

# Criminal Policy of Hate Speech in Social Media Against The Religious Dignity of Society in The Digital Century

Yanti Amelia Lewerissa  
Faculty of Law  
Hasannudin University  
Makassar, Indonesia  
elyanti\_amelia@yahoo.com

**Abstract**— Hate speech through social media can offend the religious dignity of society. This study aims to analyze the criminal policy of hate speech in social media against the religious dignity of society in the digital century. This type of research is normative legal study. The approach used is law approach and conceptual approach. Legal material consists of primary legal materials, secondary and tertiary. Data collection techniques through literature study and analyzed qualitatively. The results of research show that the development of technology and information also have a negative impact. Data by The Indonesian Ministry of Communication and Information demonstrated that in 2016 there are 800 thousand sites in Indonesia indicated as a spreader news lie (hoax) and hate speech. 773 thousand sites have been blocked based on 10 things that is prohibited one of them religious issues. Hate speech usually appears on political momentum. Indonesia will be confronted with two important political agendas, the 2018 election and 2019 presidential election. As a crime, hate speech should be addressed using the concept of criminal policy. It was concluded that criminal policies could be used to tackle hate crime in social media. It is expected that the integration of penal and non penal handling pattern.

**Keywords**— *Criminal Policy, Hate Speech, Media Social, Religious*

## I. INTRODUCTION

The advancement of science and technology has encouraged the development of information technology. The emergence of digital or Internet network is a new media in information technology. The change from analog and electronic mechanical technology to digital technology makes life fast and sophisticated. This phenomenon of the development of information technology has supported the whole world. Both developed and developing countries cannot be shut out from the development of information technology based on digital. The development of information technology also determines the progress of a nation. So do not be surprised if it is currently referred to as the digital century.

The development of information and communication technology has changed the behavior of society and human civilization globally. The development of information technology has caused the world to be indefinitely and cause significant social change. Information technology becomes a double-edged sword, because in addition to contributing to the

improvement of welfare, advancement and human civilization, as well as being an effective means of action against the law.[1] Sutanto et al also pointed out that information technology is increasingly playing an important role in life and has brought benefits such as the ease of obtaining and conveying information and science and technology, increasing trade transactions, business and even for issues previously personal. However, in addition to the ease of generating, the internet also raises the potential for a new crime called cyber crime. [2]

Related to the ease of obtaining and conveying information in the digital era, social media is one of the means of information technology widely used by the public. Social media is defined as an online medium, whose users can easily participate, share and create something in the virtual world, including: blogs, social networks (social networks), wikis, forums, and virtual worlds. [3] Antony Mayfield provides social media as a new type of group that includes several characters. First is participation, social media encourages everyone to contribute to it and nothing can limit. The second is openness, everyone who has contributed and has been published has a great opportunity to be responded by others because of its nature that is open to anyone. Third is the conversation, this is what distinguishes social media with conventional media, because communication in conventional media only inform the conversation is only one direction. Conversations on social media are two-way or even more. Fourth is the community, social media is used by a community in society based on the same group or purpose to form effective and fast communication. Fifth is connected. The characteristic of social media is the interconnection between one with another (networking) can be interpreted the number of members. [3]

The use of social media as a means of information communication in the digital century besides positive impacts such as time and energy efficiency, cheaper, can add friends and find old friends, the use of social media also have negative impacts such as dissemination of information that may cause hatred or hostility of individuals and / or certain groups of people based on tribe, religion, race and intergroup (SARA). This phenomenon strengthened especially during the legislative election, presidential election, or elections of

regional head. As experienced by the Indonesian people in the political years of regional elections in 2018 and the presidential election in 2019. Hate speech to a particular religion is deliberately spread to cause intolerance and social conflict in society.

