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SYMBOLIZATION AND HARMONIZATION OF CRIMINAL LAW ENFORCEMENT HATE SPEECH THROUGH VIRTUAL POLICE FACILITIES AND RESTORATIVE JUSTICE IN REVIEW OF NATIONAL LEGAL SYSTEM ASPECTS

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ABSTRACT -The background of this journal is the issuance of a new regulation policy regarding the Circular of the Chief of Police No. SE / 2 / II / 2021 dated February 19, 2021 to create a Clean, Healthy and Productive Indonesian Digital Space The Handling Procedure carried out by the National Police Chief, General Listyo Sigit Prabowo, was related to the reporting of the ITE Law which was a complaint offense and could no longer be represented and victims had to make their own reports and complaints. And if, accidentally creating a horizontal conflict, the mediation process is not carried out. However, for reporting that is hoax in nature, defamation will prioritize the settlement of mediation, before taking criminal law enforcement efforts. This, will be related to changes in the National Law System, regulated in positive law. Therefore, the National Police Headquarters CyberCrime Directorate to create a virtual police. The goal is that the police create a virtual police force to investigate and enforce the spread of sentences that are detrimental to public and personal interests committed by Indonesian citizens or citizens abroad who are indicated to have committed a criminal act, then they will immediately be given a warning to those concerned. The Cyber Team to immediately create a virtual police to alert the violators of the Electronic Transaction Information Law, the virtual police will then reprimand. Reprimand and then explain that 'you have the potential to violate the article with so many restrictions. In this case, it will be planned to involve influencers who have a large following or followers and can help by the wider community.

Previously, the National Police Chief issued a Circular Speech Encouraging Hate in the guidelines which are instructions and guidelines for the police in the field when there are allegations of hate speech (words that encourage hatred) within the Indonesian Police. The purpose of the National Police Chief to issue this Hate Speech Circular is to inform its members to understand the steps to handle acts of hate speech or hate speech. Before this Hate Speech circular was published, the provisions regarding the prohibition of speaking hatred (such as defamation for example) actually existed and were regulated in a number of statutory regulations both in the Criminal Code and the ITE Law. This is what is new for people to be careful in expression, be it in daily interactions on social media, on Facebook,

1
Instagram, Youtube, Tiktok, and other social media facilities and if they are going to take demonstrations on the street. The public can use this Hate Speech circular as a basis for asking police officers to mediate if one day we are involved in suspected hate speech. The National Police issued the Chief of Police Circular Number: SE / 6 / X / 2015 concerning Handling Hate Speech.

This study uses a post-positivism paradigm. The post-positivism paradigm wants to prove everything based on reality that can be built based on experience, the researcher is then neutral towards the object of research, even though the researcher holding this paradigm remains neutral towards the object of research, but he wants to study what happens from things that seem like they have been. certainly. The post-positivism paradigm ontologically conceptualizes the reality of identity, but it is realized that many factors influence that reality. Consequently, the post-positivism paradigm ontologically conceptualizes law as a set of regulations that apply in a society whose enforcement will influence legal, economic, political, cultural and other factors. Epistemologically, the researcher sits impersonal, separate from the object of research. The position of the researcher towards the object of research is neutral and impartial.

The results of the author's research, in fact, in Indonesia, there are still many of our people who generally do not understand the difference between expressions of statements and hatred. Hate speech is an act of communication carried out by an individual or group in the form of provocation, incitement, or insult to other individuals or groups in various aspects such as race, color, gender, disability, sexual orientation, nationality, religion and others. Hate speech crimes can be committed through various social media, including in campaign oration activities, banners or banners, social media networks, public opinion delivery, religious lectures, printed or electronic mass media and pamphlets.

The results of the research show that criminal acts can be classified as criminal acts of hate speech must meet the elements of direct or indirect actions, which are based on hatred based on ethnicity, religion, race and intergroup, incitement to social conflict, and carried out through various means. Of the total forms of hate speech crimes in tangible forms that were removed entirely from prisons and/or fines and imprisonment or through retorative advice.

Keywords: Criminal Action Management, Hate Speech, Social Media, Demonstrations, Virtual Police, Retorative Justice

Chapter I Introduction

The Directorate of Cyber Crime, Bareskrim Polri conducted a soft launch of the Virtual Police, the police will prioritize virtual directions as a form of preventing the spread of hoaxes and hate speech in prosecution. This is also in line with the Chief of Police's circular regarding ethical culture awareness in the digital world. One of the circular points is related to peaceful

steps in the case of the Electronic Transaction Information Law (ITE) which investigators must prioritize for the implementation of restorative justice. Related restorative justice has also existed in the Virtual Police program. In accordance with the policy of the Chief of Police that the action was ultimium remedium, so it was a last resort. The

1 Director of CyberCrime conveyed this at the National Criminal Investigation Police Brigadier General Slamet Uliandi in an event broadcast on YouTube Siber TV, Friday (19/2/2021). The following are warning steps given by the police before taking action: First, the police ask for an expert opinion, the Bareskrim cyber patrol team has asked for an opinion a criminal expert, linguist, or ITE expert before giving virtual directions to unexpected ITE Act offenders. Polri virtual warning is carried out based on opinion so that it is not a subjective opinion of police investigators. For example, when he uploaded, then the lever team reported to the Headquarters, where he was asked by a criminal expert, an expert on the law. After these three things are fulfilled, we just send the warning so that it is not subjective to the investigator. However, it has been through the lever stage by a team of experts. The National Police conduct cyber patrols on social media for content that contains hoaxes and incitement on various platforms, such as on Facebook, Twitter and Instagram. Then the Dittipidsiber patrol team will send messages in the form of direct messages (DM) via WhatsApp or other media in the form of directions. In the message, it is conveyed that the content contains or is a hoax. The National Police immediately launched the Virtual Police or Virtual Police. However, the Virtual Police will make a virtual warning if any citizen commits a criminal act. Furthermore, investigators also gave the warning message twice to someone suspected of uploading hoax content or hate speech.

