

Law Enforcement In Responding To Social Media User's Provocation That Results In Competitive Fights

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ABSTRACT

This study aims to determine the role of law in Indonesia in tackling cases with provocation types on social media. Like the provocation that occurs on social media, it triggers a fight. In this study, the authors review the negative side of social media in throwing provocations which result in duels, because duels are fights in physical or verbal contact involving 2 (two) different individuals to duel to resolve problems between the two. In conducting research, the author uses a normative juridical approach using laws and regulations as study material. With reference to Law no. 19 of 2016 and Articles 182 – 183 of the Criminal Code are expected to be able to answer questions regarding problematic. The purpose of this study is to reinforce the rule of law in social media provocations which are expected not to recur, This research is a normative juridical research method that originates from written regulations in the form of statutory regulations in the positive law applicable in Indonesia. As well as the authors use descriptive research, where the authors will provide studies and an overview of law enforcement in social media and implementation in the real world by measuring the policy of imposing criminal penalties against perpetrators of duel fights.

Keywords: Fighting, Provocation, Onlinen, Social media.

1. INTRODUCTION

The development of the digital world industry is growing rapidly along with the times. The progress of the modern era has changed people's behavior patterns to become more efficient and practical. Not a few from various groups of people use information technology to facilitate daily mobility, such as using gadgets (mobile phones), tablets, note books, laptops, and other PC devices. Through the existence of this advanced technology, it is able to produce various kinds of features that can be used by the community in getting around limited scope access. As these features are known as social media (social media) or commonly referred to as social media.

Today, the majority of social media use is dominated by young people. Where freedom of expression is a separate excuse for teenagers to use social media as the main option. Social media is not a private space but a public space for teenagers. Based on observations they can spend hours using or just enjoying social media, whether it's for uploading or sharing pictures, photos, videos, just looking around, commenting on friends' accounts (Prihatiningsih, 2017). This phenomenon is suspected to be a period of transition or transition because adolescents have not yet attained adult status and are no longer children. Adolescence is a transitional period because at that time, a person has left childhood but he has not yet entered adulthood. Teenagers who become hyperactive in social media also often post their daily activities which seem to describe their lifestyle that tries to



keep up with the times. But what they post on social media does not always reflect the true state of their social life. When teenagers post the happy side of their lives, it is not uncommon for them to actually feel lonely in their lives. Humans as creative people actors are able to create various things, one of which is the virtual world interaction space (Hasugian, 2018).

Social media in its implementation is used as a tool to support community needs. Instead of being a support in meeting community needs, social media is often misused as a means of crime. This phenomenon seems to illustrate that the existence of social media can be a 2 (two) edged sword for its users which has positive and negative sides. Social media has a positive side, such as bringing distant spaces closer together, making human work easier, and more efficient. Meanwhile, social media can be seen as a negative thing if it is used by the wrong hands, so that it has the potential to misuse digital media with various cases such as hacking, fraud, or social media provocation. On this occasion,

From a criminological point of view, criminalization can be interpreted as an act or conduct of behavioral activities that changes an individual's behavior towards an evil (disgraceful) act (Sukri, 2002). The crimes in this study are not classified as white collar crimes, however, in essence, crimes in any form are strictly not justified in positive law or in the beliefs espoused. With regard to the context of duels, in the Criminal Code (KUHP) in Chapter VI it has been regulated regarding duels. As stated in Article 182 of the Criminal Code, it discusses criminal threats for perpetrators of sparring for 9 (nine) months. As also mentioned about individual subjects, whether ordering or participating in accepting challenges, legally they can violate and can be held accountable (Matviychuk, 2017) . In connection with the description that has been presented, the researcher is interested in raising and studying criminal cases of sparring that culminate in social media with the type of provocation, so that they are expected to understand and answer questions about law enforcement using social media in real world activities.

2. RESEARCH METHOD

This research is a normative juridical research method that originates from written regulations in the form of statutory regulations in the positive law applicable in Indonesia. As well as the authors use descriptive research, where the authors will provide studies and an overview of law enforcement in social media and implementation in the real world by measuring the policy of imposing criminal penalties against perpetrators of duel fights.

