

## **A Comparative of Sanctions for Hoax as an Information Crime under the Electronic Information and Transactions Law (UU ITE) and Fiqh Jinayah**

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**Abstract:** *The dissemination of hoaxes as a form of digital information crime presents a serious challenge in modern society. Hoaxes not only cause individual harm but also disrupt social stability. Therefore, a legal approach is required that is not solely legalistic but also grounded in ethical and moral values. This research is focused on identifying the legal elements in hoax crimes according to the ITE Law and fiqh jinayah, analyzing the form and purpose of sanctions given in both legal systems, and providing integrative recommendations for law enforcement of information crimes in Indonesia that consider the principles of Islamic law as the moral and spiritual values of the nation. This study employs a library research method using a qualitative-descriptive approach. Data were obtained from academic literature, classical and contemporary fiqh texts, statutory regulations, and accredited scientific journals, then analyzed through a comparative legal framework. The Indonesian Electronic Information and Transactions Law (UU ITE) imposes criminal sanctions in the form of imprisonment and fines on hoax perpetrators, aiming to create a deterrent effect and protect the public. Meanwhile, fiqh jinayah views the dissemination of hoaxes as jinayah al-lisan (verbal offense), which may be subject to ta'zir punishment based on the extent of harm caused. The principles of maqasid al-syariah and social responsibility reinforce the urgency of education and substantive justice. The fiqh jinayah approach may complement positive law in addressing hoaxes by prioritizing public interest (maslahah), prevention, and moral values. Integrating Islamic legal principles into national law constitutes a strategic solution to the complexity of digital information crimes.*

**Keywords:** *Hoax, UU ITE, Fiqh Jinayah, Ta'zir, Maqasid al-Syariah.*

**Abstrak:** *Penyebaran hoax sebagai bentuk kejahatan informasi digital menjadi tantangan serius dalam masyarakat modern. Hoax tidak hanya berdampak pada kerugian individu, tetapi juga mengganggu stabilitas sosial. Oleh karena itu, diperlukan pendekatan hukum yang tidak hanya legalistik, tetapi juga berbasis nilai. Penelitian ini fokus mengidentifikasi unsur-unsur hukum dalam tindak pidana hoax menurut UU ITE dan fiqh jinayah, menganalisis bentuk dan tujuan sanksi yang diberikan dalam kedua sistem hukum tersebut, dan memberikan rekomendasi integratif terhadap penegakan hukum kejahatan informasi di Indonesia yang mempertimbangkan prinsip-prinsip hukum Islam sebagai nilai moral dan spiritual bangsa. Penelitian ini menggunakan metode studi pustaka (library research) dengan pendekatan kualitatif-deskriptif. Data diperoleh dari literatur akademik, kitab fiqh, peraturan perundang-undangan, dan jurnal ilmiah terakreditasi, kemudian dianalisis dengan pendekatan komparatif hukum. UU ITE memberikan sanksi pidana berupa penjara dan denda kepada pelaku hoax, dengan tujuan efek jera dan perlindungan masyarakat. Sementara itu, fiqh jinayah memandang penyebaran hoax sebagai jinayah al-lisan yang dapat dikenai hukuman ta'zir berdasarkan tingkat kerusakan. Nilai-nilai maqasid al-syariah dan tanggung jawab sosial memperkuat urgensi edukasi dan keadilan substansial. Pendekatan fiqh jinayah*

dapat menjadi pelengkap hukum positif dalam menanggulangi hoax, karena mengedepankan kemaslahatan, pencegahan, dan nilai moral. Integrasi nilai Islam dalam hukum nasional menjadi solusi strategis dalam menghadapi kompleksitas kejahatan informasi digital.

**Kata Kunci:** Hoax, UU ITE, Fiqh Jinayah, Ta'zir, Maqasid al-Syariah.

## Introduction

In the era of massive digital transformation, information can spread widely in seconds without going through an accurate verification process. The development of information technology has provided many benefits, but on the other hand it also brings serious challenges in the form of spreading fake news also known as a hoax.<sup>1</sup> The hoax phenomenon is no longer just ordinary misinformation but has become an information crime that can cause social unrest, divisions in society, and even destabilize the country.<sup>2</sup> In Indonesia, the spread of hoaxes has increased significantly, especially ahead of key moments such as elections, religious issues, and pandemics, where people are vulnerable to provocative narratives that are not founded on facts..

