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Handling of Hoax News According to Law Number 1 of 1946

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Abstrat

This research is about the countermeasure of hoax news according to the Law Number 1 1946, it is done to find out: a) the application of Article XIV, XV of Law No. 1 of 1946 in relevance to the handling of hoax crime so far and b) what the criminal policy in the handling of hoax in Indonesia is. This study uses the normative legal research method of normwissenschaft referring to the ius constituendum with descriptive-analytical research specifications using the hermeneutic paradigm, with qualitative normative data analysis methods. The discussion revolves around the discourse on the existence and urgency of Article XIV, XV Law No. 1 of 1945 and its prospects in criminal policy in the future from legal system theory so that it appears the integration of legal substance, legal structure and legal culture in handling the hoax news. The recommendation proposed is that the application of the regulation on hoax is based on the renewal of criminal law so that law enforcement does not add to the problem in the future. For this reason, it is necessary to reformulate the substance of the hoax as an effort to restructure and reconstruct the criminal law policy based on Pancasila, the accuracy of law enforcement officers in overcoming the hoax crime to achieve the objectives of criminal punishment and increase public legal awareness.
Keywords: *Hoax, Law No. 1 of 1946, Criminal Policy.*

1. Introduction

The Minister of Communication and Information of the Republic of Indonesia, Johnny G. Plate stated that until 18 April 2020 there was 554 hoax information about the Coronavirus (COVID-19) spread across 1,209 platforms, both Facebook, Instagram, Twitter, and YouTube [1]. Head of General Information at the National Police Headquarters, Kombes Pol. Asep Adi Saputra stated that the National Police made five Kapolri telegraph letters as guidelines to deal with the spread of Coronavirus. National Police Chief Gen. Idham Azis has issued five Telegram Letters as guidelines for the implementation of police duties during the period of preventing the spread of Covid-19. The five telegram letters regulate (1) Handling of potential crimes during Large Scale Social Restrictions, (2) Handling of crimes in the task of availability of basic goods and distribution, (3) Handling of Crimes in the Cyber Space, (4) Handling of potential crimes in during the social and physical distancing and (5) the handling of Indonesian migrant workers who have just arrived from a country affected by Covid-19 [2]. Preferred efforts are preemptive and preventive, but if they are not effective, law enforcement will be carried out. The existence of the National Police's telegram was made to prevent the spread of the Covid-19 to carry out Presidential Decree No. 11 of 2020 concerning Stipulation of Public Health Emergencies related to Covid-19 [3;4], Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions, and Government Regulation in Lieu of Law Number 1 of 2020 concerning State Finance and Financial System Stability. There are restrictive limitations, both legally with regulations, doctrine, jurisprudence, and social ethics restrictions.

One of the telegram letters, namely No. ST/1100/IV/HUK.7.1/2020, besides being based on Article 14 paragraph (1) and paragraph (2) of Law No. 4 of 1984 concerning Infectious Disease Outbreaks; Article 93 of Law Number 6 the Year 2018 concerning

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Health Qualiosity; Article 212, Article 214 paragraph (1) and 2, Article 216, and Article 218 of the Criminal Code relating to the dispersal of the crowd by officers, also mentions Article XIV and XV of Law No. 1 of 1946 concerning Criminal Law Regulations [5]. The Criminal Law Act applicable in Indonesia concerning material criminal law is the translation of *Wetboek van Strafrecht voor Nederlands-Indië* (WvSNI) based on *Staatsblad* 1915 No. 732, came into force on January 1, 1918. After independence, WvSNI remained in force accompanied by adjustments based on Article II Transitional Rules of the 1945 Constitution, that "All existing state bodies and regulations are immediately enforced as long as new ones have not been implemented according to this Constitution." To emphasize the enactment of colonial criminal law, on February 26, 1946, the President, with the approval of the Central Committee for Workers, issued Law No. 1 of 1946 concerning the Criminal Law Rule as a legal basis for the change of WvSNI into the Criminal Law Act [6;7]. Article XVII of Law No. 1 of 1946 reads: "This law came into force for Java and Madura on the day it was announced and for other regions on the day to be determined by the President." In General Explanation of Law No. 1 of 1946, it is said that based on Article II of the Transitional Rules of the Constitution relating to the Presidential Regulation of the Republic of Indonesia dated October 10, 1945 No. 2 of 1945, it now enforces all criminal law regulations that existed on August 17, 1945, both originating from the Dutch East Indies Government and those established by the Japanese army. Article 1 of the Perpres states: "All state agencies and regulations that existed until the founding of the Republic of Indonesia on August 17, 1945, as long as a new one was not held according to the Constitution, is still valid, as long as it does not conflict with the Constitution." Interestingly, Article 2 of the Perpres, deviating from the principle of non-retro active, states: "This regulation shall come into force on August 17, 1945." This creates a new problem because it makes a mixture of criminal law regulations in one area [8;9]. After all, there are rules from the Dutch era plus Japanese rules, although this is done to avoid the vacuum of law (*rechts vacuum*).

