ETHICAL PERCEPTION OF ENACTMENT OF THE INFORMATION AND ELECTRONIC TRANSACTIONS ACT IN INDONESIA

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ABSTRACT

The ratification of the Indonesian Act of Information and Electronic Transactions (UU ITE) on 21st April 2008 is still causing controversies to this day. In 2014 there were a number of controversial cases related to “loopholes” in UU ITE alone. Among them are three cases to be discussed in this research, which occurred in social media. These cases are Benhan vs Misbakhun, Florence vs citizens of Yogyakarta, and the case of Bupati in East Kutai. Research questions addressed in this paper focused on regulatory and ethical perceptions of the above cases. This research used a qualitative approach with case study using in-depth interview and literature review, to understand behavior of social media users in relation of the cases as stated above.

Keywords: social media ethics, media regulatory, UU ITE

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I. INTRODUCTION

Since the internet entered Indonesia in the 1990s, people in Indonesia use the internet to search for information, education, increase revenue, dissemination of the political agenda, to monitor elections. In a report from Akamai shows that the speed of the Internet in Indonesia has increased by 149% (3.7 Mbps) in Q3 2014 compared to the previous year (1.4 Mbps) (Akamai, 2014).

![Pic 1. Internet Speed in South East Asia](source: Akamai Q3 2014 (Akamai, 2014))

The Indonesian government issued regulations to regulate and protect freedom of expression in the digital world through (1) Information and Electronic Transactions Act (UU ITE), which regulates electronic transaction and information, and also prohibit four kinds of cyber crime such as pornography, gambling, threats, and defamation. (2) Ministerial Decree No. 19 on Regulating Negative Content, which underlines the duty of the government and internet service providers (ISPs) to filter websites that violate TRUST+ URL database from the Ministry of Information and Communication Technology. However both regulations threaten freedom of expression, freedom of access to information and privacy rights of Indonesian citizens (SAFENET, 2012).

Law is essentially a means to create justice for the people. However, sometimes the law can also be used as a tool to impose others. Ratification of UU ITE on 21 April 2008 is still causing a lot of controversy to this day. These controversy caused by the "loopholes" in the ITE Law. Based on data from SafeNet Indonesia, the number of cases related to UU ITE until August 2015 is 108 cases. In 2014 alone, there were a number of controversial cases related these "loopholes". Among them there are three cases that will be discussed in this study, namely the
case of Benny Handoko, Florence Sihombing and Haris Mushroomer. These three cases have been selected in this research because the completion of the three cases occurred in 2014 and originated from the realm of social media.

So the research questions are (1) how are the linkages between UU ITE and ethical use of social media? (2) How these cases can affect the behavior of users of social media? Outcomes of the research is expected to provide literacy on the ethical use of social media.

II. LITERATURE REVIEW

Information and Electronic Transactions Act (UU ITE)

Act no.11 of 2008, known as ITE Law has some provisions to be used to criminally prosecute social media users who cast criticism through the online world. The law forbid cyber crimes such as online pornography, fraud or money laundering, online gambling, and also (SAFENET, 2012):

1. Article 27 point 3: online defamation
2. Article 28 point 2: online blasphemy
3. Article 29: online threat

UU ITE has these three articles because the Indonesian Penal Code (KUHP) has been set regarding defamation, blasphemy, and threat but not yet regulate online defamation, blasphemy, or threats. In fact, all three articles have widely misused to sue Internet users while the evidence is not strong enough. Among the three articles, the most widely used is article 27, point 3 about online defamation with criminal prosecution up to six years of prison and or a fine of Rp 1 billion. Article 27, point 3 is as follows:

“Every one with purpose and without right to distribute and/or transmit and/or make people can access electronic information and/or electronic document that carry defamation”

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(1) Any person who meets the elements referred to in Article 27 point (1), point (2), point (3), or point (4) shall be punished with imprisonment up to 6 (six) years and / or a fine of Rp 1,000,000,000.00 (one billion rupiah).

Under Indonesian law, the amount of the penalty with over five years classified as serious criminal act, then the police can detain the accused in prison for twenty days and can be extended by the prosecutor until 100 days before the trial.

By 2015 the Minister of Communications and Information, Rudiantara, was sure to revise UU ITE. UU ITE revisions have gone through the process of harmonization, a matter of discussion in the House of Representatives (DPR). Change made is reduction of the sentences to article 27, point 3, from 6 years to 4 years in prison. And thus the people charged with this Article
shall not be arrested before the charges are processed (Widiartanto, 2015). Meanwhile, a fine that was initially of $1 billion was lowered to Rp 750 million (Jamaludin, 2015).

