ABSTRACT

Objective: This research aims to examine the legal regulations of hate speech crimes in the ITE Law and the Indonesian Criminal Code (KUHP), and further explore the resolution of hate speech conflicts.

Theoretical Framework: The theoretical foundations include Legal Certainty theory, Law Enforcement theory, and Legal Convergence theory concerning hate speech conflict resolution following the principle of legal certainty.

Method: This study employs a qualitative normative approach (doctrinal) utilizing various legal instruments and indirect observation through conceptual, historical, legal, comparative, and case study approaches. Data collection involves literature review and field research through interviews. The data are analyzed qualitatively, generating descriptive data to reveal legal issues.

Findings and Conclusion: The main findings indicate that Article 28 paragraph (2) of the ITE Law still leads to multiple interpretations. The absence of the term "incitement" allows subjective interpretation and constitutes a very broad formulation. A comparison of hate speech crimes in Article 28 Paragraph (2) Jo Article 45A Paragraph (2) of the ITE Law with Article 243 Paragraph (1) and Paragraph (2) of the new Indonesian Criminal Code shows significant differences in terms of elements of the crime, general criminal law principles, additional penalties, lower/proportional sanctions, public virtual domain, integrated codification, and expanded meanings.

Originality/Value: This paper recommends urging the government to refine hate speech regulations to prevent multiple interpretations and emphasizes the need for guidelines in law enforcement application.

Keywords: legal regulation, hate speech, law enforcement.

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REGULAMENTAÇÃO DA LEI RELATIVA AOS DELITOS DE DISCURSO DE ÓDIO

RESUMO

Objetivo: Esta pesquisa tem como objetivo examinar as normas legais de crimes de discurso de ódio na Lei ITE e no Código Penal da Indonésia (KUHP), e explorar mais a resolução de conflitos de discurso de ódio.

Estrutura Teórica: Os fundamentos teóricos incluem a teoria da Certeza Jurídica, a teoria da Aplicação da Lei e a teoria da Convergência Legal sobre a resolução de conflitos de discurso de ódio seguindo o princípio da segurança jurídica.

Método: Este estudo emprega uma abordagem normativa qualitativa (doutrinal) utilizando vários instrumentos legais e observação indireta através de abordagens conceituais, históricas, legais, comparativas e de estudo de caso. A coleta de dados envolve revisão de literatura e pesquisa de campo por meio de entrevistas. Os dados são analisados qualitativamente, gerando dados descritivos para revelar questões legais.


Originalidade/valor: este documento recomenda instar o governo a refinar os regulamentos do discurso de ódio para evitar múltiplas interpretações e enfatiza a necessidade de diretrizes na aplicação da lei.

Palavras-chave: regulação legal, discurso de ódio, aplicação da lei.

1 INTRODUCTION

Technology and the internet have brought significant impact to global society by introducing the concept of a global village. Along with their benefits, the phenomenon of technological advancement also brings negative consequences and opportunities for cybercrime. Vodymyr Golubev (Arief, 2007.) Referring to it as the new form of anti-social behavior, the types of threats posed by the sophistication of cyber technology include cyberwarfare, terrorism, pornography, illegal trade, and other threats.. (Nursita, 2019.) Crimes that were once conventional and direct, such as threats, theft, defamation, pornography, gambling, fraud, and acts of terrorism.. (Putra, 2018) One of the most prevalent cybercrimes in the online world today is hate speech, which has led to various triggers for social conflicts.
Several countries have regulations or domestic laws in place, such as Malaysia, which had a prohibition on hate speech content in the Anti-Fake News Act enacted in 2018. However, a year later, the law was repealed in 2019. (Syahidah Izzata Sabiila, 2021) Germany implemented law enforcement on social media platforms on January 1, 2018, through a regulation known as NetzDG (Network Enforcement Law). (Kominfo, 2018) In India, regulations concerning hate speech are outlined in the Information Technology Act No. 21 of 2000. (Ahmad Faizal Azhar, 2020.) Australia has had guidelines regarding hate speech since 2001 under the Racial and Religious Tolerance Act 2001 (Act No. 47/2001) in the State of Victoria, Australia. (Farid M. Ibrahim, 2017.)