Religion for the nation of Indonesia is a mirror for life both personally and in the life of society, nation and state. As a pluralistic nation in the religious dimension, inter-religious tolerance is needed to maintain the stability of internal security. When religious issues are brought into the public sphere through social media and made political commodity by spreading hate speech that can offend certain religious morality it will be difficult to create a peaceful atmosphere in Indonesia. Hate speech is deliberately spread through social media to provoke people to arise intolerance and discrimination attitude. If this is allowed to continue then there will be social conflicts in society that could disrupt the stability of national security. For that speech hatred as a virtual crime should be addressed with the right policy.

Hate speech prevention policy in social media can be done through two approaches. Hate speech prevention policies can be pursued through the approach of penal means and non-penal means. In this paper, the authors further analyze the penal means and non-penal means to prevent and overcome the evil of hate speech in social media that can offend religious dignity in this digital century.

## II. METHODOLOGY

This research-based paper uses qualitative approach from legal perspective to analyze the issue of hate speech in Indonesia digital media today. It also analyzes selected literatures pertinent to the research topic as well as reading carefully selected digital examples about misusing of digital media (internet) for sending many kinds of hate speech.

## III. RESULT AND DISCUSSIONS

### A. Hate Speech Against Religious Morality In Social Media

According to UNESCO a message or hate speech refers to the expression of incitement to harm (especially discrimination, hostility, and violence) against certain social or demographic groups, such as words that defend, threaten or encourage acts of violence. This concept is sometimes extended to expressions that foster a climate of prejudice and intolerance that is assumed to fuel discrimination, hostility, and violent attacks. In common language, the definition of hate speech tends to be widespread, sometimes even including words that insult rulers or individuals.[4] Particularly at crucial moments, such as election time, the concept of hate speech may be vulnerable to manipulation. Accusations of stirring hatred may be traded between political opponents or used by those in power to curb dissent and criticism. Bartlett calls hate speech or speech as a dark portrait of the internet, beyond the issue of child pornography, drug trafficking, provocation, and the market of assassination. The Internet has become an

important political platform in many parts of the world. This technique used extreme political movements to spread the message or speech of hatred and recruit new supporters.[5]

Meanwhile, according to the Council of Europe, hate speech or speech involves any form of expression that is propagated to incite, promote or justify racial hatred, xenophobia, anti-Semitism, or other forms of hatred rooted in intolerance, including intolerance expressed by nationalism and aggressive ethnocentrism, discrimination and hostility towards minorities and migrants.[5] Alois A. Nugroho quotes Rita Kirk Whillock in his essay entitled "Ethical Considerations of Civil Discourse: The Implication of the Rise of Hate Speech called that hate message essentially" rhetorical anissy "to the opponent. Although only through words, messages or utterance of hatred it aims to nullify or kill opponents. As a result, dialogue or discourse becomes stuck. There is no willingness to appreciate and listen to the other person. There is no willingness to be open, to learn, and to change.[5] The issue of religion is an issue most liked by certain groups to spread hate speech in social media. Because of the span of society, the existence of radical groups or excessive fanaticism and full confidence in what it embraces, make the issue of religion practice as a political commodity in Indonesia.

Franz Magnis Suseno sees religion from two sides, namely religious relativism and religious absolutism. From the side of religious relativism, according to him, the religion that exists in this world is essentially the same. Religion merely belongs to the category of the road, and not belong to the category of purpose. It is as if religions, as different paths to obtain one purpose, God, are relative. Relativism of this religion does not solve the problem because it does not pay attention to what is the essence of the religion of revelation, namely that they believe in themselves as a truth which God himself intended for all human beings. As the truth of God, religion is absolute. For Muslims the Qur'an is not one of the sacred books, but the complete and plenary revelation revealed by God himself. For Christians Jesus is the Word of God Himself and not one of the spiritual teachers.[5] So even though there are many differences between religion and Christianity in religious life, the two major religions agree that religious life can not be confined to mosques or churches and neither on Friday or Sunday, but concerns the whole man, in all dimensions of his life.

