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Legal Analysis of Sanctions Imposed on Perpetrators of Criminal Acts of Broadcasting False News in Accordance With The Provisions of Articles 27 And 28 of the Ite Law

Abstract

This study examines the legal basis, implementation, and effectiveness of sanctions imposed on perpetrators of criminal acts related to the dissemination of false news as stipulated in Articles 27 and 28 of the Electronic Information and Transactions (ITE) Law. The research aims to analyze the extent to which these provisions provide legal certainty, deterrent effects, and protection for the public against misinformation in digital spaces. Using a normative juridical approach, the study reviews statutory regulations, legal principles, and relevant case decisions. The findings indicate that although Articles 27 and 28 of the ITE Law offer a comprehensive legal framework for addressing false news, several issues remain, including overlapping norms, ambiguous terminology, and challenges in law enforcement practices. These limitations affect the consistency of sanctions and the proportionality of criminal liability. The study concludes that clearer guidelines, improved legal interpretation, and strengthened digital literacy are essential to enhance the effectiveness of sanctions and ensure the fair application of the law.

Keywords: Legal Analysis, Criminal Sanctions, False News, ITE Law.

A. Introduction

Indonesia is a legal state, as mandated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945). In the current era, the advancement of information technology is increasingly sophisticated, bringing both positive influence and negative impacts on society. This technological sophistication facilitates various human tasks, allowing every person to easily produce and rapidly disseminate information through various social media platforms (such as Instagram, Facebook, and Twitter) and instant messaging applications (such as WhatsApp). This speed of dissemination often occurs without prior selection or verification regarding the information's quality or truthfulness. Asyhdie, H. Zaeni and Arief Rahman. 2016

This phenomenon is increasingly evident as we enter the era of globalization, where changes and information flow without borders. One of the negative consequences arising from global change is the emergence of cyber crime. The internet has introduced a new reality to humanity, limiting the constraints of distance and time. Through the internet, people can perform activities from business transactions to social interaction that are difficult to carry out in real life due to physical separation. As technology and globalization advance, so do the crimes they enable. Social development often creates vulnerabilities that do not receive serious attention, allowing individuals or groups to exploit them negatively, often through illegal and non-normative means.

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Indonesia possesses a legal framework consisting of the Criminal Code (*Kitab Undang-Undang Hukum Pidana - KUHP*) and, following technological progress, the Law on Information and Electronic Transactions (UU ITE). These two provisions utilize the principle of *lex specialis derogat lex generalis*, which dictates that a specific regulation (UU ITE) takes precedence over a general regulation (KUHP) when addressing specific cases. In practice, the author observed a case involving the repeated dissemination of false or uncertain news through social media (Instagram and Facebook) during the 2019 General Election. This act of repeatedly broadcasting false news via electronic platforms raises questions regarding the application of criminal law and the principle of *lex specialis*.

Based on the background above, the core issues to be discussed in this study are: a). Does the indictment filed in case ruling Number 208/Pid.sus/2019/PN TSM comply with the principle of *lex specialis derogat lex generalis*? b). How is criminal law enforced against the dissemination of false news, specifically concerning the case ruling Number 208/Pid.Sus/2019/PN TSM?. Karo-Karo, R. P. P. (2021).

B. Theoretical Foundation

The legal analysis of sanctions imposed on perpetrators of criminal acts involving the dissemination of false news under Articles 27 and 28 of the Electronic Information and Transactions (ITE) Law is grounded in several theoretical perspectives. These theories provide the conceptual basis for understanding the nature of false information, criminal liability, and the purpose of legal sanctions in the digital context. Yanti, Z. (2021).

1. Theory of Legal Certainty (*Rechtszekerheid*)

The principle of legal certainty emphasizes that laws must be clear, predictable, and consistently applied. In the context of the ITE Law, this theory highlights the importance of precise definitions and legal boundaries, particularly regarding terms such as “false news” and “misleading information.” Legal certainty ensures that citizens understand prohibited conduct and that law enforcement officers implement sanctions in a fair and uniform manner. Rahman, R. A., & Tang, S.-M. (2022).