In the context of national law, information crimes in the form of hoaxes have been regulated in the Electronic Information and Transaction Law (ITE Law), specifically Article 28 paragraphs (1) and (2) which ensnare perpetrators of spreading false news that causes harm or public unrest. However, the existence of the ITE Law is inseparable from controversy, especially regarding the interpretation of rubber articles and the imbalance between public protection and freedom of expression. On the other hand, in the context of Islamic law, similar crimes have also received serious attention through the concept of *fiqh jinayah* (Islamic criminal law). In *fiqh jinayah*, the dissemination of false news is included in the category of verbal crimes that can cause *fitnah*, *ghibah*, *namimah*, and provocations that damage social order and unity of the people.<sup>3</sup>

This underscores the importance of safeguarding social harmony and the collective well-being of the community. By addressing these issues through both legal frameworks and ethical considerations, societies can work towards a balanced approach that respects individual freedoms while protecting the public from harm. Harm is not only a legal concern but also a moral one that calls for community awareness and education. Encouraging open dialogue and critical thinking can empower individuals to discern truth from misinformation, fostering a more informed and cohesive society.<sup>4</sup>

This research is motivated by the importance of comparing two systems of law-positive law (in this case the ITE Law) and Islamic law (*fiqh jinayah*) in dealing with hoax crimes as part of information crimes. This becomes relevant because Indonesian society is a legally plural society, where most of the population is Muslim and has a value attachment to the principles of sharia. Therefore, understanding how Islamic law views

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<sup>1</sup> Udiyo Basuki and Hendradi Setyawan, "Langkah Strategis Menangkal Hoax: Suatu Pendekatan Kebijakan Dan Hukum," *Jurnal Hukum Caraka Justitia* 2, no. 1 (2022): 1, <https://doi.org/10.30588/jhcj.v2i1.1033>.

<sup>2</sup> Tansah Rahmatullah, "Hoax Dalam Perspektif Hukum Indonesia," *Jurnal Hukum Media Justitia Nusantara* 8, no. 2 (2018): 103–11, <https://doi.org/10.30999/mjn.v8i2.673>.

<sup>3</sup> Lailatul Utiya Choirah, "Pemberitaan Hoax Perspektif Hukum Pidana Islam," *Al-Jinayah: Jurnal Hukum Pidana Islam* 3, no. 2 (2018): 325–48, <https://doi.org/10.15642/aj.2017.3.2.325-348>.

<sup>4</sup> Annas Hakim Muzaki Sarwono, "Analisis Yuridis Penegakkan Hukum Pidana Terhadap Berita Hoax Di Dalam Masyarakat," *Ethics and Law Journal: Business and Notary*, 2. 1 (2024): 231–237.

and sanctions information crimes is important as a moral and normative reference, which can strengthen the national legal system.

The problems raised in this research include: first, how are the characteristics of information crimes in the form of hoaxes in terms of ITE Law and *fiqh jinayah*; second, how are the forms and principles of sanctions applied in both legal systems; and third, what is the relevance of the application of Islamic legal values in strengthening law enforcement against the spread of hoaxes in the digital era. These three issues need to be studied in depth because the spread of hoaxes is not only a positive legal issue but also a moral, social, and religious issue that requires a holistic approach across legal disciplines.

This research is an attempt to bring together two legal perspectives Islamic law through *fiqh jinayah* and positive law through the ITE Law in discussing the hoax phenomenon as a modern information crime. The difference in this research lies in the comparative legal study approach that seeks to explore the philosophical, normative and practical values of the two legal systems. Not only emphasizing written norms, but also exploring the spirit of justice and benefit in the perspective of *maqasid al-syariah*.

In addition, this research also seeks not to be trapped in the dichotomy between religious law and state law, but to find common ground that can be used as a basis for strengthening national law in tackling information crimes. This is in line with the spirit of Islamic law reform in Indonesia which is integrative and contextual. So, the results of this research are expected to contribute to the development of Islamic criminal law discourse that is responsive to the dynamics of digital society and offers alternatives in the formation of fairer and more humanist policies in dealing with hoax crimes.