Law No. 11 of 2008 on Electronic Information and Transactions, which was later amended by Law No. 19 of 2016, has been a pioneer in organizing electronic systems and transactions in Indonesia. Specifically, hate speech is addressed in Article 28 paragraph (2) of this law. However, its implementation has faced challenges, leading to the issuance of a Joint Ministerial Decree (SKB) by the Minister of Communication and Informatics, the Attorney General, and the Chief of the Indonesian National Police. This initiative was taken due to perceived issues with Article 28 paragraph (2). The integration of hate speech content from the ITE Law into Law No. 1 of 2023 on the Criminal Code (KUHP), as stated in Article 243 paragraph (1) and paragraph (2), along with the imposition of additional penalties as regulated in Article 243 paragraph (2), in some aspects, introduces new meanings and broader interpretations of the law.

This research aims to delve into the normative legal regulation of hate speech offenses based on international law, the ITE Law, and the new KUHP. It also seeks to further examine the resolution of hate speech conflicts. (hate speech).

2 THEORETICAL FRAMEWORK

2.1 DEFINITION OF HATE SPEECH

Referring to the Oxford English Dictionary (OED), Robert Post, a scholar frequently cited in this discourse, defines hate speech as "speech expressing hatred or intolerance of other social groups, especially on the basis of race and sexuality." So, what falls under the category or term 'hate'? Referring back to the OED, Post understands hate as 'an emotion of extreme dislike or aversion; abhorrence, hatred.' This definition encompasses two crucial aspects: first, it relates to the substance or content of speech, and second, it pertains to the specific groups targeted.
Speech can be considered 'hate' if it expresses extreme feelings of hatred or intolerance and if these feelings are directed towards other groups based on their identity, such as race and sexual orientation. According to this definition, Post criticizes the criminalization of hate speech because he believes that expressing feelings of hatred is a normal part of human emotional life. The boundary between extreme and moderate expressions in speech is difficult to measure. Prohibiting hate speech, according to Post, faces conceptual challenges in distinguishing between "hate" and "normal dislike" or "disagreement." (Suhadi, 2014.)

2.2 LEGAL CERTAINTY THEORY

According to Hans Kelsen's theory of legal certainty, law is a hierarchical arrangement of norms, starting from the highest (abstract) norm and descending sequentially to the most concrete norm that can be implemented, such as a judge's decision. (Rohman, 2021.) Upon reviewing legal certainty according to the Utrecht perspective, it encompasses two meanings. First, the existence of general rules enables individuals to know what actions are permissible or prohibited. Second, it provides legal security for individuals against government arbitrariness because with the presence of these general rules, individuals can understand what burdens or actions the State can impose on them. (Rohman, 2021.)

2.3 CONVERGENCE LEGAL THEORY

The legal concepts of convergence, harmonization, and unification have continued to evolve, especially in the field of comparative law studies. These legal concepts can generally be understood through the following framework: (Budhijanto, 2015.)

1. Convergence: It is used as an effort to unify legal systems, concepts, principles, or norms.
2. Legal Harmonization: It is used as an effort to prepare national or state laws that have interconnected regulations based on philosophical, sociological, and juridical values.

3 METHODOLOGY

This research employs a qualitative (doctrinal) normative approach, utilizing various legal instruments and indirect observations through conceptual, historical, legal,
comparative, and case approaches. Data collection is conducted through literature review and field research involving interviews. The data is analyzed qualitatively, generating descriptive data to uncover legal issues.

The research analysis will commence by examining the normative legal domain using both primary and secondary data. Primary legal materials consist of binding legal documents, including basic norms, fundamental regulations, legislation (conventions), non-codified legal materials, jurisprudence, treaties, and legal documents. Secondary