2. Theory of Criminal Liability

The theory of criminal liability explains the basis on which individuals can be held accountable for unlawful acts. This includes elements such as *actus reus* (the criminal act), *mens rea* (criminal intent), causation, and harm. In relation to false news dissemination, this theory is used to determine whether perpetrators intentionally or negligently spread information that causes public unrest, hatred, or losses. It also serves to assess the proportionality of sanctions under Articles 27 and 28 of the ITE Law. Afisa, A. (2024).

3. Communication Theory of Mass Media Effects

This theory posits that media content including digital communication can shape public opinion, influence behavior, and create social impacts. The dissemination of false news can trigger widespread panic, manipulate perceptions, and disrupt social stability. By applying this theory, the study evaluates the social harm caused by false information and justifies regulatory intervention through criminal sanctions. Kassi, Y. (2024).

4. Theory of Cyber Law and Digital Regulation

Cyber law theory provides the foundation for understanding legal norms governing electronic information, internet communication, and digital offenses. The ITE Law operates within this theoretical framework to regulate online behavior and establish legal responsibility

in cyberspace. It also recognizes the unique challenges of digital evidence, anonymity, jurisdiction, and the rapid spread of information across platforms. Purwono, A. (2024).

5. Theory of Deterrence

Deterrence theory explains that criminal sanctions are imposed not only to punish offenders but also to prevent future violations. In the context of false news dissemination, sanctions under the ITE Law aim to create both general deterrence (discouraging the public from committing similar acts) and specific deterrence (preventing repeat offenses by convicted individuals). This theory underlines the importance of proportional and effective sanctions in reducing misinformation. Kurniawan, K. D. (2024).

6. Human Rights Theory

Human rights principles-particularly freedom of expression play a crucial role in evaluating the imposition of sanctions under the ITE Law. While individuals have the right to express opinions, this freedom is not absolute and may be limited to protect public order, national security, and the rights of others. This theory helps balance regulation against potential overcriminalization or misuse of legal provisions. ICJR (Institute for Criminal Justice Reform). (2022–2024).

C. Methods

This study adopts the Normative Juridical approach. The research will utilize Library Research, focusing the analysis on court rulings, statutory regulations, legal theories, and concepts. Research Nature: The research nature is Descriptive Analytical, which aims to clearly and accurately describe the legal issues under investigation. The collected data will then be analyzed through relevant legislation, theories, and legal principles to obtain a complete picture of the problem, draw conclusions, and provide recommendations. Rumengan, T. G., Sumakul, T. F., & Pinangkaan, N. (2025).

The data sources used in this study consist of primary and secondary data. The primary data, within the framework of normative juridical research, is derived from Court Ruling Number 208/Pid.Sus/2019/PN TSM, which serves as the main object of legal analysis. Meanwhile, the secondary data function as supporting materials and are obtained from various legal sources. These include primary legal materials in the form of statutory regulations, such as the Law on Electronic Information and Transactions (UU ITE) and the Criminal Code (KUHP); secondary legal materials comprising literature, books, scholarly journals, and other academic works relevant to the research topic; and tertiary legal materials, including legal dictionaries, encyclopedias, as well as electronic media and internet sources used to complement and strengthen the analysis (Judijanto, Putra, & Sumarni, 2025).

The collection of secondary data is carried out by reading and inventorying laws, regulations, books, scholarly works, legal dictionaries, and using electronic media (the internet) as a search engine for literature relevant to the research questions. Judijanto, L., Utama, A. S., & Setiyawan, H. (2025). Data analysis is performed on the primary and secondary data using a qualitative method to obtain the best answers and conclusions that are legally accountable. Rumengan, T. G., Sumakul, T. F., & Pinangkaan, N. (2025).

