



## Legal Protection for the Victims of Religious Hate Speech on the Internet

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### Abstract

*Over recent decades, the boom in information and communication technologies (ICTs) has brought completely new ways of establishing and maintaining relationships. Nevertheless, in very different ways, people are vulnerable to multiple forms of violence that threaten their physical and psychological integrity. Various media and new technologies are explored, but particularly the Internet and mobile phones and the convergence between the two are discussed. The religious hate speech was easily found on the internet. The victims on certain social media can report it to the managers for blocked. But on some websites, such things cannot be done, so those who feel victimized ended up doing the same thing to the first attack. Cyberwar through words will continue without end. State responses alone will never be sufficient. This happens for several reasons. First, the possibility of anonymity; second, the rapidly growing anarchy in cyberspace as a form of culture wild-wild west; the third, still weak law enforcement in the field of cybercrime – especially religious hate speech; fourth, the possibility of committing crime outside the criminal jurisdiction of a country; and fifth, diminishing of tolerant awareness. There should be a criminal policy and strong in handling this crime, and growing healthy behaviors for Internet users to communicate with other users.*

**Keywords:** *cybercrime; religious hate speech; internet; anonymity; anarchy*

### Abstrak

Selama beberapa dekade terakhir, ledakan teknologi informasi dan komunikasi (TIK) telah membawa cara-cara yang benar-benar baru dalam membangun dan memelihara hubungan. Namun demikian, dengan cara yang sangat berbeda, orang menjadi rentan terhadap berbagai bentuk kekerasan yang mengancam integritas fisik dan psikologis mereka. Berbagai media dan teknologi baru dieksplorasi, tetapi terutama Internet dan telepon seluler serta konvergensi di antara keduanya dibahas. Ujaran kebencian agama dapat dengan mudah ditemukan di internet. Para korban di media sosial tertentu dapat melaporkannya kepada pengelola untuk diblokir. Namun di beberapa situs web, hal tersebut tidak dapat dilakukan, sehingga mereka yang merasa menjadi korban akhirnya melakukan hal yang sama dengan serangan pertama. Perang siber melalui kata-kata akan terus berlanjut tanpa akhir. Tanggapan negara saja tidak akan pernah cukup. Hal ini terjadi karena beberapa alasan. Pertama, adanya kemungkinan anonimitas; kedua, berkembang pesatnya anarki di dunia maya sebagai bentuk budaya wild-wild west; ketiga, masih lemahnya penegakan hukum di bidang kejahatan siber-khususnya ujaran kebencian agama; keempat, adanya kemungkinan melakukan kejahatan di luar yurisdiksi kriminal sebuah negara; dan kelima, semakin berkurangnya kesadaran toleran. Perlu adanya kebijakan kriminal yang tegas dan kuat dalam menangani kejahatan ini, serta menumbuhkan perilaku yang sehat bagi para pengguna internet dalam berkomunikasi dengan pengguna lainnya.

**Kata kunci:** *kejahatan siber; ujaran kebencian agama; internet; anonimitas; anarki*

## I. Introduction

The nation by its constitutions has given freedom guarantee to the citizen to associate, assemble, and express thoughts verbally or in writing (Article 28 jo Article 28E The Constitution

of 1945), freely and responsibly according to the provisions of the applicable laws and regulations (Article 1 paragraph (1) of UU No. 9/1998 on Freedom of Expressing Opinions in Public). Then, this guarantee is emphasized by provisions regarding the right to develop oneself through fulfilling basic needs, receiving education, and benefiting from science and technology, art, and culture to improve the quality of life and the welfare of mankind (Pasal 28C ayat (1)).

Then, the freedom of opinion and expression regulations is emphasized through Article 28F, which instructs that everyone has the right to communicate and obtain information to develop their personal and social environment, and has the right to seek, obtain, possess, store, process, and convey information by using all available channel types. Nevertheless, the freedom granted is not free in the sense of being free, because the state provides limitations on that freedom. Article 28J of UUD 1945 Constitutions Constitution instructs the limitations of such freedom, namely the obligation to respect the human rights of others in the orderly life of society, nation, and state (paragraph (1)), and the limitations stipulated by law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill just demands by considerations of morals, religious values, security, and public order in a democratic society.

