

Criminal Sanctions against Hate Speech (Hoax) Actors in Indonesian Positive Law and From the Perspective of Islamic Law



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ABSTRACT: In the modern era, with the massive development of social media, it is very necessary to have limits on expression so that no party feels disadvantaged because of someone's words or actions on social media. The problem that often arises due to the development of social media is the problem of hate speech. Islam as a perfect religion also regulates the problem of hate speech, therefore the purpose of this study is to analyze criminal sanctions against perpetrators of criminal acts of hate speech according to positive law in Indonesia and from the perspective of Islamic law and its contribution. The method in this study is normative juridical, with the main data source being secondary data obtained through library research in the form of regulations currently in effect in Indonesia, literature books, research results and journals as well as theory from legal experts, the research results were analyzed using a qualitative descriptive method. Research results In Indonesia freedom of expression is a constitutional right of every citizen which is explicitly guaranteed by the 1945 Constitution. 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah). According to Islamic law, the penalty for spreading hate speech is ta'zir, namely sanctions that are not determined by Islamic law but are fully handed over to the authorities with a measure of benefit, both benefiting the perpetrators, victims and Public. The sanctions vary depending on the perpetrator and the type of action with the measure of benefit between the lightest penalties such as a warning to imprisonment.

KEYWORDS-Hoax; Criminal; Hate Speech; Islamic; Indonesia.

I. INTRODUCTION

In Indonesia, the freedom to express opinions in public, both orally and in writing, as well as the freedom to organize are the rights of every citizen that must be recognized, guaranteed, and fulfilled by the state. Indonesia as a constitutional state has regulated guarantees for freedom of association and assembly as well as freedom to express opinions both orally and in writing in Article 28 of the 1945 Constitution which states "Freedom to associate and assemble, express thoughts verbally and in writing and so on is stipulated by law".

One of the international instruments that guarantees the right to freedom of opinion is Article 19 of the Universal Declaration of Human Rights (UDHR) which states that "Everyone has the right to freedom of opinion and opinion; this includes freedom to hold opinions without interference and to seek, receive and impart information and opinions in any way and regardless of frontiers." Furthermore, in the International Convention on Social and Political Rights (ICCPR) it is also emphasized that the right to freedom of opinion includes speech orally, in writing or in print, in the form of art, or through other desired media [1].

In the modern era, with the massive development of social media, it is very necessary to have limits on expression so that no party feels disadvantaged because of someone's words or actions on social media. The problem that often arises due to the development of social media is the problem of hate speech.

In Indonesia, the criminal act of hate speech and sara is a problem that cannot be overcome by the provisions contained in the criminal law code, which is then abbreviated as the Criminal Code and various regulations which constitute special criminal law. To analyze and find regulations on criminal acts of hate speech (hoaxes) from the perspective of Islamic law and their contribution to the renewal of the Indonesian criminal law code.

II. RESEARCH METHOD

The paradigm in this study is post positivism because it examines from the perspective of statutory regulations as positive law and from a comparative law perspective by comparing hate speech according to regulations in Indonesia and compared to that according to Islamic law. Therefore, this research is a normative juridical research type, with the data source used is secondary data obtained

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through library research on primary legal materials in the form of rules and regulations that apply in Indonesia, secondary legal materials in the form of theories, scholarly opinions, literature books, journals, and research results, as well as tertiary legal sources in the form of legal dictionaries and encyclopedias related to the subject matter in this research. The data obtained were then analyzed using normative descriptive methods.

III. RESEARCH RESULTS

In the current era of information technology, the phenomenon of high cases of hate speech is not that surprising. Many people have predicted the occurrence of this phenomenon. Almost all countries have even anticipated this by regulating the prohibition of such acts in their countries. Even though the legal arrangements may differ from country to country, both in terms of the scope of the action, who did it, and who was the target of the utterance. It is recorded that only three countries in the world have not made a policy of criminalizing hate speech or acts of incitement to hatred, namely the United States, San Marino and the Holy See.

