LAW AND ETHICS OF COMMUNICATING IN SOCIAL MEDIA

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Abstract

Every environment has its own law and ethics as the guidelines how to behave by which the perpetrator causes three impacts, such as law, ethic, and social. The methods of the research are quantitative and qualitative research with legal approach as law in action. It is a non-doctrinal empirical so-cial science. Internet provides a new world, way of thinking, and way to communicate. Thus, there is Nettiquette, an ethical guideline of how to behave or to communicate among the the netizens. Mean-while, the teachers's awareness to properly communicate in one of vocational school in Purwokerto shows a low level. The bad way in real life communication affects their way in communicating using social media which then sometimes results in legal matter. Though there has not been any case re-corded by the court, it is still worrying since teachers should be a role model for their students. There should be some efforts to make them aware of legal obedience and communicating ethics in cyberspace for those teachers.

Keywords: netiquette, internet, social media, law and ethics, communication

Abstrak

Setiap lingkungan punya hukum dan etikanya sendiri yang menjadi pedoman bertingkah laku, dimana pelanggarannya akan menimbulkan tiga akibat sekaligus, yaitu hukum, etika dan social. Penelitian ini adalah penelitian kuantitatif dan kuantitatif dengan pendekatan terhadap hukum sebagai *law in action*, merupakan studi ilmu sosial yang non-doktrinal dan bersifat empiris. Internet menghadirkan dunia, cara berfikir, dan berkomunikasi baru. Netiquette merupakan pedoman etis dalam berperilaku/ berkomunikasi di antara para netizen. Kesadaran untuk berkomunikasi yang baik pada guru "sebuah sekolah kejuruan" di Purwokerto menunjukkan tingkat yang kurang baik. Kebiasaan buruk dalam komunikasi dunia nyata dibawa ke dunia maya sehingga seringkali menimbulkan persoalan hukum. Meski belum ada yang sampai ke ranah peradilan, akan tetapi hal ini cukup menghawatirkan mengingat kedudukan mereka sebagai guru yang seharusnya menjadi teladan bagi murid-muridnya. Perlu dilakukan penyadaran akan kepatuhan terhadap hukum dan etika berkomunikasi di dunia maya bagi bara guru tersebut.

Kata kunci: netiquette, internet, media social, hukum dan etika, komunikasi.

Introduction

In the last two decades, internet network infrastructure development (both by government and private) followed by the emergence of communication technology products (in the form of mobile phones and android) and supporting software which can directly connect to internet causes significant information or communication traffic development.[1] Katz and Rice said that the availability of network infrastructure is one of the prerequisites in internet communication. Other issues related to access issues are society involvement, and social interaction and expression.[2] The problem of internet access is already solved with the rise of internet providers including built in and android products. However, the real issue lies in other prerequisites which are society involvement, and social interaction and expression.

[1] Read shortly about the masive development of communication as the impact of technology information revolution in Nurudin, "Media Sosial Baru dan Munculnya Revolusi Proses Komunikasi", *Jurnal Komunikator*, Vol. 4 No. 2, November 2013, pp. 83-93.

[2] J. Katz and R. Rice, 2004, *Social Consequences of Internet Use: Access, Involvement and Interaction*, Cambridge, Massachusetts: The MIT Press.

Society involvement in this issue has not been much revealed. It could be because their activity is not published or still minimum although the number of virtual communities is growing significantly.[3] Society involvement in matters of internet negative impact needs to be improved since the impact on how to communicate through internet is big. Some ways of interacting and expressing themselves need to be controlled in order to avoid anarchy in cyberspace.

The issue of communicating ethics does not come to laity only, but also it comes to a teacher, a profession of sharing knowledge and intelegence. The use of internet in education has reached a stage of utilization to seek information such as teaching materials. Futhermore, problems arise on how teachers communicate using internet with colleagues, students, parents, and other communities.[4] As a role model, teachers should keep their behaviour in communicating using internet since they can misuse it for various purposes or interests. This article discusses two problems: *first,* teacher's awareness of law and ethics at "a vocational school in Purwokerto" in the use of social media to communicate; and *second*, what legal and ethical issues arise as a result of the use of social media and what the solutions are.

