

## Analisis kriminalisasi hate crimes di Indonesia faktor pendukung dan penghambat = An analysis on criminalization of hate crimes in Indonesia enabling and constraining factors

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### Abstrak

Pada tahun 2009-2012, rangkaian kekerasan kolektif bernuansa agama, sekte, keyakinan, etnis, golongan dan orientasi seksual terjadi di Indonesia. Berbagai peristiwa tersebut menunjukkan, kekerasan yang dilandasi perasaan kebencian sering terjadi di sekitar kita. Peristiwa tersebut, jatuh korban manusia dan kerugian harta yang tidak sedikit, serta menimbulkan luka yang mendalam dan permusuhan yang berkepanjangan. Fenomena inilah yang disebut dengan "kejahatan kebencian (hate crimes)."

Penelitian ini bertujuan menjelaskan pentingnya pemahaman yang komprehensif mengenai kebijakan-kebijakan penanganan hate crimes oleh lembaga otoritas negara terkait. Selain itu, penelitian ini juga berupaya memberikan pemahaman baru mengenai urgensi kriminalisasi terhadap hate crimes di Indonesia dilihat dari faktor pendukung dan penghambatnya.

Penelitian menghasilkan berbagai temuan, antara lain bahwa terjadi hate crimes secara bias terhadap agama dan orientasi seksual di Indonesia. Terdapat dua kategori hate crimes berbasis agama, yaitu antara agama yang berbeda, dan antara sekte di dalam satu agama yang sama.

Hasil analisis, ada dua syarat agar kriminalisasi hate crimes dapat dilaksanakan. Pertama, prespektif yang digunakan konsensus liberal, konflik, dan labeling. Prespektif tersebut berhubungan timbal balik dengan konstruksi sosial tentang hate crimes. Konstruksi sosial ini signifikan sebagai faktor pendukung dan penghambat kriminalisasi. Jika konstruksi sosial terhadap hate crimes adalah sebagai perilaku jahat, ketidaksetaraan dan penindasan kelompok minoritas, maka persepsi mendukung kriminalisasi. Jika hate crimes bukan kejahatan, maka dapat menghambat kriminalisasi. Kedua, terpenuhinya tujuh parameter Schuyt berhubungan timbal balik dengan legalitas sosial bagi kriminalisasi hate crimes. Kriminalisasi hate crimes tidak selalu berbentuk undang-undang baru, melainkan bisa saja pemberdayaan undang-undang yang ada dan supremasi hukum, serta profesionalisme penegakan hukum.

Kesimpulannya, kriminalisasi hate crimes akan terwujud bila terdapat signifikansi konstruksi dan legalitas sosial sebagai faktor pendukung. Kesimpulan ini menggambarkan teori baru bersifat meso-mikro, karena berkategori teori Posmo. Teori ini dapat menjelaskan kriminalisasi dalam interplay dengan filosofi sosial, kebijakan hukum (meso), namun juga dapat menjelaskan interplay dengan individu dan kelompok.

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In 2009-2012, a series of collective violent incidents triggered by religions, sects, beliefs, ethnicity, class and sexual orientation, broke out in various places in Indonesia. Such incidents show that violence based on hatred often occurs around us, causing a long death toll and damaged properties. Such incidents have also inflicted deep social wounds and protracted hostilities. This phenomenon is called "hate crimes." The

research aims at describing the importance of a comprehensive understanding on policies employed by related authorities or government agencies in controlling hate crimes. In addition, this research is also trying to provide a new understanding on the urgency of the criminalization of hate crimes in Indonesia, viewed from the enabling and constraining factors.

Findings of the research include, among others, biased hate crimes have taken place against religious affiliations and sexual orientation in Indonesia. Two categories are set up for religious-based hate crimes: between different religions and among different sects of the same religion.

Analysis on research findings arrives at a conclusion, that there should at least be present two prerequisites to criminalize hate crimes. First, the use of liberal consensus, conflict, and labeling perspectives as a tool of analysis. All perspectives reciprocally connect with the existing social construction of hate crimes. Social constructions are indeed significant as enabling and constraining factors for criminalization. When the existing social construction perceives hate crimes as an evil act, an inequality and an oppression of minority groups, then the perception encourages criminalization. But when social construction perceives hate crimes as a good behaviour, then the perception discourages criminalization.

Second, Schuyt's seven parameters are met, which reciprocally relate to the social legality for criminalizing hate crimes. Criminalization of hate crimes is not necessarily present in the form of a new law or act. It could also be manifested by empowering the existing laws, assuring the principle of law supremacy and increasing professionalism among law enforcement agencies.

This research concludes that criminalization of hate crimes could be established only if significant social construction and legality are built as enabling and constraining factors. This conclusion reflects the new theory as meso-micro in character, since it is placed under postmodernism. The theory can explain the relations and interplays between not only criminalization and social philosophies but also interplays of criminalization and individuals and groups.