According to the Big Indonesian Dictionary, "hoax" is "news" that is fake or has no source. In the Oxford English dictionary, "hoax" is defined as "malicious deception" or "lies made with malicious intent". Hoax in English means deception, fake news, fake news, or rumors. Fake news is news whose content is not in accordance with the truth (*matriële waarheid*). Silverman defines a hoax as a series of information that is deliberately misled, but "sold" as truth. Meanwhile, according to Werme, fake news is considered as fake news that contains information that deliberately misleads people and has a certain political agenda. Hoaxes are not just misleading or misleading, the information in fake news also has no factual basis but is presented as if it were a series of facts.

Hoax is an attempt by a handful of people to deceive or trick readers and listeners into believing something, even though the creator of the fake news knows that the news is fake. One of the most common examples of fake news is claiming an item or event with an element of a name that is different from the actual item or event. Another definition states that hoax is a form of deception that is used to believe something that is not true and often illogical through online media [2]. Hoax aims to create public opinion, lead public opinion, form perceptions as well as for having fun which tests the intelligence and accuracy of internet and social media users. The purpose of spreading hoaxes varies widely, but in general the goals of hoaxes are just jokes or fads, bringing down competitors (black campaigns), promotions with the intent of fraud, or invitations to do good deeds which are not necessarily clear regarding the arguments contained therein. However, this caused many hoax recipients to be provoked to spread hoax news to their colleagues and resulted in the spread of the news being widespread.

Fake news is processed in such a way as to attract readers. Netizens participate in the comments column to discuss news with the assumption that they can correct the news through their opinions. Even though it is not certain that what they convey can be understood by other people, so that more and more people comment on both the news itself and other people's arguments. Therefore, hoax news is more popular, thus covering up the existence of the original news. Hoax outbreaks have become a national problem including division, political instability and security disturbances that have the potential to hinder national development. Hoaxes through social media are regulated in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) which regulates the spread of hoaxes for those who violate it can be subject to sanctions as regulated in Article 45 A paragraph (1) namely content of false and misleading news, Article 45 A paragraph (2) whose content creates hatred or hostility towards certain individuals and/or groups of people based on ethnicity, religion, race, and between groups (SARA) [3].

According to the Press Council, the characteristics of a hoax include Generating anxiety, hatred and hostility. The source of the news is not clear. Hoaxes on social media are usually media reports that are unverified, unbalanced, and tend to corner certain parties. Filled with fanaticism in the name of ideology, the title and introduction are provocative, provide punishment and hide facts and data. Another characteristic of hoaxes is the presence of capital letters, bold letters (bold), lots of exclamation marks, and without mentioning the source of the information. And the main feature of Hoax is without a source. Hoax spreaders usually write: "copy and paste from the next group" or "posted by a friend" [4].

The types of hoax information are as follows:

- a. Fake news, namely news that tries to replace the original news. This news aims to falsify or include untruth in a news. Hoax writers usually add untruths and conspiracy theories, the weirder the better. Fake news is not a humorous comment on news.
- b. Clickbait (trap links), which are placed strategically on a site with the aim of attracting people to other sites. The content in this link is factual, but the title is exaggerated, or an attractive image is attached to lure the reader.
- c. Confirmation bias, the tendency to interpret recent events as well as evidence for existing beliefs.
- d. Misinformation, False or inaccurate information, especially that intended to deceive.
- e. Satire: An article that uses humor, irony, things that are exaggerated to comment on current events. Satirical news can be found in television shows such as "Saturday Night Live" and "This Hour has 22 Minutes".
- f. post-truth or post-truth: events where emotions play a role more than facts to shape public opinion.
- g. Propaganda: The activity of spreading information, facts, arguments, gossip, half-truths, or even lies to influence public opinion.