The purpose of this research is to analyze and compare the legal sanctions against the perpetrators of hoax distribution according to the ITE Law and *fiqh jinayah*. Specifically, this research aims to: first, identify the legal elements in hoax crimes according to the ITE Law and *fiqh jinayah*; second, analyze the form and purpose of sanctions given in the two legal systems; and third, provide integrative recommendations for law enforcement of information crimes in Indonesia that consider the principles of Islamic law as the moral and spiritual values of the nation. Through an in-depth literature study approach, this research is expected to enrich the scientific treasures in the fields of Islamic criminal law and national cyber law, as well as become an important reference for policy makers, academics, and the wider community in facing an information era full of digital manipulation and provocation.

## Method

This research uses a descriptive qualitative approach with a library research method. This method was chosen because the main focus of the research is to analyze legal concepts and norms related to hoax crimes in two legal systems, namely the Electronic Information and Transaction Law (ITE Law) and *fiqh jinayah* (Islamic criminal law). This study is normative in nature, studying the law as a prevailing norm, not as an empirical symptom. Therefore, the data used in this research is not obtained through field research, but comes from relevant and credible sources of scientific literature.<sup>5</sup>

The main data sources in this research consist of legal documents such as the text of the ITE Law (especially Article 28, paragraphs (1) and (2)), the Criminal Code (KUHP), as well as classical and contemporary *fiqh* books that discuss *jinayah al-lisan*

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<sup>5</sup> Mendra Wijaya et al., *Metodologi Penelitian: Kombinasi Pendekatan Kuantitatif, Kualitatif Dan Mixed Methods* (Medan: PT. Media Penerbit Indonesia, 2025).

such as *ghibah*, *namimah*, and *iftira'*. In addition, secondary data were obtained from accredited scientific journals in the last five years, academic books, legal articles, MUI fatwa, and previous research results that discuss information crimes and the perspective of Islamic criminal law. The data collection process was carried out using documentation techniques, namely tracing, classifying, and analyzing these sources in a systematic and structured manner.

Data analysis was conducted using the content analysis method, which interpreted and compared the legal substance in the ITE Law with the principles of *fiqh jinayah* relating to the spread of hoaxes. This analysis is done critically and comparatively to find out the similarities and differences in the concept of information crime, the form of sanctions, and the purpose of punishment in both legal systems. The *maqasid al-syariah* approach is also used as an analytical framework to see how *fiqh jinayah* places justice, benefit, and protection of society from the negative impact of hoaxes. With this method, it is expected that the results of the study can make theoretical and practical contributions to the development of Islamic criminal law and national law in the digital era.

## Discussion

### A. The Concept of Hoax as Information Crime in the Perspective of Positive Law and Fiqh Jinayah

The development of information and communication technology in the digital era has brought major changes to the social, cultural and legal life of society. One of the negative impacts that has emerged is the emergence of information crimes in the form of spreading false news or what is popularly referred to as a hoax. The term “hoax” refers to information that is fabricated to deceive or mislead readers or listeners into believing something that is not true.<sup>6</sup> In the legal context, hoax is not only an ethical issue, but has been categorized as a criminal offense because it disturbs public order, creates social unrest, and has the potential to damage the reputation of individuals and institutions. Therefore, the discussion of hoaxes as a form of information crime needs to be seen from two main perspectives: Indonesian positive law, especially through the Electronic Information and Transaction Law (UU ITE), and Islamic law through the *fiqh jinayah* approach.

