

## Case Analysis of Habib Riziq Shihab in Spreading Fake News to Personal Medical Record

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### ABSTRACT

*Riziq shihab lied to the public about himself as if he did not experience covid-19, even though it was known and confirmed that he was positively infected with covid-19. There are 2 problem formulations discussed including: 1) How is the protection of the confidentiality of medical records and personal privacy data in Indonesia? and 2) How did the panel of judges interpret Articles 14 and 15 of Law Number 1 of 1946 in the sentencing of Habib Riziq Shihab? The research method used by the author is the normative juridical method. Literature review that collects primary, secondary and tertiary legal materials to be analyzed in perspective. There are two laws regulated in the Criminal Code in general and the ITE Law in particular. a general and the ITE Law specifically in ensnaring Riziq Shihab.*

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## I. INTRODUCTION

Technological developments in the era of globalization are now growing rapidly bringing comprehensive changes to aspects of people's lives globalization that is growing rapidly today has its own influence on the life of the world community, including Indonesia. for the lives of the world community including Indonesia. Globalization has become the driver of the birth of the development of information technology. The birth of information technology information technology that can reach humans through the internet network has erased the barriers that separate human life communication. Humans can easily communicate and obtain information just by accessing and connecting to the internet network. Because of this convenience, an open society was born in which the flow of information can be freely reached by humans where the flow of information can be freely reached by humans.

The free flow of information is often inconsistent with the facts and does not contain the truth, this information is called fake news or what is now better known as hoaxes. or what is now better known as a hoax. Hoax itself has meaning as information that does not correspond to the facts, but is made to seem true. made as if it were true. From these hoaxes, people are confused, which from the confusion of the information, people can make wrong decisions and can be used by the government. wrong decisions and can be used by irresponsible parties for their own benefit. responsible parties for their own benefit.

Indonesian law itself has regulated the spread of false news or hoaxes, both in the Criminal Code both in the Criminal Code, Law Number 1 of 1946 concerning Criminal Law Regulations, to the latest for the spread of false news through electronic media by Law Number 1 of 1946 concerning Criminal Law Regulations. most

recently for the dissemination of false news through electronic media by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law). Law No. 11/2008 on Electronic Information and Transactions (ITE Law).

The application of criminal sanctions for violators of the covid19 prevention policy is faced with a dilemma. On the one hand, the provision of criminal sanctions in the administrative policy for tackling covid-19 is expected to make people obey and provide a deterrent effect for violators. Will However, this sanction article is criticized and considered inappropriate. The reason is that currently conditions of prisons are already overcapacity, criminal sanctions threaten freedom of speech and vulnerable to abuse.

On the other hand, a prominent cleric in Indonesia named Habib Rizieq Shihab, instead of being investigated for violating the psbb article during the pandemic, he stumbled upon another article, namely the article that was considered by the public prosecutor to be the public prosecutor has committed public deception, Habib Rizieq Shihab who was sentenced to prison Shihab who was sentenced to 4 years in prison and the cassation verdict to 2 years in prison, which is in the process of filing a review. imprisonment which is in the process of filing a judicial review (PK), on charges of of committing public lies.

This case began at the time of Habib Rizieq Shihab's arrival with his entourage in Indonesia, after 3 years in Saudi Arabia. Habib Rizieq Shihab arrived in Indonesia on November 10, 2020, where at that time Indonesia was hit by a catastrophic infectious disease covid 19 virus that was endemic and was at a high level of infecting the Indonesian people. Therefore the government issued regulations for migrants from abroad to conduct a Covid swab test and carry out independent isolation for 14 days, to prevent transmission of the virus that may be carried from abroad.

However, Habib Rizieq Shihab does not heed the rules, and instead conducting da'wah safari activities that cause crowds by his sympathizers. his sympathizers. After carrying out the da'wah safari, on November 25, 2020, Habib Rizieq Shihab was reportedly hospitalized at Ummi Bogor Hospital due to fatigue. Ummi Bogor Hospital due to fatigue. However, there are public allegations that he contracted the infectious disease covid 19. Although HRS stated that he was not infected with covid, there was an urge to publish the the results of Habib Rizieq's covid swab test.

