
HATE SPEECH: CONCEPT AND PROBLEM

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Abstract

Hate speech issues have become one of interesting topics discussed by academics of different disciplines since two decades ago. The studies employ various perspectives such as linguistics, sociology, anthropology, psychology, politics, law and even media and communication, making the theme an interdisciplinary study. One of prominent and comprehensive studies on hate speech in US from 1920s to the end of twenty century using social and political history perspective is one written by Samuel Walker (1994), a professor in University of Nebraska, Omaha, AS. Walker focused the study on social context and groups interrelation, prejudice and discrimination as political issues, and attempts to control hate speech through legal institutions. Started from terminology analysis like “race hate”, “group libel”, or “racist speech”, Walker then proposed a definition of hate speech and its related expressions such as race, ethnic, religious groups, minority, age, marital status, physical capacity, sexual preference and sex

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A. INTRODUCTION

Hate speech issues have become one of interesting topics discussed by academics of different disciplines since two decades ago. The studies employ various perspectives such as linguistics, sociology, anthropology, psychology, politics, law and even media and communication, making the theme an interdisciplinary study. One of prominent and comprehensive studies on hate speech in US from 1920s to the end of twenty century using social and political history perspective is one written by Samuel Walker (1994), a professor in University of Nebraska, Omaha, AS. Walker focused the study on social context and groups interrelation, prejudice and discrimination as political issues, and attempts to control hate speech through legal institutions. Started from terminology analysis like “race hate”, “group libel”, or “racist speech”, Walker then proposed a definition of hate speech and its related expressions such as race, ethnic, religious groups, minority, age, marital status, physical capacity, sexual preference and sex.¹

Hate speech issues have also been in Indonesia since a long time. In Indonesian criminal law, a legal process to sue an action that can be categorized as hate speech has been included, namely article 157 of Criminal Code². However, debates on hate speech have just emerged after the head of Indonesian Police Office issued a letter No. SE/6/X/2015 on handling hate speech. The emergence of this *beleid* triggered pros and cons. Some agree that the letter was an appropriate action due to alarming danger posed by hate speech which so far had not been properly responded, thus urged for specific response. Those who oppose see that the *beleid* could serve as a threat to freedom to express one’s mind. Moreover, it was also considered a tool to silence criticism towards government. The latter might seem absurd since hate speech has been in Criminal Code confirming that the letter issued by the Police Office has not produce a new norm.

A threat of schism and disunity as a result of hate speech poses serious problem for nation of Indonesia. Hate speech mixed with hoax grows to be a new threat to social cohesivity. This intensifies when political competition takes place especially those filled with issues of religions, race or ethnics. In presidential election 2014 and Jakarta governor election 2017 hate speech demonstrated grave threat.

Destructive power of the threat builds up in a community where the means to spread hate speech magnify through social media. The strengthening influence of social media plays a key role in increasing a threat to social schism resulted by hate speech. Hoaxes found in social media filled with hate content proves to be a grave peril. On the other hand, hate speech still remains a problematic issue both at a conceptual and practical level. When a person gives a religious sermon indicating dislike or even hostile attitudes towards different groups or religions, can he be categorized to perform a hate speech thus considered committing an offense?

¹ Read Samuel Walker, *Hate Speech: the History of American Controversy*, (Nebraska: University of Nebraska Press, 1994), h. 8.

² Article 157 of Criminal Code states: “Whoever spread, show or put a written notice or picture in public that contains feeling of enmity, hatred or insult between or towards groups of Indonesian community, with an intention that its content be known by public, will face a sentence of two years and 6 months imprisonment maximum or a fine of four thousands and five hundreds rupiahs.”

Due to serious danger this issue entails, Nahdhatul Ulama (NU) in National Conference of Ulama and Grand Conference (Munas & Konbes) from 23 to 25 November 2017 in Mataram brought up hate speech in *Babsul Masail Maudhu'iyah* forum.³ The forum mentioned that hate speech is categorized as disgraceful deed for it attacks personal and public dignity protected by religion (*hifzih al-'irdh*). It is strongly prohibited in Islam. Hate speech in Islam can be considered *namimah*, *ghibab*, *sukbriyyah*, *istihza'*, *bubtan* and even severe slender. Hate speech thus seriously regarded as prohibition in Islam.