3. RESULTS AND DISCUSSION

Ratio Legis Acts of provocation that result in fights are included in the realm of criminal law

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In the development of the all-round era of using digital means to communicate, humans are required to adapt to changes in the flow of globalization which focuses on the use of technology. Information technology makes communication between humans and between nations increasingly easy and fast without being affected by space and time. Globalization is a series of processes of change in the dynamics of the global environment as a continuation of previously existing situations or conditions marked by advances in technology and information, giving rise to a sense of interdependence, borderless confusion (Scholte, 2000). With regard to the legal dimension, of course one can understand the reasons and causes that gave birth to legal actions. As is the case with ratio legis which means legal thinking according to common sense, reason, reasons that make a reason or purpose for the birth of statutory regulations.

The world of law contains cybercrime, where this crime is quite unique because it uses advanced technological facilities and infrastructure and appears in today's modern era. Threats that occur in cyberspace (cyber) are dominated by non-state actors (non-state actors) such as individual hackers, hacker groups, activities of hackers, non-governmental organizations (NGOs), terrorism, organized crime groups (organized criminal groups). and the private sector such as internet companies and carrier security companies can also threaten the defense and sovereignty of a country (Anderson, 2007) . Cyber threats in this modern era cannot be denied when they occur, they can occur at any time within an undetermined period of time. The surge in the use of social media has become the trigger for a series of cyber crimes. the relationship between one network and another makes it easier for criminals to carry out their actions. Then, the unequal distribution of technologies makes one stronger than the other. This weakness is exploited by those who are not responsible for committing crimes.

In this study, narrowing the scope of cyber crime by focusing on the types of provocation crimes on social media. This behavior is considered to deviate from the rules and norms that apply in Indonesia. However, there are still many social media or internet users who are only able to receive information without the ability to understand and process this information properly, so that there are still many people who are exposed to information that has not been validated. The phenomenon of changing times makes children learn very quickly from hate speech, it can be dangerous, if the group that conveys hate speech can make children feel stronger. Children who have bottled up anger or have been bullied may gravitate towards the group. Provocation itself is an act to arouse anger, acts of inciting and inciting riots, hatred and social crises. Provocation is against digital ethics which includes awareness, responsibility, integrity, policy (Birkerts, 2006). Regarding how to fight provocation wisely, it is to inform the person concerned that the content he wrote contains provocation, contains hatred which will incite anger and not solve the problem. charged with Law no. 40 of 2008 concerning Racial Discrimination. There are 4 (four) forms of



provocation, which include:

1. Trolling
2. Cyberbullying
3. Flame war
4. Hate speech.

The purpose of cyberbullying is nothing but to give a shock effect or frighten the target of bullying and it is carried out continuously for an indefinite period of time. The word 'Trolling' in English means fishing with a rope. However, the word "Trolling" in the context of an act of provocation has a meaning troll refers to a person sending messages (or messages themselves) on the Internet with the aim of arousing an emotional or angry response from other users. Although sometimes the emotional level of each individual is different, the issue of provocation to trigger emotions is an act that is absolutely not justified.

The problems that occur in acts of provocation are inseparable from the existence of mens rea, which is the inner attitude of the perpetrator based on intention, will, or encouragement to commit a crime. Similar actions (provocations) carried out by perpetrators can lead to legal consequences that can be held accountable. Bearing in mind that Indonesia is a constitutional state, where the state upholds the rule of law in a series of upholding truth and justice, and there is no power that cannot be accounted for (Pinilih, 2018). Legal actions as carried out by individuals or individuals are legally obliged to be carried out with related procedural actions so that the dignity of legal supremacy is maintained. Regarding provocation in the legal dimension according to Hans Kelsen, it has been argued that legal science is not allowed to be intervened by sociological or psychological elements (Gaffar et al., 2021). On the other hand, legal ideas have also been put forward regarding basic norms or in Latin it is read as grundnorm and norm hierarchy, although this has raised a lot of speculation from jurists in examining the grundnorm. This makes a jurist smart in adapting and conceptually understanding a series of new laws and regulations so as not to cause gaps and views on legal products among the public. The philosophy regarding the enactment of this Law is based on the thoughts contained in the preamble which states: "That the globalization of information has placed Indonesia as part of the world's information society so that it requires the establishment of regulations on Information and Electronic management". Transactions at the national level so that Information Technology development can be carried out optimally, evenly and spread to all levels of society in order to educate the life of the nation as a state so that the level of progress of the nation can be easily achieved. The philosophy regarding the enactment of this Law is based on the thoughts contained in the preamble which states: "That the globalization of information has placed Indonesia as part of the world's information society so that it requires the establishment of regulations on Information and Electronic management". Transactions at the