Article 1 of Law No. 1 of 1946 reads: "By deviating from Presidential Regulation No. 2 of 1945, Criminal Law regulations that are in effect now are criminal law regulations that existed on March 8, 1945." That means, all criminal law regulations issued by the Japanese government and those issued by the commander in chief of the Dutch East Indies Army (*Verordeningen van het Militaire gezag*) and NICA regulations after March 8, 1942, are automatically invalidated [10;11]. But the Dutch were still trying to control Indonesia and forced the regulations they made to remain in effect, including *Tijdelijke Buitengewone Bepalingen Van Strafrecht Stb*. 1945 No. 135 (September 22, 1945), which contains criminal prosecution especially criminal acts in the fields of constitutional, security and order, expansion of the enactment of certain articles on the WvSNI, freezing of Article 1 of the Criminal Code to combat Indonesian freedom fighters.

Article XIV and XV of Law No. 1 of 1946 law enforcement are still often applied in tackling hoax, even though the provisions are seen by some legal experts as irrelevant considering the situation behind them are different from today. But it is also due to the freedom of using social media which makes users express their attitudes, views or opinions, including to spread lies, provocation and hatred [12]. Although initially the use of social media to provide positive benefits, on the other hand, it becomes a threat or negative impact in the form of conflict and division [13]. The spread of hate speech, intolerance and false information (hoax) are increasingly prevalent on social media, including in political situations such as the General Elections in several regions of Indonesia, due to political competition and black campaigns [14]. Many citizens as consumers of information have not been able to distinguish true and false information. One reason is the ignorance of using social media wisely. As a result, not only attacking individuals but reaching the wider community.

There is research that shows that the social structure formed in the process of spreading hoax on social media is inseparable from economic or political power or power [15;16]. Economic strength includes the control of use-values and the resources produced, distributed and consumed; while political power is involved in collective decisions that determine aspects of communities and social systems that are asymmetrically distributed, class or special groups [17]. The spread of hoax, including official information from the government about Covid-19, had a devastating effect when people were trapped in the situation of accepting social constructed social construction as truth [18]. Social construction that makes people no longer able to distinguish between what is right and what is wrong, because it only accepts the concepts of truth and justice according to those presented in the media, so just recognizing that presented by social media can make people become victims (society as a victim) the spread of information that is not necessarily true or information that is fabricated [19].

There are at least three motives for spreading hoax, namely economic, ideological-political, and pleasure. Economic motives refer to capital accumulation and profit calculation of hoax through increased website visit ratings; ideological-political motives to use hoaxes for ideological-political purposes lead to overthrowing political opponents or different ideologies through virtual space [20; 21].

Based on the description above, this paper discusses two problems, namely: a) how is the application of Article XIV, XV of Law No. 1 of 1946 in its relevance to the handling of hoax so far, b) What is the criminal policy in tackling crime hoax?

2. Method

The focus of the study in this paper is the basis for justification of Article XIV and XV of Law No. 1 of 1946 and the criminal policy against the handling of the criminal hoax. This research uses normative legal research methods in the form of a study of the content or value of law in society in the form of *normwissenschaft/sollenwissenscaft* by identifying and conceptualizing law as a value, principle, norms, dogmas, principles, laws and regulations. Through normative methods in the broadest sense, the social effects of norm formation (law) and social background can be further explored.

