

HATE SPEECH AND HARMONY IN INDONESIA

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Abstract

In 2015, 8 October Police of Indonesia released a circular on hate speech. Thus, the circular implies that citizens need information of what hate speech is. Thus, in this article, I will point out some keys information of hate speech and how it circulates by documenting some literatures. Based on my findings, hate speech is dangerous because it is starting point that leads to intolerance, social conflict and violence. Indeed, there are some cases of hate speech in Indonesia but they get less response from police because no clear law on hate speech. Reflecting to other countries, some has clear laws defining it.

Keywords: Hate Speech, Regulation, Indonesia

A. INTRODUCTION

Recently, National Police of Indonesia has released a circular on hate speech on 8 October 2015. Directly, there are many responses to the circular. Some respond it positively and some respond it negatively because of some reasons. The positives think that it is important to keep the peacefulness of Indonesia and the negatives think that it is restrictions of freedom expression and political defense of government to avoid criticism from citizens.

For example, Head of Press Council, Bagir Manan stated that the circular will make mass media easy to get punished by the circular (Masriadi, Kompas.com 2015). It is because mass media usually creates critiques, so that he thinks that it will limit media critiques. Moreover, it said that some urged to pull back the circular as Director of Institution of Press Law Help, Asep Komarudin suggested also (Tashandra, Kompas.com 2015). He criticized the circular because he is afraid that it will cause more problems. He considered the circular as something multi-interpretation, so that the National Police need to re-examine it.

In addition, from part regional government, Governor of Middle Java, Ginanjar admitted that he does not really support the circular. He hoped that the circular is not used as political force to set down some people. Even, he asked National Police not to limit freedom of expression, but it is used as the ethics of communication (Republika.co.id, 2015). Meanwhile, Dedi Mizwar, Deputy of Governor of West Java appreciated the circular because Laws of Internet and Electronic Transactions do not strongly respond to what have happened in social media today (Polda Jawa Barat, 2015).

Based on the facts above, those imply that the more explanation of issuance of the circular on hate speech is needed. Also, it is important to re-examine what hate speech is and what the purpose of the regulation of hate speech is. Moreover, it is also important how hate speeches have circulated in Indonesia. It is because the response seems shifted from the ideas of hate speech. Therefore, I will inquiry the idea of hate speech in Indonesia, circulating hate speeches and some reflection of some countries.

B. THE NATURE OF HATE SPEECH

Theoretically, J. Angelo Corlett and Robert Francescotti in "Foundations of a Theory of Hate Speech", defines that hate speech is a term of art in legal and political theory that is used to refer to verbal conduct – and other symbolic, communicative action – which willfully expresses intense antipathy towards some group or towards an individual on the basis of membership in some group, where the groups in question are usually those distinguished by

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ethnicity, religion, or sexual orientation (Simpson, 2013: 701). Then, hate speech frequently targets minorities or historically disfavored groups (Juhan, 2012: 1589). Thus, hate speech is acts to show hatred that also has negatives impacts to target of the speech.

Reassuring what hate speech is, it is useful and required to refer to international law and international principle that directly or indirectly regulate about hate speech. The international law is promoted by General Assembly of the United Nations that stated in Resolution No. 66/167. The international principle lies on The Camden Principles on Freedom of Expression and Equality that prepared by Article 19, an non-governmental institution that focuses on freedom of expression, on the basis of discussions involving a group of high-level UN and other officials, and civil society and academic experts in international human rights law on freedom of expression and equality issues at meetings held in London on 11 December 2008 and 23-24 February 2009 (Article19, 2009).

In addition, both principles can be guidelines for regulations of hate speech as it is suggested by Uli Parulian Sihombing et al. in “Ketidakadilan Dalam Beriman; Hasil Monitoring Kasus-Kasus Penodaan Agama dan Ujaran Kebencian atas Dasar Agama di Indonesia” (Injustice in Believing; The Result of Monitoring Cases of Religious Insult and Hate Speech in Indonesia) (Sihombing et al., 2012:7). The Resolution No. 66/167 is a principle that combats intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief (General Assembly, 2012: 1).

Meanwhile, the Camden Principles clearly describe and regulate about the hate speech. It restates Article 20 of International Covenant on Civil and Political Rights that all states should adopt legislation prohibiting any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (hate speech). Then, it is continued by statement that national legal systems should make it clear, either explicitly or through authoritative interpretation, that (Article19, 2009: 10):

- a. The terms ‘hatred’ and ‘hostility’ refer to intense and irrational emotions of opprobrium, enmity and detestation towards the target group.
- b. The term ‘advocacy’ is to be understood as requiring an intention to promote hatred publicly towards the target group.
- c. The term ‘incitement’ refers to statements about national, racial or religious groups which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups.
- d. The promotion, by different communities, of a positive sense of group identity does not constitute hate speech.

