Conference Paper

Identify Mens Rea in Language use from a Criminal Law Perspective

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Abstract.
This article explains and identifies the existence of mens rea in the dissemination of news packaged into content through various social media platforms, implicitly containing hate speeches, so that it can be viewed as an electronic-based criminal offense uploaded either verbally or non-verbally. An ability to communicate within the scope of society in the use of language is not owned by everyone, especially in the era of social media where there are those who use language in an inappropriate way. For example, it is used for swearing, defamation, making fake news or hoaxes, threats, persecution speech, to hate speeches that can harm the interlocutor. This study aims to determine the existence of mens rea in the use of language about hate speech committed by individuals through social media platforms. Their point of view will be studied through the perspectives of criminal law. The study's objective was to examine the use of language in individual uploads through several social media platforms that contain hate speech and 'SARA in the context of criminal law. In sampling, the author uses descriptive qualitative research methods and legal research methods based on the available data.

Keywords: mens rea, language, blasphemy, criminal law

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1. INTRODUCTION

In revealing an offense within the scope of a criminal offense, it is necessary to prove whether the defendant is proven to have committed an act against the applicable law, in proving it there must be an element of intention and mens rea (mental element of the perpetrator). Mens rea is a form of 'mental attitude' the monistic view of the offense is called the subjective element of an offense or the psychological state of the maker, while actus reus is the 'act'. When a person is sentenced to punishment, it must fulfill the elements of 'doing active/passive actions that are against the law (in accordance with criminal law regulations), does not have a justification basis and the existence of guilt in a broad sense, including elements of intent and negligence/error, ability to be responsible, no excuse'.

Language crimes are very different from other crimes that attack and even physically harm either criminal or civil legal consequences, but language crimes attack and can also hurt the soul of individuals or certain groups in a community through various social media platforms.

Currently social media is a forum for expression as well as communicating and socializing through the online world, in the form of comments, searching for information, disseminating information, disseminating content with several forms, namely in the form of writing, images, video, audio which has positive aspects and negative impacts, namely as a means of language warfare which can be in the form of incitement leading to hate speech, defamation, and as a tool for spreading fake news, along with technological advances, of course, cannot be separated in all aspects of life because technological advances are always accompanied by scientific advances.(Ngafifi, 2014)

The author quotes Dedi Rianto's opinion that the media is used to transfer information that can be accessed by everyone and make the person a social being who exchanges information or news that can be in the form of photos, videos, and videos. (Rahadi, 2017)
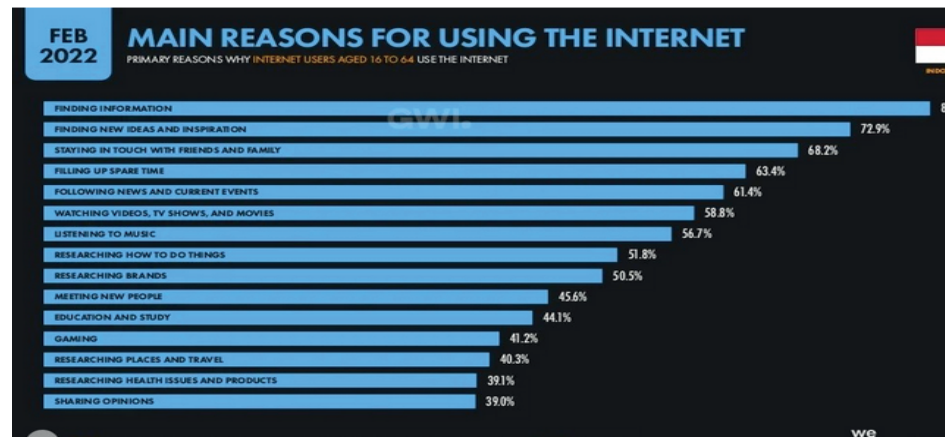
Based on Hootsuite data (We are Social): Indonesian Digital Report 2022 data on trends in internet and social media usage in various platforms in Indonesia with various social networking sites including: Youtube, Whatsapp, Instagram, Facebook, Twitter, Line, Pinterest, Messenger, Wechat (Weixin), QQ, Qzone, Tiktok (Douyin), Sina Weibo, Reddit, Douban, Linkedin, Baidu Tieba,Skype,Snapchat,Viber.