The research specification is descriptive, containing a description of the observations, people, actions and talks. The hermeneutic paradigm is used to interpret texts and trace human life and its cultural products including juridical texts. The method of data analysis was carried out qualitatively normatively by prioritizing the depth of data on secondary data collected through literature studies, in the form of primary legal materials in the form of legislation, secondary legal materials in the form of expert opinions, theories and research results, and tertiary legal materials in the form of dictionaries and other materials that refer to primary legal materials and secondary legal materials.

3. Result and Discussion

One of the major concerns in the legal world today is a weakness in the policy formulation (legislation) stage, which interferes with law enforcement. Building a national law, cannot be separated from various knowledge such as Indonesian sociology, Indonesian anthropology, Indonesian psychology, even if there are Indonesian biology and physics, and so on. As a result, before a legal product is made, there have been studies from various aspects, and not limited to the draft articles that are not soulless, as stated in Law no. 12 of 2011 concerning Formation of Laws and Regulations, which in Article 5 states that the formation of legislation is based on philosophical, sociological and juridical grounds, based on the principle of Establishing good legislation, covering: clarity of

objectives, institutional or the right forming official, the suitability between types, hierarchy, and material content, can be implemented, the usefulness and effectiveness, clarity of the formulation, and openness.

This paper starts from a positive law that was born in the past, namely Law no. 1 of 1946 concerning the Criminal Law Rule as a political process and political work behind the passage of WvSNI into the Criminal Code [22;23;24]. However, with the use of the two articles, it appears that there is a setback in the development of Indonesian law. Developing Indonesian legal science not only formulates the provisions of the legislation in the form of positive law but also develops concepts/insights. This is closely related to law-making, law enforcement, legal education, and the conditions of national law development and socio-cultural conditions. It is suspected that the study of law in Indonesia is still focused on positive law (positive law-oriented), not yet oriented towards legal development (law development-oriented), which requires comparative law and global trend-oriented.

Starting from the legal theory that sees the "formal side" of law, imbued with legal philosophy that wallows with the idea of justice, expediency, equilibrium and so on, it takes thought to interpret theories with a hermeneutic approach to be able to interpret legal theories behind the provisions legal provisions regarding hoax, whether theories about justice, legal certainty and expediency already exist in the formulation of article legislation. Hermeneutical is not just discussing the doctrine of a universal objective technical method, but the formula that: the question is not what we do or what we should do, but what happens beyond our willing and doing. The process of understanding and interpretation with the Gadamer-style dialectic system requires four factors that must not be ignored, namely: (1) building or thinking, (2) census communis (ideal practical considerations or views that underlie society) or "wisdom," universal and local wisdom, (3) consideration determines the categorization of things specifically based on a view of the universal, (4) taste or taste, namely subjective attitudes related to various tastes or balance between the senses instincts and intellectual freedom.

The importance of restructuring which means "restructuring" the building of Indonesia's criminal law system - including the handling of hoaxes is interwoven with the meaning of "reconstruction," that is, "rebuilding" the national criminal law system [25;26;27]. It is closely related to the issue of "law reform" and "law development," especially concerning "reform/development of the criminal law system" ("penal system reform/development" or often referred to briefly as "penal reform") of the legal system ("Legal system") consisting of "legal substance," "legal structure," and "legal culture".

On 12 February 2020 the Soekarno-Hatta Airport City Police conducted a cyber patrol and found content on social media containing hoaxes related to the spread of the Coronavirus at Soekarno Hatta Airport, first loaded on 27 January 2020 with the phrase "Coronavirus Entering Soekarno Hatta" and included a photo of a woman lying in the Airport Terminal area accompanied. On March 23, 2020, there was information about hoax news dissemination related to the 'lockdown' issue with the title "Data Tolls that are closed to *DKI* Jakarta" which included the *Polda Metro Jaya* logo and the logo of the Police Operational Bureau Function. Until 7 April 2020, Criminal Investigation and Regional Police in several places determined 81 suspects consisting of 51 men and 30 women and until 22 April 2020, 97 hoax cases could be threatened with 10 years in prison. up to a fine of IDR 10 billion [28;29].