In short, the description of the Camden Principles is clearer. Based on it, hate speech is an intention to promote intense and irrational emotions of opprobrium, enmity and detestation publicly that create an imminent risk of discrimination, hostility or violence against persons belonging to those group. It is also completed by implied statement that I thinks the principle wants different communities do not promote hate speech. In other words, it promotes respectfulness. There are no restrictions about freedom of speech. It only requires to not speak that can harm others.

C. HATE SPEECH IN INDONESIA

1. Issuance of circular on hate speech on 8 October 2015

Many responses have referred to the circular positively or negatively. If there are two responses, citizens who do not really understand what the significance of circular and what hate speech are, will be confused. Many support it, but they also criticize what the criteria of hate speech. Therefore, this is a problem and needs to be clarified.

Responding on the pro and contra of the issuance, Kuwado reported on 6 November 2015 in Kompas.com that General Chief of National Police of Indonesia, Badrodin Haiti clarified what the origin of the circular is (Kuwado, Kompas.com, 2015). Based on the report, he clearly stated that the examinations of violence (e.g. incidents of Sampang, Cikeusik, and Tolikara, even Aceh Singkil) that has happened in Indonesia are the basic reason of the issuance of the circular. Based on the examination, it is founded that such incidents are triggered by hate speech in which also supported by the findings of Commission of National Police of Indonesia in 2013.

He apparently stated that the circulation is not new regulation and basic law. It is only an internal guideline for police to handle cases that considered as hate speech, so that there is

protection if there is who experiences it. It is not considered as a regulation because there is Books of Criminal Laws (KUHP/Kitab Undang-undang Hukum Pidana) that has regulated it. Also, it strongly emphasizes a preventive action for who included in the case. (Kuwodo, Kompas.com, 2015)

It is clear then that circulation is not a law. It is only reinforcement of police in activating the law of hate speech that implied in KUHP and other laws. Based on the circular, the form of hate speech includes humiliation, libel, defamation, unpleasant action, provocation, incitement, untrue report (National Police of Indonesia, 2015: 3). Those aim and effect on discrimination, violence, killing or/and social conflict. Then, on article (g) the aim to incite and ignite a hatred for individual or social group in various communities is based on ethnic, religion, religious group, race, class, skin color, gender, disability and sexual orientation. In addition, those can circulate through some medias: campaign speech, banner, social media, demonstration, religious speech, and mass media.

The description of hate speech is in line with the idea of the both international principle. The regulation of hate speech is to avoid intolerance. But, it must be noted that this circular is not law. The National Police only wants to stress what hate speech is. Also, the circular actually re-state that the regulation of hate speech has been implied in some laws in Indonesia. In addition, The National Police suggest ways to handle the hate speech for police, as it is also emphasized by Truno Yodo, Head of Regional Police of Purwakarta that the regulation is not something new, because it has been regulated in KUHP and UU ITE (Tribunjabar.co.id, Humas.polri.go.id).

2. Laws of Hate Speech in Indonesia

Indeed, regulation of hate speech has been implied in some laws as mention by the circular. Based on it, if the hate speech happens, it can refer to KUHP (Books of Criminal laws), Laws of No. 11 2008 about internet and electronic transactions, Laws of No. 40 2008 about racial and ethnic discrimination, Laws of No. 7 2012 about handling social conflict, and Regulation of National Police of Indonesia No.8 2013.

However, there are some notes referring to the some laws. For example, Djafar and Abidin (2014: 21) underline that the implementations of the laws do not run well. They examine some cases that have happened and show that people are easy to report and there is less understanding of police to the law (Ibid, 21). It because police also are easy to arrest, for example: the case of Prita Mulyasari who used email to express her opinion, but it is considered as a libel (Ibid, 21). Moreover, she has spent four years to handle her case.

Another notes also has been delivered by Sihombing et al. in their book report stating that a criminalizing for the speaker of hate speech in the name of religion is weak although there was the laws mentioned above (Sihombing et al, 2015: 83). Based on their findings, there was only one case of religious hate speech brought to a court until 2012: the case of Masohi-Maluku in 2009 (Ibid, 87). In addition, according to them, mostly the minorities are considered as the suspect beside the majorities although the majorities who spread hate speech in fact, as in incident of Sampang that Syiah group is the suspect instead (Ibid, 87-88).

Indeed, based on the notes, the idea of the laws is significant. It is to keep social condition. It is used to make people respect each other. It is because the strong of diversity in Indonesia. The problem is only the implementation of laws because the less understanding to the laws either by citizens or by law enforcer. Thus, it implies that some re-examinations or corrections to the laws are needed to avoid misinterpretation, in order the people will not misunderstand to the laws, like what happened to the circular.