Within twenty-four hours, the content must be taken down. If the post is not taken down, the investigator will give another warning, but it will be upgraded to the summons stage for clarification if there

is no change. When he does not send it down, we remind him again, and if we do not remind him to clarify, the invitation to clarify is closed so that people do not have to know because of privacy. Nevertheless, if you have done that stage then you do not want to be cooperative, what do you think? However, according to the orders of the Chief of Police, humanist methods must be put forward because this is a 100-day program for him as a humanist police officer.

Furthermore, Dittipidsiber also conveyed several strategies for prevention, the first was education. Then the community's vigilance against the potential threats of social security, improve police performance services for justice and legal benefits. The stages of the strategy are carried out through several processes, the first is education. Then virtual warnings, after virtual warnings we do mediation, restorative justice. After restorative justice, only a police report is issued so that law enforcement efforts carry out not all permits or irregularities in cyberspace, but instead prioritize mediation and restorative justice efforts to create a clean, healthy, ethical, productive and diverse cyberspace. Criminal acts that can be carried out through justice for restoration include defamation, slander, and insult. He said the perpetrators involved in the case could not care, because restorative justice emphasizes justice and a balance between the perpetrator and the victim. According to Harwanto in the event that a victim of a criminal act asks for a merger of a compensation case, the court is obliged to consider the authority to adjudicate the claim regarding the truth of the basis of the claim and the penalty for the payment of the costs incurred by the victim. Criminal acts that can build up through restorative

1
justice, the first is defamation, slander, and insult. It is in the ITE Law Article 27 paragraph 3, Article 207 insults against the authorities, Article 310 and Article 311. Gainst such criminal acts defamation, slander, insult will not be subject to detention starting today and can improve through restorative justice. Why not can use due to be used by Kapolri to the whole order to make the input to use the virtual by the Police Headquarters that is this is the effort of the President of the Republic of Indonesia Joko Widodo and the Chief of Police to make this nation more calm. However, it is not that we are not detained arbitrarily, meaning that we mean the same as self-correction. Furthermore, Slamet also said that the police would not take action against someone who criticized the government. This criticism is conveyed in a civilized manner, but it will be dealt with if the criticism is delivered by adding hate speech and hoaxes. General Listyo Sigit Prabowo's complete direction regarding ethical cultural awareness to create a clean, healthy, and productive Indonesian digital space: Circular Number: SE / 2/11/2021 concerning Ethical Cultural Awareness to Realize a Clean, Healthy, Indonesian Digital Space and Productive.

I. Reference:

- a. 1945 Constitution
- b. Law Number 1 of 1946 concerning the Criminal Code;
- c. Law Number 8 of 1981 concerning Criminal Procedure Law
- d. Law Number 2 of 2002 concerning the Indonesian National Police
- e. Law Number 11 of 2008 concerning Electronic Information and Transactions
- f. Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning

Electronic Information and Transactions

- g. Regulation of the Head of the National Police of the Republic of Indonesia Number 6 of 2019 concerning Criminal Investigation
 - h. Circular of the Head of the National Police of the Republic of Indonesia Number SE / 8VII / 2018 dated 27 July 2018 concerning the Application of Restorative Justice in the Resolution of Criminal Cases.
2. In connection with the above references and considering the development of the national situation related to the application of Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions which are contradictory to the right to freedom of expression of society through digital space, it is hoped that all members of the National Police will apply law enforcement that can provide a sense of justice for the community.
 3. To enforce a just law, the National Police always prioritizes education and persuasive steps so that it can avoid allegations of criminalization of the person being reported and guarantee Indonesia's digital space to remain clean, healthy, ethical, and productive, by guiding the following aspects. Following:
 - a. Follow the development of the use of digital space which continues to develop with all kinds of problems.
 - b. Understand the ethical culture that occurs in the digital space

by taking an inventory of the various problems and impacts that occur in society

c. Prioritizing pre-emptive and preventive efforts through virtual police and virtual alerts that aim to monitor, educate, provide warnings, and prevent the public from cybercrime

d. In receiving reports from the public, investigators must be able to clearly distinguish criticism, input, hoaxes, and defamation that can be convicted to determine the steps to be taken

e. Since receiving the report, so that investigators communicate with the parties, especially victims (not represented) and facilitate and provide the widest possible space for the disputing parties to carry out mediation.

f. Comprehensive study and case title studies on supporting cases by involving Bareskrim / Dittipidsiber (can be through zoom meetings) and making collective decisions based on existing facts and data

g. Investigators have the principle that criminal law is the last resort in law enforcement (ultimatum remidium) and prioritizes restorative justice in case resolution.

h. For parties and / or victims who will take peaceful steps so that they become part of the investigators' priorities for the implementation of restorative justice, except for cases that are not divisive, SARA, radicalism, and separatism

i. The victim who still wants his case to be brought to court, but the suspect is aware and apologizes, the suspect is not detained and before submitting it to the prosecutor, space for mediation is given again.

j. Investigators should coordinate with the prosecutor in its implementation, including providing advice on the implementation of mediation at the prosecution level.

k. So that the tiered supervision of every step of the investigation is taken and to give rewards and punishments to the leadership on an ongoing basis

The judicial system is essentially identical to the law enforcement system, because the judicial process is essentially a process of enforcing the law. So, in essence, it is identical with the "judicial power system", because "judicial power" is also a "power / authority to enforce the law". If it is focused on the field of criminal law, it can be said that the "Criminal Justice System Criminal Justice System is essentially a" criminal law enforcement system" which is essentially synonymous with the "Judicial Power System in the field of Criminal Law. The judicial system is often defined narrowly as "a court system that administers justice on behalf of the state or as a system for resolving a case / dispute. This definition in my opinion is a narrow one, because it only looks from a structural aspect ("court system" and only from the aspect of the power to adjudicate / resolve cases). The judicial system (or law enforcement system - hereinafter abbreviated as SPH) is seen as an integral, as a unit of various sub-systems (components) consisting of components of

"legal substance", "legal structure", and "legal culture". As a law enforcement system, the judicial / law enforcement process is related to the three components, namely legal norms / statutory regulations (substantive / normative components), law enforcement institutions / structures / apparatus (structural / institutional components and their procedural / administrative components), and legal cultural values (cultural component). What is meant by the values of "legal culture" in the context of law enforcement, of course, is more focused on the values of legal philosophy, legal values that live in society and awareness / legal behavior / social behavior, and education / law science.