The internet as a product of science and technology has become a medium for citizens to express what has been guaranteed in the constitution. If the medium is the internet, then the space or place is in cyberspace. There is a metaphor that calls cyberspace a place to develop freedom of opinion and expression that is comparable to the wild-wild west of American Western Frontier culture,<sup>1</sup> characterized by certain characteristics such as freedom, courage, individualism, persistence, strength,<sup>2</sup> abundant land, opportunities that guarantee prosperity (unlimited economy),<sup>3</sup> minimum government roles and the absence of regulations.<sup>4</sup>

Barlow in his essay "Coming into the Country" shows an explicit expression, directly focused on the non-physical geography of the information world represented electronically by saying: "imaging discovering a continent so vast that it must have no end to its dimensions. Imagine a new world with more resources than all our future greed might exhaust...". Then, Barlow continued his argumentation about the new world itself by stating: "Certainly, the old concepts of property, expression, identity, movement, and context, based as they are on physical manifestation, do not apply in a world where there can be none".<sup>5</sup> However, the debate about the limits of freedom of opinion and expression on the internet related to the fourth amendment to the American constitution is still ongoing.<sup>6</sup>

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<sup>1</sup> Clay Calvert, "Comment, Regulating Cyberspace: Metaphor, Rhetoric, Reality, and the Framing of Legal Options." 20 *HASTING COMM. & ENT. L.J.* 20, No. 3 (1998): 541-556; and Michael Froomkin, "The Metaphor is the Key: Cryptography, the Clipper Chip, and the Constitution." 143 *U. PA. L. REV.* 709, 718 (1995).

<sup>2</sup> Jonathan J. Rusch, "Cyberspace and the "Devil's Hatband". 24 *SEATTLE U. L. REV.* 24. 578-581 (2000)

<sup>3</sup> Alfred C. Yen, "Western Frontier or Feudal Society?: Metaphors and Perceptions of Cyberspace." *Berkeley Tech. L.J.* 17 No. 4 (2002): 1207-1263.

<sup>4</sup> David G. Post, "The "Unsettled Paradox": The Internet, the State, and the Consent of the Governed", 5 *IND. J. GLOBAL LEGAL STUD.* 5, No. 2 (1998): 521-543; and David R. Johnson & David G. Post, *The New 'Civic Virtue' of the Internet: Complex System Model for the Governance of Cyberspace.* *First Monday* 3 No. 1 (1998).

<sup>5</sup> John Perry Barlow, "Coming into the Country." *Communications of the ACM*, 34 No. 3 (1991): 19-21, <https://doi.org/10.1145/102868.102876>; Diane P. Michelfelder, "Our moral condition in cyberspace." *Ethics and Information Technology* 2 No. 3 (200): 147-152. DOI:10.1023/A:1010049320893

<sup>6</sup> John D.D. Downing, "Hate Speech and First Amendment absolutism discourses in the US." *Discourse & Society* 10 No. 2 (1999): 175-189. <https://doi.org/10.1177/0957926599010002003>; Claudia E. Haupt, "Regulating Hate Speech - Damned if you do and damned if you don't: Lesson learned from comparing the German and U.S. Approaches." *Boston University International Law Journal* 23 No. 2 (2005): 299-335; Thomas W. Simon, "Fighting Racism: Hate Speech

Cyberspace has become a new place for internet users (netizens) to reveal what cannot be done in the real world. They assume freedom in the sense of being free so that almost all comments about anything can be found there, not to mention comments or opinions that are forbidden or offend many people. Whereas, the presence of a new world triggers ethical problems and requires a new approach to overcoming these ethical problems so that the use of ethical standards becomes ineffective. The attitude that should exist in such conditions is skepticism of any claim about the ethical need for cyberspace to address the moral dilemmas posed by this technology.

One of the internet users' behaviors that have become a concern is hate speech that attacks religion (religion offenses). Many comments are not commonly expressed and can trigger conflicts between religious communities, but it seems that the state is powerless to regulate them. This cannot be separated from the characteristics of cyberspace as a free space, lack of rules and none can claim sovereignty over it. Even in the United States, which is known for its protection of freedom of expression based on the first amendment to the constitution, hate speech is said to be a unique problem.<sup>7</sup>

Many countries failed to limit or censor internet content. Even stated Yen, that government efforts will fail because the decentralized nature of internet operations makes it impossible for the state to be the single controller of activity in cyberspace.<sup>8</sup> The difficulties of this cyberspace management are also agreed upon by Lessig<sup>9</sup> and even extremely stated by Barlow, the State has no right to regulate it.<sup>10</sup>

Cyberspace with its virtual reality is a representation or simulation of real-world life. There is a possibility that the virtual world is limited in its freedom with certain restrictions, although it is not entirely successful because of the difficulty of regulating the virtual world.<sup>11</sup> Even if there is a regulation, it will be difficult to enforce because of its constantly evolving nature. Moreover, some laws develop in internet-mediated communication that is formed on a bottom-up based.<sup>12</sup>

Hate speech on the internet that offense to God, prophets, religions, religious leaders or religious people is outrageous. These derogatory comments are milling on the internet all the time, and with the borderless attribute of cyberspace, hate speech can be done anywhere and anytime. This hate speech is not only one-way, but from various directions which cause mutual humiliation, blasphemy, and abuse.

