

## HATE SPEECH IN THE PERSPECTIVE OF INDONESIAN LAW AND ISLAMIC LAW

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### ABSTRACT

*This research aims to find out the provisions of hate speech in the democratic system in Indonesia according to the provisions of the legislation in force in Indonesia and according to Islamic law. This research is a legal research that uses descriptive-qualitative method with several approaches, namely: conceptual approach, case approach, statutory approach, and comparative approach. The results of this research explain that: First, hate speech is a violation of human rights; Second, some cases of violations have damaged or killed both physically and psychologically a person; Third, sanctions in law enforcement for hate speech do not provide a deterrent effect on the perpetrators due to the lack of law enforcement, and easy problem solving because it can be done by mediation, as well as dependence on the interpretation of judges in assessing violations; Fourth, one of the principles of Islamic law (Maqasid Shari'ah) is to protect honor (hifdz nafs), it is not recommended to slander, demean others, insult, and spread false news, and Jarimah Ta'zir is a punishment for those who commit violations.*

**Keywords:** Hate speech, Democracy, Positive Law, Islamic Law

### INTRODUCTION

The issue of hate speech has caused uproar in society and has become a problem that is endlessly debated. If a public official who commits hate speech is reported to law enforcement officials, they will eventually be acquitted without any legal process, or the defendant may be tried but acquitted.<sup>1</sup> Conversely, if it is delivered by ordinary people, advocates, and intellectuals who are considered to be in opposition to the authorities (opposition), it must end up in court with a decision to violate the Law on Electronic Transaction Information, then have to languish in prison.

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<sup>1</sup> M Muslimin, 'The Idea of State Criminalization of Crimes Against Press Freedom', *Proceedings of the UMS National Law Seminar.*, 40, 2018, 456–70. <<https://publikasiilmiah.ums.ac.id/xmlui/handle/11617/9718>>.



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Some court decisions include the South Jakarta District Court Decision Number 370/Pid.Sus/2018/PN.Jkt.Sel dated January 28, 2019, Ahmad Dhani was convicted of committing hate speech. Ahmad Dhani is considered guilty of committing hate speech through social media by alluding to blasphemy. Through his Twitter account, Ahmad Dhani stated "Anyone who supports a blasphemer is a bastard who needs to be spit in the face".<sup>2</sup> The panel of judges at the South Jakarta District Court also ruled that Asma Dewi violated Article 207 of the Criminal Code for using the words "koplak" and "edun" in her Facebook post. Meanwhile, Alfian Tanjung was acquitted of the hate speech case in the Central Jakarta District Court. Alfian was proven to have tweeted "PDIP is 85% PKI cadres" on his Twitter account but his actions were considered not a criminal offense,<sup>3</sup> but in another case at the Surabaya District Court, Alfian Tanjung was convicted because in his video, Alfian said that "Jokowi is a PKI",<sup>4</sup> "China is a PKI", "Ahok must be beheaded", and "Metro Jaya Police Chief is indicated to be a PKI".<sup>5</sup> Then the Muaro District Court Decision No. 45/PID.B/2012/PN.MR on behalf of the defendant Alexander AAN was convicted for uploading a link to a picture and writing of the Prophet Muhammad entitled Prophet Muhammad having sex with his wife's maid.<sup>6</sup>

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<sup>2</sup> '2 Criminal Experts Assess Ahmad Dhani's Tweets Do Not Contain Hate Speech', *Tempo.Co*, 2018 <<https://metro.tempo.co/read/1141207/2-ahli-pidana-nilai-cuit-ahmad-dhani-tak-kandung-ujaran-kebencian>>.

<sup>3</sup> Kuswandi, *Alfian Tanjung Calls PDIP 85 Percent PKI, Hasto: That's Serious Slander*, 2018 <<https://www.jawapos.com/kasuistika/0194861/alfian-tanjung-sebut-pdip-85-persen-pki-hasto-itu-fitnah-serius>>.

<sup>4</sup> Ninis Chairunnisa, *This Speech That Made Alfian Tanjung Sentenced to 2 Years in Prison*, 2017 <<https://nasional.tempo.co/read/1041914/ujaran-ini-yang-membuat-alfian-tanjung-divonis-2-tahun-penjara>>.

<sup>5</sup> 'Ceramah Ustadz Alfian Tanjung Soal PKI Berujung Penjara', *Okezone*, 2017 <<https://nasional.okezone.com/read/2017/05/30/337/1703336/ceramah-ustadz-alfian-tanjung-soal-pki-berujung-penjara>>.

<sup>6</sup> Rus Akbar, 'Atheist civil servant sentenced to 2.5 years, prosecutor appeals', *Okezone*, 2012 <<https://news.okezone.com/read/2012/06/15/340/647662/pria-cpns-ateis-divonis-2-5-tahun-jaksa-ajukan-banding>>.