1. Benny Handoko Case

Benny Handoko or @benhan case was one of many cases of defamation based on UU ITE. In December 2012, the owner of the Twitter account @benhan was reported to the police because he had been defamed by Twitter account @misbakhun. @misbakhun account is owned by Mukhamad Misbakhun, a former member of Indonesian House of Representatives and activists in the Partai Keadilan Sejahtera (PKS), while @benhan account is owned by Benny Handoko. Misbakhun felt he was accused of being a Bank Century’s robber in a tweet by Benny. Misbakhun initially did not know about @benhan tweet, but a follower of Misbakhun retweeted @benhan and mentioned @misbakhun. Felt his reputation tarnished, Misbakhun reported Benny Handoko with screen capture of the tweet as evidence (SAFENET, 2012).

Panel of Judges in South Jakarta District Court sentenced six months imprisonment with a probation period of one year against Benny Handoko in February 2014. Judge assessed Benny was guilty of intentionally and without right to distribute or transmit documents that have a charge of insult or defamation against Misbakhun (Ihsanuddin, 2014). The following are quotes from @benhan tweet that violate UU ITE (Syailendra, 2012):

“Misbakhun: perampok bank Century, pembuat akun anonim penyebar fitnah, penyokong PKS, mantan pegawai pajak di era paling korup”.

This tweet was replied by @misbakhun “Anda @benhan harus bisa menjelaskan ke saya ‘merampok’ Bank Century. Walaupun kata merampoknya menggunakan tanda petik. Sudah saya capture. Sulit lari”.

2. Florence Sihombing Case

Florence case began on August 27, 2014 at SPBU Lempuyangan Yogyakarta, when Florence went into a petrol-filling lane for cars and asked the attendant to refuel her bike with Pertamax. Because of her behavior, all citizens who have been queuing at the pump directly shouted and told Florence for queuing. The fueling event ended after the request for gasoline was refused and Florence left the gas station. Not long after, Florence vent her disappointment in social media, Path, writing “Jogja miskin, tolo, dan tak berbudaya. Teman-teman Jakarta-Bandung jangan mau tinggal di Jogja” (SAFENET, 2012). Her status on social media then was captured and disseminated through Twitter and Facebook. Based on LSM Jatisura report, Yogyakarta Police Department detained Florence with alleged accusation.

Florence was detained for two days by the police before being released because UGM requested suspension of detention. Florence was also heard by the UGM Ethics Committee of Faculty of Law and admitted regret also to ask the people of Jogja to forgive her. Although she has gained support from netizens but Florence legal process continues. Prosecutors file charges of imprisonment for six months and 12 months probation also a fine of Rp 10 million subsidiary three months in prison (Kusuma, 2015). But in the verdict, Yogyakarta District Court Judge sentenced her two months probation and a fine of Rp 10 million with a trial period of six
months. It means if for six months Florence was charged with a criminal offense, she had to undergo imprisonment and a fine of Rp 10 million to be paid, otherwise Florence should be sentenced to one month in prison (Syaifullah, 2015).

3. Haris Mushrooomer Case

This case originated from a discussion in the Facebook group on the issue of poverty in East Kutai. Discussion began with quotes from national media with statements that Regent of East Kutai, Isran Noor that after four years leading said East Kutai has no more poverty. From the article, Haris Mushrooomer commented coarsely in the Facebook group. Feeling angered on this comment, Isran Noor asked Head of Public Relations Setkab Kutim to file a report on defamation of him (Bangka Pos, 2014). Shortly thereafter Isran Noor forgave and withdrew the report from the police in response to a letter of apology from Haris Mushrooomer in March 2014 addressed to the Regent of East Kutai. From the apology, the Regent of East Kutai responded that after considering all aspects, in particular to provide positive lessons on the expression of opinions in a responsible manner, then he received the letter of apology and revoke his demands to Haris (SAFENET, 2012).

Hegemony Theory

Antonio Gramsci analyzed the various relations of power and oppression in society. According to him, the media may be a means for the group to strengthen its position and putting off other groups. Hegemony emphasis on forms of expression, method of application, a mechanism that is run to maintain and develop themselves through their victims, so that the effort was successful to influence and shape publics minds. Through hegemony, ideology of dominant group can be deployed, values and beliefs can be exchanged fairly, where people receive voluntarily (West & Turner, 2007).

Gramsci’s theory of hegemony of the social community emphasized that in society there is battle for public acceptance. Through the mass media and news production process, the process of hegemony occurs subtly so that what is reported by the media appears as a truth, logical, reasonable, and everyone considered it as an unquestionable truth (West & Turner, 2007). Hegemony serves to create a way of thinking that comes from the dominant discourse, the media also play a role in the spreading of the dominant discourse. Hegemony is used to indicate the presence of a dominant class directing and did not only regulate society through moral and intellectual leadership.