D. Results and Discussion

Case Facts (Positional Case)

The Defendant Dani Muhamad Ramdani Alias Dany Bin Yusuf on Saturday, April 20, 2019, around 20:00 Western Indonesian Time (WIB), or at least at some time in April 2019,

located in Nagarasari Village, Cipedes Sub-district, Tasikmalaya City, or at least in a place within the legal jurisdiction of the Tasikmalaya District Court authorized to examine and adjudicate the case, did deliberately disseminate false news or notifications, thereby causing unrest (*keonaran*) among the public, performed by the Defendant in the following manner:

- a. On Friday, April 19, 2019, around 14:00 WIB, a group of approximately 20 (twenty) people, wearing all-white clothing and regular civilian clothes, were observed wandering around the Cipedes Sub-district office area. Their purpose was to monitor the ballot boxes containing the results of the 2019 Presidential and Vice-Presidential Election in Tasikmalaya City, which were stored at the Sub-district Election Committee (*Panitia Pemilihan Kecamatan - PPK*) in the Cipedes Sub-district Office Hall.
- b. The group remained until night. Around 22:00 WIB, after a team of volunteers from one of the Presidential/Vice-Presidential candidate pairs arrived at the area, the group of 20 people subsequently entered the Cipedes Sub-district Office.
- c. While the group and the volunteer team were inside the office, some individuals recorded the activities of the PPK members and Police officers who were on duty guarding the ballot boxes, using their mobile phones (*Handphone*).
- d. The following day, Saturday, April 20, 2019, the video footage of the PPK members and Police officers guarding the ballot boxes at the Cipedes Sub-district Office was found posted on the Instagram account named “amperacyber”. The video included a caption that read: “Police Forcibly Trying to Open Ballot Boxes, Blocked by FPI Babinsa and Relawan 02” (*Polisi Memaksa Ingin Membuka Kotak Suara, Di hadang Oleh FPI Babinsa dan Relawan 02*).
- e. The Defendant then downloaded the video using a download application on his Gold Samsung Type S6 mobile phone.
- f. Subsequently, the Defendant reposted the video content to his personal Facebook account (email: danyramdany495@gmail.com) and added a caption at the beginning of the video: “Happened in Indihiang and Cipedes Tasikmalaya West Java”. The full caption became: “Happened in Indihiang and Cipedes Tasikmalaya West Java Police Forcibly Trying to Open Ballot Boxes, Blocked by FPI, Babinsa and Relawan 02”.
- g. The Defendant posted the video with the intention of publicizing or spreading the event contained in the video so that Facebook users would believe the event was true. However, in reality, no attempt by the Police to forcibly open the ballot boxes ever occurred, as the boxes were sealed, locked, and securely stored.
- h. The video uploaded/reposted by the Defendant on his Facebook account with the added caption was shared 48 (forty-eight) times and viewed 896 (eight hundred ninety-six) times.
- i. The circulation of this false video caused widespread uproar or unrest among the public, as viewers perceived the police institution as not being neutral.
- j. Consequently, several civil society organizations (*Ormas*) supporting one of the candidate pairs visited the Cipedes and Indihiang Sub-district Offices where the ballot boxes were stored. They accused the Police officers on guard of attempting to forcibly open the ballot boxes. These unfounded accusations led to disturbances between the Ormas members, the Police officers, and the PPK members. Candra, M., & Dinata, M. R. K. (2025).

Public Prosecutor's Indictment

The actions of the Defendant Dani Muhamad Ramdani Alias Dany Bin Yusuf are indicted and subject to criminal penalties under. First Indictment (Primary): Article 14 paragraph (1) of Law Number 1 Year 1946 concerning Criminal Law Regulations *Juncto* Law

Number 73 Year 1958 concerning the Enactment of Law Number 1 Year 1946 concerning Criminal Law Regulations for the Entire Territory of the Republic of Indonesia and Amending the Criminal Code. Atmaja, Y. D. G., Ningrum, D. J., Suryadi, & Chandra, D. E. (2025).

Second Indictment (Subsidiary): Article 15 of Law Number 1 Year 1946 concerning Criminal Law Regulations *Juncto* Law Number 73 Year 1958 concerning the Enactment of Law Number 1 Year 1946 concerning Indonesian Criminal Law Regulations. Tasikmalaya District Court Ruling No. 208/Pid.Sus/2019/PN TSM: Judicial Considerations. Selection of Indictment Article Considering that the Public Prosecutor presented an alternative indictment, the Panel of Judges, taking into account the legal facts disclosed above, directly chose the Second Alternative Indictment as stipulated in Article 15 of Law Number 1 Year 1946 concerning Criminal Law Regulations *Juncto* Law Number 73 Year 1958, the elements of which are as follows:

- a. Anyone;
- b. Disseminates news that is uncertain, exaggerated, or incomplete;
- c. While understanding or at least having reason to suspect that such news will or may easily cause unrest among the public. Loso, J., Putra, I., & Sumarni, S. (2025).