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A. Regulation of Criminal Sanctions Against Hate Speech Crime Actors in Indonesia

a. Criminal Code

1. Article 156 of the Criminal Code
2. Whoever publicly expresses feelings of hostility, hatred, or contempt towards one or several groups of the Indonesian people, shall be punished by a maximum imprisonment of four years or a maximum fine of four thousand five hundred rupiahs.
3. Article 157 paragraph (1) and (2) of the Criminal Code:
 - a. Whoever broadcasts, shows, or pastes a writing or painting in public, the contents of which contain expressions of feelings of hostility, hatred, or contempt among or against groups of the Indonesian people, with the intention of making the contents known to the public, shall be punished by a maximum imprisonment of two years and six months or a maximum fine of four thousand five hundred rupiahs
 - b. If the person who is guilty of committing said crime at the time of carrying out his search and at that time has not yet passed five years since his sentence has become fixed because of such a crime, the person concerned may be prohibited from carrying out said search.
4. Article 310 paragraph (1), (2) and (3) of the Criminal Code:
 - a. Whoever deliberately attacks a person's honor or reputation by accusing him of something, with clear intentions so that it becomes public knowledge, is threatened with defamation by a maximum imprisonment of nine months or a maximum fine of four thousand five hundred rupiahs.
 - b. If this is done in writing or with a picture which is broadcast, shown or pasted up in public, the person who is guilty of written defamation shall be punished with imprisonment for a maximum of one year and four months or a maximum fine of four thousand five hundred rupiahs.
 - c. Does not constitute defamation or defamation in writing if the act is clearly carried out in the public interest or because one is forced to defend oneself.
5. Article 311 of the Criminal Code paragraph (1)
6. If the person who committed the crime of defamation or written defamation is allowed to prove what is alleged to be true, does not prove it and the accusation is made contrary to what is known, then he is threatened with committing slander with a maximum imprisonment of four years.

b. UU no. 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination

Article 16, Every person who deliberately shows hatred or hatred towards others based on racial and ethnic discrimination as referred to in Article 4 letter b number 1, number 2, or number 3, shall be punished with imprisonment for a maximum of 5 (five) years and / or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah). In the Circular of the Chief of Police NUMBER SE/06/X/2015 concerning Hate Speech, it is explained that the meaning of Hate Speech can be in the form of criminal acts regulated in the Criminal Code and other criminal provisions outside the Criminal Code, which take the form of, among others:

- a) Humiliation
- b) Defamation
- c) Blasphemy
- d) Unpleasant acts
- e) Provoking
- f) Incitement
- g) Spreading fake news

Law Number 11 of 2008 Concerning Electronic Information and Transactions places prohibited acts in Chapter VII starting from Article 27 to Article 37. The prohibited acts here are related to electronic information and transactions. Specifically relating to hate speech, it is regulated in the provisions of Article 28 paragraph (2) of Law Number 11 of 2008 concerning Information and Electronic Transactions which states that Everyone is prohibited from deliberately and without rights disseminating information aimed at creating feelings of hatred or individual hostility. and/or certain community groups based on ethnicity, religion, race and intergroup (SARA).

Sanctions for violation of the provisions of Article 28 paragraph (2) of Law Number 11 of 2008 concerning Information and Electronic Transactions, are regulated in Article 45A paragraph (2) of Law Number 11 of 2008 concerning Information and Electronic Transactions which confirms that Everyone who deliberately and without rights disseminating information aimed at causing hatred or hostility to individuals and/or certain groups of people based on ethnicity, religion, race, and inter-group (SARA)

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as referred to in Article 28 paragraph (2) shall be punished with imprisonment for a maximum 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah) [5].

