, criminal law, or both.

Based on this classification, it can be explained that the first group chose customary law as the only way to resolve cases of spreading fake news and hate speech in Papua. The basic thinking is: (1) the perpetrator is considered to be still young or a child so there is a high possibility that he can still be directed and given guidance, (2) the perpetrator is just following along and does not understand the meaning of the action he has committed, (3) the perpetrator has regretted his actions and admitted guilt, (4) the perpetrator is

willing to apologize to the victim (society), and promises not to repeat his actions again, and (5) the perpetrator is willing to take responsibility and compensate the victim for losses (shame money). Based on these five reasons, it means that in Papua there are groups of people who still want or maintain customary law as a way to resolve problems (cases, conflicts) that occur. The presence of criminal law (state law, positive law, the Criminal Code, the ITE Law) apparently has not been able to touch the hearts of the people, and has not been able to provide a sense of justice for the people in Papua. The judge's decision has so far been considered unfair and unable to treat the suffering experienced by the victim.

Consequently, the indigenous people of Papua prefer to resolve cases through customary law, which they believe offers a greater sense of justice. Traditional institutions play a crucial role in uniting communities through local wisdom and

shared values, thereby fostering peace (Maahuri, 2022). As is known, Papua Province consists of one city, Jayapura, and eight districts: Keerom, Jayapura, Sarmi, Waropen, Mamberamo Raya, Yapen Islands, Supiori, and Biak Numfor. The region is divided into two traditional territories: Traditional Territory I (Mamta/Tabi), which includes Jayapura City and the districts of Keerom, Jayapura, Sarmi, and Mamberamo Raya; and Traditional Territory II (Saereri), which includes Supiori, Biak Numfor, Waropen, and the Yapen Islands. In the Mamta/Tabi area, traditional leadership is vested in the Ondoafi, who acts as a peacemaker or mediator in disputes. Papua is further divided into seven traditional areas: Mamta/Tabi, Saireri, Bomberai, Domberai, Animha, Meepago, and Lapago, each with its own leadership and governance structures, as detailed by Susetio (2022).



Picture 2. Map of the Division of 7 Traditional Areas in Papua and West Papua Provinces (Susetio, 2022)

The second group consists of respondents who prefer the presence of state law (positive law, Criminal Code, ITE Law, etc.) as an alternative for resolving cases of spreading fake news and hate speech. Their reasoning is as follows: (1) the perpetrator has malicious intent, deliberately creating content that can incite conflict or riots between social groups, (2) the perpetrator knowingly posts statuses or makes statements that influence or incite others, thereby generating negative sentiments and fostering hatred or hostility between groups, (3) the perpetrator does not feel guilty even though their actions have harmed many people, (4) the perpetrator shows no remorse for actions that insult the beliefs, religions, or dignity of others or other groups, (5) the perpetrator has repeatedly committed hate speech, particularly related to sensitive issues like SARA (ethnicity, religion, race, and intergroup relations), and (6) the perpetrator's actions are considered to have seriously endangered religious harmony and public security.

The third group includes respondents who choose a combination of customary law and/or state law (positive law, Criminal Code, ITE Law, etc.) as an alternative for resolving cases of spreading fake news and hate speech. Their rationale includes: (1) the people of Papua are generally accustomed to resolving cases using customary law, but when customary law is insufficient, criminal law (state law) should be

applied, and (2) the perpetrator is obliged to pay customary fines as a form of compensation to the victim or as a means of taking responsibility. If the perpetrator pays the customary fine (fulfilling their customary obligations), the court may reduce or even dismiss the sentence. It is important to note that the court can only dismiss the charges if the victim or the victim's family has forgiven the perpetrator and accepted the customary compensation. Thus, even though criminal law theory does not specifically regulate this, judges can consider such factors to ease the defendant's sentence. Justice does not always require punishment for the defendant; the key is to achieve justice that benefits both the perpetrator and the victim (a win-win solution). The primary goal of this approach is to restore relationships and return conditions to normal. Therefore, a strong commitment is required to find the right approach to provide legal understanding to the people of Papua, especially those in urban areas like Jayapura.

It is essential to provide special education regarding the ITE Law, focusing on the elements of prohibited acts, criminal sanctions, and prevention measures. The more frequently education and guidance are conducted, the more aware and law-abiding the public will become.

Next, penal measures can be taken through the formulation, application, and execution stages (Utami, 2021). The formulation stage involves the creation, formulation, and improvement of laws to

ensure legal objectives—certainty, justice, and public benefit—are achieved (Febriansyah & Purwinarto, 2020). This stage determines what actions are prohibited, criminal liability, and sanctions. In reforming criminal law, the policy formulation must consider the active and passive conditions of the perpetrator. If the perpetrator's actions result in riots or conflict, it should be classified as an active offense, warranting harsher punishment. Consequently, strict guidelines are needed, including specific minimum and maximum sentences, especially for repeated offenses or those causing significant harm to public security. This provides clear directions for law enforcement, prosecutors, judges, and correctional facilities. The special minimum sentence aims to create a deterrent effect and maintain public order and security, ensuring that conditions in Papua remain peaceful.

In essence, the development of criminal law must consider societal conditions and its goal of crime prevention and public protection. Law enforcement must adhere to established guidelines to avoid deviations and legal violations. Thus, care and precision are required in drafting and formulating laws to prevent multiple or ambiguous interpretations, ensuring that laws are effective in curbing crime. As Lawrence M. Friedman's legal system theory highlights, there are three components: structure, substance, and legal culture (Budiyanto, 2017). When these components are

linked to criminal law reform, updating the legal structure involves reforms in law enforcement institutions (police, prosecutors, courts, and correctional institutions). Legal substance reform involves changes to material and procedural criminal law, while legal culture reform focuses on fostering a law-abiding society and promoting legal education.

The application stage involves law enforcement by the entire criminal justice system. While each institution performs its duties independently, they are interdependent, working together to prevent victimization, resolve cases, and uphold justice. The ultimate goal of the criminal justice system is societal protection and law enforcement (Harve et al., 2021). However, weak law enforcement can prevent the law from being upheld and deny the community a sense of justice. Professional law enforcement is crucial for achieving justice (Suhendro, 2021). As a result, some communities turn to customary law to resolve legal cases, highlighting the need for comprehensive reform in legal substance, processes, and criminal execution.

The execution stage is the final and crucial phase, involving the implementation of criminal penalties by law enforcement authorities (Trisusilowaty, Lumbanraja, & Suteki, 2019). This stage plays a vital role in rehabilitating offenders' behavior and morals. In other words, even if the formulation and application stages are successful, if

the execution stage is poorly implemented, hate speech and conflicts may persist, leading to riots in Papua. Therefore, the execution phase has a significant influence on crime rates. Successful rehabilitation occurs when offenders improve their behavior and do not reoffend in the future.

D. CONCLUSION

The issue of law enforcement regarding the criminal offense of spreading fake news and hate speech in Papua has, in principle, been regulated by various laws, but its implementation has yet to provide a sense of justice for the victims. Judges' sentences tend to be lower than the prosecutors' demands, resulting in punishments that are still too lenient, particularly for actions that cause riots or conflict in Papua. Therefore, it is necessary to improve the formulation of special minimum penalties to address the weaknesses in law enforcement that have been evident so far concerning the offense of spreading fake news and hate speech. It is crucial to reformulate provisions related to prohibited acts, criminal liability, types of punishment, and forms of legal resolution. Efforts to balance the interests of the community with individual rights must be supported by new sentencing guidelines, including special minimum penalties, to prevent arbitrariness by law enforcement in handling criminal offenses involving fake news and hate speech in Papua.

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