Based on the author's observations, quite a lot of hoaxes are examined under Article XIV and XV of Law No. 1 of 1946. In early 2018 in East Java, there was a posting in a Whatsapp group stating: "There had just been a death threat to the Masyayikhs and in *PP Al-Falah Ploso Mojo Kediri* which involved 3 people and one was caught, two were still

captured in a search in the cottage environment. PKI has begun to rise to finish off the scholars [30;31]." Actors were examined based on Article 28 paragraph (2) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. Besides, Article XIV paragraph (2) and Article XV of Law No. 1 of 1946. Both of these articles were also applied to RRs who gave speeches in the video alluding to the term *ABRI* which had been deleted after the 1998 reforms, also to S, a veterinarian who wrote on a Facebook account: "I am not want to plague but if you think that the Republic of Indonesia is only a matter of the number of voters on the island of Java, I have the right to move at the forefront to make this happen and don't think of it as only playing with toys. The Republic of Andalas Raya Sumatra demanded a referendum if Indonesia was led by President Joko Widodo who was a cruel, authoritarian, swindler and arbitrarily challenged the cleric and the people." Another case is the *BBP* spreading hoax or hoax about seven containers of ballots punched in the Port of Tanjung Priok by saying it was purely the result of his thoughts, and a very horrendous case is the hoax of persecution of hospital activists, who made the hospital sentenced to two years in prison according to Article XIV paragraph (1) of Law no. 1 of 1946 because of the lies made by the hospital was proven to cause a disturbance. With the retention of Article XIV and XV of Law No. 1 of 1946 means that law enforcement still makes it as one of the legal basis for hoax cases despite the controversy and the existing law on information and electronic transactions [32;33;34].

A hoax can be identified in general terms, through: (1) generally having a chain letter character with the sentence: "Spread it to others, otherwise a bad thing will occur;" (2) mostly without the date of the event so it is not clear; (3) does not have an expiry date, and (4) no organization/group is identified or cited as a source of information or usually cites an organization without being linked to information. In the process of law enforcement, these characteristics can be seen along with the motives of the perpetrators to disseminate them. Some of the motifs are just for fun, joking until they are not satisfied with the government's performance [35;36]. This motive was explored by the judge when the hoax case was examined at the trial so that the element of evil mental attitude (*mens rea*) of the perpetrator could be traced.

To examine the contents of Article XIV and XV of Law No. 1 of 1946 needs to be seen formulation. Article XIV states a) Anyone who broadcasts fake news or notifications, intentionally issues uproar among the people, is sentenced to a maximum prison sentence of ten years; b) Anyone who broadcasts a news or issues a notice, which can cause public upheaval, while he should be able to think that the news or notification is a hoax, sentenced to a maximum of three years imprisonment [37;38]. Whereas Article XV Law No. 1 of 1946 reads: "Anyone who broadcasts uncertain news or excessive or incomplete news, while he understands at least should be able to suspect, that such news will or can easily issue uproar among the people, is punished with a maximum prison sentence. - a height of two years."

The first thing to highlight about the two articles is that the element of error and unlawful actions in which the method of issuing such disorder is not required must be known/can be suspected by the perpetrator. Mistake according to Idema is the heart of criminal law. A person's conviction is not enough if the person has committed an illegal act or fulfilled an objective breach of a penal provision, but also requires the condition that the culprit is guilty (subjective guilt) based on *maxim actus non facit reum nisi mens sit rea* (*geen straf zonder schuld, nulla poena sine culpa, keine strafe ohne schuld*). That is why it is very important to trace the element of error in a hoax [39;40]. Difference between paragraph (1) and paragraph (2) Article XIV of Law No. 1 of 1946 is: in paragraph (1) the spread of fake news which confuses is marked *mens rea* in the form of "intentionally" (*opzet als oogmerk*), whereas in paragraph (2) the spread of news that is

supposed to be a hoax has the potential to cause trouble [41]. Accidentally according to Memorie van Toelichting (MvT) is *willens en wetens*. Knowing (*wetens*) means "understanding," "realizing" something, related to the juridical concept, where laypeople do not need to understand like a jurist while wanting means more than wanting and hoping. Generally, every healthy person has a variety of desires, including those that lead to prohibitions and are threatened by criminal sanctions by applicable regulations. The desire to do something is an incentive or motive for his subsequent behaviour and if the perpetrator plans ways to be done to achieve his desires, the will arises (*oogmerk*) through three levels, namely: (1) incentive, (2) will, (3) action. So, there is an intention and desire (desire) to carry out an act that is driven by the fulfilment of lust so that there is awareness to broadcast news or reporting lies.