While in the absolutist side of religion, he says that the absolute is only one, the Absolute, God Himself. So the absolute in religion is the divine element in it and the divine element is revelation. Revelation and only revelation, is an absolute element in the religions of revelation. Furthermore Franz Magnis Suseno said that in essence religion consists of divine elements and human elements. In the religion of God addressed man, that is revelation, and revelation is an absolute element in religion; and in religion as well as human beings answer in faith and that is an element that is not absolute.[5]

Religions are expected to be powerful drivers of values upheld by modern humans, but which are threatened by the development of modern societies themselves: democracy, human rights, social justice, international justice, self-determination, legal independence and equality before the law, autonomous people to take care of themselves and so on. Religion fully actualizes the potential of the universalism of humanity they receive from God. Religions are expected to be a source of integrity and honesty. From the religions of values such as truth, justice, freedom, equality, compassion, mercifulness, tolerance, and a willingness to refrain radiate into society. Religions must be a place where everyone, who is not a member of that religion, is protected, selfless, without going along with cultural corruption, and ongoing powers, engaging in community development.

Almost all Indonesians are deeply determined in their attitudes by the faith of their faith, and faith depends on the religion they profess.[6] Franz said Indonesia is a pluralistic nation. Pluralistic culturally, ethnically and powerfully, and also in the religious dimension. It is clear that the role of religion in Indonesia will be crucial for the future. Religion is the most preferred issue to cause intolerance and social conflict. Because the people of Indonesia who are religious is very high end beliefs that dianutnya. Sometimes there is excessive fanaticism or radical ideas of a particular religion which, if touched on religious issues, will quickly burn with emotion because of his beliefs touched upon. When religion is under a public space such as social media is made into a certain political commodity, by spreading hate speech, it will create intolerance and social conflict in society. Hate speech-content content is intentionally made by certain individuals who aim to incite and provoke certain people to hate and violence and discrimination against certain religious or political figures. The main purpose of creating intolerance and social conflict.

According to Head of IT Sub-Directorate and Cyber Crime Directorate of Special Economic Crime Crime Police, Pol Kombes Himawan Bayu Aji, Hate speech content is a type of cyber crime the most widely complained to the police. By 2015, the number of incoming reports is related to hate speeches of 671 reports. By 2016, the number of reports about it is also high. Hate speech includes defamation, harassment, libel, provocation, and threats.<sup>1</sup> The Ministry of Communications and Information noted that the trend of hate speech in social media increased sharply in 2017. This trend occurred to coincide with the momentum of the simultaneous pilkada that will be held in 2018.<sup>2</sup> In addition Kemkominfo

<sup>1</sup>Kompas.com, *2016 Konten Berisi Ujaran Kebencian Paling Banyak Diadukan ke Polisi*, 26 Maret 2017, <https://nasional.kompas.com/read/2017/03/26/08465611/2016.konten.berisi.ujaran.kebencian.paling.banyak.diadukan.ke.polisi>.

<sup>2</sup>Liputan 6.com, *Kominfo : Tren Ujaran Kebencian Meningkat di Januari 2017*, <http://liputan.6.com/2017/09/20/kominfo-tren-ujaran-kebencian-meningkat-di-januari-2017>.

reported that during January up to April 2017 there were 5,864 complaints related to negative content of hate speech or hoax.<sup>3</sup> One case of spreading hate speech in social media of public concern is the case of the Saracens.

The Saracens have existed since November 2015. They use some means to spread the hatred of SARA contents. These include Saracen News Group, Saracen Cyber Team, Saracennews.com site, and other groups that attract citizens to join. Until now it is known the number of accounts incorporated in the Saracen Group network more than 800,000 accounts. The Saracens group charges tens of millions in proposals offered to a number of parties. They are willing to disseminate hate speech content and SARA in social media to order. about Rp 72 million per package. These costs include the cost of making the site for Rp 15 million and pay about 15 buzzers of Rp 45 million per month. There is also a separate budget for Jasriadi as chairman of Rp 10 million. The rest, the cost to pay the so-called journalists. The journalists will later write an article of order whose contents are also directed to the buyer.<sup>4</sup> President Joko Widodo rate, Saracen group that spread hoaks in cyberspace is very terrible and must be revealed to the roots by the police.<sup>5</sup>