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It is also different from the statement of a member of the House of Representatives of the Republic of Indonesia (DPR RI) who equated the Indonesian National Army (TNI) with gangs during a hearing meeting (RDP) with the Ministry of Defense and TNI. Then the statement of another member of the DPR RI who criticized or questioned the Sundanese language in communicating in meetings, of course for some people questioned that what was wrong if using Sundanese. Of course, some of these problems ended with the word "sorry" and there was no further legal process. The above case seems to strengthen the public perception that "the law is blunt upwards but sharp downwards",<sup>7</sup> while article 28 D paragraph 1 of the 1945 Constitution of the Republic of Indonesia (UUD 1945) states that "everyone has the right to recognition, guarantee of protection, and certainty of a just law and equal treatment before the law". The 1945 Constitution explicitly provides legal certainty to every citizen, they have the same rights and there is no difference between them whether they are rich, officials, or descendants of nobles.

Indonesia is a vast country inhabited by diversity, consisting of various cultures, regional languages, races, ethnic groups, religions, and beliefs, etc.<sup>8</sup> This condition is a gift, blessing, and wisdom if we are able to arrange it in an integration that produces beauty and strength, but it can also be a disaster for the disintegration of the nation when multiculturalism is a problem. This condition is a gift, blessing, and wisdom if we are able to arrange it in an integration that produces beauty and strength, but it can also be a disaster for the disintegration of the nation when multiculturalism is not accommodated properly.<sup>9</sup>

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<sup>7</sup> Amrunsyah, "Sharp Downward and Blunt Upward (Review of the Implementation of Criminal Law in Indonesia)", *Journal of Legislation and Islamic Criminal Law.*, II.01 (2017), 50–73.

<sup>8</sup> Munir Salim, 'Bhinneka Tunggal Ika Sebagai Perwujudan Ikatan Adat-Adat Masyarakat Adat Nusantara', *Al Daulah : Jurnal Hukum Pidana Dan Ketatanegaraan*, 6.1 (2017), 65–74 <<https://doi.org/10.24252/ad.v6i1.4866>>.

<sup>9</sup> Abd Mu'id Aris Shofa, 'Memaknai Kembali Multikulturalisme Indonesia Dalam Bingkai Pancasila', *JPK (Jurnal Pancasila Dan Kewarganegaraan)*, 1.1 (2016), 34–41 <<http://journal.umpo.ac.id/index.php/JPK/article/view/302>>.



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As it is known that Indonesia is a country of law as well as a country that adheres to a democratic system, meaning that Indonesian people are free to express opinions, expressions and also create with ethical and legal restrictions that apply in the country of Indonesia. There are still many Indonesians who do not understand the difference between freedom of expression and spreading hatred, the freedom of expression is sometimes uncontrolled and ends in hate speech.

Along with technological advances, human behavior in society and the state is increasingly complex,<sup>10</sup> social norms seem to disappear with the behavior of freedom of expression, they easily write their opinions and attitudes on social media. Often social media such as Facebook, Twitter, Instagram, Blackberry message (BBM), Whatsapp (WA), websites, and so on are increasingly widespread because each group attacks other groups. Most of these sites use internet forums and news to emphasize a certain point of view. Swear words or blasphemy are easily spread by these media and the perpetrators generally do not realize that what they are doing is already in the category of breaking the law and tends to cause mass destruction. Hate speech content should not circulate easily on social media. This is to prevent the realization of the Goebbels doctrine which states that lies that are campaigned continuously and systematically that turn into (as if) the truth, this is where the unclear debate begins.<sup>11</sup>

The focus of attention of the government and society today is the serious act or crime of hate speech. Hate speech itself is "an act of communication carried out by an individual or group in the form of provocation, incitement, or insult to another individual or group in terms of various aspects such as race, color, gender, disability, sexual orientation nationality, religion and others.

The beginning of hate speech appeared in Indonesia along with the increasing number of rallies, demonstrations and heated debates which are generally dominated by arrogant groups, feeling strong, having protectors, having influence, large masses

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<sup>10</sup> Sunarja E, 'Hate Speech Berbasis Agama Dalam Materi Khutbah Jumat' (Universitas Islam Negeri Sunan Gunung Djati Bandung, 2018).

<sup>11</sup> Eko Sulisty, 'Negara Hadir Melawan Hate Speech', *Sindo News*, 2017 <<https://nasional.sindonews.com/berita/1236329/18/negara-hadir-melawan-hate-speech>>.