Therefore, the mayor of Bogor together with the covid task force team visited Ummi Hospital Bogor and requested that HRS be re-swabbed and the results will be published to the public, on the grounds that it is an effort to prevent transmission of infection. published to the public, on the grounds that it is an effort to prevent transmission of the virus, because HRS has interacted or had physical contact with thousands of people. virus, because HRS has interacted or had physical contact with thousands of people. However, the request for a re-swab test was rejected by Ummi Hospital and Habib Rizieq himself on the grounds that the medical condition is his privacy.

After that, RS ummi Bogor through social media channel you tube shared a video related to Habib Rizieq Shihab's condition which was said to be improved and not infected with covid. By him Habib Rizieq wanted to go home home because his condition is considered to have recovered. Later it was only in found out that apparently, the results of the Habib Rizieq Shihab Covid Swab test showed Positive results infected with covid virus. So that the video that was broadcast is fake news. Therefore, the police investigated this case until finally on January 11, 2021, Habib Rizieq was named a suspect.

## **II. RESEARCH PROBLEMS**

Based on the background above, two problems were found in this case problems to be researched, namely:

1. How is the protection of the confidentiality of medical records and personal privacy data in Indonesia?
2. How the Panel of Judges interpreted Articles 14 and 15 of Law No. 1/1946 in the sentencing of Habib Riziq?

## **III. RESEARCH METHODS**

Research methods play an important role to obtain accurate and reliable data and reliable. The research method used used is normative juridical which is to analyze the relationship between laws and regulations with legal theories and the practice of implementing positive law which concerns the issues discussed discussed. This research will analyze legal issues, facts, and other legal symptoms related to with a legal approach, then legal approach, then obtain a comprehensive picture about the problem to be examined. Research in the form of descriptive This analysis will only describe the state of the object or problem and is not intended take or draw conclusions conclusions that apply generally regarding legal responsibility of the crime of criminal offense of spreading false news.

Legal materials that will be used used include:

- a. Primary Legal Materials

Legal materials used in research with binding force include basic norms and rules such as, legislation official records or minutes in legislation, and judge's decisions, in research and research and writing of this research, including :11 Kitab Undang-Undang Hukum Pidana (KUHP), Law No. 11 year 2008 which has been updated with Law Number 19 Year 2016 on Information and Electronic Transactions, an other regulations related to the research title. with the research title.

b. Secondary Legal Materials

Materials that provide explanation of primary legal materials and its implementation, such as research results, works of legal circles, papers seminars, and others. In the research and writing of this research includes reading materials that have related to the problem of responsibility of the perpetrator of criminal offense of spreading false news, as the object of study, namely literature and scientific works related with the problem that will be examined.

c. Tertiary Legal Materials

Legal materials that provide further explanation of the primary and secondary legal materials primary and secondary legal materials, namely, dictionaries, both translation dictionaries and legal dictionaries, magazines and the internet (virtual research)

#### IV. RESULT AND DISCUSSION

##### 1. Medical Record Data Protection

According to Edna K. Huffman, quoted by Ery Rustiyanto states that medical records are nothing but a fact related to the patient's condition, medical history, and past and current treatment. with the patient's condition, history of illness, and past and current treatment written by the health profession that provides health services. written by health professionals who provide health services to the patient. to that patient. Jusuf Hanafiah and Amri Amir with a slightly more detailed editorial a little more detailed also explains that medical records are a collection of information in the form of identity, anamnesis, laboratory examination results, physical examination results, diagnoses, medical actions, and medical records. physical examination results, diagnoses, medical actions, and records of all health service activities, both outpatient services health services, be it outpatient services, inpatient services, or emergency services for patients. emergency services for patients from time to time. Minister of Health Regulation Number 269 Year 2008 concerning Medical Records also explains that medical records is a file that contains records and documents about the patient's identity, examination, treatment, and other actions and services that have been provided to the patient.