This condition gives the sense that the government has failed to deal with the issue of hate speech that attacks religions as if there was an omission. The government is more busy dealing with

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Detours." *Indiana Law Review* 26 No. 2 (1993): 411-432; Charlotte H. Taylor, "Hate Speech and Government Speech." *Journal of Constitutional Law* 12 No. 4 (2010): 1115-1189, <https://scholarship.law.upenn.edu/jcl/vol12/iss4/4>

<sup>7</sup> Jessica S. Henry, "Beyond free speech: novel approaches to hate on the Internet in the United States." *Information & Communications Technology Law* 18 No. 2 (2009): 235-251, <https://doi.org/10.1080/13600830902808127>; G. Cowan, M. Resendez, E. Marshall, & R. Quist, "Hate speech and constitutional protection: Priming values of equality and freedom." *Journal of Social Issues*, 58, (2002): 247-263, <https://doi.org/10.1111/1540-4560.00259>; J. Glaser, J. Dixit, & D.P. Green, "Studying hate crimes with the Internet: What makes racists advocate racial violence?." *Journal of Social Issues* 58 (2002): 177-193; L. Leets, "Responses to Internet hate sites: Is speech too free in cyberspace?." *Communication Law and Policy* 6 (2001): 287-317, [https://doi.org/10.1207/S15326926CLP0602\\_2](https://doi.org/10.1207/S15326926CLP0602_2)

<sup>8</sup> Alfred C. Yen, *loc. cit.*

<sup>9</sup> Look at Lawrence Lessig, *Code Version 2.0*. (New York: Basic Book, 2006). The difficulty of regulating the internet is not only caused by the continuous development of technology, but the country also faces a dilemma because of its borderless nature and the freedom it creates. Look at Khanisa, "Dilema Kebebasan Dunia Maya: Kajian dari Sudut Pandang Negara." *Widyariset* 16 No. 1 (2013): 23-30.

<sup>10</sup> John Perry Barlow, *A Declaration of the Independence of Cyberspace*, in electronic version can be seen at <http://www.eff.org/barlow/Declaration-Final.html> accessed on December 19, 2010.

<sup>11</sup> Rob Shields, *Virtual: Sebuah Pengantar Komprehensif*. (Yogyakarta: Jalasutra, 2003).

<sup>12</sup> Lawrence Lessig, *loc. cit.*

pornographic content than hate speech. This condition gives the impression that in cyberspace anarchy is growing rapidly, as once expressed by Valauskas<sup>13</sup> when commenting on freedom on the internet. This paper tries to discuss the legal aspects of hate speech, especially those related to religious offenses, and legal protection for victims of hate speech.

## II. Research Problems

The rise of hate speech on the internet is causing conflicts in the real world. People with pseudonyms or anonymous names are free to do this, while criminal law even though it has provided regulations seems powerless to handle it, especially those under the cover of religious debate or comparative religion. There are two issues discussed in this article, namely: first, what is the actual Indonesian criminal law framework related to hate speech?; and second, how is the legal protection for victims of hate speech crimes with religious backgrounds?

## III. Research Method

In answer to the problems above, a normative legislation research method is used with a legislation approach, a conceptual approach, and a case study. The legislation approach is carried out by examining the laws and regulations related to the problems studied, while the conceptual approach is carried out to understand the concepts related to the prevention and control of crime, criminal acts of blasphemy, and protection of religious-based hate speech victims. The case approach is carried out to examine cases that occur and solve problems in these cases. The research specification is descriptive. The main data source is secondary data generated from the literature study. Then, the obtained data is analyzed using qualitative descriptive analysis.

## IV. Discussion

### 1. Hate Crime (Religion Offenses) in the Indonesian Criminal Law Framework

Two terms are often used in international human rights law for describing hate speech, namely "incitement" and "hate speech". The UN Human Rights Committee often uses the term incitement. Practically, there are differences between experts and the legal system of the country, there are those who prioritize the words themselves, others who see their impact on humanity and human existence, and others who see the impact on other people who is the object/victim of hate speech.<sup>14</sup>

The difference between incitement and hate speech lies in the intention of an utterance that is intended to cause a certain impact, either directly (actually) or indirectly (stopping on the intention). If the utterance that was expressed with passion and enthusiasm turned out to inspire the audience to commit violence or harm to other people or groups, then in that position an incitement of hatred was successfully carried out.<sup>15</sup>

However, David O. Brink emphasized that many statements or utterances are discriminative but do not fall into the category of hate speech. This can be exemplified in the

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<sup>13</sup> Edward J. Valauskas, "Lex Networkia: Understanding The Internet Community", *First Monday* 1 No. 4 (1996). DOI: <https://doi.org/10.5210/fm.v1i4.490>. Also read Agus Raharjo, "Anarki di Cyberspace (Pandangan Filosofis tentang Kausa Maraknya Cybercrime)." *Paper* in 5<sup>th</sup> Conference of Indonesia Legal Philosophy Association, Surakarta, 17-18 November 2015.