Turning to the element of error in Article XIV paragraph (2), there is an opinion that the intentions in it are intentionally aware of the possibility (*dolus eventualis*), that he should know or should suspect that his actions will cause a scene. But the authors disagree because the phrase "should be presumed" includes errors in the form of negligence (*culpa*), similar to mistakes in Articles 287, 292, and 480 of the Criminal Code, which must be guessed (*rederlijkerwijs moet vermoeden*). Thus the error in paragraph (2) as contained in Article XV in the form of "at least it is reasonable to suspect" is *culpa*.

Culpa is formulated in the Criminal Code article with the term: careless (onachtzaamheid), neglect, lack of caution, should be able to guess (moest verwachten), should guess. It is fitting to suspect (redelijkerwijs moet vermoeden) meaning that there is a strong reason to suspect (ernstige reden feeft om te vermoeden). According to MvT, error (schuld) is the pure opposite of dolus or coincidence (casus). In the case of *culpa*, there is a mistake in the form of lack of careful thinking, lack of knowledge or acting less directed than other people in general. Who intentionally made a mistake using his ability wrongly; on the other hand, who is guilty of negligence, does not use his ability when the ability he should use. *Culpa* includes lack of (careful) thinking, lack of knowledge or acting less directed, referring to a person's psychic abilities that are not or less clearly suspect the fatal impact of the perpetrator's actions - but can and must be done. *Culpa* consists of *culpa lata and culpa levis*. *Culpa* lata is a fairly serious carelessness, clear negligence, adequate caution, while *culpa* levis is mild negligence. Other classifications include *culpa* that is realized and *culpa* that is not realized, where *culpa* is aware that there is a connection between the perpetrator's awareness and the effects he can avoid, the perpetrator has calculated the possibility of the consequences of his actions, but he believes he can still avoid or prevent. Not infrequently in *dolus eventualis* (deliberately conscious of the possibility), *culpa* is considered to exist. In a *culpa* that is not realized, the perpetrator does not imagine the possibility of the consequences of his actions, he should be able to imagine that to prevent the consequences. Here there is a potential psychic awareness regarding the consequences that (should) be avoided or prevented. Difficulties often arise in proving, because *culpa*'s ignorance is not realized by the perpetrator still thinking about the consequences of his actions even though he looks at them less seriously. Another distinction is subjective *culpa* with objective *culpa*. Subjective *culpa* is *culpa* used by judges to judge individuals against similarities with other groups of people in terms of age, social status, gender, environment, where the offender carries out dangerous acts without caution so that the judge sees the offender as having not careful. Objective *culpa* relates to objectively dangerous behaviour.

Regarding the *culpa* problem in Article XIV paragraph (2) and Article XV, it should be noted that Arrest Hoge Raad November 14, 1887-W.5509, February 3, 1913-W 9459, N.I. 1913 and April 25, 1916, that negligence must meet severe carelessness, great carelessness or great negligence (*culpa lata*), so that a person is not criminally liable if the

mistake is in the form of unconscious negligence (*onbewuste schuld*) due to ignorance, ignorance, surprise, state of mind. and / or a person's soul so that he cannot estimate the consequences of his actions. As well as being difficult to prove the perpetrators' negligence relationship with the consequences that occur in such incidents, there is no point in convicting someone whose soul relationship and actions are due to the consequences, almost nothing. It was also adopted by Arrest Hoge Raad on November 21, 1932, N.J. 1933, 153: 6 June 1933, N.J. 193, 1299, May 24, 1937, W and N.J. 1937 No. 1162. The issue of *mens rea* thus often becomes an obstacle because it is the domain of legal psychology authority. How to convince the judge that the perpetrator's negligence is an unconscious negligence that should not be accounted for in the view of Hoge Raad, so that not all hoax perpetrators charged with Article XIV paragraph (2) have the potential to cause criminal mischief in a crime. Especially if we see that the goal of modern punishment is not merely retaliation or detention through imprisonment, but also coaching with criminal alternatives that are still ideas in the new Criminal Code Bill such as social work and reprimand/warning [42].