Public Sphere Theory

This theory initiated by Jurgen Habermas in 1989. According to Habermas, public sphere is “a domain of our social life where such a thing as public opinion can be formed, where citizens deal with matters of general interest without being subject to coercion to express and publicize their views” (West & Turner, 2007). In Britain and France the concept of public sphere has been around since the 18th century, where people meet and discuss new works of art. In further developments, the public sphere also involves space that is not only physical, but also the space
where the communication process can take place, such as in the mass media and the Internet. According to Habermas, the public sphere success depends on (1) the extent of access, (2) the level of autonomy of citizens who are free from coercion, (3) rejection of hierarchy, (4) the rule of law, and (5) the level of participation (West & Turner, 2007).

III. RESEARCH METHODS

The research in this article used a qualitative approach with case study method. Data collection method used are interviews and literature study. Interviews were conducted with directional or free guided interviews with subject matter remains on track and has been prepared in advance (Kriyantono, 2006). Another method used is to look for the official documentary data is data stored on websites and other data such as brochures of activities. The official document is divided into internal and external documents. Internal documents such as memos, announcements, instructions, meeting reports, conventions and other habits that take place in an institution. While the external document is issued by an institution of information such as magazines, bulletins, news published in the mass media, announcements and notices (Daymon & Holloway, 2002). The validity of such data using a detailed description is acceptable if the findings are described in detail and clearly, logically and rationally. As an analytical tool in this study used uses and gratification theory, hegemony, and the theory of public sphere. Informants in this study is Damar Juniarto, Regional Coordinator of SafeNet Indonesia.

IV. RESULTS

Southeast Asia Freedom of Expression Network (SAFENET) is a network driven online free expression in Southeast Asia, both organizations and individuals, in the context of human rights protections for freedom of speech. Found in Bali, 27th June 2013 by 15 social bloggers, journalists, lawyers, digital tech experts, Safenet work mobile and based on voluntarism. SafeNet reported the threats to freedom of expression online and support the work of Internet users. SafeNet scope of work are mapping the broadcast and online media for freedom of expression, and provide support and build solidarity with victims of violations of freedom of expression (SAFENET, 2012).

According to data from SafeNet, the number of cases related to UU ITE up in July 2015 continues to increase, with defamation become the most number of cases.
Profession of the Reported Party in cases related to UU ITE diverse consist of artists, activists, civil servants, housewives, motivator, students, lawyers, cultural, employees, journalists, and so on. While the majority complainants profession is the common people followed public officials, professionals (lawyers and doctors), artist, and educator (SAFENET, 2012). According to the results of interviews with informants, after an analysis of data from the ITE Law cases are more prevalent in the outskirts of Jakarta, with specialized areas as a pouch case. Determination of the area as a pouch case if an area has cases related to UU ITE more than 3 cases. Examples of pouch case area between Yogyakarta and Lombok with 4 cases related to UU ITE.
The analysis results of SafeNet, according to Damar Juniarto, complainant motivation can be divided into several things, namely (1) to silence criticism, (2) shock therapy, (3) revenge and barter. Of the three cases that are the focus in this research, the case of Benny Handoko and Haris Mushroomer classified as the first motivation. Both cases started because of criticism delivered through social media and led to charges. Haris Mushroomer case itself can also be classified on the second motivation. Which is based on reports, the motivation of the East Kutai Regent who want to make the case of Haris Mushroomer as teaching the public on how to use social media responsibly. While Florence Sihombing case can be classified to the second and third motivation (revenge). Because the status on one social media led to the revenge actions of NGOs Jatisura who feels abused as citizens of Yogyakarta.

**Social Media Ethics**

UU ITE usage to prosecute by all three motivations has a pattern and practice of supporting anti-democratic hegemony. In all three cases, the social media is used as a means to reinforce the dominant group and targeting ordinary people who are vocal. In addition to silencing also to give lessons to other societies more broadly. This hegemony practices is given protection through the implementation of UU ITE.

In the case of Benny Handoko and Haris Mushroomer, public officials claim their motivation for learning among other things to the public. The values of the dominant group can be spread through the success of the demands of the ITE Law. Meanwhile, according to Damar, when handed down a verdict to Benny Handoko, the judge did not follow a common protocol for evaluating digital forensic evidence necessary to determine the 'intent' in defamation. To find out whether a person has the intention or did not, the offender must prove to defame a person more than once. In the case of Florence Sihombing, prosecutors want to enforce a good Internet ethics in society. However Damar believe that if the government wants to educate the public about online ethics, then the government should teach people about it. Education is a more direct approach than punishing someone to prison.

