

## Restorative Justice Policy in Law Enforcement Against Perpetrators of Spreading Hoaxes Related to Elections on Social Media

**Dian Rosita**

Universitas Muhammadiyah Kudus

**Endang Setyowati**

Universitas Semarang

**Suwandoko**

Universitas Tidar

\*correspondence : [dianrosita@umkudus.ac.id](mailto:dianrosita@umkudus.ac.id)

**Abstract:** General elections (elections) are a benchmark for the success of democracy for countries that adhere to democratic principles such as Indonesia. The large number of hoax issues surrounding the election that are spread via social media are often considered cybercrime or cybercrime. Meanwhile, criminal law is currently developing discussions about Restorative Justice, which offers forms of settlement with the aim of fulfilling the wishes of the parties with a win-win solution. The legal issue analyzed in this research is how restorative justice policies apply in enforcing the law against perpetrators of spreading fake news (hoaxes) related to elections on social media to see the possibility of using alternative dispute resolution for election violations, especially at the police level. The method used in this research is normative juridical, using literature study and a statutory and regulatory approach related to the legal issue being discussed. This research shows that the Restorative Justice Policy against perpetrators of spreading fake news (hoaxes) taken by the Police is carried out to create a clean, healthy and productive Indonesian digital space so as not to give rise to diversity in investigative administration and differences in interpretations of investigators and irregularities must be carried out in a persuasive, educational manner. so that there is no suspicion of criminalization in the criminal act of spreading fake news (hoax) against the perpetrator or in other words the person being reported.

**Keywords:** Cybercrime, Election Hoax, Restorative Justice, law Enforcement

### INTRODUCTION

General elections (elections) are a benchmark for the success of democracy for countries that adhere to democratic principles such as Indonesia. Elections in Indonesia are usually called people's democratic parties. The public's euphoria in welcoming the democratic party is full of hoax content on social media. In the February 14 2024 election alone, the Ministry of Communication and Information (Kominfo) recorded that 160 hoax issues regarding the election were discovered from July 17 2023 to January 6 2024 spread across 2,623 social media content. (Indonesia Masuk 3 Besar Negara Pengguna Facebook Terbesar Dunia <https://databoks.katadata.co.id/datapublish/2023/11/02/indonesia-masuk-3-besar-negara-pengguna-facebook-terbesar-dunia>, 3 April 2024)

Nowadays, advances in increasingly sophisticated technology have made it easier for humans to interact with each other, where everyone can easily produce information very quickly through several social media such as Instagram, Facebook, Twitter, or mobile phone messages such as WhatsApp, Telegram and so on. cannot be filtered properly.

Social media, especially Facebook and Twitter, are equipped with interesting features for their users. Indonesia itself is ranked in the top 3 largest Facebook users in the world with 135 million users, (Indonesia Masuk 3 Besar Negara Pengguna Facebook Terbesar Dunia <https://databoks.katadata.co.id/datapublish/2023/11/02/indonesia-masuk-3-besar-negara-pengguna-facebook-terbesar-dunia>, 3 April 2024) while Twitter users in Indonesia are 27 million people and places Indonesia in 4th global ranking. (Ada 27 Juta Pengguna Twitter di Indonesia <https://databoks.katadata.co.id/datapublish/2023/11/28/ada-27-juta-pengguna-twitter-di-indonesia-terbanyak-ke-4-global> , 3 April 2024). Therefore, Facebook and Twitter are effective media for carrying out campaigns to spread the vision, mission and programs of candidates to the public in order to attract voters.

However, in its development, campaigns on social media are no longer limited to spreading the vision, mission and programs of candidates but contain content that vilifies other candidates and tends to lead to insults and/or defamation with issues that have no basis (hoaxes). Hoax issues circulating in the February 14 2024 Presidential and Vice Presidential elections include changing the debate format for Presidential and Vice Presidential candidates and the issue of using a number of National Identity Cards (KTPs) that allegedly belonged to Chinese citizens to take part in the election.

Any information released to both individuals and business entities via social and electronic media when it has been sent and read by many people can influence the emotions, feelings, thoughts and even actions of the person or group who reads it. It is very unfortunate if the information conveyed is inaccurate information, especially if the information is information about fake news (hoax) with a very provocative title leading readers and recipients to negative opinions.

All efforts to present a legal instrument that is in line with the development of the world of information and telecommunications is something that cannot be negotiated anymore. Legal instruments that regulate procedures for resolving cases related to the spread of election hoaxes need to be implemented to provide legal certainty and injustice for parties who feel their rights have been harmed. Reports from the Election Supervisory Agency (Bawaslu) as of January 2 2024 or the 36th day before the 2024 election campaign contained 204 content violations on social media (Konten Pelanggaran Pemilu 2024 Terbanyak di Instagram, <https://databoks.katadata.co.id/datapublish/2024/01/05/terdapat-204-konten-pelanggaran-pemilu-2024-terbanyak-di-instagram> , 3 April 2024). The violation content was found on social networks such as Facebook, Instagram, Twitter, TikTok and YouTube.