NU observes that *amar ma'ruf nabi munkar* cannot be combined with hate speech since a call to good deeds must be carried out by noble character showing love, care, and respect. *Amar ma'ruf nabi munkar* cannot either be combined with disgraceful deeds for a call for good actions must be fulfilled using respectful manners. Hence, *amar ma'ruf nabi munkar* will not find its accomplishment through hate speech for it is a prohibition.⁴

B. DISCUSSION

1. Concept of Hate Speech

In Indonesian, there are several terms to indicate hate speech such as “*siar kebencian*”, “*ujaran kebencian*”, or “*penebaran kebencian*”. From legal perspective, the term hate speech is used to describe “*menyiarkan*”, “*menyebarkan*” atau “*pernyataan*”. In this paper, I would use “*siar kebencian*”⁵ to translate hate speech. The word “*siar*” (to deliberately spread) is chosen because it contains wider meaning than “*ujaran*” (expression) or “*penebaran*” (spread).

According to Samuel Walker, the word “speech” is generally used to indicate all kinds of communications, verbal or non-verbal, written or visual. Referring to this definition, hate speech include all forms of communications not limited to only those expressed in words.⁶

Raphael Cohen-Amalgor, as cited in Aminah⁷, defines hate speech as:

Hate speech is defined as bias-motivated, hostile, malicious speech aimed at a person or a group of people because of some of their actual or perceive innate characteristics. It expresses

³ *Babsul Masail* is an academic forum held by NU to offer solutions for social problems using references of authoritative classical books, widely known as *kutubul mu'tabaroh*. There are three aspects discussed in *Babsul Masail*, *daily fiqh problems*, *thematic problems*, and *problems related to laws*.

⁴ A product of *Babsul Masail Maudhu'iyah* Munas dan Konbes NU in Mataram, 23-25 November 2017.

⁵ In Comprehensive Dictionaro of Indonesian Language (KBBI), the word “*siar*” has several meanings, which is 1) meratakan ke mana-mana; 2) memberitahukan kepada umum; 3) menyebarkan atau mempropagandakan (pendapat, paham, agama dan sebagainya); 4) menerbitkan atau menjual (buku, gambar foto dsb); 5) memancarkan (cahaya, terang dsb); 6) mengirimkan (lagu, music, pidato dsb). Look <https://kbbi.web.id/siar>

⁶ Read Samuel Walker, *Hate Speech*, h. 8-9.

⁷ Siti Aminah, “Siar Kebencian dan Propaganda Perang Berdasarkan Agama dan Keyakinan”, in Rumadi Ahmad dkk, *Hak Atas Beragama dan Berkeyakinan di Indonesia*, (Jakarta: Wahid Foundation, 2016), p. 356.

discriminatory, intimidating, disapproving, antagonistic, and/or prejudicial attitude towards those characteristic, which include gender, race, religion, ethnicity, color, national origin, disability or sexual orientation. Hate speech is intended to injure, dehumanize, harass, intimidate, debase, degrade and victimize the targeted groups, and to foment insensitivity and brutally against them.

The above definition explains that hate speech must be based on hostile and intolerance attitude, caused either by issues of religion, ethnics, race, sex, gender identity, sexual orientation or disability. This limitation needs to be made to build a clear division between what can be categorized as hate speech and what cannot.

Analyzed more deeply, *hate* can be understood as strong and irrational emotion taking form as insults, hostility and hatred towards a targeted group due to their specific characteristics. *Speech* on the other hand is an expression to convey opinions or ideas that can be done through different mediums. This brings about a number of important points regarding hate speech:

- a) An intent to hate and to be hostile toward someone.
- b) A person or a group of people as an object of an intent.
- c) A form of hate and hostile expressions done through a medium.
- d) To spread, to call, to promote a resentment towards a person or a group of people due to specific reasons.
- e) To agitate violence, discrimination, or hostility towards an individual or a group of people.
- f) An action is done with a clear potential to instil schism and violence towards others.