According to Damar, social media is in the public sphere, and there is no difference between the public and private sphere on the Internet. He said Indonesia does not recognize the concept of privacy so either through conventional media or online media, people still regard everything as the public sphere. The most frequently expressed sentence which supports the absence of the concept of privacy is "if you do not make a mistake then do not be afraid." The concept of privacy is closely related to the ethical use of social media. For people who value privacy, the comments and status on social media can be regarded as a private sphere and violate ethics to capture comments, or status. Damar also added, should social media profile pages is someone’s house, and the wall where the comments are the terrace, then other people should not go to a page and leave a comment without the permission of the owner of the house.

Florence and Haris cases could be a clear example of the lack of the concept of privacy. In the case of Florence, an expression of disappointment were made in social networking site Path, which should be more closed than Facebook. However, that status captured and disseminated by Path friends of Florence, which should mean a violation of privacy and ethical concept of
social media. Just like the case of Florence, Haris case also began with the expression on a closed Facebook group that is spread by one member of the group. Both of these examples illustrate the lack of knowledge of ethical use of social media in Indonesian community. Public thinks is not a problem to take the comments closed social media and disseminate them to the public.

In accordance with the theory of Habermas, that the concept of public space will be shifted from the real to the virtual space in the mass media and the Internet. But it is necessary to separate between public and private space on the internet, and internet ethical literacy necessary to limit both of this space. Hopefully, through literacy of ethical use of the Internet to foster the concept of privacy in Indonesian society and continue to use the Internet as a public sphere to exchange ideas and expression.

According to Habermas, the public sphere success depends on (1) the extent of access, (2) the level of autonomy of citizens who are free from coercion, (3) rejection of hierarchy, (4) the rule of law, and (5) the level of participation (West & Turner, 2007). With UU ITE which has provisions to have multiple interpretations, it can threaten the success of public sphere in Indonesia. If the rule of law is too strict, it will suppress public expression, resulting in a low level of participation. The quality of participation can also be decreased because of the practice of hegemony, where the dominant group solidified their position by manipulating the values and beliefs of society at large. Through cases related to UU ITE, hegemony done subtly so that the public may believe using social media means does not criticize the dominant group.

**Chilling Effect**

Damar Juniarto also describes cases of UU ITE provide chilling effect to the public. Chilling effect is a discouragement to freedom of expression through social media or the Internet due to legal sanctions and social sanctions. This effect does not spontaneously occur but rather slowly because people are seeing examples of cases related to ITE Law.

This chilling effect caused by indication of the application of Article 27 and 28 at the ITE Law made the shortage of critical sources who refused to comment on the media. This shortage of sources are known from the report Legal Aid Institute (LBH) in Makassar (Idhom, 2014). Doni from LBH Yogyakarta (Idhom, 2014), and Damar Juniarto as Safenet Indonesia Coordinator, both thought a lot of people who have the economic resources and political aim at vocal and critical people to contain occurrence of harmful news. Both also deplored the practice of law enforcement under Article 27 and 28 of Law ITE are more targeted to internet users with trivial errors, while hundreds of internet sites that upload black campaign text or video content was uncharged and it was never touched by the ITE Law.

From the literacy efforts that have been made by SafeNet Indonesia, in addition to chilling effect there are other effects, namely the widespread awareness for the use of UU ITE and to claim others with minimal evidence. This is evident from the increasing number of cases related to UU ITE and most of the complainant came from general public.
Most people who use social media in Indonesia have not been informed about the ITE Law and how the slightest expression on the internet can be used as a basis for lawsuits. Literacy of ethical use of the Internet is still the best solution to avoid cases related to UU ITE. But this literacy can not be done only by the government without the support of the society. So that literacy should start from formal education when someone is new to internet up to the college level. Other than that revision of UU ITE is the expectation of the public to avoid multiple interpretations and misuse of law for the sake of personal or group interests.

V. SUMMARY

From the three cases in this research can be concluded that the lack of literacy on the use of social media and the lack of the concept of privacy in Indonesia led to the low ethical culture in the use of social media. Added with the articles of the UU ITE can cause multiple interpretations that are so widely misused for personal gain. Increased numbers of cases of defamation are evidences of misuse of this ITE Law.

The impact of the cases related to UU ITE on the behavior of social media users is the emergence of chilling effect and the increased awareness with the use of UU ITE, which makes it is easy to sue another individual. Chilling effect can be seen from a critical resource crisis in Makassar, the crisis is likely due to fears hit by lawsuits from the ITE Law.
REFERENCES