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With regard to calls for provocation on social media which result in acts of fighting, of course making these actions or actions fall into the realm of criminal law. As we all need to understand, the criminal provisions in positive law in Indonesia contain actors who can be made suspects. The meaning of the word "suspect" has its own purpose in criminal law to avoid slander as long as the case does not yet have legal standing or a decision by the Panel of Judges that has been in *kracht*. Crime or *strafbaar feit* in Dutch has the meaning, namely a criminal act, delict, criminal act, or in a criminal case. Someone can be said to have committed a crime if the act has been regulated by law, in accordance with the principle of Legality which has a meaning (Bassiouni, 2013), According to Lamintang, that every crime in the Criminal Code In general, elements can be divided into 2 (two) types, namely subjective elements and objective elements. Subjective elements are elements that are attached to the actor or related to the actor and include everything that is contained in his heart. As an objective element in a crime has an element that is related to a phenomenon or situation, namely the circumstances in which the perpetrator's actions must be carried out (Lamintang, 1984). From a series of criminal acts in this case, of course there are elements in the criminal act, including:

1. The result of an action

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Behavior and its consequences, for a criminal act it is usually necessary to have certain circumstances or conditions accompanying the act. In a sense, the perpetrator in carrying out or hastening the evil action sees the situation and conditions.

2. Participation in criminal acts

Matters according to Van Hamel are divided into two groups, namely about the person who committed the act and about the outside of the perpetrator himself. An example of the first group is the matter of becoming a state official (ASN) which is required for violations of office such as making hate speech on social media, posting content containing SARA as contained in Article 413 of the Criminal Code and so on. An example of the second group is Article 332 (hitting, running away from women) which states that the action must be approved by the woman being hunted when her parents do not approve.

3. Additional circumstances that can become a burden in the criminal case

An example of a more aggravating situation is a case of persecution which resulted in mutual ridicule on social media according to Article 351 Paragraph 1 of the Criminal Code, which is punishable by a maximum imprisonment of two years and eight months. But if the action causes serious injury, the criminal threat is increased to five years and if it results in death to seven years (Article 351 Paragraphs 2 and 3).

4. Subjective elements of criminal acts against the law

For example, Article 362 of the Criminal Code is defined as theft, taking other people's goods, with the intention of possessing said goods is against the law. The nature of the tort is not revealed from external things, but depends on the intention of the person who takes it. If the intention of the heart is good, for example the goods are taken to be given to the owner, then the act is not prohibited, because it is not theft. On the other hand, if the intention is bad, that is, the goods will become one's own property without neglecting the owner according to law, then this is prohibited and is included in the formulation of theft. The nature of the unlawful act depends on how the defendant thinks.

5. Elements of criminal acts that are against the law objectively

The unlawful nature of an act does not need to be reformulated as a separate element. For example, in formulating an uprising which, according to Article 108, includes opposing the government with weapons, there is no need for a separate element, namely words indicating that the action is against the law. Without adding more vocabulary, the action naturally does not perform (Ngarawula & Sukowati, 2021).