2. Hate Speech and Other Related Concepts

Hate speech is not an independent concept. To describe a concept of hate speech must also describe other related concepts, be it on conceptual or practical level. Although hate speech is considered a crime, it still entails some rights protected by laws. Limitations that make certain deeds are considered hate speech can be determined by these related concepts, which will be discussed in the following section.

- a) Hates speech versus Freedom of speech and expression.

Hate speech seem inseparable from the right to express one's opinion, the right to think and to express one's self. These rights are often used as a shield of protection by those performing hate speech. This problematic issue is very much influenced by politics of law within a country. Freedom of speech and expression has been internationally accepted as human right. It is hard to determine clear separation between the two.

The right of freedom of speech and expression is protected by Indonesia Constitution UUD 1945, by DUHAM, and by article 19 International Covenant on Civil Rights and Politics that has been ratified through Act No. 12 year 2005. It says:

- 1) Everyone has a right to express his opinion without intervention;

- 2) Everyone has a right to have freedom of speech. This includes freedom to seek, receive and give any information and thought without any verbal, written or printed, or art production or other media limitations.
- 3) Enactment of these rights results in specific obligations and responsibilities. To put this right into action some limitation could be set out as it necessitates to: a) respect others' rights and dignity, b) protect national security and public stability, health or morality.

General comment of UN Committee of Human Rights conveys that enactment of freedom of speech and expression comes with specific tasks and responsibility related to others concerns or society at large.⁸

Therefore, restrictions in a form of prohibition to perform hate speech is considered legal, not opposing right or freedom of speech and expression. The prohibition can also be implemented to propaganda threatening or resulting in an aggression towards others.

b) Hate speech and Freedom of religion

On one hand, to practice one religion and faith is a right protected by international law and constitution. Everyone must be protected to practice their religion and faith, and to express it. One cannot be considered to commit a crime because he is practising his religion and faith. On the other hand, others can express their opinion on their rights. Freedom does not mean unrestricted.

General comment of UN Committee of Human Rights consider a crime all practices of religion or faith leading to war propaganda or agitation of enmity towards a religion that results in discrimination and violence.

The question is, can it be considered a crime to deliver religious teachings containing an assault to other religion. Often, claiming to deliver one religious teachings, one discriminating other religion. As far as delivering one religious teaching, it can't be generalized that one performs hate speech in absence of agitation of hatred, discrimination, or a call to enmity and violence. One can claim that he is practising his religion.⁹

c) Distinguishing the concepts of hate speech and hate crime

Hate speech and hate crime are two different things. Hate crime is a crime that is at least committed or partly motivated by victim affiliated group, be it race, religion, ethnic, gender, sexual orientation and so on. Hate crime is a crime that is motivated by hatred based on that affiliation. The essence of hate crime is a crime itself (like murder, intimidation, physical violence, attack and others), and a biased motive.¹⁰

The similarity of the two lies in motive, which is a hatred towards a group of victims. The difference lies in factors leading to crime. Hate crime takes place when effects of crime is clear and obvious. While hate speech needs no effect of the deed. An

⁸ Cited from Siti Aminah, "Siar Kebencian dan Propaganda Perang Berdasarkan Agama atau Keyakinan", p.367.

⁹ Further read, Siti Aminah, "Siar Kebencian dan Propaganda Perang Berdasarkan Agama atau Keyakinan", p. 361-365.

¹⁰ Read also Samuel Walker, *Hate Speech*, p. 9.

expression containing hate speech that stimulate agitation of enmity can be considered hate speech. Therefore, hate crime is a material crime, and hate speech is a formal crime that does not need effect of hate action.

d) Between Hate Speech and Blasphemy

Hate speech and blasphemy are often taken in a biased way by people. Blasphemy offense is often related to godslatering¹¹. In a broader meaning, blasphemy can be understood as opposing, mocking and even showing enmity towards sacred stuffs. Blasphemy in its practice needs no hate speech. Likewise, hate speech does not always a practice of blasphemy.