In Indonesian positive law, hoax does not have an explicit definition as a legal term in the law. However, the substance of the act of spreading false information is regulated in Article 28, paragraphs (1) and (2) of Law No. 11/2008 on Electronic Information and Transactions (ITE) which has been amended by Law No. 19/2016. Article 28, paragraph (1) states that “Every person intentionally and without right disseminates false and misleading news that results in consumer harm in electronic transactions.” While paragraph (2) emphasizes the dissemination of information that creates hatred or hostility based on SARA (ethnicity, religion, race, and intergroup).<sup>7</sup>

From this article, it can be concluded that hoaxes are categorized as unlawful acts if they meet the elements: (1) intentional and without rights, (2) spreading false information, (3) misleading the public, and (4) causing harm or hostility. Therefore, in positive law, hoaxes fall into the category of information crime (cybercrime) that has

<sup>6</sup> Muhamad Parhan, Jenuri Jenuri, and Mohammad Rindu Fajar Islamy, “Media Sosial Dan Fenomena Hoax: Tinjauan Islam Dalam Etika Bekomunikas,” *Communicatus: Jurnal Ilmu Komunikasi* 5, no. 1 (2021): 59–80, <https://doi.org/10.15575/cjik.v5i1.12887>.

<sup>7</sup> Windy Sri Wahyuni, et al, “Sosialisasi Sanksi Penyebaran Berita Bohong (Hoax) Berdasarkan Undang-Undang Informasi Dan Transaksi Elektronik,” *Jurnal ABDIMAS Budi Darma*, 2.1 (2021): 42–45.

criminal consequences.<sup>8</sup> The punishment depends on the impact and motive for spreading the hoax, ranging from imprisonment to large fines.

The characteristics of a hoax as an information crime in positive law include digital aspects, anonymity, massive distribution, and ideological, political, or economic motives. Hoax spreaders utilize social media and digital platforms as the main means, which makes the tracking process difficult and the impact becomes very broad.<sup>9</sup> In some cases, a hoax can trigger horizontal conflicts, such as riots, violence, and even murder. This shows that information crime is no longer a minor offense, but has become a real threat to national security.

In the perspective of *fiqh jinayah*, the dissemination of false information can be categorized as part of *jinayah al-lisan* (oral crime), which is a sin or crime committed through speech or verbal communication. In the current context, this form of crime can also be committed through digital media, considering that the substance is a statement conveyed to the public. Although the term “hoax” is not recognized in classical *fiqh* literature, the concept can be identified in several similar crimes, such as *iftira'* (slander/lie), *buhtan* (false accusation), *ghibah* (gossip), *namimah* (pitting against each other), and *kadzib* (lying).<sup>10</sup>

One of the main bases for *fiqh jinayah* regarding the prohibition of spreading false news is the word of Allah in QS. Al-Hujurat verse 6:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِن جَاءَكُمْ فَاسِقٌ بِنَبَأٍ فَتَبَيَّنُوا أَن تُصِيبُوا قَوْمًا بِجَهَالَةٍ فَتُصْحَبُوا عَلَىٰ مَا فَعَلْتُمْ لُدْمِينَ

Meaning: “O you who have believed, if there comes to you a disobedient one with information, investigate, lest you harm a people out of ignorance and become, over what you have done, regretful.”

This verse explicitly teaches the principle of caution in receiving and disseminating information. In the digital context, this verse becomes very relevant, as a lot of false information circulates without verification.

In addition to the verse, there is a hadith that is the basis of *fiqh jinayah* regarding hoaxes. There are many narrations that emphasize the prohibition of lying and the threat to the perpetrators of spreading lies. Among them is the hadith narrated by Abu Hurairah, that the Prophet Muhammad said:

كَفَى بِالْمَرْءِ كَذِبًا أَنْ يُحَدِّثَ بِكُلِّ مَا سَمِعَ

Meaning: “It is enough for a person to be called a liar if he says everything he hears.” (HR. Muslim)

This Hadith illustrates how being critical of information is part of a Muslim's moral responsibility. Spreading information without verification is a form of negligence that can cause injustice to others.

In the case of a hoax, if the false information causes social damage, chaos or hostility, then the perpetrator may be subject to *ta'zir* punishment, which is a punishment

<sup>8</sup> Husamuddin MZ et al., *Hukum Acara Pidana & Pidana Cyber: Buku Ajar* (Medan: PT Media Penerbit Indonesia, 2024).

<sup>9</sup> A Arifah and A. R Ashidiq, “Aspek Hukum Dan Tantangan Etika Jurnalisik Dalam Penyebaran Konten Viral Di Era Digital: (Studi Di Kabupaten Toboali, Bangka Selatan),” *Jurnal Syntax Imperatif: Jurnal Ilmu Sosial Dan Pendidikan* 5, no. 4 (2024): 847–848, <https://doi.org/10.36418/syntaximperatif.v5i4.486>.