1. Definition and Scope of SPH Renewal / Reform
2. Definition of Reform (Renewal)
SPH "*Reformasi*" is defined briefly as "renewal". However, reflecting on a deeper meaning, reform is not reform or change, but implies "better quality improvement", because "to reform" implies "to make better", "into better", "change for the better" ", Or" return to its original state ". Thus, "reform of the justice system / law enforcement system" implies "reforming the justice system towards better quality" or in short "improving the quality of the justice system / law enforcement system". Efforts or efforts to form / manifest the reform / renewal towards better quality can be various, among others, by reorienting, re-evaluation, reformulation, restructuring, and reconstruction ("development back").

3. Scope of SPH Reform It has been stated above that the judicial / law enforcement system is essentially a substantial, structural, and cultural system. Therefore, the scope of reform can include reform of the three aspects of the law enforcement system. This means reforming the "judicial system" of the law enforcement system, reforming laws or legal substance, reforming the legal structure, and reforming the legal culture (legal culture reform) which includes reform of legal ethics and legal science / education (reform of legal ethics and science. law / education). In short, it can be said, includes "substantial reform", "structural reform", and "cultural reform".

The reform of the criminal law system in Indonesia, can be seen in the enforcement of criminal law in Indonesia, with the issuance of a Circular of the Chief of Police regarding the procedures for the reported criminal proceedings and the process of punishment is part of legal reform in achieving a sense of justice for the community and including the reform of the criminal law system in Indonesia. Indonesia is a rule of law and a country that adheres to a democratic system, namely the Indonesian people are free to express opinions, express themselves, and be creative as long as they are still in the corridor and based on the laws in force the State of Indonesia. In Indonesia, many of our people still do not understand the understanding between statements of opinion and the concept of hatred. With advances in culture, science, technology and art, human behavior in society and as a state is increasingly complex. Such

1 behavior in terms of law, of course, some behaviors can be categorized according to the norms and some behaviors are not in accordance with the norms. Behavior that is in accordance with the prevailing norms (law) is not a problem, but behavior that is not in accordance with the norm can usually cause problems in the field of law and harm society. Behavior that is not appropriate or can be called a violation of the agreed norms, in fact, causes disruption of the order and peace of human life. The community usually labels such diversion as a coincidence and even a crime. Crime in human life is a social phenomenon that will always be connected by every human being, society, even the State. The fact has proven that crime can only be prevented or reduced but it is difficult to eradicate completely. Crime needs to receive serious attention considering the losses it can cause, the impact of which will adversely affect the State, society and individuals. Therefore, the State reacts in the form of a prohibition against acts against the law as well as sanctions for violators. The application of law by upholding the values contained in Pancasila is an effort to improve the quality of Indonesian people and society, by utilizing science and technology and paying attention to the development of modern globalization.

Acts or crimes that need serious attention at this time are hate speech (hate speech), hate speech itself is "The act of communication carried out by an individual or group in the form of provocation, incitement, or insult to an individual or group others in terms of and others. "In the legal sense, hate speech is words, behavior, writing, or performances that are prohibited because they can support these actions and prejudice either

from the party who claims to be the victim of the action. Hate speech can be carried out through various media, including campaign activities, banners or banners, social networks, public opinion delivery, religious lectures, printed and electronic mass media, and pamphlets. In Indonesia, there are several laws and regulations regarding criminal acts related to Hate Speech against a person, group or institution based on the Chief of Police Circular Number: SE / 06 / X / 2015 contained in the Criminal Code (Article 156, Article 157 , Article 310, no. 11 of 2008 concerning Electronic Information and Transaction and Article 16 of Law no. 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination. In addition to the accounting regulations regarding criminal acts related to hate speech in the Chief of Police Circular Number: SE / 06 / X / 2015, Chief of Police Circular Letter No SE / 2 / II / 2021 dated 19 February 2021 to create a Clean Indonesian Digital Space, Healthy and Productive. There are also several regulations that are not in the circular letter. Among them are Article 156a of the Criminal Code, Article 45A of Law no. 19 of 2016 concerning Amendments to Law no. 11 of 2008 concerning Information and Electronic Transactions, and Article 4 of Law no. 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination.

1.1. Research Purposes

1.2. To find out that no criminal acts of hate speech have occurred in Indonesia after implementing the Chief of Police's Circular Letter of the Chief of Police Circular No. SE / 2 / II / 2021 dated 19 February 2021 concerning Creating a Clean, Healthy and

Productive Indonesian Digital Space .

- 1.3. To find out the effectiveness of any major influence on criminal law enforcement after the establishment of the Virtual Police and legal settlement efforts by means of Retorative Justice law against parties affected by law in Indonesia due to criminal acts of hate speech

1.2. Research Methods

This study uses a post-positivism paradigm. The post-positivism paradigm wants to prove everything based on reality that can be built based on experience, the researcher is then neutral towards the object of research, even though the researcher holding this paradigm remains neutral towards the object of research, but he wants to study what happens from things that seem like they have been, certainly. The post-positivism paradigm ontologically conceptualizes the reality of identity, but it is realized that many factors influence that reality. As a consequence, the post-positivism paradigm ontologically conceptualizes law as a set of regulations that apply in a society whose enforcement will influence legal, economic, political, cultural and other factors. Epistemologically, the researcher sits impersonal, separate from the object of research. The position of the researcher towards the object of research is neutral and impartial. The methodology explains and describes how the research is carried out which is stated systematically, how the basis for the research design and model which is preceded by the experimental design or technique in accordance with the formulation of the problem researched by the author and to answer the research objectives, this research method-the steps

used are as follows : Research Type, Problem Approach, Legal Material Sources, divided into 3 parts including the following: Primary Legal Materials, Secondary Legal Materials, Tertiary Legal Materials, Legal Material Collection Procedures, Legal Material Analysis.

Chapter II. Problem

Elements of the Crime of Hate Speech and Approach Religious in the Renewal of Law Enforcement Systems in the Context of the National Law System National Law Building The religious approach is a mandate and at the same time the recording of the National Building of National Development Planning and the National Building of Law and the National Law System which we wish to aim at is the National Law System with Pancasila. The signs for the national legal system include: Article 29 (1) of the 1945 Constitution: The State is based on the One Godhead.