Research Method

This research is a quantitative and qualitative method with a research on law in action approach. It is social science which is non doctrinal and empirical. Research location is at a vocational school in Purwokerto (school name deliberately disguised). Source of data in this research is human (teacher at school). Data were obtained through questionnaires which were statistically obtained and supporting data were sources include documents, archives, and other objects. The obtained data were analyzed quantitatively.

Discussion

Legal Basis of Freedom of Opinion and Expression in Indonesia

The basic rules of freedom of opinion and expression in Indonesia are contained in the Constitution, the 1945 Constitution Article 28E paragraph (2) and paragraph (3), and Article 28F. Article 28E Paragraph (2) explains that Every person shall have the right to the freedom to believe his/her faith, and to express his/her views and thoughts, in accordance with his/her conscience, while paragraph (3) regulates the right and freedom of association, assembly, and expression opinions. Article 28F mandates the state to guarantee the right to communicate and to obtain information for the purpose of the development of his/ her self and social environment, and shall have the right to seek, obtain, possess, store, process and convey information by employing all available types of channels. The basic provisions of this Constitution are further elaborated in Article 14 paragraph (1) and paragraph (2) of Law Number 39 Year 1999 on Human Rights.

There are some other laws that regulate about freedom of opinion and expression such Law Number 40 Year 1999 of Press (Law in Press), Law Number 14 Year 2008 of Disclosure of Public Information (KIP), and Law Number 11 Year 2008 of Electronic Information and Transaction (ITE Law) and Law Number 19 Year 2016 of Change of ITE Law. Law in Press more emphasizes the freedom that is given to press or reporter in covering, processing or reporting the information. They are also free from being censored, banned or broadcasting banned. KIP Law regulates the freedom to get information about public information and to limit the type of public information that can be accessed with basis of "decency and public interest". ITE Law regulates technical aspects of the utilization of Electronic Information and Transaction using internet, meanwhile those which related to freedom of expression tends to create a threat for wrong utilization of electronic channel.

[3] Read about the development of internet virtual community in Indonesia in Siti Hidayah, "Antropologi Digital dan Hiperteks: Sebuah Pembahasan Awal", *Jurnal RANAH*, Year II No. 1, April 2012, pp. 2-10.

[4] Read about this matter in Yasraf Amir Piliang, "Budaya Teknologi Indonesia: Kendala dan Peluang Masa Depan", *Jurnal Sosioteknologi*, 28th Edition Year 12th, April 2013, pp. 247-262.

Freedom of opinion and expression are not absolute, even though those are one of the rights that cannot be lessen in every condition and cannot prosecuted on the basis of retroactive law (Article 28I section (1) 1945 Constitution *jo* Article 4 Law Number 39 Year 1999). This is an irony since the restriction is actually the reduction of rights that is regulated in previous article about freedom. In other words, freedom of opinion and expression are not non derogable rights but derogable rights.

The limit is regulated in Article 28J 1945 Constitution paragraph (2) 1945 jo Law Article 70 and Article 73 Law Number 39 Year 1999. A state argues that the restriction is done to ensure recognition and respect toward rights and freedom of others and also to fulfill fair demands according to consideration of morale, religion value, security and public order in a democratic society. Similar restriction can be found in other law with focusing on the information that is delivered along with addition in violation of decency, humiliation, or defamation.

International approval in freedom of opinion and expression is also can be found in Article 19 Universal Declaration of Human Rights. The article determines that every people has right to give opinion and to express. It includes to hold firmly the thought without any intervention and to find, accept or deliver the information and idea through any kind of media without any borderline. The same provision also can be found in Article 19 paragraph (2) ICCPR, Article 10 Europe Convention for Protection of Human Rights and Fundamental Freedom, Article 13 paragraph (1) American Human Rights Convention, Article 9 African Charter about Human Rights and Civil Rights, and Article 23 ASEAN Human Rights Declaration.

The international approval is also followed by the unity restriction for the grants of the freedom. Article 19 paragraph (3) ICCPR determines that implementation of paragraph (2) creates the particular obligation and responsibility, so certain restrictions are imposed in accordance with law and as long as needed to: respect rights or other's reputation; protect national security or public order or public morale. Similar provision also can be found in Article 29 paragraph (2) Universal Declaration of Human Rights, Article 4 paragraph (1) ICCPR (special for state of emergency), Article 20 paragraph (1) ICCPR (prohibition of propaganda), Article 20 paragraph (2) (special for prohibition of Eradication of Ethnic and Racial Discrimination), Article 10 paragraph (2) Europe Convention about Protection of Human Rights and Fundamental Freedom, Article 13 paragraph (2) American Convention about Human Rights and other articles from similar conventions.