<sup>14</sup> M. Choirul Anam and Muhammad Hafiz, "Surat Edaran Kapolri tentang Penanganan Ujarn Kebencian (Hate Speech) dalam Kerangka Hak Asasi Manusia." *Jurnal Keamanan Nasional* 1, No. 3 (2015): 341-364. DOI: <https://doi.org/10.31599/jkn.v1i3.30>. 345.

<sup>15</sup> *Ibid*

biased and evil stereotypes, but not to the extent of being stigmatized, demeaning, very religious debates, or religious comparisons. Hate speech, according to Brink, is worse than just a discriminative statement. It uses traditional epithets or symbols to harass someone because of their connection to a particular group and as an expression of contempt for the target to cause psychological distress.<sup>16</sup>

The point of contact for hate speech in the human rights framework is in two rights discourses, namely: a) freedom of religion or belief; b) freedom of expression and opinion, and c) racial and ethnic protection. Through the International Covenant on Civil-Political Rights and several other international documents, the global community has agreed on the boundaries of these two rights, so that restrictions on a right (expression and opinion) to protect certain rights (freedom of religion) should not be seen in a dichotomous framework.<sup>17</sup>

The right to religion and belief is a basic right that is protected, even including one of the rights that cannot be limited under any circumstances (non-derogable rights)<sup>18</sup> as regulated in Article 28I paragraph (1) of the 1945 Constitution and Article 4 of the ICCPR. This is different from the rights of expression and opinion which are not absolute and can be limited. Restrictions on the right to expression and opinion based on the opinion of the UN Human Rights Committee can be done to respect and maintain the reputation of others, namely someone who is individually a part or members of a community, such as religion or ethnicity.<sup>19</sup> Article 20 paragraph (2) of the ICCPR stipulates that any act that promotes hatred based on nationality, race, or religion which constitutes incitement to discrimination, hostility, or violence must be prohibited by law. This article emphasizes that the state must prohibit all forms of incitement to hatred in its domestic law, including incitement to discrimination that does not result in violence based on national, racial, or religious identity.<sup>20</sup>

About this hate speech, the Indonesian Criminal Code has generally regulated it in Article 310 paragraph (1), paragraph (2), and Article 311 paragraph (1) of Indonesian Criminal Code. However, these articles are more related to attacks on personal, individual nature, whereas in hate speech, especially religious offenses, attacks are aimed at all people of one religion, so that the number of victims is mass. Moreover, these articles are not related to the use of internet media for crime, although it can be forced by interpretation, it will feel so rude.

Regulations related to hate speech using the internet are in Article 28 paragraph (2) of Law Number 11 of 2008 concerning Information and Electronic Transactions in conjunction with Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008. This article stipulates that every person intentionally and without rights disseminates information aimed at causing hatred or hostility to certain individuals and/or groups of people based on ethnicity, religion, race, and intergroup (Suku, Agama, Ras, dan Antar Golongan/SARA). The criminal provisions of this article are contained in Article 45 paragraph (2), which stipulates that any person who fulfils the elements as referred to in Article 28 paragraph (1) or paragraph (2) shall be sentenced

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<sup>16</sup> *Ibid*, 346

<sup>17</sup> W. Cole Durham and Brett G. Scharffs, *Law and Religion: National, International, and Comparative Perspective* (New York: Aspen Publisher, 2010), 202.

<sup>18</sup> The consequence of this stipulation is that it guarantees that everyone anywhere, anytime, and in any situation, can exercise their right to worship and practice their beliefs freely without any coercion. This has become a normative framework recognized by the global community. See the detail in Manfred Nowak, "Permissible Restriction on Freedom of Religion or Belief", in Tore Lindholm, et.al. (ed), *Facilitating Freedom of Religion or Belief: A Deskbook* (USA: Martinus Nijhoff Publisher, 2004), 147. Also read M. Choirul Anam and Muhammad Hafiz, *loc. cit*, 344

<sup>19</sup> See at common comments of UN Human Rights Committee No. CCPR/C/CG/34, formed in Jeneva, 12 September 2011, 102<sup>nd</sup> session Committee, paragraphs 9 and 37.