In full, the provisions of Article 45A of Law Number 11 of 2008 concerning Information and Electronic Transactions confirm:

- (1) Everyone who intentionally and without right spreads false and misleading news that causes harm to consumers in Electronic Transactions as referred to in Article 28 paragraph (1) shall be punished with imprisonment for a maximum of 6 (six) years and/or a fine of up to Rp. 1,000,000,000.00 (one billion rupiah).
- (2) Everyone who deliberately and without rights disseminates information aimed at creating feelings of hatred or hostility towards individuals and/or certain groups of people based on ethnicity, religion, race, and inter-group (SARA) as referred to in Article 28 paragraph (2) shall be punished with imprisonment for a maximum of 6 (six) years and/or a fine of up to Rp. 1,000,000,000.00 (one billion rupiah).

Based on the provisions of Article 45A above, it can be explained as follows:

1. The crime of spreading fake news as stipulated in Article 28 paragraph (1) is punishable by imprisonment for a maximum of 6 (six) years and/or a fine of up to Rp. 1,000,000,000.00 (one billion rupiah).
2. Against the crime of hate speech as stipulated in Article 28 paragraph (2) is punishable by imprisonment for a maximum of 6 (six) years and/or a fine of up to Rp. 1,000,000,000.00 (one billion rupiah).

Based on the description above, there are several criminal acts that can be charged with Law Number 11 of 2008 concerning Information and Electronic Transactions. One of the crimes that can be charged under Law Number 11 of 2008 concerning Information and Electronic Transactions is the crime of hate speech. Criminal acts of hate speech are specifically regulated in the provisions of Article 28 paragraph (2) of Law Number 11 of 2008 concerning Information and Electronic Transactions. Article 28 paragraph (2) of Law Number 11 of 2008 Concerning Information and Electronic Transactions prohibits anyone intentionally and without right from disseminating information intended for [6]:

1. Generate hatred or
2. Hostility to certain individuals and/or groups of people based on ethnicity, religion, race and inter-group (SARA).

Sanctions for violating the above prohibition are imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah), as stipulated in Article 45A of Law Number 11 of 2008 concerning Information and Electronic Transactions. Law in the history of its development in Indonesia shows that cyberspace activities are no longer simple because they are no longer limited by the territory of a country, which can be easily accessed anytime and from anywhere. Activities through the media of electronic systems, which are also called cyber space, even though they are virtual, can be categorized as real legal actions or actions. Juridically, activities in cyberspace cannot be approached with conventional legal standards and qualifications because if this method is followed there will be too many difficulties and things that escape the enforcement of the law. Activities in cyberspace are virtual activities that have a very real impact even though the evidence is electronic, so that the perpetrators must also be qualified as people who have committed legal actions. In such a position, analysis of acts of hate speech must examine several important aspects, namely: context, speaker or actor, intention, content or content, procedure, or form of conveying the message. These five things must be tested one by one against an action, so that if these five things are fulfilled, then it can be said as hate speech [7].

B. Hoax in the Perspective of Islamic Law

Islam is a religion that is rahmatan lil 'alamin which always spreads kindness to all people from any group regardless of ethnicity, nation, race, and religion. When hate speech appears, then that's where chaos will arise and can even have an impact on war which is strictly avoided and prohibited in the teachings of the Islamic religion itself [8]. If we look at the Qur'an, it is found in Surah al-Hujarat verses 11-12. From this verse there are three things that we need to underline, this can be seen from Tafsir al-Jalalain. That the author of this book mentions that there are three kinds of defamation. First, what is meant is belittling or belittling other people for some reason. Second, what is meant is badmouthing or insulting or vilifying other people. For example, so that other people do not believe in a certain character, eventually the character is rumored with various insults, insults, and so on. Therefore, Allah commands in the Qur'an which reads "do not blame one another". Third, what is meant is calling with a bad title.

The term hoax in the Qur'an can be identified from the meaning of the word al-Ifk which means reversal (such as an earthquake that turns a country upside down), but what is meant here is a big lie, because a lie is a distortion of facts. Meanwhile, the emergence of hoaxes (lies) was caused by dissidents.