The freedom of opinion and expression (communication) from a state are strong fundamentals for everybody to give their opinion and express it without any doubt. The existence of internet is actually expanding the chance for every people to communicate with whomever and whenever since internet makes that happen. However, the freedom that is given by a state, the facility from internet are sometimes followed by bad behavior from its user. Many times were found the use of words, picture, quote or other sign languages or communication that show negative behavior. Started from lightest opinion and expression up to those which can be categorized as hate thought.

The word "hate speech" often translated as *"ujaran kebencian"*. There are two term which commonly uses in international law of human rights "incitement" and "hate speech". The United Nation Human rights committee often uses the term incitement. Practically, there are some differences between expert and state law system, where one of them emphasize on the word and the other see the impact on humanity and human existence, or evenmore by looking at the impact for others who called for hate speech.[5] [5] International rule which is related to this hate speech, emphasizes that all of

[5] M. Choirul Anam and Muhammad Hafiz, "Surat Edaran kapolri tentang Penanganan Ujarn Kebencian (Hate Speech) dalam Kerangka Hak Asasi Manusia", *Jurnal Keamanan Nasional*, Vol. 1 No. 3, 2015, p. 345. Look at this discussion and next paragraphs in Agus Raharjo, "Legal Protection for Victims of Religious of Offences on the Internet", *Proceedings of International Conference on Victimology and Victims Assistance in Indonesia*, Faculty of Law Universitas Jenderal Soedirman, Purwokerto, 20-22 September 2016, pp. 34-41.

the action that consists of hate speech about nation, race or religion and it is a incitement to do discrimantion, hostility or violence must be prohibited by law (Article 20 Paragraph (2) ICCPR). This article obligates the country to prohibit all form of hate speech in domestic law, including the incitement to do discrimination which does not affect the violence of nation, race or religion.[6]

National law about restriction of freedom of opinion and expression in public (is not only limited on hate speech), stated in Article 310 Paragraph (1), Paragraph (2); and Article 311 Paragraph (1) KUHP. This article is more individual because it is addresed to individual attack such as prestige, dignity, or self-esteem of the person who is being attacked. This specific rule related to internet use for crime stated in Article 28 Paragraph (2) Law Number 11 Year 2008 of electronic information and transaction. This article stipulate that everyone who intentionally does not have rights to spread information causing hatred or hostility within particicular individu/ group about ethnicity, religion, race and intergroup (SARA). The criminal provision of this article is written on Article 45 Paragraph (2), which stipulates that everyone who fulfills element of Article 28 Paragraph (1) 0r Paragraph (2) will be imprisoned at most 6 (six) years or fines at most Rp1.000.000.000,00 (one billion rupiah).

Implementation of rights which its freedom is guaranteed by the state should encourage people to obey the prohibitation or restriction rule. It means this rights is absolute, so the use must look at the applicable rule. The impact of this ignorance is the issue proceeded in law and the punishment is heavy. "Your mouth your tiger" now change into your finger your hell, so we have to be carefull on our finger in internet communication especially for the keyboard.

Social Media Use in "A Vacational School in Purwokerto" and The Implication for Freedom of Opini and Expression

Our position in understanding information technology is actually on two different sides. It is the position of careful (dystopian people) or optimistic in technology development (neo-futuris people).[7] Perhaps, the position likes technorealist people who become the mediator debate of two previous people. Yet, we are not always in technorealist position, in some conditions we can turn into dystopian or neo-futurist. It what makes our self-control in using the internet is important so we will not fall into the bigger hole of destruction.

The Internet users have freedom to interact with anyone; thus, they also act, say, or write anything about their interlocutors or anyone that they think those people need to be commented. Anonymity enables everyone to do anything toward anyone. Anonymous identity causes fake identity spread around. Nevertheless, in cyberspace, there is an ethic which is called as Nettiquete, a set of ethic when someone communicates with others via internet. This matter needs to be paid attention by netizens in order to make communication run smoothly.