1. Art. 1 Law: 4/2004: Judicial power is the power of an independent state to administer justice to uphold law and justice based on Pancasila to implement the rule of law of the Republic of Indonesia.
2. Article 3 (2) Law: 4/2004: State courts enforce law and justice based on Pancasila.
3. Article 4 (1) Law: 4/2004: Judgment is conducted "For Justice Based on YME Godhead".
4. Article 8 (3) Law No. 16/2004: "For the sake of justice and truth based on the one and only Godhead, the prosecutor shall carry out the prosecution with conviction based on valid evidence".

The national signs above clearly demand a "religious approach". With the

frequent mention of "Pancasila justice" and the existence of provisions in the Law on Judicial Power (Law No. 4/2004), that "Judges are even obliged to follow and understand the values of law and the sense of justice that live in a society" (Art. 1), it can be said that the SISKUMNAS signs. The need for a "cultural-religious approach". This is what constitutes the unity of Indonesia's judicial system (SPH). From the signs above, it is clear that there should be no "secularism" in the National Law System, including the making/prescription of law, law enforcement, and education / national law science). This is in line with the expressions of various "legal scientists", including:

1. Prof. Moeljatno: "In our country which is based on Pancasila, with the existence of divine principles, every knowledge (including law, pen.) Which is not accompanied by divine knowledge is incomplete".
2. Prof. Dr. Notohamidjojo also syringe, that "the responsibility of a jurist is to spiritualize the law", and "juridical scientia services must be deep and fundamental to awareness" (the value of truth, justice, honesty, compassion between people, etc.). It is also emphasized that ethical-religious norms must constitute a normative or imperative aspect of the rule of law.
3. Prof. Dr. Hazairin: "In the Republic of Indonesia, something that is against the rules of Islam for Muslims or Christian principles for Christians / Catholics is prohibited or something that contradicts the principles of the Balinese Hindu religion for Balinese Hindus. or

contrary to Buddhist morality for Buddhists".

The various expressions of Indonesian legal scholars are identical to the famous expression of Albert Einstein's "science scientist" who stated: "science without religion is paralyzed." Einstein's general expression can of course also be applied in the field of legal science. Law science without religion is incomplete, lame, and even dangerous. This is in line with the statement in my inauguration speech, that "Criminal Law Studies which are solely focused on the study of norms and viewed from the study of values, are a partial, lame and even dangerous study seeing the scope of the reform of the law enforcement system including" reforms. substantial ", " structural reform ", and " cultural reform ", then the religious approach of course also focuses on those three things. However, the background of this seminar, the description is more directed to substantial and cultural reforms with a note that the religious approach in this paper contains the meaning of a moral approach and a scientific approach (divine science).

4. 2. The Religious Approach in "Substantial Law Reform" Is Part of the Means of Restorative Justice in the Crime of Hate Speech

The religious approach in reforming the substance of national law has been repeatedly put forward by scholars and in various national law seminar forums. Usually, the religious control approach also approaches cultural values and legal awareness that live in the community (customary law). So there is a cultural-religious approach. Various statements of the national seminar regarding the cultural-religious approach (especially those related to criminal law)

include: The various statements regarding the cultural-religious approach above, of course, demand the exploration and realization of values that are based / oriented to religious morals and values. social moral culture (local / national wisdom values) in the formulation / policy making of the substance of criminal law. Especially in the VIII / 2003 national law development seminar, a firm stance was drawn, that in order to build legal persons with noble morals, religious teachings must be a source of motivation, a source of inspiration, a source of evaluation, and a source of substance in national law development policies. The implementation of a cultural-religious approach in the formulation of criminal law, of course, in the structure of the criminal law system, namely: (1) the problem of criminalization: the formulation of criminal acts; (2) the problem of punishment / imposition of sanctions (punishment); and (3) problems with the implementation of criminal law / criminal law sanctions (criminal execution). In the three scopes of the criminal law system, three main problems of criminal law are covered, namely: a) what actions should be punished; b) what conditions must be met for blame / account for someone who did the act; and c) what criminal sanctions should be imposed on that person. The three main subjects / problems are commonly referred to briefly as: (1) a criminal act; (2) the problem of "error"; and (3) "criminal" problems. These three main criminal law problems are sub-systems that are closely related to the general principles of criminal law. An action or a criminal act cannot be a criminal act if its elements are not fulfilled, especially in the crime of hate speech. In the related Laws and Regulations

regarding Hate Speech, it is not clearly spelled out from the criminal act of Hate Speech, but it can be seen explicitly from the elements of the Hate Speech. The following are the elements contained in the crime of hate speech:

- a. All actions and efforts, either directly or indirectly;
- b. Which is based on hatred based on ethnicity, religion, religious sect, beliefs, race, between groups, skin color, ethnicity, gender, people with disabilities, and sexual orientation;
- c. Which is an incitement to an individual or group for a unity, violence, loss of life and / or social conflict;

Which is done through various means.

- a. The explanation of the elements of hate speech is as follows:
- b. All actions and efforts, either directly or indirectly. Two meanings cannot be accurate, namely:
- c. Various forms of human behavior, both oral and written. For example, speech, writing and drawing.
- d. The action is intended so that other people or groups do what we recommend / ask. Thus, the action is active support, not carrying out a one-time action aimed at the target target.
- e. Which is based on hatred based on ethnicity, religion, religious sect, beliefs / beliefs, race, between groups, skin color, ethnicity, gender, people with disabilities, and sexual orientation. This case is closely related to collective narcissism, namely excessive narcissism against the group or personal group identities. Namely,

the pattern of thinking about what they support or what they believe is better than what other parties support or adhere to. In other words, they have their own group tendencies that give rise to narcissistic identity. Attitudes like this can lead to the view that other groups are not better than theirs, at a certain stage it can lead to feelings of hatred towards other groups or groups. However, the law does not speak about this, but rather changes in the form of prohibition of the consequences of these actions which are detrimental to both individuals and certain groups, such as acts of discrimination, crime or riots.