<sup>20</sup> M. Choirul Anam and Muhammad Hafiz, *op.cit*, 345.

to a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah)

Crimes against religious interests can be divided into two types, namely offenses related to religion, and offenses against religion.<sup>21</sup> In the first category, the crime is not directed at and endangers religion itself. In the second category, the crime endangers religion and is directly attacked. Here his actions and statements are intentionally directed at religion.<sup>22</sup>

Criminal acts directed against religion can be found in Article 156, Article 156a, and Article 157 of the Criminal Code. Articles 175-177 regulate violations of religious gatherings, and Articles 178-181 are called *Grabdelikte* and *Leichenfravel* or respect for people who have died and their graves as a basis for punishment. Articles 156 and 15a relate to restrictions on freedom to express opinions, issue statements or take actions against a religious group that is different from other groups because of religion, or against religion itself as its object.<sup>23</sup>

Article 156a includes statements directed at religion itself, not groups, but not yet directed at the prophet as the founder of the religion, scriptures, religious leaders, and religious institutions. Also not included is the statement that defiles the name of God, which in other countries is called *Godslating*, *Gotteslasterung*. Class and religion are essentially inseparable from prophets, scriptures, religious leaders, and religious institutions, and go plastering can be added. The legislation now needs to be supplemented by blasphemy or bolstering.<sup>24</sup>

Determination of an act as a crime against religious interests relates to theories regarding religious offenses that underlie criminal law to determine the existence of a religious offense. Oemar Seno Adji suggests that there are three theories regarding religious offenses, namely:<sup>25</sup>

1. *Friedensschutz theory*, namely a theory that views public order/tranquility as a protected legal interest;
2. *Gefuhlsschutz theory*, namely a theory that views religious feelings as legal interests that must be protected
3. *Religionsschutz theory*, namely a theory that views religion and sich as a legal interest that must be protected/secured by the state.

## **2. Legal Protection for Victims of Religious Offences and Prevention of Hate Speech**

The victim in a crime is the party who suffers the loss or suffering caused by the perpetrator of the crime. So far, the position of the victim has received little attention because the criminal justice system is too oriented to the perpetrators of the crime.<sup>26</sup> According to The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the United Nations (1985), what is meant by victims (victims) are people who individually or collectively have experienced suffering, including physical or mental suffering. mental, emotional suffering, economic loss, or substantial reduction of human rights through acts or omissions (missionaries) that violate the criminal law in force in member countries which includes legal regulations that prohibit abuse of power.<sup>27</sup>

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<sup>21</sup> Oemar Seno Adji, *Hukum Pidana Pengembangan* (Jakarta: Erlangga, 1985), 96-96

<sup>22</sup> Supanto, *Delik Agama* (Surakarta: LPP dan UNS Press, 2007), 98

<sup>23</sup> Oemar Seno Adji, *loc. cit.*, 98, Supanto, *loc. cit.*, 99 and 101

<sup>24</sup> Supanto, *op.cit.*, 102

<sup>25</sup> Oemar Seno Adji, *Hukum (Acara) Pidana dalam Prospekti* (Jakarta: Erlangga, 1981), 87

<sup>26</sup> Steven Schafer, *Compensation and Restitution on Victims of Crime* (Montclair, New Jersey, 1980), 8

<sup>27</sup> Arif Gosita, *Masalah Korban Kejahatan (Kumpulan Karangan) Kedudukan Korban di Dalam Tindak Pidana* (Jakarta : PT. Bhuwana Ilmu Populer, 2004), 44

The classic problem that arises is that the criminal justice system as the basis for resolving criminal cases does not recognize the existence of victims of crime as seekers of justice. Victims of criminal acts are not actively involved in the judiciary, cannot directly submit criminal cases to the court themselves, but must go through the designated agencies (police and prosecutors).<sup>28</sup> The relationship between the victim and the police or prosecutor is only symbolic, this is different from the relationship between the defendant and an advocate.<sup>29</sup>

The Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana/KUHAP) as a reference in procedural law contains the rights of victims, but when viewed as a whole it is minimal when compared to the protection of the rights of perpetrators of crimes. This happens because the system adopted by the Criminal Procedure Code is retributive justice, which is a policy whose point of protection is the perpetrator of the crime (offender oriented) not restorative justice which focuses on the policy of protecting the victims of crime (victim oriented).<sup>30</sup>

Law Number 13/2006 about the Protection of Witnesses and Victims jo Law Number 31/2014 is a regulation that tries to balance the position of the perpetrator and the victim. Through the Witness and Victim Protection Agency (Lembaga Perlindungan Saksi dan Korban/LPSK), victims have the right to apply to the court in the form of the right to compensation in cases of gross human rights violations, the right to restitution, or compensation for which the perpetrator of the crime is responsible. The decision regarding compensation and restitution is given by the court (Article 7). The form of compensation for victims in Government Regulation (Peraturan Pemerintah/PP) Number 35/2020 concerning Amendments to Government Regulation Number 7/2018 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims, can be divided into 3, namely:

1. The provision of compensation to victims, as stated in Article 1 point 4, is compensation provided by the state because the perpetrator is unable to provide full compensation which he is responsible for.
2. The provision of restitution to the victim, as stated in Article 1 point 5 is compensation given to the victim or his family by the perpetrator or a third party, which can be in the form of returning property, payment of compensation for loss or suffering, or reimbursement of costs for certain actions.
3. The provision of assistance to victims, as stated in Article 1 point 7, is a service provided to witnesses and/or victims by the Witness and Victim Protection Agency in the form of medical assistance and psycho-social rehabilitation.