Medical records have value for patients, health centers, and health care providers.health service providers. Some of the uses of medical records for patients include to provide evidence of medical treatment received by the patient, provide information that will facilitate the patient's next visit and protect the patient's legal interests in the event of an accident or even malpractice. accidents or even malpractice. Meanwhile, for health care facilities health care facilities, medical records have value as data for health professionals in carrying out their duties, evidence of health professionals in carrying out their duties, evidence of the cost of health services that have been provided to the patient, and health services that have been provided to patients, and evaluation of resource utilization such as the use of resources such as the use of materials and medicines during health services performed. Then, the use value of medical records for service providers is to provide information to all health professionals in providing health services for patients, providing continuous health service data, and presenting useful data for research and education.

Regarding ownership of medical records in Law Number 29 of 2004 concerning Medical Practice in Article 47 paragraph (1) It is stated that medical record documents belong to doctors, dentists, and health care facilities while the contents of medical records belong to the patient. patient. Regarding the same thing, it is also explained in Permenkes Number 269 Year 2008 Article 12 paragraphs (1) and (2). Furthermore, Article 12 paragraphs (3) and (4) explains that the contents of medical records that belong to the patient are in the form of a summary of medical records that can technically be given, recorded, and copied by the patient or other people who are copied by the patient or other people who have been authorized or have obtain consent from the patient. Based on the legal provisions above, it can be understood that the physical file of the medical record must be in the health center. Saryankes. Meanwhile, the contents contained in the physical file of medical records are identity, anamnesis, physical examination, supporting examination, and treatment belong to the patient. treatment belong to the patient. It's just that until now it is still often debate regarding which information should be provided to the patient as a consequence of the provisions of the to the patient as a consequence of the provisions of positive law related to the ownership of medical records. related to the ownership of medical records. Therefore, the creation of a medical summary or medical summary or medical resume is done as a middle ground to fulfill the the patient's wishes and at the same time the patient's right to the contents of medical records that are his/her property.

In the case of the use of the patient's property rights over the contents of medical records by the government, consent from the patient is not required as long as the patient's other rights, such as the right to privacy, are respected. rights such as the right to privacy are still respected. However, if the contents of the medical record medical record contents are used by other parties that are not affiliated with the government, the consent of the patient is required before the use of the medical record contents by the government. government, the patient's consent is required before the use of the contents of the medical record can be done. When the contents of a patient's medical record contents are used without the patient's consent then it can be considered as an act that harms the patient's interests. an act that harms the interests of the patient. In such cases, the patient can file a lawsuit through Article 1365 BW. The basis for filing a lawsuit The basis for filing the lawsuit is not only based on the violation of the provisions in the Article 1365 BW. the law and general provisions but also based on the violation of morals which require that the contents of the patient's medical record are suum should be respected by other parties. In the context of Covid-19, this tends to be needed considering that in terms of overcoming the Covid-19 pandemic data collection on patients with Covid-19 is needed to see the development and spread of the virus nationally. see the development and spread of the virus nationally. But of course this is done by not violating the patient's privacy rights which can harm the patient's personal interests.

## 2. Liability for the Crime of Broadcasting Fake News

Criminal liability in foreign languages is referred to as criminal liability. The definition of criminal liability is the culpability of a person because of the unlawful act he has committed, so that he can be held criminally responsible (verwijbaardheid). In essence, criminal liability is always applied to someone who is deemed guilty in the occurrence of a criminal offense. guilty in the occurrence of a criminal offense. Criminal responsibility is basically basically can be held accountable to a perpetrator of a criminal offense, but must fulfill 4 (four) conditions.