Cases involving two provocateurs that lead to a duel can be categorized as a criminal



act which materially contains a substance that intersects with the alleged violation of the law. According to the expert, it is also related to similar incidents that can be categorized as criminal acts, namely a series of legal regulations that can indicate the actions that should be imposed as criminal acts and where the criminal acts should have occurred (Ngarawula & Sukowati, 2021). One way to deal with crime is to use criminal law with imprisonment. Jerome Hall gives a description of punishment, as follows:

- a) *First*, punishment is the loss of necessary things in life;
- b) *second*, forced punishment by force;
- c) *third*, punishment is given on behalf of the state, authorized;
- d) *fourth*, punishment requires rules, violations, and their determination, which are stated in decisions;
- e) *fifth*, punishments given to offenders who have committed criminal acts;
- f) *sixth*, the degree or type of punishment related to the crime, and compounded or commuted by looking at the perpetrator's personality, motives and impulses.

Criminal Accountability of Perpetrators of Social Media Provocation Which Ends in Fighting Fights

Every action that humans desire must have a consequence of what they have done. Given the importance of technology in the pace of economic, social and cultural development, the government has guaranteed freedom of association and assembly to express ideas, thoughts or opinions both orally and in writing, including through social media. The recognition of people's sovereignty in Indonesia is contained in the 3rd paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the abbreviation of the 1945 Constitution of the Republic of Indonesia), as stated, "By the grace of Allah SWT, Almighty and driven by the will your honor, to live as an independent nation, the Indonesian nation hereby declares independence. Furthermore, referring to Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulates, "Sovereignty is in the hands of the people and implemented according to the Constitution". Based on the provisions above, it can be underlined that in Indonesia, it is the people who are the true owners of power. The power in question is that the highest power is in the hands of the people, the people give this power to representatives of the people who occupy the legislative and executive institutions to carry out the will of the people, fight for people's rights and run a government centered on people's welfare. So, people's freedom and independence are important to create people's welfare.

With regard to the issue of criminal liability is a problem that cannot be separated in the science of criminal law. Until now, the literature that specifically discusses criminal responsibility is still lacking. Existing literature is not enough to help the public, including students, academics



and practitioners, in understanding the concept of criminal responsibility and its development and application. According to the researcher in this, what causes social change and the development of science and technology also has an impact on the model of criminal responsibility. criminal responsibility system, amidst the lack of literature on criminal law. However, there are deficiencies that are still not systematic in the preparation of the delivery flow (Lubis, 2020).

This case raises not the least the issue of the essence of human rights for the perpetrators, where many make excuses related to the Indonesian state apart from being a form of people's sovereignty, similar rights they get are very basic human rights, which are necessary to uphold justice and truth, promote general welfare, and enrich the life of a nation. Then he proved the embodiment of Article 28 of the 1945 Constitution of the Republic of Indonesia. That is, so that the functions of these rights do not conflict with various other institutions, especially the interests of the public as the main consumers of the mass media. There is a right that has been legalized by Article 28 of the 1945 Constitution of the Republic of Indonesia which wants the press to truly become a medium of information. communication and education for the public. Therefore, it can be understood that the orientation of the right to express opinions is usually aimed at matters that are critical (social control). The meaning of social control must be interpreted constructively so that it does not lose its essence as food which contains the public interest.

Researchers in this scientific paper reveal that the meaning of the word "freedom of opinion, or expressing opinions in public" does not mean that every individual can clearly act freely - freely, of course there are limitations in the scope of freedom of expression as a form of freedom of expression. The limitations on the sentence "freedom of opinion in public" certainly create new speculations regarding its literal meaning, what is clear is that the researcher reveals that the limitations referred to are freedom of opinion which may not touch or contain elements of SARA. In its implementation, the state together with citizens uphold the supremacy of the constitution which is the implementation of democracy because the constitution is the highest form of social agreement (Hendrianto, 2016). Instead of making social media a means of entertainment and information, social media can become a boomerang if its users misuse it in inappropriate ways, which literally means that social media pioneered by the press makes it possible to convey various news and information so that it strengthens and supports the community to play an active role. in the realization of digital democracy in Indonesia.

In general, the responsibility of provocateurs is included in the realm of cyber crime, which is the substance of the criminal law itself. There are various types of cyberspace that need attention, including:

- a) Individual Convenience (Privacy)
- b) Common criminal acts that use IT as a tool



- c) Procedural issues such as jurisdiction, evidentiary, investigation etc
- d) Electronic contracts/transactions and digital signatures
- e) Pornography
- f) Theft via the Internet
- g) Consumer protection
- h) Use of the internet in daily activities.