Blasphemy generally takes form of words or texts that are against long practiced divine teachings. In a number of countries, blasphemy is prohibited by law. In traditions of Abrahamic Religions (Judaism, Christian, and Islam), it is also forbidden. In Judaism tradition, blasphemy means to ridicule god's name or to say things that contain detestation towards god. In a Christianity, The New Testament mentions that to detest the holy spirit is considered an unforgiven sin and a blasphemy. In the Old Testament, one performing blasphemy is threatened to be killed by stone throwing. In Islam, blasphemy is to detest God, The Prophet Muhammad and all prophets in Al-Quran, and to detest al-Quran. While Hind and Budha do not specifically attend a blasphemy.

Blasphemy can be categorized as follow:

- 1) Direct Blasphemy. Law regulating this blasphemy attempts to protect religion, doctrine, symbol or respected personality and other things considered sacred by religion.
- 2) Insult to religious feeling, deemed to protect feeling of a group of people from being "insulted" or "offended" because of their faith. Domain of feeling is quite delicate. Someone who has no intention at all to detest or ridicule one's faith can be sued to do a blasphemy due to other's feeling offended.
- 3) Laws restrict religious expressions. In many cases, this is embedded with an interest to protect public moral and stability, which in turn relates to issues of freedom of speech and expression.¹²

e) Hate Speech typology

There are at least three kinds of hate speech according to its level of hazard.

1) Hate Speech that must be banned

International law gives right to members of United Nations to ban the most dangerous kind of hate speech. The ban aims to prevent its destructive effects such as direct and public incitement to genocide. The action can be considered

¹¹ Discussion on Blasphemy read further, *Delik Agama dan Kebidupan Beragama dalam RUU KUHP*, (Jakarta: the Wahid Institute, 2007).

¹² Look Siti Aminah, "Siar Kebencian dan Propaganda Perang Berdasarkan Agama atau Keyakinan", p. 372.

gross violation of human rights. This kind of hate speech contains agitation to do an action, in part or wholly, such as:

- a) to kill a person or a group of people being a victim of a hate speech.
- b) to cause injuries on body or mental of group of people.
- c) to cause purposively physical damages of people property.
- d) to make some attempts to prevent child birth from certain group of people
- e) to take children out of their families forcefully

2) Hate Speech that can be banned.

International law of human rights gives permission to a nation to restrict the right of freedom of speech and expression. This restriction is allowed as long as it gives respect to human rights, protects national security and public stability, health and moral. One kind of hate speech is one that targets an individual. This is against article 20 (2) ICCPR because the doer makes no attempt to incite people to do something to others based on specific characteristics. This type of hate speech is categorized as violence threat and abuse.

3) Hate Speech that is not banned.

This category relates to expressions perceived to hurt a feeling of someone or group of people but is considered very light. This kind of expression could harm tolerance, norms of ethics or respect of others. Although it is not prohibited by law, it can instil intolerance. The best response to this kind of hate speech is not to make it a crime, but to build understanding between the two parties.¹³ Tolerance is the key for this kind of hate speech.

3. Different Countries in Handling Hate Speech

How countries handle hate speech can be divided into three categories: **First:** Countries that view hate speech cannot be banned since it is part of freedom of expression. US holds this kind of view. US is the only country with no codes about hate speech. However, it does not mean that hate speech cannot be considered a crime. There are law cases in US Supreme Court consider some expressions cannot be protected by US Constitution such as sexual abuse, blasphemy, and words potential to harm harmony and peace. This is recorded when the Supreme Court let free the racist Ku Kluk Klan who often spread hate speech. The court implemented what it called “*imminent danger test*”, which is to see whether a hate speech is performed to incite enmity that could cause sudden chaos. In 1969, this test was perfected saying: whether who performs hate speech has an intention to incite chaos and the presence of assumption that a chaos takes place as a result of a hate speech.

Second: Countries that strictly forbid hate speech, even with great excessiveness. European countries and Canada can be categorized to this group. European countries implement strict laws and sensor dealing with hate speech. There is one European country who considers holocaust denial -to deny massive genocide by

¹³ Read Rumadi et.al, *Hak atas Kebebasan Beragama dan Berkeyakinan di Indonesia*, pp. 374-376.