Social media which exist as the ouptput of internet development becomes the mainstay for many people to have communication with others. Facebook, Twitter, WhatsApp, Skype, and Instagram are some kinds of social media that have so many users. Social media refers to practical activity and behavior in communities which assemble to share information, knowledge, and opinion through chatting media. Generally, social media application can be categorized into forum and message boards, review site, opinion, blogging and microblogging, bookmarking, and sharing media.[8]

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[6] M. Choirul Anam and Muhammad Hafiz, *ibid*.

[7] Anthony G. Wilhelm, 2003, *Democracy in Digital Age, Challenges in Political Life in Cyberspace,* translated by N. Veraningtyas menjadi *Demokrasi Di Era Digital, Tantangan Kehidupan Politik di Ruang Cyber,* Yogyakarta: Pustaka Pelajar–CCSS, pp. 5-6; Agus Raharjo, 2016, *Anar-ki di Cyberspace, Bagian Pertama: Filosofi dan Regulasi Cyberspace*, Yogyakarta: Genta Publishing, p. 17; Khanisa, "Dilema Kebebasan Dunia Maya: Kajian dari Sudut Pandang Negara", *Widyariset*, Vol. 16 No. 1, April 2013, pp. 23-30.

[8] R. Thackeray, Et.Al., "Use of Social Media in Health Promotion: Purposes, Key Performance Indicators, and Evaluation Metrics", *Health Promot Pract.*, Vol. 13 No. 2, March 2012, pp. 159-164.

Media literacy at least has two basic components: knowledge and skill. Rosenbaum mentions that knowledge and skill are related to the relationship between public, producer, and media;[9] meanwhile Martens (2010) categorizes knowledge and skill of media literacy into four aspects: media industry, media message, media public, and media effects. Both of them agree that there are several basic elements in media literacy, such as: Media are constructed; Each person can perceive the same message in different way; and There are influences of media toward public.[10] Boyd and Ellison see the uniqueness of social media not because social media enable people to interact with strangers, but it is because the ability of social media to make someone able to show his or her social relation.[11] Nevertheless, it must be wary that the use of social media can decrease the quality level of someone's relationship in the real world and it can create problem in daily life.[12]

The study on cyberculture allows someone have various identities. Identity can find and become multi-identities. Cyberspace enables its users use identity that they want, and people can celebrate their freedom in anonymous world. Cyberspace becomes self-laboratory which characterizes postmodern life, self becomes self-fashion and self-create.[13] Another study mentions that there are two impacts of social media use for netizens namely preventive behavior and braggadocian behavior. Preventive behavior is described as live your live as if your mother is watching. People which include this category are those who always be careful in posting their status, uploading picture or writing, or sending news. They always think about what they share through social media since they are aware that all people around the world pay attention to them. Braggadocian behavior comes from the word "braggart" which means liar. People who include this category often update their status by informing that they do something cool with narcissistic style in certain place that they think it is good to be known by others.[14]

Those two studies, theoretically, is backlashing because the first one makes it possible to communicate with lies such as by using anonymity. However, the second one teaches or shows honesty about who you are through postings on social media. Someone can be categoryized as the first one and others belong to the second category. Nonetheless, this will ruin self-image as an ambiguous person or one with double personality and this is often found in the era of digital information like today.

Based on the research conducted in vocational school in Purwokerto with 29 respondents of teachers, the following is the result. *First*, the knowledge about social media is obtained through colleagues (48,3%), others learn it by themselves (34,5%) and family and friends (17,2%). *Second*, period of time in the term of how long they have been using social media, most of the respodents answer with 4 (four) years with 72,4%, 24,1% of respondents answer with 3 years and only some of them have been using social media for over than 10 (ten) years with 3,5%. *Third*, the purpose of using social media for the respondents is to look for educational data (17,2%), entertainment (13,8%), demand for lifestyle (13,8%) and the rest is combination of the reasons with the addition as social platform. *Fourth*, the social media mostly

[9] J.E. Rosenbaum, J.W.J. Beentjes and R.P. Konig, "Mapping Media Literacy: Key Concepts and Future Directions", *Communication Yearbook*, Vol. 32, 2008, pp. 313-353.