<sup>10</sup> Sudarti and Ainun Najib, “Punishment of Criminal Act of Accusing Adultery (Qadzaf) in Indonesian Positive Law: Perspective of Maqasid Al-Sharia,” *Justicia Islamica*, 18. 2 (2021): 261–280.

determined by the judge on the basis of public interest considerations. *Ta'zir* punishments are flexible and can take the form of warnings, imprisonment, exile, or other social sanctions. In the current context, contemporary scholars state that the spread of hoaxes through social media is part of a serious *mukhatharah ijtimai'iyah* (social threat) and must be dealt with firmly in order to maintain the benefit of the people.<sup>11</sup>

In both positive law and *fiqh jinayah*, spreading false news is not only seen as a violation of the law, but also as a violation of social and moral norms. In a civilized society, honesty and integrity of information are important foundations in building public trust. The spread of hoaxes erodes these values and creates an atmosphere of distrust, conflict, and even division in society.

In the context of Islam, keeping the tongue is part of the morals that are highly upheld. Rasulullah SAW said:

مَنْ كَانَ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ فَلْيَقُلْ خَيْرًا أَوْ لِيَصْمُتْ

Meaning: "He who believes in Allah and the Last Day, let him speak well or keep quiet." (HR. Bukhari and Muslim)

This Hadith reinforces the teaching that Muslims must guard their tongues (including in digital form) from lying, slander, or invalid information. Therefore, hoaxes are not only legally harmful, but they also damage the morals of individuals and society.

Furthermore, in the perspective of *maqasid al-syariah*, the spread of hoaxes is contrary to the main objectives of sharia, namely protecting religion (*din*), soul (*nafs*), intellect (*'aql*), descendants (*nasl*), and property (*mal*). Hoaxes that target religious issues can trigger sectarian conflicts, those that target the intellect can damage public rationality, and those that target the soul or property can result in loss of life or material loss.<sup>12</sup> Therefore, *fiqh jinayah* views the spread of hoaxes as a serious crime that must be dealt with using justice, prevention, and education approaches.

## B. A Comparison of Legal Sanctions against Hoax Perpetrators according to the ITE Law and Fiqh Jinayah

Information crime in the form of hoax distribution is an increasingly complex legal phenomenon in the digital era. Not only do they cause disruption to information security, hoaxes also damage social stability, causing hatred, division, and even physical conflict. Therefore, the legal system has a strategic role in tackling this crime through the provision of strict and proportional sanctions. In the Indonesian context, the spread of hoaxes is regulated through positive law, specifically the Electronic Information and Transactions Law (ITE Law).<sup>13</sup> On the other hand, in Islamic law, this crime is studied in the branch of Islamic criminal law or *fiqh jinayah*, which views hoaxes as part of oral crimes (*jinayah al-lisan*) that can be subject to *ta'zir* punishment.

Law No. 11 Year 2008 on Electronic Information and Transactions which has been amended by Law No. 19 Year 2016 is the main legal basis for taking action against

<sup>11</sup> Irdlon Sahil, "Fiqh Kontemporer Dalam Pengaturan Etika Media Sosial Bagi Umat Muslim," *Journal of Economic and Islamic Research* 3, no. 1 (2024): 379–90, <https://doi.org/10.62730/journalofeconomicandislamicresearch.v3i1.141>.

<sup>12</sup> Marz Wera Mofferz, "Meretas Makna Post-Truth: Analisis Kontekstual Hoaks, Emosi Sosial Dan Populisme Agama," *Societas Dei: Jurnal Agama Dan Masyarakat* 7, no. 1 (2020): 3, <https://doi.org/10.33550/sd.v7i1.141>.