1. Found in the Criminal Code, namely regulated in Article 390 of the Criminal Code, which the essence of which is to benefit oneself or another person by against the law, causing a decrease or increase in the price of merchandise, fonds, and securities from the false news, the merchandise, fonds, and securities from the false news, shall be punished by a maximum of two years and eight months. shall be sentenced to a maximum of two years and eight months. In order for the perpetrator to be prosecuted under Article 390 of the Criminal Code, the news broadcast must be false news or empty news, and the consequences of the dissemination of the false news must lead to increase or decrease in the price of goods, funds, securities, etc., with the intent to benefit oneself. etc. which is done with the intention to benefit oneself or others.
2. Found in Law Number 1 Year 1946 concerning Criminal Law Regulations, which is regulated in Article 14 paragraph (1), and paragraph (2), as well as Article 15 of Law Number 1 Year 1946 concerning Criminal Law Regulations. (2), as well as Article 15 of Law No. 1/1946 on Criminal Law Regulation. The essence of the provisions of Article 14 paragraph (1), namely as a result of the dissemination of false news causing unrest among the people, it will be punishable by among the people, it will be punished with a maximum imprisonment of ten years. years of imprisonment. The essence of Article 14 paragraph (2) is that spreading news that can cause unrest among the people, and the perpetrator does not realize that the news is false, then the perpetrator will be punished with a maximum of ten years in prison. realize that the news is a lie, it is punishable by a maximum of three years imprisonment. a maximum of three years' imprisonment. The essence of Article 15 is broadcasting news that is news that is uncertain, and the perpetrator realizes that the news will easily cause unrest among the people. easily cause unrest among the people, then punishable by a maximum of two years imprisonment.
3. There is in the ITE Law, which is regulated in Article 28 paragraph (1) of the ITE Law, the essence of which is that the perpetrator deliberately intentionally against the law spreading false news (hoaxes) that cause losses in electronic transactions. resulting in losses in electronic transactions.

Criminal responsibility for people who are proven to fulfill elements of criminal offense in Article 28 paragraph (1) of ITE Law based on Article 45A paragraph (1) of the ITE Law, shall be punished with imprisonment for a maximum of six years and/or a maximum fine of one billion rupiah. one billion rupiah.

## 3. Verdict on Habib Rizieq Shihab Case

Decision of the East Jakarta District Court Number 225/Pid.Sus/2021/ PN. Jkt. Tim. Dated May 27, 2021. Stating that the defendant Moh. Rizieq bin Husein Syihab was brought to trial by the Public Prosecutor charged with based on the following indictment:

That the defendant Moh. Rizieq bin Husein Syihab alias Habib Muhammad Rizieq Shihab together with Muhammad Hanif Alatas bin Abdurachman Alatas and Dr. Andi Tatat bin M. Azhar Toha (Prosecution conducted separately)<sup>89</sup> on Thursday, November 26, 2020 at approximately 2:00 a.m. Prosecution conducted separately)<sup>89</sup>

on Thursday, November 26, 2020 at approximately 17:20 WIB or at least 17:20 WIB or at least at some time in November 2020 located at Umm Hospital 2020 at Ummi Hospital at Jalan Empang number 02 Rt. 004 Rw 002 Empang Village, South Bogor Subdistrict, Bogor City or at least at a place that is still included in Bogor City. or at least at a place which is still included in the jurisdiction of the Bogor District Court Bogor District Court, but based on Article 85 of the Criminal Procedure Code and the Decree of the Chairman of the Supreme Court of the Republic of Indonesia Number: 50/KMA/SK/II/2021 concerning the Appointment of the East Jakarta District Court to Examine and East Jakarta District Court to Examine and Decide Criminal Cases on behalf of the Defendant dr. Andi. Criminal Case on behalf of the Defendant Dr. Andi Tatat bin M. Azhar Toha, et al, therefore The East Jakarta District Court has the authority to try those who committed, who ordered to commit, and who participated in committing acts, by broadcasting false news or notifications, by deliberately deliberately publishing a disturbance among the people which act was committed by the defendant in the following manner:

The actions of the defendant constitute a criminal offense as regulated and punishable under Article 14 paragraph (1) of Law Number 1 Year 1946 concerning Criminal Law Criminal Law Jo Article 55 paragraph (1) to 1 of the Criminal Code.