<table>
<thead>
<tr>
<th>Level</th>
<th>Instrument</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>International</td>
<td>Law No. 12 of 2005 Ratifying the International Covenant on Civil and Political Rights (ICCPR)</td>
<td>2005</td>
</tr>
<tr>
<td>International (India)</td>
<td>Information Technology Act No. 21 of 2000</td>
<td>2000</td>
</tr>
<tr>
<td>International (Germany)</td>
<td>NetzDG (Network Enforcement Law)</td>
<td>2018</td>
</tr>
<tr>
<td>National (Indonesia)</td>
<td>Article 28E(3) of the 1945 Constitution</td>
<td>1945</td>
</tr>
<tr>
<td>National (Indonesia)</td>
<td>Article 28F of the 1945 Constitution</td>
<td>1945</td>
</tr>
<tr>
<td>National (Indonesia)</td>
<td>Article 28J(2) of the 1945 Constitution</td>
<td>1945</td>
</tr>
<tr>
<td>National (Indonesia)</td>
<td>Law No. 19 of 2016 on Amendments to Law No. 11 of 2008 on Information and Electronic Transactions (ITE Law)</td>
<td>2016</td>
</tr>
<tr>
<td>National (Indonesia)</td>
<td>Law No. 1 of 2023 on the Criminal Code (KUHP)</td>
<td>2023</td>
</tr>
<tr>
<td>National (Indonesia)</td>
<td>Circular Letter of the Chief of Police No. SE/6/X/2015 on Handling Hate Speech</td>
<td>2015</td>
</tr>
<tr>
<td>National (Indonesia)</td>
<td>Circular Letter of the Chief of Police No. SE/2/11/2021 Regarding Cultural Awareness Ethics to Realize a Clean, Healthy, and Productive Digital Space in Indonesia</td>
<td>2021</td>
</tr>
<tr>
<td>National (Indonesia)</td>
<td>National Police Chief Regulation No. 8 of 2021 on Handling Criminal Acts based on Restorative Justice</td>
<td>2021</td>
</tr>
<tr>
<td>National (Indonesia)</td>
<td>Constitutional Court Decision No. 76/PUUXV/2017</td>
<td>2017</td>
</tr>
<tr>
<td>National (Indonesia)</td>
<td>Attorney General Regulation No. 15 of 2020 on Discontinuation of Prosecution based on Restorative Justice</td>
<td>2020</td>
</tr>
<tr>
<td>National (Indonesia)</td>
<td>Directorate General of General Court Affairs Decision of the Supreme Court of the Republic of Indonesia No. 1691/DIJU/SK/PS.00/12/2020 on the Implementation Guidelines of Restorative Justice</td>
<td>2020</td>
</tr>
<tr>
<td>National (Indonesia)</td>
<td>Joint Decision of the Minister of Communication and Informatics, the Attorney General, and the Chief of the Indonesian National Police No. 229/2021, No. 154/2021, No. KB/2VI/2021 on Implementation Guidelines for Specific Articles within the ITE Law</td>
<td>2021</td>
</tr>
</tbody>
</table>

Source: Author
legal materials provide explanations about primary legal materials, such as draft laws, research findings, works by legal experts, enabling the formulation of appropriate concepts and methods for resolving hate speech conflicts.

4 RESULTS AND DISCUSSION

4.1 LEGAL REGULATION OF HATE SPEECH OFFENSES IN THE ITE LAW

The Government of the Republic of Indonesia has issued Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights (ICCPR). This means that the covenant document issued by the United Nations in 1966 has become an "integral part of the law" applicable in Indonesia. Article 20, Paragraph 2, ICCPR clearly prohibits hate speech based on, among other things, religion:

"Any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence shall be prohibited by law."

Furthermore, Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) states:

"Each State Party shall prohibit all dissemination of ideas based on racial superiority or hatred and incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another color or ethnic origin". (Budhijanto, 2015.)

Several related regulations such as Article 28 paragraph (2) of the Information and Electronic Transactions Law (ITE Law) must be considered, taking into account the provisions stipulated in the Joint Decree of the Minister of Communication and Informatics of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Chief of the Indonesian National Police Number 229 of 2021, Number 154 of 2021, and Number KB/2VI/2021 regarding the Implementation Guidelines for Certain Articles in the ITE Law. These provisions include: [Note: The sentence seems incomplete, please provide the continuation if you need a translation for the specific provisions mentioned after "(Indonesia., 2021)"

a. The main offense under Article 28 paragraph (2) of the ITE Law involves spreading information that incites hatred or hostility towards individuals or groups based on Race, Religion, Ethnicity, and Inter-group relations (SARA).