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and so on. However, it is possible and has happened where minority groups trigger hate speech.<sup>12</sup> Especially in the political year, hate speech is suddenly popular. The intensity of this behavior is increasing marked by the democratic party. This is due to friction or differences that represent certain groups of ethnicity, religion, race, and intergroup (SARA). Certain support groups may be at odds with other candidate support groups. There are also certain candidate statements whose words harass or insult other candidates and there are also people or groups who spread certain news whose activities are related to SARA to cause words of hatred and go viral on social media. Therefore, the closer to the political contestation agenda, the more hate speech will increase. This is because hate speech is used as one of the campaign strategies to attack and bring down political opponents.<sup>13</sup>

The conflict that occurred has become news and public attention because it can strengthen public skepticism towards elections, which is arguably one of the spearheads of democracy in Indonesia. The example above indicates that now the circulation of content smelling of hate speech has a great chance of circulating, especially through social media and influencing the public, especially the millennial generation, because it is not only done by individuals but has been organized. This is in line with data from the Ministry of Information and Communication, which found 3,640 SARA-based hate speeches in the digital space since 2018.<sup>14</sup>

There are a number of international instruments that deal with hate speech, such as: UN Declaration of Human Rights 1948; Convention On The Elimination Of All Forms Of Racial Discrimination (CERD); and International Covenant on Civil and Political Rights (ICCPR).

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<sup>12</sup> Pahriadi, *'Hate Speech in the Perspective of the Qur'an'* (University of Alauddin Makassar).

<sup>13</sup> Zahra Mahrunisa, *'Legal Analysis of Hate Speech in Elections Based on Law Number 7 of 2017 concerning Elections and Fiqh Siyasah Dusturiyyah'* (State Islamic University Maulana Malik Ibrahim Malang, 2019).

<sup>14</sup> *Siaran Pers No. 143/HM/KOMINFO/04/2021 Tentang Sejak 2018, Kominfo Tangani 3.640 Ujaran Kebencian Berbasis SARA Di Ruang Digital, 2021* <[https://www.kominfo.go.id/content/detail/34136/siaran-pers-no-143hmkominfo042021-tentang-sejak-2018-kominfo-tangani-3640-ujaran-kebencian-berbasis-sara-di-ruang-digital/0/siaran\\_pers](https://www.kominfo.go.id/content/detail/34136/siaran-pers-no-143hmkominfo042021-tentang-sejak-2018-kominfo-tangani-3640-ujaran-kebencian-berbasis-sara-di-ruang-digital/0/siaran_pers)>.

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In addition, Law No. 11 of 2008 as amended by Law No. 19 of 2016 on Electronic Information and Transactions (ITE Law) also contains prohibitions and criminal threats for perpetrators who make hate speech or fake news. Article 28 paragraph (1) in conjunction with Article 45 of this Law contains criminal penalties for any person who intentionally and without rights spreads false and misleading news that results in consumer harm in electronic transactions. This criminal offense is formulated materially. This means that the criminal offense is fully completed when the consequences of the act have arisen, namely consumer harm in electronic transactions. The intentional element means that the perpetrator intends to spread false and misleading news, and intends or at least realizes that there will be consequences for consumers. The perpetrator also understands that what he is doing is not justified (subjective unlawfulness), and understands that it will result in harm to consumers of electronic transactions.

In addition to the ITE Law, Article 207, Article 210, and Article 321 of the Criminal Code (KUHP) also contain prohibitions on defamation, in all its forms, that attacks honor and good name. The substance of these articles has been restated in the Draft Criminal Code. In the Draft Criminal Code, what is meant by "insult" is an attack on the honor or good name of another person. The nature of the act of defamation is if the act of defamation is done by accusing, either orally, in writing, or with pictures that attack the honor and good name of a person, thus harming that person.<sup>15</sup>

Related to the legal issues that are used as this research in the legislation is still debatable, so from the background described, the author is interested in raising the title "Hate speech in the Perspective of Indonesian Law and Islamic Law". By formulating the problem: *first*, how hate speech is viewed from Indonesian positive law; *second*, how hate speech is viewed from Islamic law.

## METHOD

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<sup>15</sup> Muhamad Nasrudin and Ibnu Akbar Maliki, 'Settlement of Hate Speech Crimes Based on Restorative Justice with Fiqh Islah Approach and Marah Compensation Theory', *Journal of Nizham*, 9.1 (2021), 91–109.

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This research uses empirical juridical research methods, namely field research with several interviews as the main data and library research which sees law as an abstract system of regulations, whose attention is focused on law as a separate subject, regardless of its relationship with matters outside of these regulations.<sup>16</sup> This research consists of primary sources, namely interviews with library materials containing new or up-to-date scientific knowledge. And, secondary sources, namely library materials that contain information about primary materials.<sup>17</sup>

### DISCUSSION

#### 1. Hate Speech in the Indonesia Legal System

Hate speech is an act of communication carried out by an individual or group in the form of provocation, incitement, or insult to another individual or group in terms of various aspects such as race, color, ethnicity, gender, disability, sexual orientation, nationality, religion, and others.<sup>18</sup> Hate speech can also be defined as words, behavior, writings, or instructions that are prohibited because they can trigger acts of violence and prejudice either from the perpetrators of these statements or the victims of these actions. Websites that use or implement Hate Speech are called Hate Sites. Politicians argue that the term Hate Speech is a modern example of novel Newspeak, where Hate speech is used surreptitiously to criticize policies that are realized in a poor and hasty manner as if they were politically correct.<sup>19</sup>

To date, there is no legal definition of what constitutes Hate Speech and defamation in the Indonesian language. In English, defamation is defined as defamation, libel, and slander which when translated into Indonesian are slander

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<sup>16</sup> Bambang Sunggono, "Metode Penelitian Hukum, Jakarta," *PT Raja Grafindo Persada*, 2010.