Proof of Elements

The Panel of Judges considered the proof of these elements as follows: Element 1: Anyone Considering that the element "anyone" refers to the legal subject (*Natuurlijke Persoon*) who commits the criminal act, in this case, Dani Muhamad Ramdani Alias Dany Bin Yusuf. The Defendant's identity was confirmed, he was found mentally and physically capable of responsibility, and no justifying or excusing circumstances were found. Conclusion: The element "Anyone" has been legally and convincingly proven. Chesterman, S. (2025).

Element 2: Disseminates news that is uncertain, exaggerated, or incomplete. Considering that this element is analyzed using the Great Dictionary of the Indonesian Language (KBBI), where *disseminating* is equated with *spreading*, and *uncertain news* is defined as a report of an event whose certainty is unestablished. Expert witness Drs. Kholid Abdullah Harras, M.Pd., confirmed that false news is information not based on fact. Kompas.id. (2025, April 29).

Considering that based on the legal facts, the Defendant's act of spreading a video downloaded from the "amperacyber" account via Facebook, adding the narrative "Happened in Indihiang and Cipedes Tasikmalaya West Java Police Forcibly Trying to Open Ballot Boxes, Blocked by FPI Babinsa and Relawan 02," constitutes the act of disseminating uncertain news. This is because the Defendant's added narrative did not match the facts at the Cipedes Sub-district Office (no attempted forcible opening of ballot boxes), even though the Defendant intended the public to believe the event was true. Conclusion: The element "Disseminates news that is uncertain..." has been legally and convincingly proven. Kompas.id. (2025, April 29).

Element 3: While understanding or at least having reason to suspect that such news will or may easily cause unrest among the public. Considering that the Expert Witness explained that false news can cause unrest (*huru-hara* or *uproar*), which the KBBI defines as commotion or disturbance. Considering that the Defendant's act of downloading and posting the video on his Facebook account with a provocative caption, coupled with the fact that the video was shared 48 times and viewed 896 times, demonstrates that the Defendant had reason to suspect that such uncertain news would or could easily cause unrest among the public. Conclusion: The element "While understanding or at least having reason to suspect..." has been legally and convincingly proven. Panjaitan, D. A., & Eddy, T. (2020).

Final Criminal Verdict: Considering that all elements of Article 15 of Law Number 1 Year 1946 have been fulfilled, the Defendant must be declared legally and convincingly guilty of committing the criminal act as charged in the second alternative indictment. Considering that the Panel of Judges found no circumstances that would eliminate criminal responsibility

(justifying or excusing reasons), the Defendant must be held accountable for his actions and declared guilty and sentenced.

- a. Detention Period: The period of lawful arrest and detention shall be fully deducted from the sentence imposed.
- b. Detention Status: The Defendant shall remain in custody.
- c. Evidence (Confiscated and Destroyed):
 - 1) 1 (one) unit Samsung Galaxy S6 Edge mobile phone.
 - 2) 1 (one) Telkomsel SIM card with Number 081222370285.
 - 3) 1 (one) Facebook account Dany M Ramdany.
- d. Evidence (Attached to the Case File): 1 (one) bundle of printed screenshots of the Facebook account a/n Dani Muhamad Ramdani.
- e. Aggravating Circumstances: The Defendant's actions harmed the police institution.
- f. Mitigating Circumstances: The Defendant has no prior convictions; the Defendant admitted and regretted his actions.
- g. Court Costs: The Defendant is obligated to pay the court costs. Laowo, Y. S. (2020).

