

## Legal Analysis Of Offense: The Hate Speech Of Religion And Denominations

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**Abstrak:** *The purposes of this research are 1) to know and analyze the law enforcement for hate speech against religions and denominations in Indonesia, 2) to know and analyze the factors which influence the law enforcement for hate speech against religions and denominations in Indonesia. The research used an empirical method that reviewed the processing and functioning of law in society, specifically analyzing the law enforcement for hate speech against religions and denominations in Makassar, Polrestabes, and Pengadilan Negeri Makassar. The result of this research shows that the law enforcement for hate speech against religions and denominations in Indonesia is still ineffective, with numerous instances of hate speech occurring without any affirmative action from law enforcement agencies. Additionally, the police have been unsuccessful in enforcing the law against hate speech, and there is a lack of regulations governing hate speech against religions and denominations. The society's black-and-white mindset, which separates religious affairs from state affairs, also contributes to this issue. The recommendations are, 1) the apparatus must have an active role to get through the spread of hate speech against religions and denominations, in particular under Circular No SE/06 / X /2015 about handling hate speech as a procedure, 2) construct particular rules about speech and preaching involving religion and denominations, 3) create particular rules for hate speech against religions and denominations to determine any hate speech that will be determined.*

**Keywords:** *Legal Analysis, Criminal Offense, Denominations, Religion*

### INTRODUCTION

Discussion about the issue of Hate Speech became heated after the Indonesian Republic Police, hereinafter referred to as Polri, issued Circular Letter No: SE/ 06 / X /2015 regarding the handling of hate speech, even though the circular letter is only a Standard Operating Procedure abbreviated as SOP. However, we can see how the procedure for handling hate speech offenses and what rules are used to ensnare hate speech offenders.

As explained in the Polri circular letter, the impact of Hate Speech can be divided into two, namely: first, the impact on the victims of Hate Speech is the

degradation of human dignity. And second, the social impact is the emergence of collective hatred, isolation, discrimination, violence, and at the most terrifying level, the extermination of a certain race, ethnicity, or group through various acts of terror directed at the target group of Hate Speech.

As explained orally by Dr. Jalaluddin Rakhmat. M.Sc. in a training event for preachers located in Bandung, West Java. There are 6 ways or stages of exterminating a community or race: Stigmatization, Labeling, Discrimination, Criminalization, Persecution, Genocide.

Based on the above opinion, it is true that the most frightening consequence of Hate Speech is genocide or the extermination of a community or race. Because stigmatization and labeling are forms of Hate Speech that bring hatred to individuals or groups who are stigmatized and labeled.

It clearly contradicts the 1945 Constitution of the Republic of Indonesia Article 28 G paragraph 1 "everyone has the right to personal protection, family, honor, dignity, and property under their control, as well as the right to security and protection from threats of fear to do or not do something that is a human right" and paragraph 2 "everyone has the right to be free from torture or treatment that degrades human dignity and has the right to obtain political asylum from another country".

The obstacle in handling Hate Speech is always associated with the right to freedom of speech, as it is considered to violate the right to freedom of speech. This strengthens the need for a more specific regulation governing Hate Speech. Especially Hate Speech regulations related to religion and belief systems, because based on the data presented above, the majority of conflicts that occur are conflicts that are carried out in the name of religion. So that the handling can proceed properly. And there are no rights that violate each other.

Therefore, this research raises the following problem formulation:

1. How is the law enforcement against the crime of Hate Speech in Indonesia?
2. What are the factors that influence the law enforcement of Hate Speech crimes in Indonesia?

To find out and analyze the law enforcement against Hate Speech crimes in Indonesia. To find out and analyze the

factors that influence the law enforcement of Hate Speech crimes in Indonesia.

The researcher will focus on the law enforcement against Hate Speech crimes against religion and religious beliefs and the factors that influence its law enforcement.

## **METHOD**

This research uses empirical legal research to find theories about the process of occurrence and the process of law functioning in society. It aims to analyze how the law enforcement against Hate Speech crimes against religion and religious beliefs in society.

This research is located in the city of Makassar, South Sulawesi Province. The location was chosen because the researcher resides in Makassar and has found many cases of hate speech that have not been followed up, as well as the numerous consequences of hate speech that occur in Makassar.