- f. Which is an incitement against an individual or group for citizenship, violence, loss of life and/or social conflict; Inciting: encouraging or influencing others to commit national acts, violence or hostility. Does the person who heard the person who did what was instigated is not an element that does not need to be proven. What can be used as a basis for seeing if this is incitement include:
- g. Intonation (tone) which can indicate the intention of the utterance to incite;
- h. The spatial and temporal context of the utterance is uttered.
- i. Which is done through various means. All kinds of tools or intermediaries so that crime can occur. Examples of facilities are books, magazines, e-mails, leaflets, pictures, screen printing on car doors, and others. There are various types of crimes that are

classified into the form of hate speech crimes. Hate speech can take the form of a criminal act regulated in the Criminal Code (KUHP) and other criminal provisions outside the Criminal Code, which take the following forms:

- a. . Insult;
- b. . Defamation;
- c. . Blasphemy;
- d. . Unpleasant acts;
- e. . Provoke;
- f. . Instigate;
- g. . News of the spread of lies;

All of the above actions have a purpose or impact national acts, violence, loss of life, and / or social conflict. Insult Insult can be said as utterance of hatred if the insult is aimed at a person or group based on ethnicity, religion, religious sect, beliefs / beliefs, race, skin color, inter-group, ethnicity, gender, people with disabilities, sexual orientation and expression. Gender and that insult is in the form of national incitement, hostility or violence. This insult is contained in the formulation of Article 315 of the Criminal Code jo. Law No. 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights jo. Article 7 paragraph (2) of Law No. 39 of 1999 concerning Human Rights. Article 315 of the Criminal Code reads: "Every insult with intentionally which is not defamatory or written defamation, committed against a person, either in public orally or in writing, or in front of the person himself orally or in an act, or by a letter sent or received to him, threatened with minor insult, by punishment a maximum imprisonment of four months and two weeks or a maximum fine of three hundred rupiah. "Slander can also be said as utterance of hatred if the

accusation is not only stated as being made in the form of actions and efforts, either directly or indirectly, the accusation is false about the honor or good name of a person based on ethnicity, religion, religious sect, belief / belief, race, color, between groups, ethnicity, gender, people with disabilities, sexual orientation, gender expression and accusations of discrimination, violence or violence. Insult in the form of slander is contained in the formulation of Article 311 of the Criminal Code jo. Law No. 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights jo. Article 7 paragraph (2) of Law No. 39 of 1999 concerning Human Rights. Article 311 of the Criminal Code reads: "(1) If threatened with a crime of defamation or written defamation, in the event that it is permissible to prove that what is alleged is true, does not prove it and the charges made contradict what is known, then he will be convicted of slander, with a maximum imprisonment of four years. (2) Revocation of these rights in article 35 no. 1-3 can be removed. "

Defamation can be said as utterance of hatred if the attack takes the form of actions and efforts, either directly or indirectly, attacks on or a person's good name are based on ethnicity, which is incitement to individuals or groups so that discrimination, violence, loss of life and/or social conflict; Inciting: encouraging or influencing others to commit national acts, violence or hostility. Does the person who heard the person being heard do what was instigated does not become an uncertainty, so it does not need to be proven. Which can be used as a basis for seeing whether this is incitement, among others:

1. Intonation (tone) which can indicate the intention of the utterance to incite;
2. The spatial and temporal context of the utterance is uttered.
3. Which is done through various means. All kinds of tools or intermediaries so that crime can occur. Examples of facilities are books, magazines, e-mails, leaflets, pictures, screen printing on car doors, and others. There are various kinds of crimes that are classified into the form of hate speech crimes. Hate speech can take the form of a criminal act regulated in the Criminal Code (KUHP) and other criminal provisions outside the Criminal Code, which take the following forms:
 - a. Insult;
 - b. Defamation;
 - c. Blasphemy;
 - d. Unpleasant acts;
 - e. Provoke;
 - f. Instigate;
 - h. News of the spread of lies; and all of the above actions have a purpose or could have an impact on national acts, violence, loss of life and / or social conflict.
- a. Insult, Insult can be said as utterance of hatred if the insult is aimed at a person or group based on ethnicity, religion, religious sect, beliefs, race, skin color, inter-group, ethnicity, gender, people with disabilities, sexual orientation and expression. Gender and that insult is in the form of national incitement, hostility or violence. This insult is contained in the formulation of Article 315 of the

Criminal Code jo. Law No. 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights jo. Article 7 paragraph (2) of Law No. 39 of 1999 concerning Human Rights. Article 315 of the Criminal Code reads: "Every deliberate insult that is not defamatory or defamatory in writing, is committed against a person, either in public orally or in writing, or in the face of the person himself orally or indeed, or by letter or letter. was administered to him, was threatened with light humiliation, by a maximum imprisonment of four months and two weeks or a maximum fine of three hundred rupiahs. "Slander can also be said as an utterance of hatred. The accusation is not only stated but carried out in the form and effort, either directly or indirectly, false accusations of a person's honor or good name based on ethnicity, religion, religious sect, belief, race, color, and between groups. Ethnicity, gender, people with disabilities, sexual orientation, gender expression and the accusation in the form of incitement to discrimination, violence or violence. Insult in the form of slander is contained in the formulation of ARTICLE 311 KUHP jo. Law No. 12 of 2005 concerning Ratification of International Covenants on Civil and Political Rights jo. Article 7 paragraph (2) of Law No. 39 of 1999 concerning Human Rights. Article 311 of the Criminal Code reads: "(1) If the person committing a crime of defamation

or defamation in writing, in the event that it is permissible to prove that what is alleged is true, it does not prove it and the charges are made contrary to what is known, then he will be threatened with slander, with a maximum imprisonment of four years. (2) Revocation of these rights in article 35 no. 1-3 can be removed. "

- b. Defamation, Defamation can be said as hate speech if the attack takes the form of direct or indirect actions and efforts, attacks on someone's honor or good name based on ethnicity, religion, religious sect, belief / belief, race, color, inter-group, ethnicity. , gender, people with disabilities, sexual orientation, gender expression and attacks in the form of incitement to discrimination, hostility or violence. Defamation is contained in the formulation of Article 310 of the Criminal Code jo. Law No. 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights jo. Article 7 paragraph (2) of Law No. 39 of 1999 concerning Human Rights. Article 310 of the Criminal Code reads: "(1) Anyone who deliberately respects someone's good name or accuses him of something, which means clearly known to the public, is threatened with defamation, with a maximum imprisonment of nine months or a maximum fine of three hundred rupiahs. (2) If this is done in writing or a picture that is shown, shown or affixed in public, then those who refer, because of defamation, shall be punished with

imprisonment of a maximum of one year and four months or a maximum fine of three hundred rupiahs. (3) It is not defamatory or written defamation if acts of light are committed in the public interest because it is for self-defense. "