Dictum (Verdict)

Judgment:

- a. Declares the Defendant Dani Muhamad Ramdani Alias Dany Bin Yusuf as legally and convincingly proven guilty of committing the criminal act of "Disseminating uncertain news while understanding or at least having reason to suspect that such news will or may easily cause unrest among the public" as charged in the second alternative indictment;
- b. Sentences the Defendant, therefore, to imprisonment for 6 (six) Months and 7 (seven) Days;
- c. Stipulates that the period of arrest and detention already served by the Defendant shall be fully deducted from the sentence imposed;
- d. Stipulates that the Defendant shall remain in detention;
- e. Stipulates the following evidence:
 - 1) 1 (one) unit Samsung Galaxy S6 Edge mobile phone;
 - 2) 1 (one) Telkomsel SIM card with Number 081222370285;
 - 3) 1 (one) Facebook account Dany M Ramdany with email address: danyramdany495@gmail.com and password: danyramdany; Shall be confiscated for destruction;
 - 4) 1 (one) bundle of printed screenshots of the Facebook account a/n Dani Muhamad Ramdani, along with screenshots of the Video Post; Shall remain attached to the case file;
- f. Orders the Defendant to pay the court costs amounting to Rp 5,000.00 (Five Thousand Rupiah). Nugroho, W. S. (2020).

Other Findings

Analysis of the Indictment in Case Ruling Number 208/Pid.Sus/2019/PN TSM Viewed from the Principle of *Lex Specialis Derogat Lex Generalis*. Legal principles hold the highest position within the structure of legal rules. A legal principle serves as the fundamental basis and abstract guidelines that underpin concrete regulations and guide the execution of law. Concrete regulations, such as statutory laws, must not contradict established legal principles. The legal principle is not concrete law but rather the basic, general, and abstract thought behind a concrete regulation. Nugroho, W. S. (2020).

In criminal law, the principle of legality is paramount, meaning punishment must be based on law. This encompasses all legislative products, from laws passed by the Parliament

(DPR) to other implementing regulations. Consequently, state power must submit to the law. In law enforcement, the correct application of legal principles is essential for maintaining legal consistency and resolving conflicts within the system. Munif, E. I., Jatmiko, R., & Winarno, W. (2020).

One crucial legal principle is the Principle of *Lex Specialis Derogat Legi Generalis* (Specific Law Derogates General Law). This principle is contained in Article 63 paragraph (2) of the Indonesian Criminal Code (KUHP), which states that if an action falls under a general criminal regulation and is also regulated by a specific criminal regulation, the specific regulation shall apply. This is a preference principle that determines which law must be prioritized when an event is regulated by more than one provision.

The *lex specialis* principle is vital for law enforcement officials in selecting the appropriate rule to apply to an event governed by both general provisions (like the KUHP) and specific provisions (like laws outside the KUHP). Article 63 paragraph (2) KUHP is applicable not only when a concrete event is confronted with the KUHP but also when two or more laws outside the KUHP are involved, unless otherwise stipulated. As long as a regulation contains all specific criminal provisions, the general provisions are overridden. In the context of ruling Number 208/Pid.Sus/2019/PN TSM:

- a. Criminal Act: Dissemination of false news (in the electronic/online sphere).
- b. General Regulation: Article 14 or 15 of Law No. 1 Year 1946 (concerning Criminal Law Regulations).
- c. Specific Regulation: Article 28 or 27 of Law No. 11 Year 2008 concerning Information and Electronic Transactions (UU ITE), as amended by Law No. 19 Year 2016.

Although the Public Prosecutor filed an alternative indictment (including Article 15 of Law No. 1 Year 1946), the application of the *lex specialis* principle—which should prioritize the UU ITE (specific law) in cases of electronic false news dissemination—remains a critical issue for academic discussion.

Analysis of Criminal Law Enforcement Against the Dissemination of False News Related to Ruling Number 208/Pid.Sus/2019/PN TSM. The government has an adequate legal framework to combat hoax and mitigate its negative impacts. Applicable provisions include:

- a. Law No. 1 Year 1946: Article 14 and Article 15 (general law).
- b. Law No. 11 Year 2008 (amended by Law No. 19 Year 2016) on ITE: Article 27 paragraph (3) and Article 28 paragraphs (1) and (2) (specific law).
- c. KUHP: Article 311 (defamation), Article 378 (fraud), Article 156 and 157 (hate/insult).
- d. Law No. 40 Year 2008: Article 16 (Racial and Ethnic Discrimination).