Cyber crime like hate speech has its own characteristics. The perpetrators are generally young people who master information technology. Cyber crime is generally done extra cautiously and is very convincing. Often through a dispute. Rare cases of cyber crime are performed individually. One of the contributing factors is that the offender needs additional expertise or help from other actors due to the complicated or sophisticated skills required to commit the crime.[7] Similarly, what happened to the Saracens. Those who join the Saracen group are young people who certainly have the ability in the field of information technology. The work system is group or there is a conspiracy. The arrest of Jasriadi as group chairman, Muhammad Faizal Tanon and Sri Rahayu Ningsing and the existence of 15 Buzzer<sup>6</sup> and journalists assigned to write articles according to the order show that the speech of hatred in social media is done by well organized group. Usually, hate speech contents and the smell of SARA crowded circulating in social media on political momentum. Prevention of hate

<sup>3</sup>DetikNews, *Fenomena Apakah Saracen itu?*, 29 Agustus 2017, <http://detik.com/2017/08/29/fenomena-apaakah-saracen-itu>

<sup>4</sup>Kompas.com, *Polisi Sebut Saracen Pasang Tarif Rp 72 Juta Per Paket Konten, SARA*, 25 Agustus 2017, <https://nasional.kompas.com/read/2017/08/25/20475761/polisi-sebut-saracen-pasang-tarif-rp-72-juta-per-paket-konten-sara>.

<sup>5</sup> Kompas.com, *Saracen Mengerikan, Saya Perintahkan Kapolri Usut Tuntas*, 27 Agustus 2017, <https://nasional.kompas.com/read/2017/08/27/18501421/joko-wi-saracen-mengerikan-saya-perintahkan-kapolri-usut-tuntas>

<sup>6</sup> Buzzer is a group of Twitter users (around 2000 members or more) who is paid to promote certain products via Twitter. Some of them are paid for provoking special issues through hate-speech or hoax.

content is not only to support the implementation of electoral political agendas, but more importantly for the prevention of hatred, discrimination and violence so that intolerations that can lead to social conflict can be eliminated. `

### *B. Criminal Policy for Countering Hate Speech in Social Media*

#### a. Understanding of Criminal Policy

Crime or crime is one form of deviant behavior that is always present and inherent in every form of society. There is no lonely society of evil. According to Saparinah Sadli, this deviant behavior is a real threat or threat to social norms; can lead to individual tension as well as social tensions; and is a real or potential threat to the ongoing social order.[8] So aside from being a humanity issue a crime is also a social issue. So according to Benedict S Alps is "the Oldest Social Problem".[8]

One type of crime in modern times is a crime by using computer means or called cyber crime. Cyber crime uses technology as a tool to achieve criminal objectives. This is in line with Barda Nawawi Arief's opinion that cyber crime is a dark side of technological advances that have a very wide negative impact on all areas of modern life today. Thus there is a need for countermeasures that can be pursued with various approaches or policies. The policy of crime prevention or so-called criminal policy can cover a wide scope.

Sudarto presents three meanings of criminal policy, namely: in a narrow sense, the whole principles and methods that form the basis of reaction to violations of the law in the form of criminal. In a broad sense, the overall function of the law enforcement apparatus, including the workings of the courts and the police. In the broadest sense, overall policies are taken through legislation and official bodies aimed at upholding central norms in society. On another occasion, Sudarto argues that criminal kebijakan is a rational effort of society in tackling crime. This is in accordance with the formulated by Marc Ancel that the criminal policy is the rational organization of the control of crime by society. Similarly, disampaikan by G. Peter Hoefnagels, that criminal policy is the rational organization of the social reaction to crime.[9] Other definitions are also put forward by G. Peter Hoefnagels, that is; criminal policy is the science of crime prevention, criminal policy is a policy of designating human behavior as crime, and criminal policy is a total rational of responses to crime.[9]

According to G. Peter Hoefnagels, crime prevention efforts can be pursued with:[9]

- 1) criminal law application
- 2) preventiona without punishment
- 3) influencing views of society on crime and punishment / mass media

Thus efforts to overcome crime can be divided into two, namely through the "penal" (criminal law) and through the

"non penal" (not / outside the penal law). If listening to the division of crime prevention efforts proposed by G. Peter Hoefnagels, then point a is a "penal" path while point b and c are "non penal" paths. The penal path focuses more on repressive efforts after the crime occurs. While the non-penal path focuses on efforts that are preventive (prevention / penangkalan / control) before the crime occurred.