1. Stating that the defendant Moh. Rizieq Bin Husein Syihab alias Habib Muhammad Rizieq Shihab has been proven legally and convincingly guilty of committing the crime of participating in the act by broadcasting false notices, intentionally publishing a disturbance among the people as in the charge disturbance among the people as in the first alternative primair indictment of the Public Prosecutor. first primair indictment of the Public Prosecutor.
2. Sentenced the Defendant therefore to imprisonment for 4 (four) years.

Furthermore, the defendant Habib Muhammad Rizieq Shihab through his attorney his attorney filed an appeal to the DKI Jakarta High Court with decision Number 210/Pid.Sus/2021/PT Dki. Dated July 12, 2021, with the verdict is as follows:

1. Receive the request for appeal from the Public Prosecutor
2. Affirming the decision of the East Jakarta District Court Number 225/Pid.Sus/2021/PN.Jkt.Tim dated May 27, 2021, which is being appealed against. the appeal.
3. Determine the length of time the Defendant has been in detention. shall be deducted in full from the sentence imposed.
4. Order that the Defendant remain in custody.
5. Charges the costs of the case at both levels of court to Defendant which at the appeal level is set at Rp 5,000,- (five thousand rupiah).

At the cassation stage of the Supreme Court (MA) decision Number 4471 K/Pid.Sus/2021, cut the sentence period for Habib Rizieq Shihab from four years to only two years. four years to only two years. The decision, related to the cassation filed by the public prosecutor, as well as the attorney for the High Priest of the Islamic Defenders Front (FPI). Defenders of Islam (FPI), in the case of false news in the results of the Covid-19 test.

In the cassation decision, it is said that the objective reasons for the judges reduce the period of imprisonment for Habib Rizieq. The judge said, Habib Rizieq, as a defendant, actually killed enough evidence of committing a criminal act. criminal act. Namely doing, or broadcasting false news. The news and the false information, Habib Rizieq did intentionally which was accused of to cause chaos in the community. "As in the alternative indictment first primair indictment of the public prosecutor," so in the cassation decision. However, Habib Rizieq's actions only occurred in the mass media. mass media. According to the judge, from Habib Rizieq's actions, it did not cause loss of life, physical, or property damage to other parties. Even, said the judge, the reduction of the sentence, considering that Habib Rizieq was also sentenced in another case. Therefore, HRS deserves a lighter criminal sentence

## V. CONCLUSION

Then the following conclusions can be drawn as follows:

The provisions of Article 14 paragraph (1), Article 14 paragraph (2), and Article 15 of Law Number 1 Year 1946 on Criminal Law Regulations can cover acts that are now known as "offenses". include acts that are now known as broadcasting hoaxes (fake news) even though it is not done through electronic media. electronic media. Article 14 paragraph (1), Article 14 paragraph (2), and Article 15 Law Number 1 Year 1946 are ordinary offenses, not complaints. complaint offense, so that prosecution can be carried out by not require a complaint from an interested party or an aggrieved party.

Efforts made by the government in order to protect personal data especially related to patient medical records. In the midst of the rampant pandemic of Corona Virus Disease-19 (hereinafter referred to as Covid 19) pandemic in Indonesia. Often the identity of sufferers or people who have been exposed to Covid 19 is known by the people in their environment, which has implications for the isolation of these sufferers from the surrounding community. surrounding community. There are also frequent leaks of the identity of Covid-19 patients in the surrounding community due to information that comes out of the hospital with the aim of preventing the spread

of Covid 19. from the hospital with the aim of preventing the spread of the virus, which which basically violates the provisions regarding the privacy of patients with Covid 19, worse often other medical record data including diseases suffered by someone are also widely spread to the public.