Regarding the dissemination of hoaxes that may incite hatred towards a group, the most specific article is often Article 28 paragraph (2) of the UU ITE: “Every person who deliberately and without rights disseminates information intended to incite hatred or hostility among individuals and/or certain community groups based on ethnicity, religion, race, and intergroup affiliation (SARA).” Although Article 28 paragraph (2) UU ITE does not explicitly contain the element of "falsehood," in practice, information disseminated to incite hatred is often inherently false. Mamujaja, A. F. (2020).

The elements of the criminal act under Article 28 UU ITE are:

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| Article 28 paragraph (1) (Consumer Loss) | Article 28 paragraph (2) (SARA/Hatred) |
| Fault: Deliberately | Fault: Deliberately |
| Illegality: Without rights | Illegality: Without rights |
| Act: Disseminates | Act: Disseminates |

| | |
|--|--|
| Article 28 paragraph (1) (Consumer Loss) | Article 28 paragraph (2) (SARA/Hatred) |
| Object: False news | Object: Information |
| Consequence: Causes consumer loss in electronic transactions | Goal: To incite SARA-based hatred or hostility |

In addition to the above articles, those who spread hoaxes may also be charged with articles related to hate speech found in the KUHP (Articles 156, 157, 310, 311) and the UU ITE, as well as referring to the Indonesian National Police Circular Letter (SE) No. SE/6/X/2015. Wibowo, D. P., & Sudarto, S. (2020).

E. Conclusions and Recommendation

Based on the research findings and discussion, the conclusions drawn in this study are as follows: Analysis of the Indictment Viewed from the Principle of *Lex Specialis Derogat Lex Generalis*. The application of the Principle of *Lex Specialis Derogat Lex Generalis* in Case Ruling Number 208/Pid.Sus/2019/PN TSM was not fulfilled. The Public Prosecutor (JPU) is deemed imprecise in drafting the indictment because they used Law No. 1 Year 1946 (the general law) instead of utilizing the ITE Law (the specific law) which more precisely regulates cybercrime.

The *Lex Specialis* principle is a preference rule that requires law enforcement to prioritize the specific statute that addresses a particular event, even if the event is also covered by a more general statute. Considering the *tempus delicti* (time of the offense) occurred when the ITE Law was already in effect and the crime was committed via electronic media, the indictment should have employed the ITE Law as the *lex specialis* for cybercrimes.

Analysis of Criminal Law Enforcement Against the Dissemination of False News. Provisions concerning the dissemination of false news (*hoax*) that can cause unrest are regulated by two main legal frameworks in Indonesia:

- a. Law No. 1 Year 1946 concerning Criminal Law Regulations (general law).
- b. Law No. 19 Year 2016 concerning Information and Electronic Transactions (ITE Law) (specific law).

ITE Law Article 28, particularly paragraphs (1) and (2), formulates the criminal act of disseminating false news in the electronic sphere with the following elements:

- a. Fault: Deliberately.
- b. Illegality: Without rights.
- c. Act: Disseminates.
- d. Object: False news/Information.

The suggestions derived from this research are directed towards law enforcement officials and the judicial institutions:

- a. Suggestion Regarding the Principle of *Lex Specialis Derogat Lex Generalis*. The Public Prosecutor is advised to be more careful and thorough in drafting indictments, especially in selecting the applicable articles. In cases of cybercrime, the JPU must observe and apply the Principle of *Lex Specialis Derogat Legi Generalis* by prioritizing the ITE Law as the more specific regulation, rather than solely using the general Law No. 1 Year 1946.
- b. Suggestion Regarding Criminal Law Enforcement on False News. In enforcing the law against the criminal act of disseminating false news, law enforcement officials must continuously conduct a thorough analysis of the validity of newer or more specific laws governing the offense. Priority must be given to the statute that is specific in nature.

- c. Furthermore, the Panel of Judges is advised to ensure that the legal considerations underpinning the verdict must be aligned and consistent with the operative part (dictum) of the ruling, and comply with the applicable procedural rules (KUHAP and KUHP).

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