In addition to the problem of errors in the form of *culpa* in Article XIV paragraph (2) and Article XV of Law No. 1 of 1946 which often causes controversy, another thing that is no less important is the phrase "publishing disorder among the people" raises a question mark, what does "disorder" mean? Elucidation of Article XIV says about "mischief": "It is the same as" *Verordening No. 19 van het Militair Gezag*. "Disturbances are greater than anxiety and shake the hearts of a few. Chaos also confuses, while broadcasting means similar to "*verspreidings delict*" in Article 171 of the Criminal Code."

Historically, if observed closely, the contents of Article XIV and XV of Law No. 1 of 1946 is similar to Article 171 (especially after amended by *Stb*. 1947 No. 180), so Article XIV and XV are seen as replacements for Article 171 that has been revoked. The impact/effect formulation in the two articles is made non-uniform. Article XIV paragraph (1) is required to cause a real disturbance, meaning that it includes material offence because to fulfil the element of a criminal offence requires an uproar among the people because the legislators try to prevent a person from being convicted before a disturbance. In paragraph (2) it and Article XV are sufficient if it has the potential to issue trouble. In the Big Indonesian Dictionary, trouble is a stir, a riot, a commotion that can only be overcome after the police act. Here it is necessary to study who determines that a condition that occurs can already be categorized as chaos according to these provisions so that it is not left to the judge's conviction. Explanation of Article XV states: "Arranged is not so broad as" *verordening* No. 19 *van het Militair Gezag*. This article is about "hearsay" (news that is uncertain) and news that is broadcast in an additional or subtracted manner. Broadcast the true news correctly is not punished."

What is meant by broadcasting here is after multiplying the writing/description and then distributing it to the people/public. The intended method of issuing confusion is not required (formulated) to be known / can be suspected by the perpetrator. News that is uncertain means news that is not yet known to be true, whereas news that is excessive means news that has been added or polished here and there so that it is no longer the same as the original news; while excessive news implies news that contains information more than the news that has existed since the beginning; and news that is incomplete means that news is not complete anymore, either because it is reduced, added, so it is not the same as the news that was originally obtained. Notification means the process, manner or act of notifying, can also mean an announcement or notice. The term disturbance means disturbance of peace and tranquillity in the community or the issuance of unrest. The highest level of this disturbance is chaos, so it is difficult to control it.

The criminal policy is a rational attempt from the community to tackle crime which provides alternative crime prevention so that it does not look at any one area, for example,

material criminal law (substantial) or formal criminal law, but also the law of criminal conduct to foster perpetrators hoax [43]. The politics of criminal law is identical to the "crime prevention policy with criminal law" which is essentially part of the law enforcement policy. Crime prevention efforts through making criminal law rules are an integral part of efforts to protect society (social welfare). Naturally, if the policy or politics of criminal law is also said to be an integral part of social politics (social policy) which is all rational efforts to achieve public welfare and at the same time include community protection. So social policy includes social welfare policy and social defence policy.

Criminal law policy or criminal law politics cannot be separated from general political politics, which are (1) Efforts to realize good regulations following the circumstances and situations at one time; (2) The policy of the state through authorized agencies to establish the desired regulations that are expected to be used to express what is contained in society and to achieve what is aspired. Therefore, carrying out the politics of criminal law means making elections to achieve the best results of criminal legislation, in the sense of meeting the requirements of justice and usability, and according to circumstances and situations at a time and for the future. But if criminal law and politics want to make an adequate contribution, the environment of change cannot be ignored at all. Until whenever criminal politics will always be social-based or community-based and therefore is a policy that is historical and philosophical.