3. Examples of cases that have happened

To make clear what hate speech, it is important to see some examples of hate speech that promote discrimination or violence. In the book report of Sihombing et al., they clearly illustrate some cases of hate speech that have happened in Indonesia until 2012. Below are some cases that have happened (Sihombing, 2012: 56-62):

a. Hate Speech to Ahmadiyah Group (2008)

A religious organization leader has spread hate speech in a religious speech, at Banjar, Tasikmalaya, West Java, on February. The hate speech has boosted intolerance to Ahmadiyah

by people in West Java and other regions. Suddenly months later, violence attacks happened in June. These are some parts of his speech:

"Kami ajak umat Islam ayo mari kita perangi Ahmadiyah, BUNUH Ahmadiyah di mana pun mereka berada, saudara! ALLAHUAKBAR!! BUNUH, BUNUH, BUNUH, BUNUH! TIDAK APA APA BUNUH... Kamu merusak akidah, DARAH KAMU HALAL!! AHMADIYAH HALAL DARAHNYA UNTUK DITUMPAHKAN. Persetan HAM! Tai kucing HAM! dan PERANGI AHMADIYAH, BUNUH AHMADIYAH, BERSIHKAN AHMADIYAH DARI INDONESIA! ALLAHU AKBAR! Tidak apa-apa, kami yang bertanggung jawab!"

(We invite all muslims, let's war against Ahmadiyah. Kill Ahmadiyah wherever they are! Allahuakbar! Kill, kill, kill, Kill! It is ok to kill them. You have destroyed our belief. Your blood is halal (allowed). The blood of Ahmadiyah is halal to be spilled. Damn HAM (human rights). Human right is feces of cat. War against Ahmadiyah, kill Ahmadiyah, and eradicate Ahmadiyah from Indonesia! Allahuakbar! It is ok, we are responsible for it!)

b. Hate speech on Syi'ah group (2012)

The hate speech was conveyed by a figure when celebrating Isra' Mi'raj of prophet Muhammad in Jaluak Sepuluh, Bangkalan Madura that uploaded in You Tube on 21 Mei 2012 in the front of public. This presumably leaded violence attacks and discrimination to the group on 26 Augustus 2015 until one of the group was death. Below are some parts of the speech:

"Silahkan kalo ada di suatu daerah, ada masuk syiah. USIR DARI TEMPAT ITU, SURUH PINDAH KE TEMPAT LAIN. Jangan hanya Tajul Muluk saja, bukan hanya Tajul Muluk saja diusir dari tempat itu. Habib yang masuk SYIAH USIR DARI TEMPAT ITU KARENA DIA MENGOTORI DAN MENJATUHKAN DATUK-DATUKNYA".

(Please, if there is who follow Syi'ah in a region, drive them out from the region! Demand them to move to other region! Not only TajulMuluk who must be driven out. Habib (Arabic term used to respect the ancestor of Prophet Muhammad), drive him out because he has polluted and destroyed his ancestors).

c. Condoning

This is usually and mostly done by some governmental officials in responding a violence incident. Their responses are wrong because they actually and indirectly have accepted the violence. For example, a violence attack to Ahmadiyah Group Ahmadiyah at Desa Cikeusik, Pandeglang, Banten on Februari 2011 indirectly has been supported by an official in a forum in responding Ahmadiyah issue. Below are some parts of the speech:

"Ahmadiyah harus dihentikan karena bertentangan dengan ajaran pokok agama Islam. Kalau harus dihentikan, dan tidak boleh lagi lanjutkan aktivitas-aktivitasnya" dan juga "Ahmadiyah telah menyulut amarah masyarakat karena masih terus melanjutkan aktivitasnya. Namun, kondisi itu masih bisa diredam kepolisian. Ajaran Ahmadiyah membuat banyak umat Islam merasa ajaran Islam dihina dan dinistakan. Lagipula, lanjutnya, ajaran ini sudah dilarang di sejumlah negara." Serta "Kalau enggak segera ambil keputusan tegas, potensi konflik akan ter-maintain dan meningkat serta bisa menimbulkan konflik sosial. Dengan demikian, menurut saya, Ahmadiyah harus dibubarkan,"

(Ahmadiyah must be stopped because it is contrast to Islamic teaching. If it is stopped, it cannot continue their activities. Also Ahmadiyah has make society become angry because they still continue their activities. But, police can dim the situation. Teaching of Ahmadiyah makes muslims feel the islamic teaching humiliated and insulted. Then, this group has been banned by state. If there is no clear decision, the potential of conflict will be more maintained and increased that can lead to social conflict. Therefore, for me Ahmadiyah must fall out.)