This research uses primary data as the main data and is supported by secondary and tertiary data. Primary data includes interviews and field observations. Secondary data includes the Constitution of the Republic of Indonesia, Legislation, Uncodified legal materials such as customary law, jurisprudence, and treaties. Tertiary data includes dictionaries and articles from newspapers and the internet.

The main data sources are obtained from the Indonesian National Police, specifically the Makassar City Police Resort, the Makassar District Court, and groups that are often victims of hate speech offenses.

To obtain maximum data in this research, data collection techniques are used with in-depth interview methods with those who are considered to have the most knowledge. Data is also requested from the

police regarding hate speech offenses that occur in Makassar.

**RESULTS AND DISCUSSION**

Hate speech offenses are regulated by several laws. First, the Indonesian Criminal Code (KUHP) in articles 156, 157, 310, and 311. Second, Law Number 11 of 2008 concerning Electronic Information and Transactions in articles 28 and 45 paragraph 2 as the criminal provisions. And third, Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination in Article 4 and Article 16 as the criminal provisions.

From these laws, there are three categories of hate speech offenses, namely defamation offenses, defamation of character offenses, and Information Technology and Electronic offenses, commonly referred to as ITE offenses (specifically for defamation and slander). Therefore, how law enforcement is carried out against these three offenses can represent law enforcement against hate speech offenses.

The following are data on law enforcement of these offenses in the Makassar City Police Resort and the Makassar District Court over the past three years.

Table 1 Number of Defamation, Defamation of Character, and ITE Offenses.

Source: Makassar City Police

Offense / Year	2021		2022		2023	
	L=	S=	L=	S=	L=	S=
Insult	20	33	22	41	3	2
Defamation	9	12	5	7	1	1
ITE	0	1	2	4	0	0

Table 2 Number of Completed Cases of Insult, Defamation, and ITE Offenses

Source: Makassar District Court

Year / Offense	Insult	Defamation	ITE
2021	1	3	5
2022	1	1	5
2023	0	1	6

If we look at the overall cases related to hate speech, there has been good law enforcement with many cases successfully decided in the Makassar District Court.

Based on the explanations above, both based on data from the Makassar City Police and the Makassar District Court, it can be concluded that law enforcement related to hate speech has been effective.

What about the enforcement of the law on hate speech offenses against religion and religious sects? From all the cases classified as hate speech, there have been no reports submitted to the police, specifically the Makassar City Police. This is in line with what was stated by one of the investigators at the Makassar City Police, Police Brigadier Andi Parawangsa, that during his tenure as an investigator handling cases of insult, defamation, and ITE, there have been no reports related to religious and racial issues.

However, can it be said that cases of spreading hatred related to religion and religious sects do not exist due to the absence of reports to the police? The answer is not necessarily. This could be due to a lack of awareness from the public or victims to report such incidents.

This is because the spread of hatred towards religious sects and religious movements is carried out by religious leaders or in this case, religious teachers or scholars. Moreover, it is exacerbated by the religious views of the community,

which tend to focus more on the appearance rather than the knowledge of these religious teachers. Therefore, what is conveyed by these religious teachers is considered true and in accordance with the applicable law.

For example, in the city of Makassar, there are several religious teachers who give sermons in assemblies or on mosque pulpits, and the content of their sermons incites hatred and attacks against certain religious sects, such as Shia and Ahmadiyya. The worst part is that it even justifies the killing of someone. This is what Ustad Said Samad, the leader of LPPI Makassar, has done.

Pamphlets and banners are put up in various corners of the city, mosques, and campuses, containing the spread of hatred towards the Shia sect, which results in discrimination against the Shia group.

Not only in the real world, but also through the virtual world. There are many websites that freely spread hatred related to religious and ethnic issues. For example, <http://www.lppimakassar.com/> This website contains various news articles that contain hate speech towards religions and religious movements.

The above-mentioned incidents are only a small part of the many cases of hate speech against religions and belief systems. These cases are rarely reported or enforced by the police.

As a result, various impacts arise from hate speech against religions and belief systems. The most common impact is violence carried out in the name of religion due to hate speech against religions and religious movements. They always use a certain religion or religious movement to spread hatred against different religious beliefs or movements.