The criminal policy regarding hoax can be viewed from Friedman's theory of the three elements of the legal system, which states: "The substance is composed of substantive rules and rules about how institutions should behave ... the structure of a system is its skeletal framework; it is the permanent shape, the institutional body of the system, the tough, rigid bones that keep the process flowing within bounds ... legal culture refers, then, to those parts of general culture-customs, opinions, ways of doing and thinking -that bend social forces toward or away from the law and in particular ways" [44]. Related to the first element, namely the legal substance regarding hoax, is still regulated in No. 1 of 1946, as part of the colonial dress "dressed" Indonesia, even though there has been Law No. 11 of 2008 Jo. Act No. 19 of 2016 concerning Electronic Information and Transactions that regulate matters in the field of information and electronic transactions, including criminal acts of decency, gambling, insulting and/or defamation, extortion and/or threatening, hoaxes that cause consumer harm, hatred or hostility of individuals and/or groups based on ethnic-religion-race-intergroups, threats of violence or intimidation personally [45;46].

Reformulation of the substance of Article XIV and XV of Law No. 1 of 1946 epistemologically can be done by using constructivism perspective in the form of hermeneutics or dialectically on 'construction' through interaction between and among adherents and observers, which is interpreted with the aim of distilling consensus 'construction' or 'resultant constructs.' The hermeneutic approach seeks to understand objects (products of human behaviour communicating with each other) or in terms of action-interaction actors when they are involved in/into a social process, even in legal issues. Every human product of behaviour and legal products in *abstracto* and *concreto* are interpreted by interpretations by and obeyed to obtain meaning about facts that are studied as objects. Through hermeneutics, the study of law is not free from elitist positive Juris authorism, but also empirical structuralist or behavioralist. The hermeneutic approach to legal studies makes the legal reviewer not trapped in the interests of the profession alone by the paradigm of positivism and formal logical methods alone. The methodology advocates learning from the people, inviting legal reviewers to explore and examine the meaning of law from the perspective of users and/or seekers of justice. Hermeneutics initially interpreted manuscripts, extending as teachings to all human

sciences, wherefrom the interpretation of texts moved to methods for interpretation of human behaviour. Hermeneutics of law is human life and its cultural products, including juridical texts. The Article XIV Article XV of Law 1 of 1946 was problematic because Law No. 73 of 1958 concerning the Application of Law No. 1 of 1946 in all regions of the Republic of Indonesia and the amendment of the Criminal Code does not contain the two articles in the Criminal Code and is not mentioned at all in Law No. 73 of 1958, by contrast if someone broadcasts fake news which causes noise, then the perpetrators can be charged with Article XIV of Law No. 1 of 1946. The difference of opinion is related to the history of the law that Law No. 1 of 1946 has never been revoked, but it is also worth asking the question whether the substance of the law on hoax is an integral whole system, is there an integrated criminal law system or integrated criminal legal substance in the legislation regarding criminal acts of the hoax? The hermeneutic paradigm can be used to dissect the substance of Article XIV and XV of Law No. 1 of 1946 against hoax, including reviewing the historical setting of the birth of the rule in 1946, which was marked by an emergency, but in normal circumstances, must be reviewed, because criminal law with harsh sanctions is not the only way to change someone's behaviour [47]. The formulation of the elements of a hoax crime in a comprehensive manner must contain three main problems in criminal law, namely prohibited acts (actus reus) including the formulation of consequences due to confusion, people/perpetrators (mens rea) who examine not only the inner attitude, to explore the motives and the will of the offender, and the criminal (both criminal sanctions in the form of punishment/strafing as well as disciplinary action in the form of treatment.

Another thing that must be addressed is the legal structure in handling hoax, how law enforcers do not just explore the elements of a criminal offence through the penalty path due to ambition of dragging perpetrators to correctional institutions but are also able to implement criminal policies through non-penal efforts [48]. Whether the legal structure has been arranged comprehensively in the integrated criminal justice system of the judicial power system, in which there are various subsystems in the form of institutional structures for law enforcement, namely (1) investigators, (2) public prosecutors, (3) courts, (4) executing apparatus, and (5) legal counsel. In line with this, reform or structuring also needs to be carried out on institutions/institutions, management/governance systems and mechanisms as well as supporting facilities/infrastructure of the prevention and eradication of hoax through the criminal justice system [49]. However, it cannot be separated from the present situation which certainly cannot be equated with the situation at the time of the creation of Article XIV and XV of Law No. 1 of 1946.