Victims of hate speech in the form of religious offenses are not individuals as argued by Law Number 13 of 2006 jo Law Number 31 of 2014, but the victims are masses. If there is an attack on religion, it is not only religion as a legal interest that must be protected (religionsschutz theory), but also the religious feelings of the religious community (gefühlsschutz theory) and public order is disturbed as a reaction to the hate speech. Although it can be separated, the combination of all the theories can be used to analyze an act of hate speech that is hurled on the internet.

If the victim is mass, will the victim get the rights as stated in the law? This is a difficult one to answer, for several reasons. First, the victims are mass, more than one or two people; second, the presence of victims everywhere, this also makes it difficult to determine who is being

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<sup>28</sup> Mudzakir, *Posisi Hukum Korban Tindak Pidana Dalam Sistem Peradilan Pidana* (Disertasi, Jakarta: Universitas Indonesia, 2001).

<sup>29</sup> Soeparman et.al, "Kepentingan Korban Tindak Pidana Dilihat Dari Sudut Viktimologi". *Varia Peradilan* XXII No. 260 (2007), 51

<sup>30</sup> *Ibid*

harmed; third, perpetrators are difficult to detect because an internet user can be anyone and anywhere; fourth, the rights of victims can only be resolved after a judge's decision or after the judicial process is completed, even though judicial decisions rarely contain the rights of victims; Fifth, which victim and who will have their rights fulfilled, it will be difficult for the state to determine it.

In connection with these matters, then reflecting on various events related to utterances of hatred towards religion or those that attack religion, it is often found that the state cannot realize the rights of victims. In the end, Victims only become victims who will not get anything as promised by the state, because the state cannot or is not able to make it happen or let the victim continue to suffer. This is actually what causes frequent dissatisfaction from victims in the criminal justice system

If the victim's rights are granted after the judicial process is completed, it will take quite a long time, and the suffering caused can be deeper, moreover, the nature of this attack on religion will increasingly expand along with the news through mass media and electronic media. Moreover, there has been no granting of victims' rights as a result of attacks on religion, except for promises that continue to be proven to be false. The existing procedures in the legislation make the victim eventually recover on his own without state intervention. Is this what the state wants, then what about the function of the state which is to protect citizens?

Given the nature of the internet that can make people do anything and anywhere with an anonymous identity, this, in turn, reinforces the idea that "cyberspace" is a literal rather than a metaphorical place, separated from the boundaries of physical space,<sup>31</sup> so an actor can freely carry out his actions. Although this can be revealed, it takes quite a long time, especially to track activity logs from internet usage. This advantage and the freedom offered by the internet allows a person to do anything even though in real life he is a polite, more faithful person

There is a lot of job from the state in dealing with hate speech, especially religious offenses. Religion is a sensitive issue and often triggers social unrest. Law enforcement is also often easily intervened by invisible forces and often makes the work of law enforcement officers not neutral. It seems that the state must be firm in this matter, being a protector for citizens who are victims, or supporters of this hate speech action.

The internet has a sword edge, it can be both profitable and detrimental. It can support harmonization through effective communication between religious communities based on tolerance and dialogue, but it can also be a factor that divides the people and the nation if the communication is based on suspicion or distrust. Even though the state is minimal in monitoring internet content – except for those who share pornography and terrorism – self-control from users is an effective measure so as not to fall into hate speech perpetrators, or become victims who are not paid attention to at all by the state.

Hate speech can be used as a destructive political tool that must be fought together at the community level, with regulations as well as structural interventions and other political forces. In addition, the role of individuals is important to prevent such hate speech given their ability to apply knowledge in detecting and analyzing hate speech at an early stage. Learn from the successes in Rwanda, Burundi, and Congo that have succeeded in building reconciliation radio programs so that they can strengthen listeners' ability to resist manipulative influences and strengthen the role of individuals as strong contributors to countering hate speech in society.<sup>32</sup>

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<sup>31</sup> Diane P. Michelfelder, *loc. cit.*

<sup>32</sup> Johanna Vollhardt, Marie Coutin, Ervin Staub, George Weiss, and Johan Deflander, "Deconstructing Hate Speech in the DRC: A Psychological Media Sensitization Campaign." *Journal of Hate Studies* 5 (2006/07): 15-35.