<sup>17</sup> Soerjono Soekanto, "Penelitian Hukum Normatif: Suatu Tinjauan Singkat," 2007.

<sup>18</sup> Adria Maulana Prabowo, *'The Application of Law Against Perpetrators Who Spread Hate Speech in General Elections According to Law Number 7 of 2017 concerning Elections'* (Dharmawangsa University, Medan, 2019).

<sup>19</sup> Joseph Fallon, *'UK-USA : The British Character of America'*, 2001, 91–95.

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(defamation), oral slander (slander), written slander (libel). In Indonesian, there is no legal term to distinguish between these three words.<sup>20</sup>

**2. Forms of Hate Speech**

The forms of Hate Speech can be in the form of criminal offenses regulated in the Criminal Code (KUHP) and other criminal provisions outside the Criminal Code, among others:

No.	Forms of Hate Speech	Description
1.	insults	According to R. Seosilo in his book entitled Kitab Undang-Undang Hukum Pidana (KUHP) and complete article-by-article comments in explanation of article 310 of the Criminal Code, explains that: Insulting is attacking someone's honor and good name, the attacked here usually feels embarrassed. The object of insult is a sense of self-esteem or dignity regarding honor and the good name of the person whether individual or communal (group).
2.	Defamation	The definition of defamation in the Criminal Code is known as defamation (defamation) is the act of defaming the good name or honor of a person by stating something either orally or in writing.
3.	Blasphemy	Defamation is a word, behavior, writing, or performance that is prohibited because it can trigger acts of violence and prejudice either the perpetrator of the statement or the victim of the action, while according to Article 310 paragraph (!) of the Criminal Code defamation is an act committed by accusing a person or group of having committed a certain act with the intention that a person or group has committed a certain act with the intention that the accusation is spread (known by many people). The alleged act need not be a punishable act such as stealing, embezzlement, adultery and so on. It is enough that it is an ordinary act, certainly a shameful act.
4.	Unpleasant Actions	Unpleasant Behavior is a treatment that offends the feelings of others. Whereas in the Criminal Code unpleasant actions are regulated in article 335 paragraph (1). Article 335 paragraph (1): shall be punished by a

<sup>20</sup> Atven Vemanda Putra, 'The Existence of Article 27 Paragraph (3) of Law Number 11 Year 2008 in Defamation Cases', 2013.



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	maximum imprisonment of one year or a maximum fine of four thousand five hundred rupiahs. (1) Any person who unlawfully forces another person to do, not to do or to tolerate something, by means of violence, another act or unpleasant treatment, or by means of threat of violence, another act or unpleasant treatment, either against himself or against another person. (2) Any person who forces another to do, not to do or to tolerate something by threat of defamation or libel.
5. Provoke	According to KBBI, provoke means an act done to arouse anger by inciting, provoking anger, irritation and making the person who is provoked have negative thoughts and emotions.
6. Inciting	According to R.Soesilo, inciting means encouraging, inviting, arousing or burning people to do something. In the word "incite" is implied the nature of "intentionally". Inciting is harsher than "luring" or "persuading" but not "forcing".
7. Spreading fake news	Spreading false news is broadcasting news or news where it turns out that the news broadcast is false news. What is considered as false news is not only telling something empty news, but also misrepresenting an event.

Then some aspects of Hate Speech as intended, aim to incite and ignite hatred against individuals and / or groups of people in various communities that can be distinguished from aspects:<sup>21</sup>

- a. Ethnicity, Seeking general support, by inciting violence, discrimination or hostility so that social conflicts occur between tribes;
- b. Religion, Insulting on the basis of religion, in the form of incitement to commit violence, discrimination or hostility.
- c. Religious sect, Advocating or seeking public support for the interpretation of a religion practiced in Indonesia or conducting religious activities, with the intention of inciting others to commit violence, discrimination or hostility.

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<sup>21</sup> Komisi Hak Asasi Manusia (KOMNASHAM), *Buku Saku Penanganan Ujaran Kebencian (Hate Speech)* (Jakarta: Komnasham, 2015).