Related to this writing that hate speech through social media is a computer crime that deserves to be overcome. Computer crime countermeasures can be pursued by using two important means, namely through lane or means penal and non penal means. This is evident in the United Nations VIII / 1990 Congress Resolution on computer related crime which proposes several policies including:[10]

- 1) Urging member states to intensify more effective computer overhaul efforts by considering the following measures:
  - a. undertake the modernization of material criminal law and criminal procedure law;
  - b. develop computer preventive and security measures;
  - c. undertake steps to sensitize citizens, judicial apparatus and law enforcement, to the importance of computer-related crime prevention;
  - d. conduct training efforts for judges, officials and law enforcement officers on economic and cyber crime;
  - e. extend the rules of ethics in the use of computers and teach them through the informatics curriculum;
  - f. adopted a policy of protecting cyber crime victims in accordance with the United Nations Declaration on Victims and taking steps to encourage victims to report the existence of cyber crime.
- 2) calling on member countries to increase international activities in the effort to cyber crime
- 3) recommend to the Committee on Crime Prevention and Control of the United Nations to:
  - a. expanding the guidelines and standards to assist member countries in facing cyber crime at the national, regional and international levels;
  - b. develop research and further analysis to discover new ways to deal with future cyber crime problems;
  - c. considers cyber crime when reviewing the implementation of extradition treaties and cooperation assistance in the field of crime prevention

#### g. Non-Penal Facilities

Crime prevention efforts through non-penal means are more of a preventive measure, so the main objective is to address the conducive factors of the crime. These conducive factors, among others, center on social problems or social conditions that directly or indirectly can lead to crime. Non-penal efforts are a strategic undertaking in the overall criminal policy. This was confirmed also in the United Nations congress on the "Prevention of Crime and the Treatment of Offenders" in Caracas in 1980 which, among others, stated that: [9]

- 1) The crime problem impades progress towards the attainment of an acceptable quality of life for all people;

- 2) Crime prevention strategies should be based upon the elimination of causes and conditions giving rise to crime;
- 3) The main causes of crime in many countries are social inequality, racial and national discrimination, low standards of living, unemployment and illiteracy among broad sections of the population.

The social conditions or causes that constitute the cause of the crime can not be overcome only by means of penalties due to the limitation of penal means, as previously described. It needs to be integrated with non penal means. One of the non penal means to overcome the problem or social condition is through social policy. Social policy is a policy or rational effort to achieve community welfare. So it is synonymous with national development policy or planning which covers a wide range of aspects of development. Self-development can be "criminogenic" if the development is:[9]

- 1) It was not rationally planned
- 2) Disregarded cultural and moral values
- 3) Did not include integrated social defense strategies

One of the social policies that deserve attention is the cultivation of community mental health through religious education as an effort to combat crime.[11] It is seen that religious education is very important and strategic in reinforcing human belief and ability to follow the path of truth and goodness. With effective religious education and counseling, it is not only hoped that the human soul will be healthy, but also the healthy family and healthy social environment. In addition, the use of technological advances (techno prevention) as well as activities that are oriented towards public service or educative communicative activities with the community are non penal efforts that should be effective.