- c. Blasphemy, Blasphemy is a word, behavior, writing, or performance that is prohibited because it can carry out acts of violence and prejudice either from the party who made the statement or the victim of the act, while according to article 310 paragraph (1) of the Blasphemy Criminal Code Is an act committed by accusing a certain person or group of committing a certain act to make the accusation public (known to many people). The alleged act does not need an act that can be said, such as embezzling, adultery, etc. Enough with ordinary actions, of course, shameful acts. Meanwhile, defamation with a letter is regulated in Article 310 paragraph (2) of the Criminal Code. As stated, the accusation was made in writing (letter) or a picture, then the crime is called insulting with a letter. So a person is prosecuted according to this Article if the accusation or insulting words are made through a letter or picture.
- d. Displeasing Deeds Unhappy conduct does not constitute hate speech. Because the Constitutional Court in decision No. 1 / PUU-XI / 2013 has removed the binding power of the phrase "any other act or unpleasant treatment" in Article 335 paragraph (1) item 1 of the Criminal Code. Thus, bandages are

no longer pleasant in Indonesian criminal law.

- e. Provoking, Provoking in the form of a public statement of feelings of hostility, hatred or insult to one or several groups contained in the formulation of Article 156 of the Criminal Code can be said to be hate speech if the feeling of hostility, hatred or insult is carried out in the form of actions and efforts either directly or indirectly. The group referred to in this article is each part of the Indonesian people that differs from one or several other parts due to race, country of origin, religion, place, origin, descent, nationality or position according to constitutional law.
- f. Instigate R. Soesilo, To instigate means to encourage, awaken, the spirit of people. In the word "inciting" the character implies "deliberately". Inviting it is harder in "entice" or "coax" but not "entry". Incitement is contained in the formulation of Article 160 of the Criminal Code.
- g. Spread of Fake News According to R. Soesilo, Spread of Fake News is broadcasting news or news where it turns out that the news that was released was fake news. What is seen as fake news does not tell empty news, it also tells about an incident.

In practice, hate speech crimes are not only committed through speech. It is not only done in a frontal way of uttering hatred towards a party. Harwanto stated that community must first find out the truth as well as the track record of

related cooperatives as a precaution. People don't be easily tempted. The people behind this scam are targeting the consumptive society in an easy and fast way but without control. These crimes were often carried out indirectly by accusing the problematic party. Hate speech is usually carried out through the media or through means. Media or tools that can be used in hate speech, namely:

- a. A. Campaign, either in the form of speech or writing; According to Article 1 paragraph (26) of Law no. 10 of 2008 concerning the General Election of DPR, DPD, DPRD which is called a campaign is an activity of election participants to convince voters by offering the vision and mission of the election participants.
- b. Banners or banners; A banner or banner is a promotional media that is printed with Digital Print which is generally in the form of a portrait or vertical.
- c. Social media networks; Social media is a bold medium, with users who can easily share and create content including blogs, social networks, wikis, forums and virtual worlds. Today there are so many cases of hate speech through social networks. This is due to the easy access to social media networks and people's lack of understanding of freedom of opinion and hatred. This is what happened to Jonru F. Ginting. One of Jonru's posts in question is the question of Quraish Shihab who will become the imam of the Eid prayer at the Istiqlal Mosque, Jakarta 2017. According to Jonru, Quraish Shihab does not deserve

to be the imam of his statement which states that Muslim women do not need to see the hijab. Then Jonru invited Muslims not to pray Eid al-Fitr at the Istiqlal Mosque if the imam is Quraish Shihab. Then on Friday 2 February 2018, Jonru was sentenced to 1.5 years in prison and a fine of Rp. 50,000,000, - for hate speech through social media. In addition, Jonru was found guilty of committing a crime in Article 28 paragraph (2) jo. Article 45A paragraph (2) of Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transaction jo. Article 65 paragraph (1) of the Criminal Code.

- d. Expressing opinions in public; Expression of opinion in public can be interpreted as a demonstration or stale. This is in Article 1 paragraph (3) of Law no. 9 of 1998 on Freedom of Expressing Opinions in Public, which reads: "A demonstration or demonstration is an activity carried out by an oral person or more to express thoughts, writings and etc. in a demonstrative manner in public".
- e. Religious lectures; A.G. Lugandi explained that a religious lecture is a unidirectional delivery of information from the speaker to the audience. In contrast to Abdul Kadir Mansyi, he argues that lecture is a method that is carried out using conveying guidance, understanding, and explanation of a problem in front of the crowd.

So what is meant by religious lectures is a method used by a religious leader to convey messages to the audience and invite the audience to the right path, in accordance with religious teachings to increase faith in God. We can see this in the events at the Masjid Assu'ada Jatinegara on February 20, 2015. At that time KH. Nuril Afirin or often called Gus Nuril gave a lecture at the Prophet Muhammad SAW birthday, held at that time. At first the event went smoothly until in the end the lecture had to change in the middle of the event because it was considered that the content of the lecture had left the theme of the event and contained elements of hatred towards one group. So, Gus Nuril was forced to step down by one of the groups present at the event to maintain order in the event, which had previously been chaotic and not conducive.

- f. Print or electronic mass media; Mass media is a place or place that contains all information, events that are attractively packaged in printed form (magazine, newspaper) and electronic (radio, television). Hate speech through printed or electronic mass media has also occurred in Indonesia in 2014. For example, the tabloid publication of the *Obor Rakyat* in May 2014 became a controversy because the tabloid contained hate speech aimed at the vice president, Joko Widodo at that time. In the end, for this incident, Chief Editor of the *People's Torch* Setyadi

Budiono and Managing Editor of the *People's Torch* H. Darmawan Sepiyosa was sentenced to prison for 8 (eight) months each based on the Supreme Court Decision of the Republic of Indonesia Number: 546K / Pid.Sus / 2017 for their actions of committing defamation through writing. tabloid against Joko Widodo during the 2014 Presidential Election (*Pilpres*) and was charged with violating Article 310, paragraph (2) of the Criminal Code jo. Article 55 paragraph (1) of the Criminal Code.