Based on the above explanations, it can be concluded that law enforcement against the crime of hate speech against

religions and religious movements is not effective. This is because there are many cases of hate speech against religions and religious movements, and there is no decisive action taken by law enforcement agencies against these cases.

The effectiveness or ineffectiveness of law enforcement is certainly influenced by various factors, one of which is the legal system. Effective law enforcement must be supported by a good legal system. If the legal system functions well, law enforcement will automatically be carried out effectively.

As Lawrence M. Friedman's opinion, a legal system must contain: 1) Legal Structure, 2) Legal Substance, 3) And Legal Culture.

The three factors determine whether a legal system can function properly so that law enforcement can be carried out effectively. organized effectively. The effectiveness or ineffectiveness of law enforcement against hate speech towards religion and religious sects is determined by three elements that must exist in a legal system.

The first thing we will discuss is the legal structure. The legal structure refers to the structural institutions that are empowered by law to carry out their respective functions.

The institutions that are included in the legal structure are the law-making institution, law enforcement institution, and legal supervision institution. The law-making institution in this case is the Government and the People's Representative Council, which are responsible for producing legal products in the form of regulations. Furthermore, the law enforcement institution consists of the police, prosecutors, and judges, who function to implement the legal products that have been produced by the law-making institution. The legal supervision

institution aims to supervise law enforcers in implementing legal products, in this case, the Constitutional Court and the Judicial Commission, assisted by other institutions including civil society organizations.

The three institutions above are general legal structures. So what about specific legal structures? In this case, it is related to the prevention of human rights violations. This is because hate speech against religion and religious beliefs is included in cases of human rights violations.

The institution specifically handling human rights cases in Indonesia is the National Commission on Human Rights, abbreviated as Komnas HAM. Komnas HAM was initially established based on Presidential Decree Number 50 of 1993 regarding the National Commission on Human Rights. Since 1999, the existence of Komnas HAM has been based on the Law, namely Law Number 39 of 1999, which also determines the existence, objectives, functions, membership, principles, completeness, as well as the duties and authorities of Komnas HAM.

Furthermore, an important aspect in realizing a good legal system is the substance of the law. The substance of the law in this case refers to legislation. Here is an explanation of legislation on human rights and hate speech.

Before the enactment of Law Number 39 of 1999, the prohibition on the dissemination of hatred was already regulated in the Criminal Code, specifically in Article 156. However, that article only pertained to the dissemination of hatred against ethnic groups in Indonesia. Article 157 also regulates the prohibition on spreading hatred through writings and drawings, which in the

present time includes pamphlets and banners.

Since the issuance of Circular Letter Number: SE/06/X/2015 regarding the handling of hate speech, Articles 310 and 311 of the Criminal Code have been included as the legal basis for law enforcement against hate speech offenses.

The next legal regulation is Law Number 11 of 2008 concerning Electronic Information and Transactions, specifically in Article 27 paragraph 3 and Article 28. The criminal provisions are stipulated in Article 45. There is also a regulation on the elimination of discrimination, namely Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination.

However, out of all these regulations, only one regulates hate speech against religion and religious sects, which is Article 28 of Law Number 11 of 2008 concerning Electronic Information and Transactions. This is one of the factors contributing to the ineffective enforcement of the law against hate speech targeting religion and religious sects.

Furthermore, one important aspect in realizing a good legal system is legal culture. It is futile to have a complete legal structure and good legal substance without being supported by the legal culture of the society.

Therefore, the legal culture of a society must be good in order to create a good legal system. One aspect of legal culture is the legal awareness of the society. Legal awareness in this case means that the society is aware that there are laws in place and they must abide by them.

One example is the society's awareness of using the law to resolve a problem. Based on the researcher's observations, the society's awareness of

using the law to solve problems is already good.

This is based on the numerous reported crimes that are reported to the police, such as theft, fraud, and others. Although in some cases, there are still members of the society who choose to take matters into their own hands outside of the law when faced with a problem. For example, in cases of street crime caught in the act by the public, most of the society takes matters into their own hands without considering the existing rules.