Even in the United States, efforts to stop hate speech require assistance from NGOs to monitor, track and regulate hate speech on the internet, and assess the potential and limitations of all such efforts.<sup>33</sup>

Indonesia needs to learn from other countries about this in addition to evaluating the steps that have been taken in preventing and overcoming religion-based hate speech. This needs to be done considering that the perpetrators of religion-based hate speech on the internet have metamorphosed into behavior that is dangerous and difficult to eradicate. The perpetrators who lead to extremes – so they can also be called extremists – are present and proliferate online. They support the supremacy or segregation of race, religion, and class in society. Research results from Gerstenfeld et.al. suggest that the Internet may be a very powerful tool for extremists as a means to reach an international audience, recruit members, connect diverse extremist groups, and enable maximum image control.<sup>34</sup> If Indonesia cannot stop perpetrators and extremists from spreading hate speech, then Indonesia will become a new battlefield for wars between religions or between sects within religions. If this happens, then the world will enter the second dark age after the Middle Ages.

## V. Conclusion

The development and use of information technology cause a person to find freedom and express anything, including things that are prohibited by the state. Hate speech that attacks a particular religion is a must, considering the competition to get as many people as possible is a mission carried out by that religion. The internet allows this to happen because a person can disguise himself as anything and anyone (anonymous), the lack of regulation that causes anarchy to develop rapidly, law enforcement is weak, jurisdictional issues due to its borderless nature, and decreased tolerance in the community in religious life. It takes intelligence, ingenuity, and wisdom in using the internet so as not to get caught up in being the perpetrators or victims of hate speech.

## References

- Adji, Oemar Seno. *Hukum (Acara) Pidana dalam Prospekti*. Jakarta: Erlangga, 1981.
- Adji, Oemar Seno. *Hukum Pidana Pengembangan*. Jakarta: Erlangga, 1985.
- Anam, M. Choirul and Muhammad Hafiz. "Surat Edaran Kapolri tentang Penanganan Ujarn Kebencian (Hate Speech) dalam Kerangka Hak Asasi Manusia." *Jurnal Keamanan Nasional* 1, No. 3 (2015): 341–364. DOI: <https://doi.org/10.31599/jkn.v1i3.30>
- Barlow, John Perry. *A Declaration of the Independence of Cyberspace*, electronic version in <http://www.eff.org/barlow/Declaration-Final.html>, access on Desember 19 2010;
- Barlow, John Perry. "Coming into the Country." *Communications of the ACM*, 34 No. 3 (1991): 19-21. <https://doi.org/10.1145/102868.102876>

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<sup>33</sup> Jessica S. Henry, *loc. cit.*

<sup>34</sup> Phyllis B. Gerstenfeld, Diana R. Grant and Chau-Pu Chiang, "Hate Online: A Content Analysis of Extremist Internet Sites." *Analyses of Social Issues and Public Policy* 3 No. 1 (2003): 29-44. B. Levin, "Cyberhate: A legal and historical analysis of extremists' use of computer networks in America." *American Behavioral Scientist*, 45 (2002): 958–988. J. A. Schafer, (2002). "Spinning the web of hate: Web-based hate propagation by extremist organizations." *Journal of Criminal Justice and Popular Culture* 9 No. 2 (2002): 69–88; also look John Perry Barlow, "Button-down terror": The metamorphosis of the hate movement. *Sociological Focus*, 33 (2002): 113–131.