As has been previously described that efforts to overcome crimes through non-penal means more precautionary measures, then efforts to overcome the crime of hate speech in social media using non-penal means can be:

- 1) Techno prevention  
Because hate speech in social media is a form of crime using computer or digital technology, the prevention must also use the use of computers or techno prevention, among others:

- Security software.[7]  
Preventative action that can be done is access control through authentication mechanism by using password; a firewall that is a program that is a device that is placed between the internet with internet network that aims to keep access inside or out of unauthorized access can not be done; Intruder Detection Probing (IDP) includes autobuse, detects probing by monitoring log files; back up routine for backup manakalah our system entered by another party.
- Security hardware[7]  
Preventative actions that can be taken are computer locking to prevent unauthorized use; the use of dial back, ie the use of a double phone between the phone send and phone receives by interchange in the use of the phone.

- Take advantage of hoax news report features provided by social media such as facebook status report feature, feedback feature on google, tweet report feature on twitter. Negative news content may be reported to the contents@mail.kominfo.go.id or the data.turnbackhoax.id page provided by the Indonesian Anti Hoax Society.<sup>7</sup>
- Use other media to check news content. Amnesty International recommends that Youtube users also check content through FotoForensics which will analyze the authenticity of the photo through error level analysis (ELA). There is also Wolfram Alpha which can help to check the condition of time and place accurately.<sup>8</sup>
- Kemenkominfo has activated a hoax or crawling machine on the internet. Within 5 to 10 minutes this machine can scavenge and give results in the form of URLs or links that can be millions or directly classify. This machine works when it finds negative cents or violates the rules, the verifier team will mark the submissions (screen capture) and then submitted to the team executor for follow-up.<sup>9</sup>

- 2) Social prevention  
efforts to overcome hate speech through social prevention can be done by:

- Introduction of computers and internet network to the community that can be done through various seminars, workshops and workshops on computers and internet networks and their impact on people's lives.
- Community participation. In addition to being an active user in social media, people can also become victims of hate crime in social media when there is intolerance and social conflict. Therefore, community participation is equally important to maintain security and order through the use of social media that is good and true and dare to report and not be hooked with the issue or incitement that is deliberately spread by certain elements.

- 3) Education prevention  
Attempts to overcome hate speech in social media that can be done through education prevention are:

- religious education is very important and strategic in reinforcing human beliefs and abilities to follow the path of truth and goodness. With effective religious education and counseling, it is not only hoped that the human soul will be healthy, but also the healthy family and healthy social environment. When society has been fortified by good religious education and counseling, it will be able not to be quickly provoked or provoked by hate speech utterances. As Frans Magnis Suseno pointed out earlier that religions are expected to be powerful drivers of values upheld by modern humans, Religions are expected to be a source of integrity and honesty. From the religions of values such as truth, justice, freedom, equality, compassion, mercifulness, tolerance, and a willingness to refrain radiate into society. Religions must be a place

<sup>7</sup>Toni Ervianto, *Fenomena Apakah Saracen Itu ?*, detik.com

<sup>8</sup>Ibid

<sup>9</sup>Toni Ervianto, *Fenomena Apakah Saracen Itu ?*, detik.com

where everyone, who is not a member of that religion, is protected, selfless, without any inclination to cause intolerance or social conflict through intentional hatred to incite or provoke society.

Cultural education in the prevention of hate speech in social media aims to build or awaken the sensitivity of citizens and law enforcement officers to the problem, and disseminate / teach ethics the use of social media through educational media. So there is a code of ethics and behavior in social media.

- Fatwa Majelis Ulama Indonesia Number 24 of 2017 on Law and Guidance of Bermuamalah Through Social Media. the use of digital media, especially social media-based ones in the community is often not accompanied by responsibilities, so it is not often a means of disseminating untrue information, hoax, slander, ghibah, namimah, gossip, twisting facts, hate speech, hostility, confusion, false information, and other forbidden things that cause social disharmony.
- Scientific activities that integrate religious education and information technology advances such as the International Conference Religion and Public Civilization can raise public awareness to avoid engaging in hate speech but are not easily provoked by incitement or provocation.
- Digital literacy to the community through education. Digital literacy is more complex. Referring to Allan Martin, digital literacy is a combination of several forms of literacy: computer, information, technology, visual, media and communication. This means digital literacy requires technological mastery skills, information analysis competencies, effective communication skills, and visual work. Educational institutions such as schools or colleges should think about introducing digital literacy into their learning materials. This proposal is also a protective measure considering the students who are mostly users of digital media so that in the future we can prepare a capable and tolerant digital society.<sup>10</sup>