From these data, it shows that the use of the internet to access various social media platforms in Indonesia is very large, making it possible to spread good information or hoaxes, which are actions that aim to make other people believe something that is not true, including untrue news.
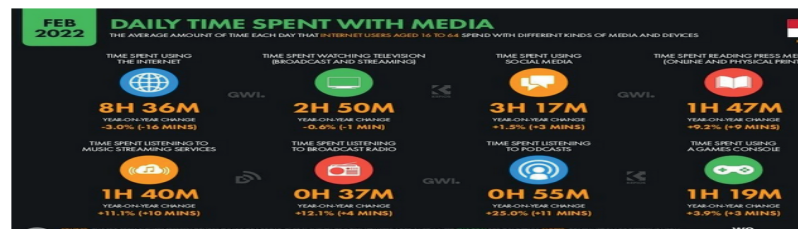
Even spreading hate speech is very easy, it can be accessed quickly throughout Indonesia. Crimes through cyberspace in the form of virtual integration between humans and technology or more familiarly called cyberspace, which is the current trend in the form of spreading fake news or hoaxes and hate speech. (Fitriani & Pakpahan, 2020)This can be seen from some speech acts of public figures or public officials that are disseminated through various social media platforms and have legal consequences that can be seen from language science through psycholinguistics and sociolinguistics.

The use of words in language in a community is a sematic weapon, where humans can express, express using words to describe circumstances, desires, hopes, thoughts, experiences, in relation to other humans carried out orally, or writing which can unwittingly lead to attitudes or language crimes, of course, language crimes are very different from other crimes that attack and even physically harm either criminal or civil law, but

Pengguna internet di Indonesia memiliki beberapa alasan utama dalam penggunaan internetnya. Berikut adalah alasan-alasan utama pengguna internet di Indonesia:

Dalam mengakses media digital, pengguna internet di Indonesia menghabiskan waktu yang bervariasi, dan dapat dilihat seperti yang terpampang pada gambar di bawah ini:

Website yang banyak dikunjungi orang di Indonesia pada Tahun 2022

Berikut adalah daftar website yang sering dikunjungi oleh pengguna internet di Indonesia berdasarkan penilaian dari Semrush:

Figure 1: **Data retrieved from Hootsuite (We are Social)** https://andi.link/hootsuite-we-are-social-indonesian-digital-report-2022/.

language crimes attack and can also hurt the soul of individuals or certain groups in a community through various social media platforms.

Psycholinguistics is a way of seeing or processing in the brain when someone who conveys an utterance will be processed in someone's reasoning "who conveys the utterance, it will be different if the speaker is a public official, public figure, or person who has power, different if the speech expert is an ordinary person) it will be different and Psycholinguistics is a science of language and mind which is a science that studies the relationship between language and human behavior, human intellect and language skills.(Http://Stp-Mataram.e-Journal.Id/JHI, 2023)

"psycholinguistics explores the relationship between the human mind and language, which emphasizes the relationship between the human brain and the meaning and use of language. The mind or brain operates when there is or occurs the use of language and mental processes in interpreting, digesting language(Http://Stp-Mataram.e-Journal.Id/JHI, 2023)

The use of language in everyday life greatly affects the articulation of communication and interaction between people, which will provide a unity to connect a difference, therefore the diversity of a language becomes unique in the art of language.

In the process of communicating and speaking, there will be a process that produces utterances, in the form of sentences how speakers use language to form and build communication and understanding. So the need to describe the psychological processes that take place in a person who utters his sentences that are heard by the public in a particular community when communicating and there is a process to convert thoughts into codes and vice versa the code that is processed into a result of thought in which there is a process of "coding and understanding the code" as a message conveyed by the speaker. Language is a form and result of a process in the form of spoken or written language, that humans as language users have systems that can explain how humans capture other people's ideas and how the human as a speaker expresses the ideas he has through language in writing or unwritten which contains the process of perception, language acquisition, language production and is an overflow of thoughts from someone who speaks, the science that studies language has a series of theories so that it can be studied.

Sociolinguistics is a science that studies language that is closely related to the situation and conditions of society where the relationship is supported by social theories, especially sociological theories that examine the level of language used or contained in human life there are dialects and code mixes in a woven communication. Dialect is a uniqueness or characteristic in language as a differentiator in the user. In essence "Sociolinguistics emphasizes the study of community patterns in using language." and sociolinguistics as a branch of linguistics that aims to find more comprehensive underlying principles involving "the calculation of the influence of various social contexts".