<sup>13</sup> Nur Aisyah Siddiq, "Penegakan Hukum Pidana Dalam Penanggulangan Berita Palsu (Hoax) Menurut Undang-Undang No.11 Tahun 2008 Yang Telah Dirubah Menjadi Undang-Undang No.19 Tahun 2016 Tentang Informasi Dan Transaksi Elektronik," *Lex Et Societatis*, 5.10 (2017): 26–32.

digital criminals in Indonesia, including hoax spreaders. Article 28, paragraph (1), states that: "Every person who intentionally and without right spreads false and misleading news that results in consumer losses in electronic transactions, shall be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp 1,000,000,000 (one billion rupiah)." Meanwhile, paragraph (2) adds: "Any person who intentionally and without rights disseminates information aimed at creating a sense of hatred or hostility of individuals and/or certain community groups based on ethnicity, religion, race, and intergroup (SARA) shall be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp 1,000,000,000."

The form of sanctions in the ITE Law is repressive and aims to provide a deterrent effect to the perpetrators. The sanctions given are in the form of imprisonment and/or large fines. Indonesian positive law in this case tends to focus on the legal-formal aspect, namely violations of written legal norms, without explicitly taking into account spiritual or moral aspects.<sup>14</sup> However, the main purpose of imposing sanctions remains within the framework of guidance, prevention so that similar violations are not repeated and the general public is protected from harmful information.

The application of sanctions in the ITE Law often causes debate in the community, especially regarding the interpretation of articles that are considered rubber, which can potentially curb freedom of expression. In some cases, this article has even been used to silence criticism of the government or certain groups, which should receive protection as part of democratic rights. Therefore, it is important to review how this form of sanction is enforced so that it remains in line with the principles of substantial justice, not merely procedural justice.<sup>15</sup>

Hoax is not explicitly mentioned as a term in *fiqh jinayah*, but the behavior of spreading false information is included in the category of oral crimes such as *iftira'* (falsification of accusations), *kadzib* (lying), *ghibah* (gossip), and *namimah* (pitting against each other). Islamic law views this act as a form of violation of individual rights and public rights, classified as a major sin because it can damage community harmony, cause hostility, and spread hatred.

Sanctions in *fiqh jinayah* against hoax perpetrators are not rigidly regulated as in positive law, but are *ta'zir*, which is a punishment whose type and form are left to the *ijtihad* of the judge based on the level of damage (*mafsadah*) caused and the interests of public welfare.<sup>16</sup> *Ta'zir* is different from *hudud* (punishment specified in the Qur'an and Hadith) and *qishash/diyat* (punishment for physical crimes such as murder or injury). In the case of hoaxes, because they are not included in *hudud* or *qishash*, the sanctions are determined by the ruler or judge according to the social context and the impact caused.<sup>17</sup>

The purpose of sanctions in *fiqh jinayah* is preventive, educative, and repressive at the same time. Punishment does not only aim to punish the perpetrator but also to improve his morals, teach lessons to the community, and prevent the recurrence of similar crimes. The form of *ta'zir* sanctions can be in the form of reprimands, fines,

<sup>14</sup> Junaidi Lubis et al., *Pengantar Hukum Pidana* (Jakarta: Akasa Law Center, 2025).

<sup>15</sup> Mustakim La Dee et al., *Dinamika Hukum Pidana Dalam Konteks Keadilan* (Medan: PT. Media Penerbit Indonesia, 2025).

<sup>16</sup> Sumardi Efendi, Khairil Akbar, and Muhadi Khalidi, "Exploring Criminal Punishments: A Comparative Review of Islamic and Indonesian Law," *FUQAHA Journal of Islamic Law* 1, no. 1 (2024): 13–22.

<sup>17</sup> M. A Nasution, "Hoax Sebagai Bentuk Hudud Menurut Hukum Islam," *Yurisprudencia: Jurnal Hukum Ekonomi* 3, no. 1 (2017): 16–32, <https://doi.org/10.24952/yurisprudencia.v3i1.677>.

imprisonment, or other socially relevant and socially beneficial punishments.<sup>18</sup> In Islamic history, Caliph Umar bin Khattab once punished people who spread false news by being beaten or ostracized from the community as a form of social education.