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- d. Belief/Belief, Inciting hatred or statement of hostility to the belief/belief of others so that discrimination between communities arises.
- e. Race, Showing hatred or hatred to others because of treatment, distinction, restriction or restoration based on race which results in the revocation or reduction of recognition or exercise of human rights.
- f. Intergroup, Dissemination of hatred against an intergroup of the population with the intent to incite people to commit violence, discrimination or hostility.
- g. Skin Color, Showing hatred or resentment towards others because of differences in skin color which results in the revocation or reduction of recognition or exercise of human rights.
- h. Ethnicity, Showing hatred or resentment towards another person because of treatment, distinction, restriction or selection based on ethnicity which results in the deprivation or diminution of the recognition or exercise of human rights.
- i. Gender, Any form of distinction, exclusion, or restriction that has the effect or purpose of reducing or eliminating the recognition, utilization or exercise of human rights, based on sex.
- j. People with Disabilities, Showing hatred or resentment towards people with disabilities, so that there are restrictions, obstacles, difficulties and reduction or elimination of the rights of people with disabilities.
- k. Sexual Orientation, Gender Expression, Expressing hatred or resentment towards others who have a sexual orientation, resulting in discrimination against such people.

**3. Means or Tools used to Commit Hate Speech**

Premeditated abuse The means of Hate Speech according to the National Commission on Human Rights (KOMNASHAM) can be done through various media or means, which contain elements of hate speech, among others:<sup>22</sup>

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<sup>22</sup> (KOMNASHAM).

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No.	Facilities	Description
1.	Campaigns	expressing thoughts in public, either in writing or orally, by inciting others to violence, discrimination or hostility.
2.	Banner	Displaying or posting in public writings accompanied by pictures and containing information containing hateful or insulting statements with the intent to incite people to commit violence, discrimination or hostility.
3.	Social media networks	Hate Speech committed through printed or electronic mass media, namely: First, distributing or transmitting and making accessible electronic information or electronic documents that contain insults and defamation. Second, spreading false news to cause hatred or hostility of certain individuals or groups of people based on ethnicity, religion, race, and intergroup.
4.	Public expression of opinion	expressing thoughts in public, by inciting people to violence, discrimination or hostility.
5.	Religious lectures	lectures that incite hostility, discrimination or violence on the basis of religion by misusing the contents of the holy book.
6.	Print or electronic mass media	distribute or transmit and make accessible electronic information or electronic documents that contain statements of hostility, hatred or contempt.
7.	Pamphlet or flyer	Broadcasting and publicly displaying or posting writings accompanied by pictures containing statements of hatred or contempt with intent to incite violence, discrimination or hostility.

Basically, hate speech can be channeled in two ways. Namely the conventional way in the real world or by spreading in social media or cyber space. Both methods have different ways of spreading. Although the basis is the same using words.

**4. Laws that regulate Hate Speech**

Hate Speech in Indonesia is regulated in various regulations and ratification of international covenants, although it has not had a significant impact on overcoming it in society. Hate speech on October 08, 2015 was announced as a criminal offense by

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the Indonesian Police through Circular Letter Number: SE/06/X/2015 on hate speech. Forms of hate speech included in the criminal offense of the Criminal Code such as insult, defamation, blasphemy, unpleasant acts, provocation, incitement, and dissemination of false news. The negative impacts that often occur with the spread of untrue news or news and hate speech are very troubling, ranging from causing embarrassment, social sanctions from both social media users and the community, loss of reputation, and life threatening. The circular refers to several laws: first, the Criminal Code (KUHP); second, Law No. 39 of 1999 on Human Rights; third, Law No. 2 of 2002 on the Indonesian National Police; fourth, Law No. 12 of 2008 on the Ratification of the International Convention on Civil and Political Rights; fifth, Law No. 11 of 2008 on Electronic Information and Transactions; sixth, Law No. 40 of 2008 on the Elimination of Racial and Ethnic Discrimination, and seventh, Law No. 7 of 2012 on Social Conflict Management. Some of these provisions are explained as follows:

Act/ The Law	Article Materials
<b>KUHP Article 156</b>	any person who publicly expresses feelings of hostility, hatred or contempt against one or more groups of the Indonesian people, shall be punished by a maximum imprisonment of four years or a maximum fine of three hundred Rupiahs.
<b>KUHP Article 157 paragraph (1) dan (2)</b>	(1) Any person who disseminates, openly demonstrates or puts up a writing or portrait, the contents of which contain statements of feelings of hostility, hatred or contempt among or against groups of the Indonesian people, with intent to give publicity to the contents, shall be punished by a maximum imprisonment of two years and six months or a maximum fine of three hundred Rupiahs. (2) If the offender commits the crime in his profession and five years have not yet elapsed since an earlier conviction on account of a similar crime has become final, he may be deprived of the exercise of said profession.
<b>KUHP Article 310 paragraph (1), (2), dan (3)</b>	Any person who with deliberate intent attacks someone's honor or good name by alleging something, with the obvious intent to give publicity thereto, shall, being guilty of libel, be punished by a maximum imprisonment of nine months or a