The large number of hoax issues surrounding the election itself is a form of election

violation based on Law No. 7 of 2017 concerning General Elections (UU Election). Meanwhile, social media which is used to spread hoax issues under Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions (UU ITE) is often considered cybercrime or virtual crime.

A total of 322 reports of criminal violations in the 2024 election were submitted to the Directorate of General Crimes, Bareskrim Polri. The large number of reports often slows down the process that will be handled by the police. Of course, law enforcement officials need to find a breakthrough in how law enforcement against perpetrators of spreading fake news (hoaxes) related to elections can be resolved at the police level.

Criminal law is currently developing discussions about Restorative Justice, which offers a form of settlement with the aim of fulfilling the wishes of the parties with a win-win solution so that no party feels disadvantaged any more. The concept of restorative justice is aimed at providing protection to victims accompanied by providing compensation and rehabilitation for affected victims. Meanwhile, the perpetrator has the opportunity to make efforts to restore the situation due to his actions, then the community plays a role in maintaining peace.

Based on the problems above, the author tries to analyze the restorative justice policy in enforcing the law against perpetrators of spreading fake news (hoaxes) related to elections on social media to see the possibility of using alternative dispute resolution for election violations, especially at the police level.

## RESEARCH METHODS

The method used in this research is normative juridical, namely a legal research method that seeks to find legal rules, legal principles and legal doctrines in order to answer the issues faced (Marzuki, 2011) regarding restorative justice policies in law enforcement against perpetrators of spreading fake news (hoax) related to the election on social media. The data used in this research is a literature study obtained from legal and non-legal materials. The approach used is a statutory and regulatory approach related to the legal issue being discussed. The laws and regulations used are the Criminal Code, the ITE Law and the Election Law

## **DISCUSSION AND ANALYSIS**

### **1. Restorative Justice Policy against perpetrators of spreading fake news (hoaxes)**

Restorative Justice or restorative justice is the newest model of approach in efforts to resolve criminal cases which prioritizes the concepts of dialogue, rehabilitation and reconciliation rather than punishment. Restorative Justice is included in the alternative resolution of criminal cases which changes the focus of punishment to dialogue and mediation involving the perpetrator, victim, family of the perpetrator/victim and other related parties to jointly create an agreement to resolve criminal cases fairly for the perpetrator and victim by prioritizing restoration to its original state and restoring patterns of good relations in society. (Huda, 2023)

Bagir Manan in his writing stated that the principle of Restorative Justice is to build joint participation between perpetrators, victims and community groups to resolve a criminal incident that places the perpetrator, victim and community as parties directly or indirectly related to a criminal event where the parties work together and arrive at a solution that is considered fair for all parties. (Manan, 2008) Apart from that, Restorative Justice is also a more appropriate effort to overcome excess capacity in correctional institutions. (M. Abdillah, 2019)

The idea of Restorative Justice itself comes from traditional values which, in general, have existed since the Indonesian nation existed. Traditional values which constitute the local wisdom of the Indonesian people are deliberation and consensus. Restorative Justice bases its ideas on societal traditions that criminal acts are essentially conflicts between individuals, so Restorative Justice places the individual who is the victim as the central point in resolving criminal cases. In its implementation, law enforcement officers, in this case the Police, as the front guard of law enforcement in Indonesia, become mediators or bridges between perpetrators and victims to discuss without coercion. So the concept of Restorative Justice requires initiative from the perpetrator or suspect to realize their mistake and apologize.

Marian Liebmann (Liebmann, 2007) stated that there are at least 6 (six) main principles in Restorative Justice, namely:

- (1) Priority on support and recovery/healing for victims
- (2) Responsibility of the offender for what has been done
- (3) Dialogue to achieve understanding
- (4) Efforts to repair losses
- (5) Make perpetrators of criminal acts aware to avoid committing criminal acts in

the future

(6) The community helps reintegrate the perpetrator and victim

The emergence of fake news (hoaxes) ahead of the election is one of the threats that can disrupt the momentum of people's euphoria in celebrating democracy and can reduce the quality of democracy itself. Therefore, to maintain the quality and integrity of the Election from the threat of spreading fake news (hoaxes), the Government has created and implemented a number of regulations, one of which is regarding Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions (UU ITE). Apart from that, regulations regarding the prohibition of hoaxes are regulated in Article 14 paragraph (1) and paragraph (2) and 15 of Law no. 1 of 1946 concerning Criminal Law Regulations, Articles 311 and 378 of the Criminal Code.