- g. Pamphlet; A pamphlet (or can be called a leaflet, spread, treatise, spread) is writing that can use a picture or not, without covering or binding, which is printed on a sheet of paper on one side or both sides, then folded or cut in half, third, or even quarter, so it looks smaller.
- h. And others. Other tools or media that are not applicable above that are used to implement hate speech.

Chapter III. Discussion

3.1. Legal Consequences Against Perpetrators of Hate Speech Crimes

Legal consequences occur from all legal actions committed by legal subjects against legal objects or other consequences caused by specific events by law that have been determined or determined as legal consequences. The legal effect referred to here is the legal effect within the scope of criminal law. Legal consequences are in the form of sanctions arising from acts against the law. In criminal law, legal sanctions are called penalties. All forms of criminal acts will

always have a law. The punishments incurred also vary depending on the regulations governing them and the criminal act itself. According to Tri Andrisman, punishment is suffering or sorrow that is deliberately imposed on people who commit acts that meet certain conditions. Meanwhile, Roslan Soleh, who was under sanction, was a reaction to the offense, and this was in the form of a sorrow that the State deliberately gave to the offender. The punishment itself is regulated in Article 10 of the Criminal Code (KUHP), consisting of:

- A. Basic Crime;
 - a. Death Penalty;
 - b. Imprisonment;
 - c. Penalty confinement;
 - d. Penalties for fines;
- B. Additional Penalties;
 - a. Revocation of certain rights;
 - b. Confiscation of certain goods;
 - c. Announcement of the Judge's decision.

In this discussion, it is more revealing to the perpetrators of crimes of hate speech crimes. Based on the Chief of Police Circular Number: SE / 06 / X / 2015 issued by the Chief of Police General Badrodin Haiti on October 8, 2015, the following are some brief descriptions related to the legal consequences of hate speech:

1. KUHP (Criminal Code), namely:
2. Article 156 of the Criminal Code: "Anyone who publicly feels hostility, hatred or contempt for one or several groups of the Indonesian people, is punishable by a maximum imprisonment of four years or a maximum fine of four thousand and five hundred rupiahs."

3. Article 156a of the Criminal Code: "To be punished with a maximum sentence of 5 years, whoever deliberately in public expresses feelings or commits an act:
4. What exists is like hostility, a signal or blasphemy against a religion adhered to in Indonesia;
5. With the intention that people do not adhere to any religion that is not based on the One Godhead.
6. Article 157 paragraph (1) and (2) of the Criminal Code: "(1) Whoever broadcasts, shows or posts writing or painting in public, which contains a statement of feelings of hostility, hatred or insult between or against groups of the Indonesian people, the purpose of searching for its contents is known to the public, is punishable by a long imprisonment of two years and six months or a maximum fine of three hundred rupiahs. (2) If the person who violates said crime at the time of carrying out his search and at that time has not passed five years since his conviction is still that crime, that person may be prohibited from searching. "

7. Article 310 paragraphs (1), (2) and (3) of the Criminal Code: "(1) Anyone who deliberately respects someone's good name or accuses him of something, the meaning of which is clearly known to the public, is threatened with defamation by imprisonment. a maximum of nine months or a maximum fine of four thousand and five hundred rupiahs. (2) If this is done in writing or a picture shown, displayed or pasted in public, then he will be punished for

defamation with a maximum imprisonment of one year and four months or a maximum fine of four thousand and five hundred rupiahs. (3) It is not defamatory or written defamation, if the act is clearly committed for the sake of the public or because it has already been activated. "

8. Article 311 paragraph (1) of the Criminal Code: "If the person who commits a crime of defamation or defamation is allowed to prove what is alleged is true, does not prove it and the accusation is contrary to what is known, he will be threatened with slander with a maximum imprisonment of four year. "

a. Law No. 11 of 2008 concerning Electronic Information and Transactions:

1. Article 28 paragraph (1) and (2): "(1) Every person knowingly and without right, false and misleading news that results in consumer losses in electronic transactions. (2) Anyone who knowingly and without right has information to create hatred or enmity for certain individuals and/or community groups based on ethnicity, religion, race and intergroup (SARA). "2. Article 45 paragraph (2):" Every person who fulfills the provisions referred to in Article 28 paragraph (1) or paragraph (2) shall be sentenced to imprisonment for a maximum of 6 (six) years or a maximum fine of Rp. 1.00.000,000.00 (one billion rupiahs). "

2. Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic

Information and Transactions: 1. Article 45A paragraph (2): "Any person who knowingly and without the right of information intended to cause hatred or enmity for certain individuals and / or groups of society based on ethnicity, religion, race, and between groups (SARA) as referred to in Article 28 paragraph (2) shall be punished with imprisonment for a maximum of 6 (six) years and / or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiahs). "

3. Law No. 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination: Article 4 letter b: "Shows hatred or hatred towards people because of racial and ethnic differences in the form of actions:

- a. make text or pictures to be placed, pasted on, or disseminated in a public place or other places that can be seen or read by others;
- b. make a speech, reveal, or utter certain words in a public place or other places that other people can hear;
- c. changes to something in him in the form of objects, words, or pictures in public places or other places that others can read; or committing the deprivation of people's lives, torture, rape, sexual immorality, violent theft, or deprivation of liberty based on race and ethnicity. "Article 16:" Anyone who deliberately shows hatred or hatred towards another person based on discrimination and ethnicity as referred to in Article 4 letter b number 1, number 2, or number 3, shall be sentenced to imprisonment

of 5 (five) years and / or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiahs). "

According to Ilmih, There needs to be an increase and awareness that everyone in facing this era must have a new awareness, in this digital era they must be more aware of protecting data and always protecting it. Because there are risks that must be regulated to provide a sense of security for customers and continue to enforce the law according to the Banking Law, the Information and Telecommunication Law, the OJK Law and the Corruption Crime Law. The results of Harwanto's study show that, based on the formulation of the criminal provisions of Law No.12 of 2012 on Higher Education, criminal provisions are regulated for those who commit criminal offenses.