Even though the development of technology is marked by inappropriate actions, it is not easy to simply judge that technology is not suitable for use in any aspect. The connection to the provocation that resulted in a duel can be seen in his personal assessment. Sutherland in this theory argues that criminal behavior is behavior that is learned in a social environment. Evil behavior can be learned through interaction and communication, what is learned in the group is the techniques for committing crimes and the reasons (values, motives, rationalizations, and behaviors) that support these evil deeds. Apart from criminal responsibility prior to sentencing, researchers conducted research on indicators that lead to crime, namely the phenomenon of social control which focuses on techniques and strategies in regulating human behavior that lead to adjustment or compliance with societal rules. It is also said that a person follows the law in response to certain controlling forces in his life. A person becomes a criminal when the controlling power is weak or missing.

In general, societies that experience changes as a result of technological advances give rise to many social problems. This happened because the condition of the community itself was not ready to accept changes or it could also be because of changes in community values in assessing old conditions as conditions that were no longer acceptable (Mansyur & Dikdik, 2005). Provocation through social media is a form of hate speech because the message conveyed aims to incite the public to create feelings of hatred or hostility towards certain individuals and/or groups based on ethnicity, religion, race and between groups (SARA). This phenomenon then emerged with the number of perpetrators of a series of crimes dominated by children and adolescents. Based on the provisions contained in Article 1 number (2) of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA), formulates that: "Children in conflict with the law are children in conflict with the law, children who are victims of criminal acts, and children who are witnesses of criminal acts". Children in conflict with the law can also be said to be children who are forced into contact with the criminal justice system because: 1). Suspected, charged, or found guilty of breaking the law, 2). Becoming a victim resulting in a violation of the law committed by a person/group of people/institution/state against them, 3). Have seen, heard, felt, or known an event of violation of the law. Judging from its scope, children in conflict with the law can be divided into:

1. The perpetrator or suspect of a crime



2. Victims of crime
3. Witnesses of criminal acts.

Furthermore, regarding children in conflict with the law who are qualified as child victims of criminal acts, it is expressly formulated in Article 1 number 4 of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) as children under the age of 18 (eighteen) years who experience physical, mental and/or economic losses as a result of a crime. If you take into account the theoretical analysis of Law no. 11 of 2008 concerning Information and Electronic Transactions as amended by Law no. 19 of 2016 (UU ITE) related to cyber bullying against children in the political perspective of criminal law: The Criminal Code (KUHP) is the main system of criminal law regulation in Indonesia. Most of the formulations of criminal acts in the Criminal Code are conventional and have not been directly linked to the development of cyber bullying which is part of cyber crime. In addition, it contains various weaknesses and limitations in dealing with technological developments and various high-tech crimes. If interpreted in the Criminal Code, cyber bullying behavior is included in the article on insult, slander, threats and acts of decency. However, these articles lack the ability to be applied in cyberspace, this is because the Criminal Code was made long before the development of cyberspace. The drawback is in the words "publicly known" and "in public". According to the Constitutional Court Decision No. Including the terms "publicly known," "in public," and "on air" isn't enough. The broad formula "distribute" and/or "transmit" and/or "make accessible" is required.

In criminal law, the most basic principle is known, namely the principle of "No Crime Without Guilt" which is known as "keine strafe ohne schuld" or "geen straf zonder schuld" or "nulla poena sine culpa". From this principle it can be understood that wrongdoing is an element of criminal responsibility as a subject of criminal law. That is, someone who is recognized as a legal subject must have an error to be convicted. Mistakes are the basis of accountability. Error is the mental state of the maker and the inner connection between the maker and his actions. Regarding the state of the soul of a person who commits an act, it is usually referred to as the ability to be responsible, while the inner relationship between the maker and his actions is intentional, negligent, and forgiving reasons (Roesli et al., 2017). The system for formulating criminal sanctions in the ITE Law is a cumulative alternative. This can be seen in the formulation that uses the words ".. and/or. There are two types of criminal sanctions (strafsoort) in the ITE Law, namely imprisonment and fines. The system for formulating the duration of a sentence (strafmaat) in the ITE Law is: Maximum specific, imprisonment according to the ITE Law is a maximum of 12 years / Special maximum criminal fine is a minimum of Rp. 300,000,000.00 (three hundred million rupiah), and a maximum of Rp. 12,000,000,000.00 (twelve billion rupiah). imprisonment according to the ITE Law for a maximum of 12 years / Special maximum criminal fine of at least Rp. 300,000,000.00