b. The disseminated information can take the form of pictures, videos, sounds, or writings that convey an invitation or broadcast to others, encouraging
them to harbor feelings of hatred and/or hostility towards individuals or groups based on SARA issues or sentiments.

c. The criteria for "spreading" can include uploads on social media accounts set to public access, or broadcasting something on messaging applications where there is no content control; anyone can upload and share it, in other words, without any specific moderation.

d. Acts prohibited under this Article are motivated by the intention to incite hatred and/or hostility based on SARA. Law enforcement authorities must prove this motivation, which is characterized by content that invites, influences, mobilizes the public, incites or stirs discord with the aim of fomenting hatred and/or hostility.

e. The phrase "inter-group relations" refers to population groups outside of Race, Religion, and Ethnicity, as defined in the Constitutional Court Decision Number 76/PUU-XV/2017.

f. Expressing opinions, disagreements, or dislikes about individuals or groups is not prohibited, unless the disseminated content can be proven to involve attempts to incite, influence, or mobilize the public, incite or stir discord to create feelings of hatred or hostility based on SARA differences or sentiments.

Hate speech based on Race, Religion, Ethnicity, and Inter-group relations (SARA) as defined in accordance with Constitutional Court Decision Number 76/PUU-XV/2017 encompasses: (Putusan Nomor Mahkamah Konstitusi Republik Indonesia., 2017)

"One of the categories that recognizes social differentiation, alongside categories such as ethnicity, race, and religion. The categories of "ethnicity" and "race" refer to inherent conditions or factors that cannot be changed by individuals belonging to a specific ethnicity or race and become lifelong identities. Religion, unlike ethnicity and race, is not an inherent factor but a personal choice. However, due to its sacred nature and anthropologically embedded values that are difficult to change, it tends to become a lifelong identity for those who adhere to it.

The category of "ethnicity" encompasses entities such as Javanese, Acehnese, Jambi, Minang, Kuba, Sundanese, Sasak, Bugis, Sumbawa, Balinese, Ternate, Waigeo, Dani, and others. The category of "race" includes entities such as Mongoloid, Malay, Melanesoid, and so on. The category of "religion" encompasses entities such as Muslims, Christians, Catholics, Hindus, Buddhists, and Confucians. Beyond these three categories, the Court believes that there are still many other categories that have not yet been accommodated by the law, such as domicile, profession/occupation, groups affiliated with specific organizations, and so on.

The term "inter-group" according to the Court is not a clear and distinct term. Its meaning cannot be immediately understood, unlike the terms "ethnicity," "religion," and "race," which are all placed on an equal footing with the term "inter-group" and even give rise to a popular acronym in society, which is
SARA. Although not clear and distinct, it does not mean that the term "inter-group" does not exist. Further, it is important for the Court to clarify that the term "inter-group" seems to be perceived as something dangerous or negative, partly due to its potential for arbitrary application. Universally, when a legal regulation is applied arbitrarily, it is inherently harmful and dangerous. However, this is a matter of law enforcement, and there are legal remedies available to address it, making it a question of the application of the law rather than a constitutional issue. The constitutional problem arises when the term "inter-group" is eliminated, leading to a legal vacuum and legal uncertainty. The term "inter-group" is formed by combining the words "inter" and "group," where the word "group" in the Indonesian Dictionary has the same meaning as a community. When a group is understood as a collection of individuals with specific attributes or characteristics in common, this term encompasses ethnicity, religion, and race. However, in the SARA (ethnicity, religion, race, and inter-group relations) context, the legal status of the terms "ethnicity," "religion," "race," and "inter-group" is equal, meaning they do not mutually encompass one another, and none is subordinate to the others. Through this Court decision, it is affirmed that the term "inter-group" does not only encompass ethnicity, religion, and race, but extends beyond that to include all entities that are not represented or encompassed by the terms ethnicity, religion, and race.

4.2 "ARTICLE 28 PARAGRAPHS (2) SHOULD BE INTERPRETED ACCORDING TO LINGUISTS."

"Based on the interview results with language expert Drs. Yani Paryono MPD, here are some explanations regarding the elements contained in Article 28 Paragraph 2 as follows:". (Yani Paryono, 2023,)

"Any person who intentionally and without right disseminates information aimed at stirring up hatred or hostility against individuals and/or specific groups in society based on ethnicity, religion, race, and inter-group relations (SARA)."