Reflecting on the case of Ir. Basuki Tjahaja Purnama at the North Jakarta District Court Number: 1537 / Pid.B / 2016 / PN JKT.UTR. The Panel of Judges sentenced Ir. Basuki Tjahaja Purnama eyebrows Ahok with imprisonment for 2 (two) years. According to the judge, Ahok was proven to have violated Article 156a of the Criminal Code concerning blasphemy. According to the Judge, Ahok had fulfilled the elements of blasphemy. The video and witnesses presented by the prosecutor were irrefutable evidence that Ahok had linked Surat Al-Maidah verse 51 with the word "lying". In addition, the judge also assessed that Ahok had the intention and deliberate sentence. As a public official, Hakim said Ahok had to be more careful in using terms that were harassing. This incident began on September 27, 2016, when Ahok made a speech during a

working visit to Pramuka Island, Thousand Islands, which later insult religion. Several people reported Ahok regarding the alleged blasphemy since 6 October 2016. They reported that Ahok's statement in front of the Seribu Islanders had blasphemed religion. Initially, Ahok only spoke about the fishermen program that the DKI Jakarta Provincial Government has implemented. Ahok then applies to fishermen even though he was not elected as governor in the 2017 gubernatorial election. Moreover, a statement stating that slaughtering tainted religion Initially, Ahok's speech was not a problem. Nevertheless, on October 6, 2016, it became a big issue when someone named Buni Yani uploaded the video recording of the speech on his Facebook account, entitled "Blasphemy of Religion?" with a transcription of Ahok's speech but cut off the word "use". He was "because he was lied to by Surah Al-Maidah 51" and not "because he was lied to using Surah Al-Maidah 51" which could be entered. For his actions, Buni Yani was reported by Ahok Volunteers from the Ahok-Djarot Young Advocate Community (Box of Adja). Buni Yani's crime upload has caused polemics in the community and could reveal divisions between religious communities. As a result of his actions, Buni Yani was charged with Article 32 paragraph (1) jo. Article 48 paragraph (1) of Law No. 11 of 2008 concerning Electronic Information and Transaction, which reads "Everyone knowingly and without right or against the law in any way changes, adds, reduces, transmits, destroys, removes, transfers, a collection of electronic information and / or electronic documents belonging to other people. or public property "contained in the Bandung District Court Decision.

1 Chapter IV. Conclusions and Suggestions

4.1. Conclusion

After researching as presented in the chapters above, it is finally up to the end of this journal. Based on the results of the research and discussion that has been described, several things become the basis of the discussion on "Legal Arrangements against the Crime of Hate Speech" with the pattern of resolving the restorative means of justice supported by a pattern of religious legal scientific approaches will produce a system pattern. The law is insane, because it prioritizes the mediation process between the reporting party and the reported party carried out by the police, acting as the police for peace in accordance with the Chief of Police Circular No. SE / 2 / II / 2021 dated 19 February 2021. Therefore, the authors conclude the following:

1. An action or a criminal act cannot be said to be a criminal act if its elements are not fulfilled, especially in the crime of hate speech. In the related Laws and Regulations regarding Hate Speech it is not clearly spelled out from the criminal act of Hate Speech, but it can be seen explicitly from the elements of the Hate Speech. Furthermore, criminal acts in the development of the law are more lenient, due to complaints and mediation between the parties.
2. Legal consequences for hate speech: If a person declares hostility, hatred, insults committed in public, he will be punished by a maximum imprisonment of 4 (four) years (Article 156 of the Criminal Code). If it is done in writing or in pictures, there is a maximum

imprisonment of 2 (two) years and 6 (six) months (Article 157 paragraph (1) of the Criminal Code). If disseminated via electronic media, the threat of imprisonment for a maximum of 6 (six) years and / or a maximum fine of 1 billion rupiahs (Article 45A paragraph (2) Law No.19/2016). If someone commits blasphemy against religion, he or she is threatened with imprisonment for a maximum of 5 (five) years (Article 156a of the Criminal Code). If disseminated via electronic media, is threatened with imprisonment for a maximum of 6 (six) years and / or a maximum fine of 1 billion rupiahs (Article 45A paragraph (2) Law No.19/2016). If someone commits defamation in public, they face imprisonment for a maximum of 9 (nine) months (Article 310 paragraph (1) of the Criminal Code). If it is done in written or pictorial form, the threat of imprisonment is up to 1 (one) year and 4 (four) months (Article 310 paragraph (2) of the Criminal Code). If disseminated via electronic media, the threat of imprisonment for a maximum of 6 (six) years and / or a maximum fine of 1 billion rupiahs (Article 45A paragraph (2) Law No.19/2016). If someone accuses slander, they face a maximum imprisonment of 4 (four) years (Article 311 paragraph (1) of the Criminal Code). If disseminated via electronic media, the threat of imprisonment for a maximum of 6 (six) years and / or a maximum fine of 1 billion rupiahs (Article 45A paragraph (2)

Law No.19/2016). If someone writes fake news, they face imprisonment for a maximum of 6 (six) years and / or a maximum fine of 1 billion rupiah (Article 45A paragraph (1) Law No.19/2016). If a person shows hatred or hatred for an ethnic crime, he or she is in danger of a maximum of 5 (five) years and / or a maximum fine of Rp. 500,000,000, - (Article 16 of Law No. 40/2008). If disseminated via electronic media, the threat of imprisonment for a maximum of 6 (six) years and/or a maximum fine of 1 billion rupiahs (Article 45A paragraph (2) Law No.19/2016).

1 4.2. Suggestion

The need for more synergic cooperation between the police, the community, and traditional stakeholders in carrying out supervision, handling and prevention in each conflict-prone area and still do not understand what Hate Speech is and what the impact of the crime of Hate Speech was not handled and responded to early. Therefore, it is necessary to hold outreach or counseling from the Government related to problems in schools, universities, rural areas, and also to the community regarding the understanding and forms of Hate Speech crimes and also explaining sanctions or based on laws that have been regulated by the Government regarding the sanctions for a person to commit such hate speech crimes (Hate Speech). Not only through direct socialization, indirect socialization through banners or banners can also be done either from the government, police or the community.

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