#### 4) Personal prevention

the existence of Circular Letter of Chief of Police No. 6 of 2015 on the Handling of Hate speech which contains steps of handling as a guide to police officers to handle cases of hatred both preventive and law enforcement by applying criminal sanctions. In the Circular Letter, Polri members are required to be proactive in implementing preventive measures such as streamlining intelligence functions, promoting the function of Binmas and Polmas to conduct counseling and socialization, prioritizing the function of Binmas in coordinating with all elements of society; Computerized technical training to law enforcement officers so that they also understand well the digital machine and how it works and the impact it brings; the

<sup>10</sup>Suko Widodo, *Literasi Digital Sebagai Strategi Merespon Ujaran Kebencian (Hate Speech) di Media Sosial*, [HTTP://NEWS.UNAIR.AC.ID/2017/04/12/LITERASI-DIGITAL-SEBAGAI-STRATEGI-MERESPON-UJARAN-KEBENCIAN-HATE-SPEECH-DI-MEDIA-SOSIAL/](http://news.unair.ac.id/2017/04/12/literasi-digital-sebagai-strategi-merespon-ujaran-kebencian-hate-speech-di-media-sosial/)

establishment of special units that serve to prevent and combat computer crime, such as the establishment of special Criminal Directorate of IT Subdit and Cyber Crime on police bareskrim.

- 5) Government cooperation with the communication technology industry such as facebook and tweeter which is the most widely used social media by the people of Indonesia, so that later the internet becomes a safe place to communicate in this digital era.

The optimization of crime prevention of hate speech must be done by combining two means of criminal policy. The integral policy between penal and non penal means must be done because crime prevention policy can not run well if only use one of the facilities only considering there are limitations. Whatever the steps taken in preventing and overcoming the evil of hate speech must be rational steps. Because the characteristic of a criminal policy is the application of rational methods.

#### h. Penal Facilities

Of the various international instruments that have been described earlier, it appears that the use of penal facilities is needed in the prevention of cyber crime. Two central problems in criminal policy using penal means (penal law) is the problem of determination:

- 1) What actions should be criminalized
- 2) What sanctions should be used or imposed on the offender

The solution of the above two central problems must be directed towards achieving certain objectives of established social and political policy. Thus the criminal law policy including the policy in handling the two central issues above must also be done with a policy oriented approach.[10] Sudarto says that in the face of the first central problem, which is often called the problem of criminalization, should consider the following:[10]

- 1) The development of criminal law should pay attention to national development objectives, namely to create a just and prosperous society equally spiritually material based on Pancasila;
- 2) The act which is attempted to be prevented or overcome by criminal law shall be an undesirable act, which is the act of bringing harm to the community;
- 3) The use of criminal law must also take into account the cost benefit principle
- 4) The use of criminal law should also take into account the capacity or capability of the workforce of law enforcement agencies, lest there be an excessive workload.

The problem of a policy-oriented approach is the tendency to be pragmatic and quantitative and not to allow for the inclusion of subjective factors, such as values into the decision-making process. Criminal policy is inseparable from value problems because, as Christiansen says, the conception of the problem of crime and punishment is an essential part of the culture of any society. Once pila is said by W. Clifford, the very fondation of any criminal justice system consists of the phylosophy behind a given country. Moreover, Indonesia based on Pancasila and its national development policy line

aims to shape the whole Indonesian people, if criminal will be used as a means for that purpose, the humanistic approach must also be considered. This is because evil is not only a matter of humanity but in essence the criminal itself contains suffering or sorrow that can attack the most valuable value for human life.[10]

Efforts to overcome the crime of hate speech in social media through penal means is to use the Criminal Code and legislation outside the Criminal Code. The Articles of the Criminal Code which may be used to ensnare the offender of hatred, namely Article 156, Article 157 paragraph (1) and paragraph (2), Article 310 and Article 311. Whereas the rules outside the Criminal Code which can ensnare the offender of hatred are Article 28 paragraph (1) and paragraph (2) of Article 42 paragraph (2) of Law Number 11 Year 2008 concerning Electronic Information and Transactions, Article 16 of Law Number 40 Year on the Elimination of Racial and Ethnic Discrimination as well as Law Number 12 Year 2012 on Handling Social Conflict.