The phrase "Every person who intentionally and without right" refers to individuals or groups, including individuals, groups, or legal entities, who knowingly and plannedly violate the law or norms by performing actions without permission or lawful rights. The term "every person" indicates the plurality of individuals or entities involved. "Intentionally and without right" emphasizes that the action is done with deliberate intent and planning, not accidentally, and without official authority or valid permission according to the law. The term "right" refers to the authority, ownership, or permission granted by the law. In this context, this phrase highlights unlawful violations committed intentionally and without valid permission, involving various forms of individuals or groups engaged in such illegal acts.
Article 28 paragraph (2) of the ITE Law prohibits any person who intentionally and without right disseminates information aimed at inciting hatred or hostility against specific individuals or groups in society based on ethnicity, religion, race, and inter-group relations (SARA). The interpretation of the phrase "Every person who intentionally and without right" refers to individuals or groups, including individuals, groups, or legal entities, who knowingly and plannedly violate the law or norms by performing actions without permission or lawful rights. The term "every person" indicates the plurality of individuals or entities involved. "Intentionally and without right" emphasizes that the action is done with deliberate intent and planning, not accidentally, and without official authority or valid permission according to the law. The term "right" refers to the authority, ownership, or permission granted by the law.

The importance of understanding this concept is also emphasized by Drs. Yani Paryono MPD and Ramlah Mappau, S.S., M.Hum. They emphasize that the interpretation of this article must consider lexical and grammatical aspects, as well as the context of its usage. The use of the phrase "and/or" indicates that the illegal act must meet all the conditions or elements specified in the article to be considered a valid violation. Conversely, a violation can also be deemed valid if it meets any of the conditions mentioned in the article.

However, there is a potential ambiguity in the use of the phrase "specific community." This highlights the importance of using clear and cautious language in determining the interpretation and application of this phrase to avoid potential misuse or misunderstanding in the legal domain. Article 28 paragraph (2) needs to be interpreted carefully and based on objective and fair legal principles. The use of precise language and detailed clarification is necessary to avoid ambiguity and ensure that law enforcement is carried out with integrity and justice.

Understanding the concept of "Inciting Hatred" also needs to be handled carefully. This term refers to actions or statements that can evoke negative feelings, hatred, or hostility towards a particular group or individual. However, the subjective nature of this term allows for varying interpretations, which can be influenced by political, social, or specific group interests. Therefore, there needs to be an objective and reliable system to determine whether an action or statement meets the criteria of "Inciting Hatred."

Combining the results of interviews and interpretations provides a deeper understanding of Article 28 paragraph (2) of the ITE Law. However, to ensure fair and
just law enforcement, it is important to continually review and clarify these provisions, including considering input from legal experts and the community. Thus, a clearer understanding can be established, and law enforcement can be carried out objectively and fairly in accordance with the principles of justice and freedom of expression in society.

"Based on the interview with Ramlah Mappau, S.S., M.Hum., the phrase 'Inciting Hatred' as stated in Article 28 paragraph 2 refers to actions or statements that can evoke or trigger negative feelings, hatred, or hostility towards a particular group or individual."

"The term 'Inciting Hatred' refers to actions or statements that can evoke or trigger negative feelings, hatred, or hostility towards a particular group or individual. However, due to its subjective nature, the interpretation and usage of this term can be influenced by political, social, or specific group interests."

(Ramlah Mappau, 2023)

Ramlah Mappau, S.S., M.Hum stated that Article 28 paragraph (2) needs to be interpreted by considering lexical and grammatical aspects, as well as its usage context. She pointed out that from a lexical perspective (based on dictionaries), a word-for-word translation would yield a different understanding compared to the intended meaning based on the context of word usage.

The opinions of Drs. Yani Paryono MPD and Ramlah Mappau, S.S., M.Hum suggest that the mentioned article can be divided into two clauses. The difference between these two clauses lies in the use of the phrase "individual and/or community groups" in the first clause and "specific individuals and/or specific community groups" in the second clause. The first clause indicates that the dissemination of information aimed at inciting hatred or hostility can encompass both individuals and community groups as a whole.