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Acts of provocation on social media are not exempt from criminal responsibility. People who disseminate information with the aim of causing hatred or hostility towards certain individuals and/or groups of people based on ethnicity, religion, race and intergroup (SARA) are also acts that are prohibited in Article 28 paragraph (2) UUPA. ITE Law. The crime for perpetrators of hate speech as referred to in Article 28 paragraph (2) is punishable by a maximum imprisonment of 6 years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah). Then it turned out that the provocation led to a duel, where a specific duel was a disgraceful act by way of a duel against the background of a sense of revenge which gave rise to anger to challenge the opposing party in a one-on-one fight. because regarding witnesses, the time and place have been clearly regulated by the agreement of the conflicting parties. the context of duel fights, in the Criminal Code (KUHP) in Chapter VI it has been regulated regarding duel fights. As stated in Article 182 of the Criminal Code, reads:

"With a maximum imprisonment of nine months, threatened:

- (1) Any person who challenges someone to a duel or orders someone to accept the challenge, if this results in a duel;
- (2) Whoever deliberately continues the challenge, if it results in a fight.

Every individual involved in a duel also includes committing a crime in which the individual or perpetrator can be held accountable in order to maintain legal certainty. The main purpose of law is to create social order, create order and balance. By achieving order in society, it is hoped that human interests can be protected (Mertokusumo, 1988). It should be a point to pay attention to, Articles 184 and 185 of the Criminal Code threaten punishment for people who commit one-on-one fights, while Article 186 threatens punishment for duel witnesses who commit fraud. Punishment as an act against a criminal can be justified reasonably not solely because the punishment has a positive effect on the convict, victim and other people in society. Therefore this theory is also called the theory of consequentialism. Criminals are imposed not because they have committed crimes but so that the perpetrators of crimes will no longer commit crimes and other people are afraid of committing similar crimes.

In order to find out and understand the originality of a research or written work, an attempt is made to compare scientific writings with the aim of carrying out updating a journals entitled "*Law Enforcement In Responding To Social Media User's Provocation That Results In Competitive Fights*". The journal written by Indra Heriadi entitled "*Criminalization of Fighting*".

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Offenders Reviewed From Article 184 Paragraph (1) and Paragraph (5) of the Criminal Code" from the University of 17 August 1945 Surabaya, in this study discussed the punishment for duel perpetrators in the perspective of the Criminal Code. Meanwhile, this study discusses provocative actions in the use of social media which result in sparring.

4. CONCLUSIONS

Provocation through social media is a form of hate speech because the message conveyed aims to incite the public to create feelings of hatred or hostility towards certain individuals and/or groups based on ethnicity, religion, race and inter-group (SARA). Problems that occur in acts of provocation that result in fights cannot be separated from the existence of mens rea, namely the mental attitude of the perpetrator based on the intention, will, or urge to commit a crime. Similar actions (provocations) committed by perpetrators can lead to legal consequences that can be accounted for because they are against the law which are contrary to the Criminal Code and laws and regulations so that the perpetrators of acts of provocation can be criminally charged and the parties involved in fights can be punished without exception.

In connection with writing this research, researchers try to make breakthroughs or suggestions that can be followed up for the future, including:

1. Restrict accounts that are proven to be used by users aged 18 (eighteen) years and under to be deactivated as long as the sufficient age is reached.
2. Carry out regular outreach to all levels of society regarding crime in the cyber realm.
3. Strengthen the potential of children's character with extra monitoring from parents so that they are not affected by a unfavorable environment.
4. POLRI's participation in the cyber field is needed to eradicate accounts containing SARA elements to be investigated immediately so as not to cause public uproar.

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