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	maximum fine of three hundred Rupiahs. (1) If this is done by means of a writing or portrait broadcast, exhibited or affixed in public, it shall, being guilty of libel, be punished by a maximum imprisonment of one year and four months or a maximum fine of three hundred Rupiahs. (2) It shall not be considered as libel or slander in writing, if the act is clearly committed in the public interest or out of necessity of self-defense.
<b>KUHP Article 311 paragraph (1)</b>	If the person committing the crime of libel or slander is allowed to prove that what is alleged is true, does not prove it and the accusation is made contrary to what he knows, he shall be punished by a maximum imprisonment of four years.
<b>Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information Article 45A paragraph (2) jo. Article 28 paragraph (1)</b>	Every person intentionally and without the right to disseminate information that is intended to create a sense of hatred or hostility of individuals and/or certain groups of people based on ethnicity, religion, race and intergroup (SARA).
<b>Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information Article 45 paragraph (2)</b>	any person fulfilling the elements as referred to in Article 28 paragraph (1) or paragraph (2) shall be punished with imprisonment of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).
<b>Law No. 40 of 2008 on the Elimination of Racial and Ethnic Discrimination Article 16</b>	every person who intentionally shows hatred or resentment to another person based on racial and ethnic discrimination as referred to in article 4 letter b number 1, number 2, or number 3, shall be punished with a maximum imprisonment of 5 (five) years and/or a maximum fine of Rp.500,000,000.00 (five hundred million rupiah).

The law on hate speech in principle has fulfilled the elements of limiting freedom of expression. However, in its application, the law is considered a form of discrimination against someone who wants to express their opinion through any media. In fact, the law was formed to prevent conflicts between individuals and groups. The content material contained in the law can be said to be a rubber article based on the cases described previously. Therefore, further explanation of the article is needed, such as an explanation of the sentence called hate speech and insult itself.

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As for the legal system in Indonesia, the government makes restrictions on freedom of expression, due to the many expressions based on hatred that result in the creation of conflicts between individuals and groups related to ethnicity, religion, race and custom (SARA).<sup>23</sup>

One of the articles most often used by law enforcers to spread hatred is Article 45A paragraph (2) of Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information above, by some activists/society is often interpreted as an article that shackles freedom and human rights. Based on the dictum of Law No. 11/2008, the purposes of this Law are: first, that the use and utilization of Information Technology must continue to be developed to maintain, preserve, and strengthen national unity based on the Laws and Regulations in the national interest; second, that the utilization of Information Technology plays an important role in trade and national economic growth to realize public welfare; third, that the government needs to support the development of Information Technology through legal infrastructure and its regulation so that the utilization of Information Technology is carried out safely to prevent its misuse by taking into account the religious and socio-cultural values of Indonesian society.<sup>24</sup>

### **5. Factors Causing Hate Speech**

Hate speech has gone viral in various mass media. Hate speech cases in Indonesia can be said to be in a state of alert, because many cases have occurred and processed in court. there are several factors that cause perpetrators to commit hate speech crimes, namely:<sup>25,26</sup>

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<sup>23</sup> Chandra Oktiawan, 'Yuridis Tindak Pidana Ujaran Kebencian Dalam Media Sosial', *Al 'Adl: Jurnal Hukum*, 13.1 (2021), 168–88.

<sup>24</sup> Erdianto Effendi, 'Penafsiran Ujaran Kebencian Dalam Hukum Pidana Indonesia Berdasarkan Beberapa Putusan Pengadilan', *Riau Law Journal*, 4.1 (2020), 23 <<https://doi.org/10.30652/rlj.v4i1.7824>>.

<sup>25</sup> Zulkarnain Zulkarnain, 'Ujaran Kebencian (Hate Speech) Di Masyarakat Dalam Kajian Teologi', *Studia Sosia Religia*, 3.1 (2020), 70–82 <<https://doi.org/10.51900/ssr.v3i1.7672>>.

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No	Causal Factors	Description
1.	Individual/personal factors	The individual's own psychological factors can lead to crimes of emotional distress, low mental capacity, hurt feelings towards the victim, grudges, and so on.
2.	Public ignorance factor	The factor of public ignorance is also a cause of hate speech crimes, the lack of socialization / counseling to the community is what causes this crime to occur in a society that is classified as not knowing about the existence of rules regarding hate speech crimes, especially insults.
3.	Facilities and amenities factor	This factor also affects the era of globalization as it is now, and it also affects the rapid growth of electronic media, especially internet media so that the dissemination of information is easier, faster, and more effective to obtain. So that someone is less wise in using internet or communication media facilities and there are no restrictions on the use of communication tools.
4.	Factor of lack of social control	The lack of reasonable internal control on the part or the environment in the family who often do not want to know about the conditions of their family members, and from the external party where the community does not care about the incidents of crime that occur around it, the loss of control and the absence of social norms or conflicts of norms in question.
5.	Environmental factors	The environment is the main place in supporting the occurrence of criminal behavior patterns committed by a person. Factors that influence this include an environment that provides opportunities to commit crimes and a social environment that provides examples and role models.
6.	Economic and poverty factors	Economic factors that can trigger the occurrence of crimes usually start from the economic situation of the perpetrator who is classified as low, unemployed, unemployed and pressed for a high and urgent needs so as to encourage the behavior of committing hate speech crimes.