The regulation of the criminal threat of spreading fake news (hoax) is stated in Article 28 paragraph (1) in conjunction with Article 45A paragraph (1) of the ITE Law regarding every person who deliberately and without right spreads false and misleading news which results in consumer losses in Electronic Transactions as intended in Article 28 paragraph (1) is punishable by a maximum imprisonment of 6 (six) years and/or a maximum fine of IDR 1,000,000,000 (one billion rupiah). Then in Article 28 paragraph (2) in conjunction with Article 45A paragraph (2) of the ITE Law, it is stated that every person who deliberately and without right disseminates information aimed at causing hatred or hostility towards certain individuals and/or groups of society based on ethnicity, religion, race and inter-group (SARA) as intended in Article 28 paragraph (2) shall be punished with a maximum imprisonment of 6 (six) years and/or a fine of IDR 1,000,000,000 (one billion rupiah).

Apart from going through legal channels, efforts to resolve perpetrators of spreading fake news (hoaxes) can also be done through mediation in accordance with the Decree of the Director General of the General Justice Agency Number: 1691/DJU/SK/PS.00/12/2020 concerning Guidelines for Implementing Restorative Justice in the General Court Environment which is an elaboration of Article 1 number 1 of Law Number 48 of 2009 concerning Judicial Power which states that "judicial power is the power of an independent State to administer justice to uphold law and justice based on Pancasila and the Constitution of the Republic of Indonesia Indonesia in 1945 for the implementation of the legal state of the Republic of Indonesia.

The implementation of Restorative Justice is not only carried out at the Supreme Court, the Republic of Indonesia Police (Polri) is the spearhead of law enforcement through

the National Police Chief's Circular Letter Number SE/II/2021 dated 19 February 2021, one of which instructs investigators to adhere to the principles of criminal law. ultimum remedium in law enforcement and prioritizing restorative justice in case resolution. Apart from that, Restorative Justice is also contained in Police Regulation Number 8 of 2021, namely Handling Criminal Cases Based on Restorative Justice, which in this context is the handling of cases related to the scope of ITE.

Based on the Circular, handling cases of alleged violations of the ITE Law uses a Restorative Justice approach related to ethics to create a clean, healthy and productive Indonesian digital space. Restorative Justice as a policy adopted by the Police was carried out so as not to give rise to diversity in investigative administration and differences in investigators' interpretations and irregularities. The Restorative Justice policy adopted by the Police must prioritize humanistic values in deliberations to resolve cases of alleged violations of the ITE Law outside of court through mediation.

Therefore, in implementing the Restorative Justice policy, law enforcers, especially the Police, must prioritize persuasive education so that there is no suspicion of criminalization in the criminal act of spreading fake news (hoaxes) against the perpetrator or in other words the person being reported. With the existence of restorative justice, of course it will also make it easier to implement the legal system in Indonesia because it will focus more on solutions, not just prison, because prison sentences are the ultimate goal rather than criminal acts of spreading fake news (hoaxes) related to elections, which often or even often occur every day. on social media before the democratic party period, even until the election itself had finished.

The target of this Restorative Justice policy is to achieve justice by improving or restoring conditions after an incident, not retaliation. The ITE Law itself actually has a good aim, namely to protect the public from the dangers of misuse of information media and electronic transactions, especially the criminal act of spreading fake news (hoaxes), however since its promulgation the ITE Law has been considered to contain articles that are controversial and have the potential to criminalize society.

The concept of resolving cases using this mediation model makes the parties play more of a role in resolving their own problems, while law enforcement officers only act as facilitators and mediators in criminal cases containing conflict with the aim of reconciling them.

## **2. Restorative Justice in Election Law Enforcement**

Election law enforcement is a form of handling election violations whose legal enforcement is specifically formulated in Law No. 7 of 2017 concerning General Elections. In this law, procedures for resolving 4 (four) forms of election violations are regulated, the forms of violations are:

1. Violations of the Election Organizer's Code of Ethics, carried out through an ethical examination hearing by the General Election Organizer Honorary Council (DKPP)
2. Settlement of administrative election violations, an open hearing conducted by the Examination Council and resolution of Administrative Election Violations through a speedy event.
3. Violations of other laws and regulations are handled by Bawaslu and then forwarded to the authorized agency
4. Handling of election crimes is carried out through Bawaslu and then forwarded to the Integrated Law Enforcement Center (Sentra Gakkumdu)

The concept of Restorative Justice which focuses on the conditions for creating justice and balance emphasizes the resolution of criminal cases in a balanced manner for the perpetrator and the victim. Law enforcement based on Restorative Justice aims to restore the relationship between the victim and the perpetrator through an agreement between the two parties. This concept is very possible if the criminal act is not public and the victims are massive, including criminal acts against the State.