- Barlow, John Perry. "Button-down terror": The metamorphosis of the hate movement. *Sociological Focus*, 33 (2002): 113-131.
- Calvert, Clay. "Comment, Regulating Cyberspace: Metaphor, Rhetoric, Reality, and the Framing of Legal Options." *HASTING COMM. & ENT. L.J.* 20, No. 3 (1998): 541-566. [https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1490&context=hastings\\_comm\\_ent\\_law\\_journal](https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1490&context=hastings_comm_ent_law_journal)
- Cowan, G., M. Resendez, E. Marshall, & R. Quist, "Hate speech and constitutional protection: Priming values of equality and freedom." *Journal of Social Issues*, 58, (2002): 247-263, <https://doi.org/10.1111/1540-4560.00259>
- Downing, John D.D. "Hate Speech and First Amendment absolutism discourses in the US." *Discourse & Society* 10 No. 2 (1999): 175-189. <https://doi.org/10.1177/0957926599010002003>
- Durham, W. Cole and Brett G. Scharffs, *Law and Religion: National, International, and Comparative Perspective*, New York: Aspen Publisher, 2010.
- Froomkin, Michael. "The Metaphor is the Key: Cryptography, the Clipper Chip, and the Constitution." 143 *U. PA. L. REV.* 709, 718-63 (1995);
- Gerstenfeld, Phyllis B., Diana R. Grant and Chau-Pu Chiang, "Hate Online: A Content Analysis of Extremist Internet Sites." *Analyses of Social Issues and Public Policy* 3 No. 1 (2003): 29-44.
- Glaser, J., J. Dixit, & D.P. Green, "Studying hate crimes with the Internet: What makes racists advocate racial violence?." *Journal of Social Issues* 58 (2002): 177-193
- Gosita, Arif. *Masalah Korban Kejahatan (Kumpulan Karangan) Kedudukan Korban di Dalam Tindak Pidana*. Jakarta: PT. Bhuwana Ilmu Populer, 2004.
- Johnson, David R. & David G. Post. "The New 'Civic Virtue' of the Internet.: Complex System Model for the Governance of Cyberspace." *First Monday* 3 No. 1 (1998). DOI:10.5210/fm.v3i1.570.
- Haupt, Claudia E. "Regulating Hate Speech - Damned if you do and damned if you don't: Lesson learned from comparing the German and U.S. Approaches." *Boston University International Law Journal* 23 No. 2 (2005): 299-335.
- Henry, Jessica S. "Beyond free speech: novel approaches to hate on the Internet in the United States." *Information & Communications Technology Law* 18 No. 2 (2009): 235-251. <https://doi.org/10.1080/13600830902808127>
- Khanisa. "Dilema Kebebasan Dunia Maya: Kajian dari Sudut Pandang Negara." *Widyariset* 16 N.. 1 (2013): 23-30. DOI: <http://dx.doi.org/10.14203/widyariset.16.1.2013.23-30>. <https://widyariset.pusbindiklat.lipi.go.id/index.php/widyariset/article/view/17/12>
- Leets, L. "Responses to Internet hate sites: Is speech too free in cyberspace?." *Communication Law and Policy* 6 (2001): 287-317. [http://dx.doi.org/10.1207/S15326926CLP0602\\_2](http://dx.doi.org/10.1207/S15326926CLP0602_2)
- Lessig, Lawrence. *Code Version 2.0*. New York: Basic Book, 2006.
- Levin, B. "Cyberhate: A legal and historical analysis of extremists' use of computer networks in America." *American Behavioral Scientist*, 45 (2002): 958-988.
- Diane P. Michelfelder, "Our moral condition in cyberspace." *Ethics and Information Technology* 2 (2000): 147-152, 2000. DOI:10.1023/A:1010049320893
- Mudzakir. *Posisi Hukum Korban Tindak Pidana Dalam Sistem Peradilan Pidana*. Dissertation. Jakarta: Universitas Indonesia, 2001.

- Nowak, Manfred. "Permissible Restriction on Freedom of Religion or Belief", dalam Tore Lindholm, et.al. (ed). *Facilitating Freedom of Religion or Belief: A Deskbook*, USA: Martinus Nijhoff Publisher, 2004.
- Post, David G. "The "Unsettled Paradox": The Internet, the State, and the Consent of the Governed" *IND. J. GLOBAL LEGAL STUD.* 5, No. 2 (1998): 521-543. <https://www.jstor.org/stable/25691118>
- Raharjo, Agus. Anarki di Cyberspace (Pandangan Filosofis tentang Kausa Maraknya Cybercrime), *Paper Paper* in 5<sup>th</sup> Conference of Indonesia Legal Philosophy Association, Surakarta, 17-18 November 2015..
- Rusch, Jonathan J. "Cyberspace and the "Devil's Hatband". 24 *SEATTLE U. L. REV.* 577, 578-81 (2000);
- Schafer, Steven. *Compensation and Restitution on Victims of Crime*. Montclair, New Jersey, 1980
- Schafer, J. A. "Spinning the web of hate: Web-based hate propagation by extremist organizations." *Journal of Criminal Justice and Popular Culture* 9 No. 2 (2002): 69-88
- Shields, Rob. *Virtual: Sebuah Pengantar Komprehensif*. Yogyakarta: Jalasutra, 2003.
- Simon, Thomas W. "Fighting Racism: Hate Speech Detours." *Indiana Law Review* 26 No. 2 (1993): 411-432.
- Soeparman et.al, "Kepentingan Korban Tindak Pidana Dilihat Dari Sudut Viktimologi". *Varia Peradilan XXII* No. 260 (2007).
- Supanto. *Delik Agama*. Surakarta: LPP dan UNS Press, 2007.
- Taylor, Charlotte H. "Hate Speech and Government Speech." *Journal of Constitutional Law* 12 No. 4 (2010): 1115-1189, <https://scholarship.law.upenn.edu/jcl/vol12/iss4/4>
- Valauskas, Edward J. "Lex Networkia: Understanding The Internet Community". *First Monday* 1 No. 4 (1996). DOI: <https://doi.org/10.5210/fm.v1i4.490>.
- Vollhardt, Johanna., Marie Coutin, Ervin Staub, George Weiss, and Johan Deflander, "Deconstructing Hate Speech in the DRC: A Psychological Media Sensitization Campaign." *Journal of Hate Studies* 5 (2006/07): 15-35.
- Yen, Alfred C. "Western Frontier or Feudal Society?: Metaphors and Perceptions of Cyberspace", *Berkeley Tech. L.J.* 17 No. 4 (2002): 1207-1263.