The word al-ifk in various forms is mentioned 22 times in the Quran. The word al-ifk is used in the Qur'an to mean the following:

- 1) Lying words, namely words that are not in accordance with reality. She is mentioned in the case of Rasulullah's wife, Aisha (may Allah be pleased with her). (Surah An-Nur (24): 11).
- 2) The destruction of a country because its inhabitants do not justify the verses of Allah, for example QS. Al-Tauba (9): 70.
- 3) Turn away from the truth because they always lie, like QS. Al-Ankabut (29): 61

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The book of the Salaf explains that hoax is the same as kadzib, namely expressing something that is not in accordance with reality. Islam strongly condemns lying behavior. Allah SWT confirms that people who lie are only people who do not believe in the verses of Allah SWT. As Allah confirms in Surah An-Nahl verse 105 which means: "Indeed, those who fabricate lies are only those who do not believe in Allah's verses, and they are the liars". (Q.S An-Nahl: 105). Hoax as a form of lying to the public is not justified in Islam. All types of deception, both deception directed at individuals and deception against institutions, organizations or against groups of people aimed at public opinion or provocation and political interests, so that this is one of the causes of division in the ummah which is already very worrying. Hoax makers are classified as actions that harm other people. As in the Al-Quran Surah An-Nur verse 19 as follows:

Meaning: Indeed, those who want (the news of) a very heinous act to be spread among those who believe, for them will be a painful punishment in this world and in the hereafter. And Allah knows, while you do not know (QS. An-Nur: 19) To achieve the determination of data and facts as information materials to be conveyed to the public, careful research is needed by the press, especially journalists. Islamic teachings accommodate the ethics of information accuracy through several verses. Opinion of Ulama About Fake News (Hoax), among others:

1. Imam Al-Qurtubi

Imam Al-Qurtubi in interpreting the verses of the Qur'an regarding backbiting. Regarding the word of Allah SWT, ("Is there anyone among you who likes to eat the flesh of his dead brother?") Allah SWT likens the crime of backbiting by eating the flesh of a dead person because a dead person cannot know if his flesh is eaten by another person, like when he is alive do not know people gossip about it.

2. Al-Imam An-Nawawi

Al-Imam An-Nawawi in the Book of Syarh Sahih Muslim, Juz 1 page 75 gives an explanation of the hadith related to the behavior of spreading every news that comes to him, which means: "And as for the meaning of this hadith and the meaning of similar atsar, then both are a warning against conveying any information that is heard by someone because usually he hears true and false news, so if he conveys everything he hears, it means he has lied because he conveyed something that did not happen.

3. Imam Al-Shan'ani

Imam Al-Shan'anii in the Book of Subulussalam Jus 4 page 188 states "most scholars are of the opinion that calling the wicked (sinners) as O wicked people! O corrupt people! Likewise, it is permissible to gossip about them with the condition that they intend to advise them or advise others to explain the fasiq's behavior or to prevent them from doing it. Not with the intention of falling into it. Then (all of that) must arise from good intentions".

Some of the opinions above show that scholars do not allow backbiting, but Al-Imam Al-Ghazali allows it but with specified conditions.

In Islamic Criminal Law, punishment is also called 'uqubat, punishment can be divided into four types, namely:

- a. Principal punishments (al-'uqubat al-ashliyah), such as qishas punishment for finger-murder, or hand-cutting punishment for finger theft.
- b. Substitute punishment (al-'uqubat al-badaliyah), namely that which replaces the main punishment, if the main punishment cannot be carried out and for valid reasons, such as diyat punishment (fine) as a substitute for qishas punishment, or ta'zir punishment as a substitute for had punishment or qishas punishment that cannot be carried out. The diyat punishment itself is the main punishment, namely for semi-intentional killing, but it is also a substitute for qishas punishment. Thus, the ta'zir punishment is also the main punishment for the ta'zir finger itself, but it also becomes a substitute punishment for the hudud finger or qishas-diyat which does not receive a real punishment for certain reasons.
- c. Additional punishment (al-'uqubat al-taba'iyah), namely punishment that follows the main punishment without requiring a separate decision, such as the prohibition of receiving inheritance for people who commit murder against the family, in addition to the punishment of qishas (death), the punishment of revocation of rights as a witness who was sentenced to someone who did jarimah qadzaf (slandering other people for committing adultery) in addition to the main punishment, volume eighty times.
- d. Complementary punishment (al-'uqubat al-takmiliah), namely the law that follows the main punishment with the requirement of a separate decision from the judge, and this condition is the characteristic of separating it from additional punishment.