The criminal law has the ultimate nature of remedium or the ultimate means of imposing rape to the offender. If other efforts can not improve the offender, then the criminal law can be used. The use of penal means in tackling crime has various limitations, so the use of penal means (criminal law) must be more careful, thorough, efficient and selective and limitative.[12] The application of penal sanctions in a legislation is not a mere legal matter of law, but an integral part of the substance or matter of the law itself. The use of penal means in governing society (through legislation) is essentially a part of a policy move and must be done through a rational approach.

#### IV. CONCLUSIONS

From the argument that has been mentioned above, it can be concluded that the development of information technology gave rise to computer crime. One of the most widespread computer crimes that occurred before the democracy party was the massive hate speech in social media whose purpose was to cause social intolerance and conflict in society. The crime is worth to be addressed, therefore the criminal policy of hate speech in social media that can offend the religious dignity of society in this digital age can be done by using two important means, namely the use of non-penal means and penal means. Non-penal facilities are more preventive, i.e. preventive measures against background factors or causes of crime. While the penal means that the use of criminal law through the application of criminal sanctions in the legislation is more repressive, ie efforts to overcome after the crime occurred.

To be applied optimally in tackling the crime of hate speech in social media, penal means and non-penal means must be integrated. In view of the limitations in the use of criminal law, the use of criminal sanctions in a legal product to cause deterrent effect to the offender must be done more carefully. While non-penal facilities should be more optimized because it is a strategic step in preventing a crime. Whatever

approach is used, it should be a rational method because criminal policy is a rational attempt to tackle the problem.

#### REFERENCES

- [1] Ahmad. M. Ramli, *Cyber Law dan HAKI dalam Sistem Hukum Indonesia*. Bandung: PT Rafika Aditama, 2006.
- [2] Sutanto, Herman Sulistio dan Tjuk Sugiarto (Ed), *Cyber Crime-Motif dan Penindakan*, Pensil 324. Jakarta, 2005
- [3] Roni Tabroni, *Komunikasi Politik Pada Era Multimedia*. Bandung: Simbiosis Rekatama Media, 2012.
- [4] Gagliardon et al, *Countering Online Hate Speech*. Paris: UNESCO Publishing, 2015.
- [5] Edi Santoso, *Pengendalian Pesan Kebencian (Hate Speech) Di Media Baru Melalui Peningkatan Literasi Media*. Prosiding Seminar Nasional Komunikasi, 2016.
- [6] Franz Magnis Suseno, *Etika Politik*. Jakarta: Gramedia Pustaka Utama, 2003.
- [7] H. Sutarman, *Modus Operandi dan Penanggulangannya*. Yogyakarta: Laksbang PRESSindo, 2007.
- [8] Muladi dan Barda Nawawi Arief, *Teori-Teori dan Kebijakan Pidana*. Bandung: PT Alumni, 2005.
- [9] Barda Nawawi Arief, *Handout Kebijakan Hukum Pidana* (No date).
- [10] Barda Nawawi Arief, *Tindak Pidana Mayantara Perkembangan Kajian Cyber Crime di Indonesia*. Jakarta: Raja Grafindo Persada, 2006.
- [11] Sudarto, *Kapita Selekta Hukum Pidana*, 1981.
- [12] Budi Suhariyanto, *Tindak Pidana Teknologi Informasi (Cyber Crime) Urgensi Pengaturan dan Celah Hukumnya* Jakarta: Raja Grafindo Persada, 2013.