<sup>26</sup> Olga Jubany, 'Backgrounds, Experiences and Responses to Online Hate Speech: An Ethnographic Multi-Sited Analysis', May 2013, 2016, 744-49 <<https://doi.org/10.2991/sschd-16.2016.143>>.



7.	Community factor	interest	People tend not to think about the impact of what will happen in the future by committing hate speech crimes on social media. Many people commit hate speech because they have certain goals including personal, political, SARA, or just want to be known by many people.
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The first factor above is a trigger for hate speech because in the person of netizens there is a negative prejudice against certain people or groups, for example there is an assessment that a certain group, religion, or ethnicity is uncivilized, stingy, very exclusive and so on. Then there are individuals who feel that they get pleasure by making others difficult, or in other words "it's nice to see people in a position of distress and it's hard to see other people feel happy". individuals who do that because for them it is fun and feel entertained. So, it is not just because they want to gain recognition and higher status, and it is not a matter of money, their intention is purely to entertain themselves and they do not care about the legal repercussions. this kind of person is strange and it exists in society.

### **Hate Speech in Islamic Law**

The Prophet Muhammad, who was sent to portray God's revelation and is believed to be a universal legal reference for mankind that is not limited by space and time, which actually positions the expression and attitude of the Prophet Muhammad in dealing with the phenomenon of hate speech. To address the phenomenon of hate speech, in the history of the Prophet, the Prophet showed different responses to several cases that were considered to contain insults or harassment. At a certain time and space, the Prophet responded to hate speech in a firm manner accompanied by condemnation, then at a different time and space the Prophet responded in a calm and patient manner. The Prophet is basically an exemplary reflection that hating others is a despicable act. The description of it can be found in the hadith of the Prophet that "Do not hate each other, envy each other, turn your backs on each other and break each other - ties of friendship or kinship - and be you all O servants of God



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as brothers. It is not lawful for a Muslim to leave - i.e. not greet - his brother for more than three days (*Muttafaq 'Alaihi*).<sup>27</sup> Similarly, the Qur'an states that:

"O you who believe, let not a group of men despise another group, so that those who are laughed at may be better than them, nor let a group of women despise another group, so that those who are despised may be better than them, and do not revile yourselves and do not call each other by offensive names. The worst of calls is that which comes after faith, and whoever does not repent, then they are the wrongdoers. (Q.S. Al-Hujurat/49: 11).

O you who have believed, avoid prejudice, for some prejudice is sin, and do not find fault with people, and do not backbite one another. Would any of you like to eat the flesh of his dead brother? Then surely you would be disgusted with him. and fear Allah. Verily, Allah is Receptive to repentance, and Merciful. (Q.S. Al-Hujurat/49: 12)

Actions that are prohibited based on the verses of the Qur'an and al-Hadith above are acts of hating fellow Muslims and non-Muslims, and related to bad words in the form of slander or the act of spreading news that does not match the facts, incitement, speech in the form of speech and actions that can hurt the feelings of others, as well as disbelieving fellow Muslims, desecrating religion and insulting with obscenities.<sup>28</sup>

Why are slander and hate speech more cruel than murder? If it is associated with the meaning of slander as an act that can cause chaos, then it is not surprising that it is considered more cruel than a murder. According to Ibrahim Taha Ziyad in his thesis, he divides the forms of insult into 3 (three) things as follows:<sup>29</sup>

a. *Al-Zammu*

It is to attribute something to another person in the form of an insinuation that can cause anger.

b. *Al-Qadhu*

Namely something related to reputation and self-esteem by not attributing something to others.

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<sup>27</sup> Abi Zakariya bin Syaraf al-Nawawi Yahya, *Riyadhu Al-Shalihin* (Mesir: Dar Al- Rayyan li al-Turas, 1987).

<sup>28</sup> Yayan Muhammad Royani, 'Kajian Hukum Islam Terhadap Ujaran Kebencian/ Hate Speech Dan Batasan Kebebasan Berekspresi', *Jurnal Iqtishad: Reconstruction of Justice and Welfare for Indonesia*, 5.2 (2018), 24.

<sup>29</sup> Ibrahim Thoha Ziyad, *Nitaq Al-Masuliyah Al-Jazaiyyah 'an Jara'imi Al-Dammi Wa Al-Qadhi Wa Al-Tahqiri* (Turki: Middle East University, 2011).

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### c. *Al-Tahkir*

Namely any reproach that indicates insult and harassment.