Meanwhile, the second clause is more specific by stating that the dissemination of such information is aimed at inciting hatred or hostility towards specific individuals or specific community groups based on ethnicity, religion, race, and inter-group relations (SARA). The phrase "towards specific individuals or specific community groups" emphasizes that the action is specifically directed at certain individuals or specific community groups. In this analytical context, the difference between the two clauses lies in the inclusion of "Specific Community Groups" in the second clause, which is not explicitly mentioned in the first clause. The second clause provides a more detailed explanation of the target audience for the dissemination of the intended information.
4.3 INTERPRETATION OF ARTICLE 28 PARAGRAPH (2) ACCORDING TO CRIMINAL LAW EXPERTS

"In the formulation of the essence of Article 28 paragraph (2) according to Prof. Dr. Muhadar, S.H., M.H.". (Muhadar, 2023) Legal experts argue that regarding the term "antargolongan," clarification is needed on whether the entities referred to are religious groups, community organizations, government institutions, or cultural groups. This raises questions about whether the intended conflict pertains to inter-individual disputes or inter-group conflicts.

Article 28 Paragraph (2) of the Electronic Information and Transactions Law (ITE Law) in Indonesia prohibits the dissemination of information containing defamation or hatred towards individuals or community groups. Although the term "incitement" is not explicitly mentioned in the article, criminal experts explain that its meaning encompasses various entities. Law should not only be read literally but also interpreted implicitly. In the interpretation of criminal law, the offense under Article 28 Paragraph (2) can be considered a formal offense per material or a material offense per formal, inciting hatred or hostility.

However, there is confusion regarding the broad interpretation of the term "community groups." Some legal scholars suggest that this term should be clearly and precisely defined in the ITE Law, considering the principles of lex certa, lex stricta, and lex scripta in Indonesian criminal law. There are concerns that an overly broad interpretation might lead to legal uncertainty and abuse of authority in determining what falls under "community groups."

Furthermore, criminal experts explain that the term "antargolongan" has a broad meaning, encompassing various entities. Even if the term "incitement" is not explicitly stated in the article, the provision is not only read literally but also interpreted implicitly. Reading the law does not solely involve its literal interpretation; especially for legal professionals, particularly criminal law experts, they read word by word, not only the explicit words but also the implicit essence contained within those words. From the essence, it can be observed that what is contained in the article can incite hatred. Therefore, there is incitement implied in it; it doesn't need to be explicitly stated because before someone engages in hate speech, they usually initiate hostility and conversation.

Indonesian criminal law follows the separation between criminal acts and criminal liability, known as the dualistic doctrine, not the monistic one. Criminal acts only concern
the act itself (actus reus), while the person committing the act and their accountability are separate matters. With this separation, intent (mens rea) becomes a determining factor in criminal liability. Criminal liability is based on the unwritten law principle "no punishment without guilt" (geen straf zonder schuld beginsel). In other words, someone who commits a criminal act may not necessarily be sentenced, depending on whether they can be held accountable or not. Intent as a subjective element requires either intention (dolus) or negligence (culpa).

Based on the interview with AKP Kamaluddin, S.H., M.H., the position of Panit I and unit II Subdit Cyber Crimes of the South Sulawesi Regional Police, to find and identify an alleged criminal act in order to determine whether an investigation can be conducted or not, the initial step is conducting an investigation by officers of the Indonesian National Police authorized by the law to do so and who meet the requirements based on their knowledge and experience. (AKP Kamaluddin, 2023)

"From the research findings, the author discovered the data on the number of reports related to hate speech crimes in the South Sulawesi Regional Police (Polda Sulsel), namely...": (Sulsel., 2022)

The table shows the number of hate speech crime reports in the South Sulawesi Regional Police (Polda Sulsel) in the year 2022.