The sanction for spreading fake news (hoax) in Islamic criminal law is ta'zir, the fuqaha interpret ta'zir as an unspecified punishment.

Humiliation according to Islamic law is a translation of the word Ihtikar. Ihtikar means belittling, which means humiliating other people, which can occur using words, demonstrations, or pictures, which then makes the insulted person feel ashamed.

One of the Islamic jurists, Abdul Rahman Al-Maliki stated that humiliation is divided into three, namely:

1. Al-Dzamm, is the attribution of a certain matter to someone in the form of a subtle satire that causes anger and harassment of humans.
2. Al-Qadh, is everything that relates to reputation and self-esteem without relating anything specific.
3. Al-Tahqir, is every word that is reproachful or indicates reproach or harassment.

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Allah SWT said in QS. Al-Hujurat verse 11 which means: "O you who believe, do not be a people make fun of another people, (because) maybe they (who are being made fun of) are better than those who make fun of and don't women women (make fun of) other women, (because) maybe women (who are made fun of) are better than women (who make fun of) and don't you reproach yourself and don't call you with titles the bad one. The worst call is a bad (call) after faith and whoever does not repent, then they are the wrongdoers".

It is mentioned in the commentary of Ibn Kasir, that Allah SWT has said by prohibiting His servants, namely the believer's making fun of each other, humiliating insults, and reproaching. One people should not make fun of each other, look down on other people, because it is possible that the people who are insulted and who are ridiculed are better than those who make fun of, and it is not certain that those who make fun of are better than those who are ridiculed. Allah SWT also prohibits believing women from making fun of and insulting each other among believing women, as well as prohibiting self-deprecation by criticizing fellow believers. Likewise, do not call each other bad names that the person does not like.

According to Al-Maraghi, Allah SWT forbade a believer to criticize another believer in all forms of reproach. And if he does not repent after committing such an act, then he is doing bad to himself and committing a grave sin. Allah says: "And fear (Allah) those who, if they leave weak offspring behind them, they fear for their (welfare). Therefore, let them fear Allah, and let them speak the right words. The interpretation of the verse above in a short translation of the book of Ibn Kasir explains, that whoever wants glory, obey Allah because Allah is the ruler and owner of the world and the hereafter. Then Allah said that good sayings and sayings, such as dhikr to Allah, recitations of the Qur'an, and other prayers in the form of good deeds will be raised in rank to Allah. But for those who plan evil deeds, do bad deeds, Allah will provide a harsh punishment and their evil plans will be destroyed [9].

Rasulullah SAW in a hadith from Abu Hurairah RA, has said:

Whoever believes in Allah and the Hereafter, then let him say good or keep silent. (Narrated by Bukhari and Muslim)

Some scholars interpret this hadith with understanding: "If someone wants to say, then if what he says is good and true, he will be rewarded. If not, he should refrain, whether those words are unlawful, makruh or permissible." In the case of permissible words, it is recommended to be avoided or even ordered to be abandoned, for fear of falling into what is unlawful or makruh and often things like this happen to a lot of humans. Because those who truly believe in Allah will fear the threat of His punishment, hope for His reward, and carry out all commands and leave all His prohibitions.

The term punishment in Islamic law is called Islamic criminal law, which is a translation of the word *jinayah fiqh*. Islamic criminal law is all legal provisions regarding criminal acts or criminal acts committed by people of *mulaf* (people who are burdened with obligations), because of understanding the detailed legal arguments from the Al-Qur'an and hadith.