German socialist on Jewish in WW II- as crime. In Belgium, there are two laws regulating hate speech: anti-racism law 1981 and holocaust denial law 1995. In the Netherlands, hate speech is banned by Criminal Code article 372 c including expressions that insult a person or a group of people because of their religion, philosophy of life, sexual orientation, and physical or mental disability. In 2009, Geert Wilders, the producer of film “Fitna” was stated to violate this article 137 in Amsterdam Court, but released in 2011.

European commission allow some restrictions related to hate speech based on article 10 European Convention of Human Rights; including laws regulating holocaust denial or denouncing genocide. A Decree of European Human Right Court recommend members of European Union to fight hate speech including anti-Semitism.

ICCPR article 20 states ‘all actions promoting hate towards a nation identity, race or religion taking form in hate speech to do discrimination, enmity and violence must be banned by law’.

Third: Countries who ban hate speech not excessively. They are two groups: 1) Countries who ban hate speech to protect human rights and minority. 2) Countries who ban hate speech to protect the majority or traditional values.¹⁴

4. Indonesia in dealing with hate speech

Indonesian law takes its source from European law tradition. How Indonesian law deals with hate speech is very much alike as European tradition. In Indonesian law, there are laws regulating hate speech. In article 156 Criminal Code it is stated:

“Whoever in public states a feeling of enmity, hate or insult towards something or groups of Indonesian citizens, is facing a sentence of being jailed four years maximum or fine four thousand and five hundred rupiahs”.

Article 156a Criminal Code says:

“To face a sentence of five years imprisonment maximum, whoever on purpose in public show a feeling or do something that, a. In its essence demonstrate enmity, misuse or blasphemy to any religion practiced in Indonesia, b. is intended to impair anyone from practicing any religion based on a Belief in One God.”

Article 157 section 1 Criminal Code states:

Whoever spread, show or put a written notice or picture in public that contains feeling of enmity, hatred or insult between or towards groups of indonesian community, with an intention that its contain be known by public, will face a sentence of two years and 6 months imprisonment maximum or a fine of four thousands and five hundreds rupiahs.

Another law regulating hate speech is Law no.11 year 2008 on Information and electronic transaction. Article 28 section (2) states:

¹⁴ Lookt Siti Aminah (penyunting), *Kompilasi Hasil Penelitian Putusan Pengadilan dan Kebijakan Daerah terkait Hak-Hak atas Kebebasan Beragama/Berkeyakinan*, (Jakarta: ILRC, 2014), p. 58-59.

Whoever on purpose and without a right spreads information intended to instil hatred and enmity towards an individual and or a community of certain ethnic, religion, race and or group (SARA).

In article 45 section (2) the aforementioned deed faces a sentence of maximum 6 years imprisonment and or a fine of one billion rupiah.

Code No. 40 year 2008 on abandonment of race and ethnic discrimination also regulates deeds that are categorized as race/ethnic discriminative. Article 4 section b of the code explains:

- a) To write or draw a picture to be placed, glued or spread in public or other places that are exposed to people to read and see.
- b) To give a speech, or deliver certain words in public or other places that can be heard by others.
- c) To wear something, or words or pictures in public or other places that can be read or seen by others.
- d) To take someone's life, to oppress, to rape, to harass sexually, to steal with violence or impair other freedom of people of certain race and ethnic.

Article 16 Code no. 40 year 2008 also mentions the sentence:

“Whoever deliberately shows hatred or a feeling of hate towards others of race or ethnic discrimination as intended in article 4 section b number 1, 2 or 3 will face a sentence of five years imprisonment and or fine maximum five hundred millions rupiah”.

C. CONCLUSION

Hate speech is one aspect of human right that can be restricted. Countries differ in setting limitations to the rights. There are countries that do not apply tight restrictions, while others treat it with very fine constraints. Politics of law in each countries determine such differences. An implementation of hate speech prohibition is very closely related to power relation. In certain social circumstances, a number of hate speech cases go without any law enforcement, due to non-legal considerations.

Indonesia have put a number of laws regulating hate speech. However, grey areas exists and needs continuous studies and discussions. These grey areas are related to hate speech often legitimized as religious teachings. Claiming to perform religious sermon, people can find shelter from delivering hate speech. Should religious activities show hatred and enmity? This is an area that will have a very long journey of discussions and negotiations in the law and life of Indonesian society.

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