D. REFLECTION OF HATE SPEECH IN OTHER COUNTRIES

Mostly all states in the world, including the most liberal country like United State and West European countries, adopt such regulation; moreover, European Union released *Manual*

of *Hate Speech* (Azra, 2015). Then, Waldron notes that most liberal states now have laws against hate speech and that, in many states, the laws are characterized as prohibitions on 'group libel' or 'group defamation' (Altman, 2015).

In the United States itself, the regulation of hate speech is needed based on some cases that have happened, although there are some debates towards it. As it was happen to First Amendment that regulate about speech, I found many researches that show the debates to the amendment. It is because it is stated that the amendment offers no freedom of speech (B. Fisch, 2002: 464). For example, Juhan (2012: 1578) shows in his article that there were responses stating that it is offensive or unsavory for society. It becomes a debate because it is always contrasted to freedom of expression as it was done in Indonesia.

However, as far as reading some researches relating to the regulation of the speech, it is found that many researches imply the significance of the regulation by similar suggestion that the regulation must be clear theoretically and practically. One of the researches, Smolla (1990: 203) explains some theoretical principles underlying the reasons of why the principle can be accepted, one of the principle is Harm Principle that explains possible harm that can happen because of speech:

- a. Physical Harms. Speech may cause physical harms to persons or property in a variety of ways. Speech may be used to negotiate a contract soliciting a murder, or to commission an arsonist to burn down a building. Speech may be used to whip an angry crowd of protesters into an emotional frenzy, inciting them to storm barricades and throw rocks at police. The physical violence caused by these examples carries out the wishes of the speaker. Speech may also cause violence counter to the speaker's interests, as when those who hear the message are so outraged that they are moved to physical assault against the speaker.
- b. Relational Harms. Speech may interfere with relationships of various kinds, including social relationships, commercial transactions, proprietary interests in information, and interests in the confidentiality of communications.
- c. Reactive Harms. Speech can cause reactive harms-injuries caused by emotional or intellectual responses to the content of the speech. These reactive harms may be felt by individuals, or they may be harms conceptualized in some collective sense, such as injuries to community values of morality or civility.

In Australia, based on depth research by Katharine and Luke (2015) the regulation about have speech shows that the regulation of hate speech has positive effect for society. It can make society safer and indirectly build good society because it has educative effect when they are going to speech. Both of them clearly conclude their research that:

"... We have found that Australian hate speech laws provide some remedies... Further, the laws have a direct educative function... The laws also have indirect educative value, both in terms of setting a standard for public debate and in the sense that (even unsuccessful) complaints can be used to raise awareness about appropriate ways of expressing oneself in public... We found no evidence of an undesirable chilling effect on public discourse, and considerable evidence that members of the public continue to express themselves on a range of controversial policy issues. We also found little evidence that Australia's regulatory framework produces an unwanted martyr effect, with only one case in the last 25 years having done so. (Katharine and Luke, 2015).

Therefore, the regulation of hate speech is needed is to avoid discrimination, intolerance and social conflict, even genocide as it has happened in Rwanda 1994. It is important to reflect to Rwanda incident that considered as the failure of International human rights law to provide an adequate response to the genocide, particularly by not preventing the regression from 'hate propaganda', to 'incitement to violence', and to genocide (Viljoen: 2015: 13). Viljoen (2015: 13) clearly argues that United Nation must take seriously to the existing regulations to avoid such incident and reminds for states that have not yet done so, to criminalize hate propaganda, and for those that have, to prosecute diligently.

E. CONCLUSION

Regulation of hate speech, speech that aims or effects on discrimination, intolerance, social conflict, or persecution, should be taken seriously to build peacefulness and security in

society. Basically Indonesia has had the regulation in some laws; the circular on hate speech is not law is only reinforcement to the existing law. But, based on some notes from who do research about the law, government needs to reexamine the laws to make them clearer and avoid misinterpretation because based my view sometimes people think instead the laws are to prohibit critique or expression. Also, the national laws, including international laws and principles should be implemented correctly and seriously reflecting to the harms of the happened cases of hate speech. In addition, each element always should be aware to the regulation. Strong spirit of respect should be implemented in each self.

It must be clear which one is hate speech, which one is blasphemy, or which one is critique. Indeed, there are no laws that directly speak about hate speech. It is only implied and attached in some laws. Therefore, the meaning of hate speech shifted from the nature referring to international principle or law. For example, the mentioning of *pencemaran nama baik* (libel) and *tindakan tidak menyenangkan* (unpleasant action) is bias. All elements must take note of this category that these can be categorized as hate speech if these show hatred, aims and effect to discrimination, intolerance and social conflict, even genocide in the name of religion, belief, ethnic, social class or/and sexual orientation.

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