[10] Hans Marten, "Evaluating Media Literacy Education: Concepts, Theories and Future Direction", *Journal of Media Literacy Education*, Vol. 2 No. 1, 2010, pp. 1-22.

[11] D.M. Boyd and N. Ellison, "Social Network Sites: Definition, History, and Scholarship", *Journal of Computer-Mediated Communication*, Vol. 13 No. 1, 2007, pp. 1-11.

[12] K. Young, "Online Social Networking: An Australian Perspective", *The International Journal of Emerging Technologies and Society*, Vol. 1 No. 7, p 39-57, 2009; R.A. Davis, G.L. Flett and A Besser, "Validation of a New Scale for Measuring Problematic Internet Use: Implication for Pre-Employment Screening", *Cyberpsychology & Behavior*, Vol. 5 No. 4, 2002, pp. 342-343.

[13] Sherry Turkle, 1997, *Life on the Screen: Identity in the Age of the Internet*, Touchstone Books, Related to this identity matter, read Wolly Baktiono, "Dunia Cyberspace Baudrillardian "The Matrix", *Jurnal Ilmiah SCRIPTURA*, Vol. 2 No. 1, January 2008, pp. 8-17; Maria Nala Damayanti and Elisabeth Christine Yuwono, "Avatar, Identitas dalam Cyberspace", *Jurnal Desain Komunikasi Visual Nirmana*, Vol. 15, No. 1, January 2013, pp. 13-18.

[14] Erik Qualman, 2010, *Socialnomics, How Social Media Transforms The Way We Live and Do Business*, Burlington: Awareness.

used by the respondents are Whatsapp (WA) with 82,8% and the rest are Facebook, Twitter, Instagram and others. *Fifth*, the function of social media according to the respondents is to help communicate (96,6%) and as an existence of activity symbol (3,4%). *Sixth*, their respond toward sensitive postings is waiting for the right time to respond (56,2%) and the rest is instantly replying, postponing and choosing to respond only positive postings and ignoring. *Seventh*, the respondents who always check on the valid-ity of the data when they want to post or share something to the media is 51,7%, those who sometimes check it are 37,9% and the rest never check and only adjust to what they need. *Eighth*, most of the respondents have already aware of crime in social media including cybercrime (82,8%), meanwhile the form or technical aspects of the crime that they know are false accusation/provocation, hoax and falsification of data with 93,1%. *Ninth*, the effort to deter or overcome crime through social media, according to the respondents, is handing it over to the government and self-control with 62,1%, 34,5% of respondents only answer with self-control and hand over to the government with 3,4%.

Based on the data from the questionnaire, we can fathom that teachers have already been using social media for a while. They also are also aware of the importance of communicating by using social media, either for work or only to communicate with their colleagues outside of work. Thoughtful action toward responding to post or share information can be seen from the number of respondents who answer them with carefulness and check the validity of that information. Their awareness of law can also be understood through the knowledge that they know regarding to the forms of crime and how to handle them.

Those data are only from the surface because in reality, the social media is often misused to attack other's right and status. Based on the result of interview with the informants, the following are the explanation. There are several groups in social media that is often used to communicate, namely, facebook with two groups. The first group is school group (consist of teachers, board members and students) and teachers group (contains teachers only). In WhatsApp, there also two groups, namely groups of teacher and informal group (consist of teachers who are disappointed with school policy). Based on 37 teachers, there are some of them who play role as provocator and spread hate or hoax.

There is several expressions appeared in postings of group, such as: *first*, cursing like using the name of animal namely, squirrel-asshole, rascal, using the name of bodies to emphasize, namely, "your eyes!" and excessive excalamation mark;[15] *second*, provocation by spreading hate, especially to someone who are trusted by member of boards to occupy certain position; *third*, false accusation, to school officials by providing false facts because they disagree with schools policy; *fourth*, satire, in the form of postings or status and comment to social media associated with work or personal.

The behavior of some teachers which are less ethical in using social media causes work relations and performance to be disrupted. It is what actually the perpetrator wants and aims. Dissatisfaction over: leadership policies, employment relationships, and honorariums received; to be the cause of that improper attitude. This actually indicates the ability of the perpetrator to adapt to the work environment, field of work, and behave at a particular time and place.