Islamic criminal law is the *syari'at* of Allah SWT which contains benefits in human life in this world and the hereafter. *Shari'at* materially has the intention of carrying out basic obligations for every human being to carry it out. The concept of basic *shari'ah* obligations places Allah SWT as the holder of all rights, both those that exist within oneself and those that exist in others. Islamic criminal law aims to preserve the soul, mind, property, and offspring, and in general is to uphold justice to create public order and tranquility. This goal is the same as the concept of the purpose of Islamic law, seen from the legal provisions made by Allah and the Prophet Muhammad, namely for the happiness of human life in this world and the hereafter.

A person or group who intentionally or unintentionally commits a crime, then this act in Islamic law is called *Jarimah*. According to the Islamic criminal law system, *jarimah* is divided into three, namely:

1. Jarimah Hudud

Had in the language of *fiqh* means provisions concerning sanctions against perpetrators of crimes in the form of physical or moral torture, which according to the *Shari'ah* are provisions of Allah SWT, contained in the Qur'an and those carried out by the Prophet. Actions included in this class of criminal acts are adultery, *qadzaf*, theft, robbery/holding up, alcohol, rebellion, and apostasy.

2. Jarimah Qisas

literally means cutting or replying. *Qisas* in Islamic criminal law is the appropriate retribution imposed on criminals as sanctions for their actions.

3. Jarimah Ta'zir

Jarimah ta'zir literally means glorifying or helping. In terms of Islamic law, *ta'zir* is an educational punishment that does not require the perpetrator to be subject to a *had* and does not require paying a fine. Criminal acts included in this finger are minor criminal acts, such as sexual offenses that do not include adultery, accusations of committing a crime.

Another form of *jarimah ta'zir* is crimes whose forms are determined by the Government, which do not conflict with the principles, values, and goals of *sharia*. Such as traffic regulations, maintenance of the environment, and the imposition of sanctions whose penalties have not been determined by the Qur'an and Sunnah [10]. *Ta'zir* also means punishment in the form of giving lessons. Because the punishment is to deter the perpetrators from doing what they have done again, in other words to be a deterrent.

The scholars divide the *ta'zir* finger into two parts. First, *jarimah* related to the rights of Allah. What is meant by those relating to Allah's rights are matters relating to the general good, such as damage to the earth. Second, finger related to individual rights. What

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is meant by actions related to individual rights are anything that threatens the welfare of humans, such as humiliation. Based on the division above, hate speech for acts that have recently occurred, involving actions related to individual rights such as insults, dropping honor based on ethnicity, religion, race, ethnicity, and nationality, can be categorized in jarimah ta'zir.

The ta'zir sanction has repressive and educational aims and objectives. The repressive function here is that the ta'zir sanction must have a good impact on the convicted perpetrator, so that he no longer makes the same mistake. The educational function here is that ta'zir sanctions must be able to change lifestyles for the better so that they stay away from actions that are close to immorality.

According to Al-Mawardi, the length of the prison sentence in ta'zir varies, depending on the perpetrator and the type of finger action. According to Syafi'iyah scholars that the longest limit for the length of a prison sentence is one year, it is assigned to exile. According to Abu Yusuf that the perpetrator who entered the prison until he repented [11].

CONCLUSIONS

In Indonesia, freedom of expression is a constitutional right of every citizen which is explicitly guaranteed by the 1945 Constitution. The crime of hate speech is regulated in Article 45A of Law Number 11 of 2008 concerning Information and Electronic Transactions with a maximum prison sentence of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah). According to Islamic law, the penalty for spreading hate speech is ta'zir, namely sanctions that are not determined by Islamic law but are fully handed over to the authorities with a measure of benefit, both benefiting the perpetrators, victims and Public. The sanctions vary depending on the perpetrator and the type of action with the measure of benefit between the lightest penalties such as a warning to imprisonment.

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