Islam, as a religion of *rahmatan lil'alamin*, contains universal teachings that uphold human values and the protection of human rights. Human rights in the Islamic world are not new; the universal Islamic Shari'ah teaches the principles of equal rights and freedoms, including freedom of expression.<sup>30</sup> Inclusivity is important in freedom of expression, which is a step out of boundaries so that individuals and communities can interact with others. Individuals should respect each other's opinions and thoughts based on freedom of expression, whether it is good or bad, right or wrong that someone does, it is not our right to pass judgment or denounce, insult, corner others. However, one should not judge a person's thoughts, actions, or beliefs because when such actions violate the rights of others, human rights regulations have set restrictions.

Islam does not differentiate between people on any basis except on the basis of piety, faith, and doing good is a phrase repeatedly mentioned in the Qur'an, and doing good in a good way is in accordance with the provisions that have been regulated by Sharia. This confirms that religion and morals must always go hand in hand, so that shari'a is the superstructure of ethical norms. For Muslim intellectuals, law and ethics all stem from moral obligations.<sup>31</sup>

Hate speech in the formulation of Islamic law is included in the discussion of criminal law or *Jinayah*. The concept of crime in *Fiqh Jinayah* is divided into three categories based on the quality of the severity of the punishment. Namely *Jarimah* with punishment in the form of *hudud*, *qisas diyat* and *takzir*.<sup>32</sup>

Words that cause harm to a Muslim are punishable by *takzir*, such as addressing another person with the words "O disbeliever", "O wicked", "son of a kuntilanak", "son of a bastard". Once Sayyidina Ali *Karamallahu Wajhah* was asked

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<sup>30</sup> Candra Perbawati, 'Human Rights Enforcement in the Era of Globalization in the Perspective of Islamic Law', *Al-'Adalah*, 12.4 (2015), 843–54.

<sup>31</sup> Mohammad Hashim Kamali, 'Limits on Freedom of Expression', *Freedom of Speech: Background, Issues and Regulations*, 2020, 7–96.

<sup>32</sup> Makhrus Munajat, 'Regulation of Criminal Offenses in Islam Based on Maqasid Al-Shari'ah Theory', *Journal of Asy Sir'ah*, 45.1108 (2011).

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about a man saying to another "*ya fasiq, ya khabis*" said Sayyida Ali "it's all fawahisy and there is takzir and not "*had*".<sup>33</sup> According to 'Abdul Qodir Audah *jarimah takzir* is a criminal act that can be punished with a single or more punishments based on *takzir*, *Takzir* itself means *takdib* or discipline. According to Audah, sharia does not provide a limit on the punishment for *jarimah takzir*. The *takzir* punishment decided by the judge can be based on appropriateness based on the act and the perpetrator, So that *takzir* punishment is actually immeasurable.<sup>34</sup> Meanwhile, according to 'Audah, what distinguishes *takzir* from other punishments (*hudud* and *qisas*) is the forgiveness of one's actions.<sup>35</sup> In *jarimah takzir*, forgiveness is in the hands of the ruler on condition that it does not violate the human rights of the victim. Conversely, when the victim forgives a perpetrator, it is only related to his basic rights, the rest is returned to the ruler.

Hate speech in the definition that has been formulated, covers criminal offenses that are considered mild to severe based on the consequences caused. In hate speech that is not a serious individual attack, punishment in the form of action is considered more appropriate in achieving benefit. It is different when the actions taken can have a systemic impact, causing widespread harm, criminal punishment can be a solution.

## CONCLUSION

Hate speech through internet media (in any form) can be charged with Article 45 paragraph (3) of Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions. The acts of hate speech in question are several actions in the form of insults, defamation, blasphemy, unpleasant actions, provocation, incitement, and dissemination of false news with the mode of

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<sup>33</sup> Wahbah Zuhaili, *Al-Fiqhu Al-Islami Wa Adillatuhu* (Damaskus: Dar al-Fikr, 1985).

<sup>34</sup> Ali Abubakar, 'Reconstructing the Position of Repentance in Islamic Criminal Law', *Journal of Madania*, 19.1 (2015), 93–106.

<sup>35</sup> Budi Dermawan and M. Noor Harisudin, 'Transformation of Islamic Criminal Law Thought towards National Criminal Law (Implementative Analysis of Jarimah Hudud, Qishash and Takzir)', *Rechtenstudent*, 1.3 (2020), 251–63.

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insulting the victim using words, sentences, as well as images and memes and dissemination of information on social media aimed at creating a sense of hatred or hostility between individuals and/or certain community groups based on ethnicity, religion, race and intergroup (SARA).

Hate speech in the formulation of Islamic law is punishable by *takzir*, based on varied actions and consequences, *takzir* punishment for the perpetrators of this *jarimah* is by action and punishment. The punishment is based on the desired benefit of the Sharia (*maqasid al-syari'ah*), namely the protection of human rights and dignity with the aim of realizing a peaceful, harmonious and harmonious life. In addition to the *takzir* approach, the social environment approach or the involvement of all parties, political, cultural, and economic is needed in tackling hate speech.

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