Victims of the improper behavior are officials, former officials and teachers at the school. If the teacher is the victim, the taken action is to report it to the school official, virtually block the perpetrator's account from their social media and physically keep a distance with

[15] The use of these words belongs to cyberbullying. Read about cyberbullying in M. Campbell, "Cyberbullying: An Old Problem in a New Guise?", *Australian Journal of Guidance and Counseling*, Vol. 15 No. 1, 2005, pp. 68-76; S. Hindujaa and J. Patchinb, "Cyberbullying: An Exploratory Analysis of Factors Related to Offending and Vic-timization", *Deviant Behavior*, Vol. 29 No. 2, 2008, pp. 129-156; E.M. Kraft and J. Wang, "Effectiveness of Cyber Bullying Prevention Strategies: A Study of Students Perspective", *International Journal of Cyber Criminology*, Vol. 3 No. 2, 2009 pp. 513-535; Rulli Nasrullah, "Pe-rundungan Siber (CyberBullying) di Status Facebook Divisi Humas Mabes Polri", *Jurnal Sosioteknologi*, Vol. 14 No. 1, April 2015, pp. 1-11.

the perpetrator. Many teachers are actually worried or potentially victimized, so they just peeked postings in social media without commenting, being alert and keeping physically distant. There are also victims who respond virtually as well, replying to comments.

The school step in dealing with the problem is by settling in a kinship, clarifying, whether done by authorized school officials or involving the foundation. In any clarification, the offender will always circumvent even blame on the claimant's side. These are the characteristics of irresponsible person. There is no nature of chivalry, losers, and cowards. Warning has been done orally as a form of disciplinary action against employees who violate ethics. However, this step does not mean anything, because slanderous, cursing, sarcasm or other hate speech persists.

The school has not yet decided to bring this issue to the realm of the law. Although based on evidence and witness, it has fallen into the category of criminal offenses. The articles that may be used are Article 27 paragraph (3) of the ITE Law (if related to defamation) or Article 28 paragraph (2) of the ITE Law (if related to hate speech), and the general article on defamation and defamation on Article 310 paragraph (1), paragraph (2); and Article 311 paragraph (1) of the Criminal Code. The steps taken by the school is understandable, considering that if this goes to the realm of law, will cause a commotion that will affect the performance of teachers in teaching, school image and the declining number of students. Many are taken into consideration before bringing this matter to the judiciary, and a step to it is the final step if the offender is no longer able to be coached.

The perpetrators, in the study of cyberculture included in the category of braggadocian behavior, braggart or liar, dishonest and the desire for action is considered cool. This kind of behavior actually shows who he really is, even in real life they may act the other way around. This is evident from the denial that is done when clarified on their posts in social media. The self is shown as if it is clean, flawless, honest, brave, and holy. Despite not using anonymity to cover his identity, however-in Sherry Turkel's view-what they do is actually a lie as well. If between what they post is then denied in reality (clarification), they actually have a psychiatric disorder.[16]

Conclusion

Freedom of opinion and expression is guaranteed by the constitution and legislation, but there is often an expression of excessive freedom. In general, the legal and ethical awareness of teachers from a "vocational school" in Purwokerto is good, as indicated by statistical data on the purpose and function of social media use which is for educational purposes. However, there are some teachers who make social media as a means to wreak dissatisfaction with the policy of school leadership, work atmosphere or honorarium by doing unlawful actions (curse, provocation, satire, or hate speech) to school leaders and fellow teachers. The act of denial is done when clarified for their actions. It shows a cowardly attitude and unwillingness to be responsible. The use of judicial channels is the last step if the concerned can no longer be done coaching.

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[16] Compare this argument with the similar one about internet user behaviour as the psychological impact in D. Satalina, "Kecenderungan Perilaku Cyber Bullying Ditinjau dari Tipe Kepribadian Esktrovert dan Introvert", *Jurnal Ilmiah Psikologi Terapan*, Vol. 2 No. 2, 2014; M. Ybarra, "Linkages between Depressive Symptomatology and Internet Harassment among Young Regular Internet Users", *Cyberpsychol and Behabior*, Vol. 7 No. 2, 2004, pp. 247-257.

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