The implementation of the trial of the case of spreading false news defendant Habib Rizieq Shihab went through various stages, at the East Jakarta District Court east with verdict number 225/Pid.Sus/2021/PN.Jkt.Tim dated May 27, 2021, which is charged in Article 14 paragraph (1) of Law Number 1 of 1946 concerning Criminal Law Regulation Jo Article 55 paragraph (1) to 1 of the Criminal Code, stating that the defendant Moh. Rizieq Bin Hussein Shihab has been proven legally and convincingly guilty of committing the crime of participating in the act by broadcasting false notifications and imposed a prison sentence of 4 (four) years. (four) years. At the appeal level with decision number 210/Pid.Sus/2021/PT DKI, dated July 12, 2021 resulted in a verdict that upheld the previous verdict, namely the decision of the district court. that upheld the previous decision, namely the decision of the East Jakarta District Court. East Jakarta. The stage of the Supreme Court cassation decision (MA) decision Number 4471 K/Pid.Sus/2021, cutting the sentence against Habib Rizieq Shihab from 4 (four) years. Rizieq Shihab from 4 (four) years to only 2 (two) years in prison on November 15, 2021, with the consideration of the judges that the criminal act of broadcasting false news by Habib Rizieq Shihab only occurred in the mass media, the act did not cause casualties, physical, or property losses to other parties.

## REFERENCES

- Ali, Mahrus, Dasar-dasar hukum pidana, cet. 2, Jakarta: Sinar Grafika, 2012.
- Prodjodikoro, Wirjono, Tindak-tindak pidana tertentu di Indonesia, ed. 3 cet. 4, Bandung: Refika Aditama, 2012.
- Asshiddiqie, Jimmly. Pengantar Ilmu Hukum Tata Negara. Jakarta: Rajawali Pers, 2009.
- Putera Astomo, 2018, Ilmu Perundang-Undangan Teori dan Praktik di Indonesia, Depok: PT. Raja Grafindo Persada, 2018.
- Yati Nurhayati, Pengantar Ilmu hukum, Bandung: Nusa Media, 2020.
- Lamintang, P.A.F. dan F.T. Lamintang, Dasar dasar Hukum Pidana Indonesia, Sinar Grafika, Jakarta, 2014.
- Moeljatno, Azas-azas Hukum Pidana, cet.2, Bina Aksara, Jakarta, 1984.
- Poernomo, Bambang, Asas-asas Hukum Pidana, Ghalia Indonesia, JakartaSurabayaSemarang-Yogya-Bandung, 1978.
- Christiany Juditha, Interaksi Komunikasi Hoax di Media Sosial serta Antisipasinya, Jurnal Pekommas, Vol. 3 No. 1, Tahun 2018.
- Sapahuma, Nacota Yeshida. 2015. Realitas Politik dalam media massa (Konstruksi pemberitaan media massa seputar 100 hari pemerintahan Jokowi-JK), Politika: Jurnal ilmu politik, Vol6, No. 1.
- Siringoringo, Valeri M.P. 2017. Pengaturan Perlindungan Hukum Hak Pasien Dalam peraturan Perundangan Undangan tentang kesehatan di Indonesia. Diponegoro Law Jorunal, Vol 6, No. 2.
- Sungkowo, Heri. 2018. Efektifitas pemberian informasi hak pasien dalam pelayanan di rumah sakit islam fatimah cilacap. Jurnal Ekonomi, Bisnis, dan Akuntansi, Vol 20, No. 2.
- <https://nasional.compas.com/read/2020/04/08/06441951/hujan-kritik-terhadappemidanaan-di-tengah-wabah-covid-19?page=all>, diakses pada tanggal 23 Desember 2021.
- TVR. Parlemen Komisi 3 DPRRI, youtube. com/ watch?v=StbZT kxh2r8&t=3354s, Diakses pada tanggal 23 Desember 2021.
- Megapolitan. kompas. com/ read/ 2021/ 08/ 30/ 130011761/ rizieq-shihab-tetapdivonis-4-tahun-penjara-kasus-rs-ummi-bogor-oleh- pt? page= all, diakses pada tanggal 23 Desember 2021.
- Wikipedia Ensiklopedia Bebas, “Berita Bohong”, [https:// id. wikipedia. org/ wiki/ Berita\\_bohong](https://id.wikipedia.org/wiki/Berita_bohong), diakses tanggal 13 Mei 2022.