2. METHODOLOGY/ MATERIALS

This research focuses on how the use of language and its impact in a social sphere when we look at it from the perspective of criminal law through psycholinguistic and sociolinguistic methods, and this research also aims to examine more deeply how the

relationship between the social status of a speaker and its legal consequences and how the rules apply in Indonesia It is outlined in the descriptive analytical research method in the form of presenting problems that occur based on data and analyzing and interpreting them. (Sapitri, 2018) A description of the reality that occurs is systematic, factual and accurate juxtaposed with primary, secondary, and tertiary legal materials, in this study the authors analyze secondary data by understanding the law which is used as a set of rules or positive norms that exist in the legislative system that regulates human life in an environment, in this case what is used is a normative juridical approach, by collecting data through literature study techniques.

3. RESULTS AND DISCUSSIONS

Based on the analysis that the existence of language in human life can be seen in the language used, the author takes 3 utterances as examples, namely the promotion and design of the Holywings team. "THESE NAMES GET FREE BOTTLE! EVERY THURSDAY (MUHAMMAD & MARIA)", three uploads of Ahmad dhani on twiter, namely February 7, 2017 Dhani's writing which reads, "Yang menistakan agama si Ahok...yang diadili KH. Ma'ruf Amin... -ADP." The second on March 5, 2017, Dhani wrote, "Siapa saja yang dukung penista agama adalah bajingan yang perlu diludahi mukanya -ADP." And the third on March 7, 2017, Dhani's Twitter account uploaded, "Sila Pertama KETUHANAN YME, PENISTA Agama jadi Gubernur...kalian WARAS?? -ADP." Hate speech committed by Basuki Tjahaja Purnama "Jadi jangan percaya sama orang, kan bisa saja dalam hati kecil Bapak-Ibu enggak bisa pilih saya ya kan? Dibohongi pakai Surat Al-Maidah 51, macam-macam itu. Itu hak Bapak-Ibu ya. Jadi kalua Bapak-Ibu perasaan enggak bisa kepilih nih, karena takut masuk neraka karena dibodohin gitu ya, ngga apa-apa."

The crime of hate speech is regulated in the provisions of articles 156 and 156a of the Criminal Code, articles 27-29 of Law of the Republic of Indonesia No. 19 of 2016 concerning amendments to Law No. 11 of 2008 concerning information and electronic transactions article 28 paragraph 2 jo article 45A paragraph 2 of the ITE Law which specifically regulates the prohibition of expression disseminated in the form of information relating to ethnicity, religion, race, and intergroup (SARA). Meanwhile, the International Covenant on Civil and Political Rights (KIHSP) has mandated in article 20 paragraph 2 "the protection of hatred on the basis of nationality, race, religion with due regard to the limits of human rights that are allowed, one of which is the limitation of the rules of expression and opinion".(Rights, 1988)

The use of the phrase in the dissemination of information aimed at causing hatred and hostility in Article 28 paragraph 2 is interpreted subjectively and is a very broad formulation. According to R Soesilo, which is interpreted as an act of encouraging, inviting, arousing, burning enthusiasm to do something so that his actions to cause hatred alone cannot fulfill this measure.

This has also been confirmed by the Rabat Plan of Action which states that in order to be able to declare an expression as a criminal offense, one of the elements that must be met is the element relating to "intent",(OHCHR.org, 2012) explained in article 20 of KIHSP, there must be an element of incitement, for the distribution or dissemination of content alone cannot be categorized as an act that can be punished.

Linguists in some of the above cases must master the analytical framework in accordance with the tradition of forensic linguistics and are also required to understand the legal provisions as a reference context for the criminal event in question and must have qualified qualifications in the field of forensic linguistics. In the context of the development of linguistics, a new scientific branch that has developed under the name of forensic linguistics is a field of science that specifically examines language in a legal context. For example, the provisions contained in Article 156 a of the Criminal Code are measures that linguists must pay attention to when delivering their testimony related to this case. In the perspective of forensic linguistics, these provisions are the context that must be considered when the author examines the data analysis unit in this criminal case.