When we look closely:

- (1) Supreme Court Regulation No. 4 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System
- (2) Decree of the Director General of Badilum No. 1691 of 2020 concerning Guidelines for Implementing Restorative Justice
- (3) Prosecutor's Regulation no. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice
- (4) National Police Chief Regulation no. 8 of 2021 concerning Criminal Acts Based on Restorative Justice,

This regulation regulates the qualifications of crimes that can be resolved through a Restorative Justice mechanism, including:

- a. The amount of loss was under 2.5 million rupiah
- b. Cases involving suspects who have committed a crime for the first time
- c. The criminal offense is punishable by imprisonment for not more than five years
- d. This criminal act does not cause unrest and/or rejection from society, does not result in

social conflict, does not divide the nation, is not radical or separatist.

e. Not a perpetrator of a criminal offense based on a court decision

f. Not a criminal act of terrorism, a criminal act against state security, a criminal act of corruption and a criminal act against people's lives.

Based on the considerations above, if Restorative Justice is used to handle election crimes, the perpetrators must formally disqualify the types of criminal acts. In the author's opinion, if you look at the qualifications of the crimes mentioned above, it is difficult for Restorative Justice to be applied to election crimes because the criminal acts are public in nature and relate to political rights and people's sovereignty.

The principle of legality in criminal law regulates that each person can only be punished for their actions if they are first formulated in statutory regulations. This principle requires that there be provisions in advance regarding prohibited acts that can be punished. In accordance with this principle, the criminal threat of spreading fake news (hoax) has been regulated in Article 28 jo Article 45A UU ITE. In order to be charged under this article, a person intentionally and without right disseminates information intended to stirring hatred or hostility towards certain individuals and/or groups of society based on ethnicity, religion, race and between groups (SARA).

Viewed from the context of spreading fake news (hoax) related to elections, then based on Article 280 paragraph (1) letter d of the Election Law, this means inciting and pitting individuals or communities against each other. Thus, the act of spreading fake news (hoax) related to elections on social media is a criminal act in the ITE Law and the Election Law which is narrowed down to spreading fake news (hoaxes) about candidates and/or other election participants in the form of writing and/or images in the form of electronic information, and/or electronic documents, that allege something and are intended to make the allegation known to the public by broadcasting, showing, distributing and making the content accessible.

Applying the Restorative Justice Policy to perpetrators of spreading fake news (hoax) related to election violations, law enforcement officers involved in the Gakkumdu center should first look at the chronology and not be influenced by any party and not intervene by anyone. Restorative Justice in enforcing election criminal law should not be aimed solely at achieving certain targets in quantity but should be aimed at the quality aspect.

Restorative Justice can be used as *ius constituendum* in enforcing election criminal law which is aimed at improving the quality of election criminal law enforcement itself. Among them is by prioritizing prevention rather than prosecution and if a criminal act occurs,



it can be resolved as soon as possible through alternative dispute resolution that is integrated with the criminal justice system, if the violation is description as criminal law.

To make this happen, of course, you have to completely change the provisions as regulated in the Election Law, which were originally based on retributive justice to restorative justice. Apart from that, fundamental changes must also be made to the law enforcement perspective of law enforcement officers involved in Gakkumdu centers so that restorative justice can be carried out from investigations to trials in court. Then, what is no less important is that the legal culture of the community itself must be based on restorative justice, not a retributive justice perspective. The police must be committed to resolving election violations that are description as criminal law as best as possible in order to participate in creating a clean democratic party in Indonesia.

## CONCLUSIONS

1. The Restorative Justice policy against perpetrators of spreading fake news (hoaxes) taken by the Police is carried out to create a clean, healthy and productive Indonesian digital space so as not to give rise to diversity in investigative administration and differences in investigators' interpretations and irregularities. The Restorative Justice policy adopted by the Police must prioritize humanistic values in deliberations to resolve cases of alleged violations of the ITE Law outside of court through mediation in a persuasive, educational manner so that there is no suspicion of criminalization in the criminal act of spreading fake news (hoaxes) against the perpetrator or in other words reported person.
2. Restorative Justice in enforcing election criminal law is used as *ius constituendum* because to make it happen, you must completely change the provisions regulated in the Election Law which were originally based on retributive justice to become restorative justice. Restorative Justice in enforcing election criminal law should not be aimed solely at achieving certain targets in quantity but should be aimed at the quality aspect. These include prioritizing prevention rather than prosecution and if a criminal act occurs it can be resolved as quickly as possible through alternative dispute resolution that is integrated with the criminal justice system.

## ADVICE

Considering that the concept of Restorative Justice, which is part of progressive law, is still *ius constituendum*, law enforcement officers are needed who are brave, responsive and adaptive to current developments to implement Restorative Justice policies.

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