In addition to the substance and structure, there is still a legal culture consisting of elements of social attitudes and values as a force that continues to move the law concerning the values of the Pancasila. These values maintain a balance between individual interests and the interests of society, as well as the balance between the values of justice and legal certainty, the balance between the principle of legality and the principle of accountability (error). The existence of a penal policy by including rules on hoax crime in the new Criminal Code Bill (legal substance) and coupled with the existence of a legal structure (criminal justice system) that is increasingly reliable and acts with care and conscience, must also be balanced with non-penal policies through public education and awareness about the legal culture that starts from the general culture, customs, opinions, ways of thinking, behaving and acting that direct social forces towards or away from the law in certain ways [50]. The handling of hoax requires a scientific approach to improve the quality of values and products of the law enforcement process, which should be integrally optimized including (1) juridical-scientific-religious approach/orientation (normative/positivistic juridical based on scientific principles and guiding "God's guidance;" 2) juridical-contextual-cultural approach (criminal law

enforcement based on positive law in the context of national development and national legal system development; and (3) global/comparative juridical approach that is not just "legal reform" through legislative policies, but also in enforcement law (judicial policy) [51]. Viewed from the aspect of legal culture is an embodiment of a system of "legal cultural values," so that a legal culture of conducive law must be created through increasing the awareness of the law of the state apparatus and law enforcement, education for information consumers to share behaviour based on Pancasila values.

Concerning the issue of the implementation of this crime, after seeing the conditions that occur in the field of material criminal law and formal criminal law as the influence of community development and modernization, changes in the criminal law system are not enough just to make changes in mere criminal law, but also formal criminal law and criminal law, along with all the institutions that are often called tools or law enforcement apparatus, which support the operation of the system. So changes in criminal law must be seen in the operation of the entire criminal law system. In his opinion, comprehensive renewal of criminal law must include the renewal of substantive criminal law, formal criminal law (criminal procedural law) and criminal implementation law (*Strafvollstreckungsrecht*). The three areas of criminal law must be jointly renewed because if only one field is renewed and the others are not, then there will be difficulties in its implementation and the purpose of the reform will not be fully achieved.

The restructuring ("rearrangement") of the building of the Indonesian criminal law system - including the handling of hoax - can also be interpreted as "reconstruction" ("rebuilding") the national criminal law system. The two terms are closely related to "law reform" and "law development," specifically relating to "penal system reform/development" or in short "penal reform" [52;53]. Concerning law enforcement against hoax, it should be remembered that the meaning of "integrated criminal justice system" is simultaneity and harmony which includes: (1) structural synchronization in the administration of justice, (2) substantial synchronization in the form of vertical synchronization and horizontal concerning positive law, and (3) cultural synchronization in living the views, attitudes and philosophies that thoroughly underlie the functioning of the criminal justice system. Thus, in terms of the legal system, the penal system reform covers a very broad scope, which includes: (1) renewal of "the substance of criminal law," which includes renewal of material criminal law (the Criminal Code and Laws outside the Criminal Code), formal criminal law (Criminal Procedure Code), and criminal law implementation, (2) renewal of "criminal law structure," including institutional structuring, procedures and mechanisms and facilities/infrastructure to support the criminal justice system, and (3) renewal of "criminal law culture," including legal awareness of the perpetrators, legal behaviour, legal education and criminal law.

4. Conclusion

The handling of hoax in the criminal justice process has not been optimally viewed from the historical aspects of law because the rules used come from the early independence period and there are differences in the perception of legal experts about the existence of legal substance, and there is no integration between legal substance and legal structure and legal culture. The handling of the hoax is related to the use of criminal law policies that work on all aspects consisting of substantive criminal law, formal criminal law and criminal implementation law based on Pancasila. From the discussion presented, the following recommendations are made: (1) Reformulation of the substance of the crime of hoax as an effort to restructure and reconstruct the criminal law policy, accompanied by an update in the formal criminal law and the law of criminal conduct concerning the handling of hoax includes legal substance, structure law and legal culture based on Pancasila; (2) It is necessary to pay close attention to law enforcement officers in tackling

hoax in the framework of achieving criminal objectives; and (3) It is necessary to increase the awareness of consumer information law to create a better legal culture in supporting substitution and legal structure in criminal policy regarding the prevention of hoax in Indonesia.

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