However, the society's legal awareness regarding hate speech towards religion and religious sects has not been well-established. This is due to the many cases of hate speech towards religion and religious sects that do not result in legal action.

Apart from the fact that the police do not take legal action, this also happens because of the lack of society's awareness in reporting cases of hate speech towards religion and religious sects.

There are many factors that can influence the lack of society's awareness in reporting acts of hate speech towards religion and religious sects.

Firstly, the society is not aware that there are regulations prohibiting the spread of hatred. Secondly, the society does not know that the actions they take are a violation of the law. Thirdly, it is due to the mindset of the society.

The first and second factors fall within the realm of legal awareness, meaning that the society's legal awareness regarding hate speech towards religion and religious sects has not been well-established, resulting in the lack of reports on hate speech offenses.

The third factor is the determining factor, namely the mindset of society. As explained in the previous sub-chapter, hate speech perpetrators against religion and

religious sects are often labeled as *ustad* or *ulama*. Therefore, when delivering a sermon that contains elements of hate speech, society considers it to be true and not a violation of the law. This is because the mindset of society always assumes that what is conveyed by someone labeled as *ustad* or *ulama* is true, without conducting analysis or reassessment of the content of the sermon.

In conclusion, the enforcement of laws against hate speech targeting religion and religious sects in Makassar City has not been effectively implemented, as there have been numerous cases of hate speech in Makassar City without any decisive action from law enforcement authorities. The factors that influence the enforcement of laws against hate speech targeting religion and religious sects, making it ineffective, are firstly, law enforcement authorities, particularly the police, not fulfilling their duties properly by taking decisive actions against perpetrators spreading hatred towards religion and religious sects. Secondly, the laws concerning hate speech targeting religion and religious sects are still very limited and open to multiple interpretations. Thirdly, the legal culture of society has not been well-established in terms of hate speech targeting religion and religious sects, influenced by the mindset of society that tends to avoid mixing religious and state affairs.

Suggestions for law enforcement authorities, particularly the police, are to play an active role in handling the spread of hate speech, especially targeting religion and religious sects, by implementing Circular Letter Number: SE/06/X/2015 regarding the handling of hate speech as a standard procedure. Specific regulations should be created to govern the rules of preaching or spreading religion, so that what is conveyed by

preachers does not violate the law. Specific regulations should also be established to define hate speech, which can serve as a reference for determining whether something can be classified as hate speech.

## CONCLUSION

Hate speech offenses in Indonesia are regulated by several laws, including the Indonesian Criminal Code (KUHP), Law Number 11 of 2008 concerning Electronic Information and Transactions, and Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination. These laws categorize hate speech offenses into defamation offenses, defamation of character offenses, and Information Technology and Electronic (ITE) offenses. Law enforcement data from the Makassar City Police and the Makassar District Court over the past three years indicate effective enforcement against general hate speech offenses, with many cases successfully decided. However, specific hate speech offenses targeting religion and religious sects have seen no reports or legal actions. This lack of reports, despite the presence of incidents, suggests a deficiency in public awareness and willingness to report such offenses, likely due to societal and religious influences.

In Makassar, certain religious teachers have incited hatred and attacks against specific religious sects such as Shia and Ahmadiyya through sermons, pamphlets, banners, and online platforms. Despite these activities, there have been no legal actions taken against these individuals, highlighting the ineffectiveness of law enforcement against hate speech targeting religion and religious sects. Contributing factors to this ineffectiveness include the legal system's structure, the substance of the law, and the

legal culture. The current legal structure and substance do not adequately address hate speech targeting religion and religious sects, with limited and vague regulations. Furthermore, the legal culture lacks awareness and proactive reporting of such offenses, and the societal mindset often views religious teachings as inherently lawful, exacerbating this issue.

For effective law enforcement against hate speech targeting religion and religious sects, it is crucial to improve the legal system by ensuring law enforcement authorities, particularly the police, actively enforce existing regulations against hate speech, creating specific regulations governing religious preaching to prevent incitement to hatred, and establishing clear definitions and regulations on hate speech to guide law enforcement and public understanding. Additionally, improving public awareness and education on the legal implications of hate speech, especially related to religion and religious sects, is essential to foster a legal culture that supports effective law enforcement.

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