<table>
<thead>
<tr>
<th>NO</th>
<th>YEAR</th>
<th>NUMBER OF CRIMES</th>
<th>STATUS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>2018</td>
<td>2</td>
<td>Stage 2</td>
</tr>
<tr>
<td>2.</td>
<td>2019</td>
<td>12</td>
<td>(7 P21 Status) (5 Stage 2 Status)</td>
</tr>
<tr>
<td>3.</td>
<td>2020</td>
<td>3</td>
<td>(2 Withdrawn Reports) (1 Stage 2)</td>
</tr>
<tr>
<td>4.</td>
<td>2021</td>
<td>2</td>
<td>P21</td>
</tr>
<tr>
<td>5.</td>
<td>2022</td>
<td>5</td>
<td>(4 P21) (1 Preliminary Investigation Status)</td>
</tr>
</tbody>
</table>

Source: Data from the Criminal Investigation Directorate Operations Bin of South Sulawesi Regional Police (Ditreskrimsus Polda Sulsel)

Source: Data Bag Bin Ops Ditreskrimsus Polda Sulsel

Based on the data presented by the South Sulawesi Regional Police regarding the number of hate speech crime reports in specific years, the following conclusions can be drawn:

1) Trend in the Number of Reports: Generally, the number of hate speech crime reports at the South Sulawesi Regional Police has shown fluctuations during the period from 2018 to 2022.

2) Trend in Status Changes: There is variation in the status of hate speech crime reports. The statuses fall into several categories, such as Stage 2, P21 (second-stage investigation), Report Withdrawal, and Preliminary Investigation...
(Lidik). P21 indicates that the case is in the process of the second-stage investigation, whereas Lidik indicates that the case is in the initial stage of preliminary investigation.

3) Increase in the Number of Reports: Although the number of reports in 2022 was not significantly high, there was an increase compared to previous years. In 2022, there were 5 hate speech crime reports, with 4 of them in the P21 status and 1 in the Lidik status.

4) Most Common Status: From the provided data, the P21 status (second-stage investigation) is the most common status related to hate speech crime reports. This indicates that the majority of reported hate speech cases have progressed to advanced investigative stages.

4.4 ADVANTAGES AND DISADVANTAGES OF ARTICLE 28 PARAGRAPH (2) JO ARTICLE 45A PARAGRAPH (2) OF THE ITE LAW IN COMPARISON WITH ARTICLE 243 PARAGRAPH (1) AND PARAGRAPH (2) OF THE NEW CRIMINAL CODE

The opinion of the Constitutional Court is unclear as it expands the definition of "antargolongan" instead of providing a clear and precise definition. The ambiguity in the formulation of Article 28 Paragraph (2) of the ITE Law does not reflect the principle of legality (lex certa) because its elements are not clearly and explicitly outlined. This lack of clarity leads to different interpretations among criminal law experts and law enforcement officers. There is also a broad interpretation in the judges' decisions, and it easily leads to the abuse of power in law enforcement practices, allowing individuals expressing their opinions on electronic media to be easily prosecuted.

The change in hate speech provisions from Article 28 Paragraph (2) Jo Article 45A Paragraph (2) of the ITE Law to Article 243 Paragraph (1) and Paragraph (2) of the new Criminal Code. The research suggests the implementation of an Integrated Criminal Justice system as a solution to maintain a balance in protecting the interests of the state, society, individuals, perpetrators, and crime victims. The analysis indicates the advantages of legal integration, alignment with general legal principles, regulation of more proportional sanctions. However, it also identifies weaknesses such as complex interpretations, proportional sanctions, protection of freedom of speech, and the principle of equality before the law.
5 CONCLUSION

"Hate speech should not be viewed narrowly; the widespread impact of information and communication technology has broadened its scope. Based on international conventions and national hate speech regulations, ideally, hate speech laws, besides addressing ethnic and racial issues, should also consider potential triggers such as identity politics, community organizations, and nationalism, which can incite hate speech crimes leading to discrimination, hostility, or violence. Such acts should be prohibited by law.

In this regard, one alternative policy approach in cases of hate speech, classified as minor to moderate violations, could involve public apologies or social pardons as a form of sanction. This approach also aims to restore the position of victims who have suffered due to the replication of hate speech content dissemination.

To resolve online hate speech conflicts, the establishment of 'Police Mediators' is necessary. They would act as mediators between perpetrators and victims. Police often play a leading role in handling hate speech cases, enjoying public trust as law enforcement officers, enabling them to mediate conflicts more effectively."
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