The analysis of language used as evidence of criminal acts (language as legal evidence), must pay attention to and analyze the utterance which is the unit of data analysis in several cases used as examples by the author. The objective aspect of the speech is related to the linguistic features that can be interpreted literally in the speech of Ahok, Dhani, Hollywing promo content, while the subjective aspect is related to the intention of the speech. The results of the analysis of these two things will be used to explain the main problem in this case, namely whether the speech or language used by the speaker has the dimension of blasphemy?

Sociolinguistics can be influential in analyzing cases of hate speech committed by public officials by paying attention to the social, cultural, and political context in which the hate speech is uttered.

For example, in the case of Basuki Tjahaja Purnama's hate speech, sociolinguistics can pay attention to how the use of language that denigrates or insults certain groups can strengthen certain social or political positions by denigrating other groups. In this

case, sociolinguistics can consider how such language and acts of hate speech can be connected to broader social and political conflicts.

In addition, sociolinguistics can also pay attention to factors such as the social status and power held by public officials that make them more likely to commit hate speech. For example, a public official who has great power and strong influence in society may use hate speech to strengthen his position and oppress certain groups that are considered threatening his power.

Thus, sociolinguistics can contribute to analyzing cases of hate speech committed by public officials by paying attention to the social, cultural, and political contexts that influence language production, as well as the social and power factors that influence the behavior and actions of these public officials. However, as in psycholinguistic analysis, sociolinguistic analysis must also be supported by other evidence and relevant legal considerations.

In any study of applied linguistics, it is important to ensure that the linguistic analysis has a rationale and relationship to the context it is being applied to. In this study, linguistic analysis is linked to the legal domain. Therefore, the important thing to note in this study is to merge the elements of law and linguistics through a clear paradigm. Regarding their respective roles, we need to know that the legal element in this study provides the background and framework for the context, while linguistics provides the tools to analyze that context based on the perspective of language in use and is associated with the science of sociolinguistics, while the science of Psycholinguistics can help to understand how the meaning of words or phrases used can trigger emotional and psychological responses in the recipient. For example, some words or phrases in a particular language can have stronger connotations or meanings in certain contexts, which can amplify the hateful message being conveyed. In addition, psycholinguistics can also help to understand how the tone of voice, intonation, and rhythm of voice used in hate speech can affect the thoughts and emotions of the recipient. Studies in psycholinguistics show that voice intonation can provide clues about the speaker's intentions and emotions, and can influence how the message is received by the receiver. As such, psycholinguistics can provide an in-depth analysis of how hate speech is produced and understood by certain individuals or groups. However, it is important to remember that psycholinguistic analysis is only one tool in understanding hate speech cases and must be supported by other evidence to avoid misjudgment or misinterpretation.

In terms of criminal law, hate speech is considered a criminal offense that can be subject to legal sanctions. In Indonesia, this is regulated in Article 28 paragraph

(2) of the 1945 Constitution which states that "everyone has the right to freedom of association, assembly, and expression" but with the condition that they must not disseminate information that causes hostility and contempt towards certain individuals or groups of people.

In addition, Article 45A paragraph (2) of Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions states that any person who intentionally and without right disseminates information containing insults and/or harassment of certain individuals or groups can be charged with a maximum imprisonment of 6 years and/or a maximum fine of 1 billion rupiah.

In the case of Holywings promotion and Ahmad Dhani's hate speech, the relevant parties can be charged with Article 28 paragraph (2) and Article 45A paragraph (2) of Law No. 19 of 2016. Meanwhile, in the case of hate speech committed by Basuki Tjahaja Purnama, he was subject to imprisonment for violating Article 156a of the Criminal Code on blasphemy.

However, it is important to note that in law enforcement related to hate speech, it is important to consider the elements of mens rea and the socio-cultural context in which the hate speech appears. This is because the mens rea element and the socio-cultural context can affect the level of guilt and crime committed by the perpetrator.

4. CONCLUSION AND RECOMMENDATION

The author concludes that hate speech is an act that harms individuals or groups and violates human rights. Handling hate speech cases requires a holistic approach through criminal law, sociolinguistics, and psycholinguistics. The use of language in speech affects the perception of the recipient, so sociolinguistics also needs to be considered by the judge to determine the existence of mens rea. Psycholinguistics makes an important contribution in understanding the intention behind the utterance, the effect of language on the recipient, the interpretation of the message, and the evaluation of evidence. In criminal law, mens rea is important for criminal sanctions, but handling hate speech cases requires a broader approach. The government needs to improve regulations, support anti-hate speech education, and provide training for law enforcement and the public.

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