The hadith evidence that is often used as a reference in this case is the word of the Prophet Muhammad SAW:

وَيَاكُمُ وَالْكَذِبُ، فَإِنَّ الْكَذِبَ يَهْدِي إِلَى الْفُجُورِ، وَإِنَّ الْفُجُورَ يَهْدِي إِلَى النَّارِ

Meaning: “Indeed, lying leads to impurity, and impurity leads to hell. A person continues to lie until it is written in the sight of Allah as a liar.” (HR. Bukhari and Muslim)

This Hadith shows that lying, including spreading hoaxes, is a sin that has serious consequences in the sight of Allah and adversely affects society. Therefore, *fiqh jinayah* recommends a punishment commensurate with the damage caused by the lie. The principle of proportionality in punishment emphasizes the need for justice and deterrence, ensuring that individuals are held accountable for their actions. This approach not only seeks to rectify the harm caused but also aims to cultivate a sense of responsibility within the community.

In principle, both positive law and *fiqh jinayah* have similarities in terms of the objectives of sanctions, namely creating a deterrent effect, maintaining public order, and providing protection to the community from harmful information. However, there are fundamental differences in the philosophical basis and legal approach used. Positive law uses a legalistic approach based on written and procedural norms. The perpetrator is considered guilty if proven to fulfill the elements of the article violated. This system is black-and-white, although in practice, judges still have discretionary space in sentencing. Meanwhile, *fiqh jinayah* uses a value and moral approach, which emphasizes substantive justice and *maqasid al-syariah* (the objectives of sharia), such as protecting religion, reason, soul, honor, and property.<sup>19</sup>

Another difference lies in the flexibility of the type of sanction. Positive law regulates sanctions with definite provisions, while in *fiqh jinayah*, judges are given the discretion to determine the most appropriate form of punishment based on context and benefit. This approach allows for adjustments to the times, including the current digital era, where the spread of hoaxes has a much wider scale and impact than in the past.

In terms of the principle of justice, *fiqh jinayah* pays close attention to the aspects of intention (*niyyah*) and social impact in imposing sanctions. A person who unintentionally spreads false news due to negligence or ignorance cannot be equated with a person who spreads it consciously to cause a riot. In positive law, although intention is also taken into account in some cases, the legal process continues as long as the elements of the article are fulfilled, without considering intention in depth.

Deterrent effect is an important goal of legal sanctions. In the ITE Law, high criminal sanctions and fines are expected to reduce the number of hoaxes. However, the reality shows that the spread of hoaxes continues to increase, even more difficult to control due to the ease of access to technology and the low digital literacy of the community. Therefore, many consider that positive law enforcement needs to be complemented with an educative approach and a strong legal culture.

<sup>18</sup> Zulfadli et al., *Fiqh Jinayah* (Surabaya: Pena Cendekia Pustaka, 2024).

<sup>19</sup> Linda Wati, “Pidana Penyebaran Berita Bohong (Hoax) Dalam Hukum Pidana Positif (Tinjauan Berdasarkan Hukum Pidana Islam),” *Al-Qanun: Jurnal Kajian Sosial dan Hukum Islam*, 1. 1 (2020): 77–98.



*Fiqh jinayah* with the principles of *islah* (repair) and *tarbiyah* (education) not only emphasizes punishment but also moral improvement of the perpetrator and public education. Sanctions in the form of *ta'zir* open up space to provide a social deterrent effect, such as a public apology, a temporary ban on using social media, or participation in an anti-hoax campaign. This approach is considered more humanist and contextual, especially in societies with strong religious values.

Overall, *fiqh jinayah* offers a restorative and preventive approach that is oriented toward long-term benefits. This is in line with the Prophet's hadith, which emphasizes the importance of maintaining the honor of others:

المُسْلِمُ أَخُو الْمُسْلِمِ لَا يَظْلِمُهُ وَلَا يَخْذُلُهُ وَلَا يُسْلِمُهُ

Meaning: "A Muslim is a brother to another Muslim, neither oppressing him nor allowing him to be oppressed." (HR. Bukhari and Muslim)

Spreading a hoax is a form of injustice that must be prevented, and the sanctions in Islam are intended to restore the damaged honor and restore social relations.

The comparison between sanctions against hoax perpetrators according to the ITE Law and *fiqh jinayah* shows that both legal systems have the same goals, but the underlying approaches and values are different. The ITE Law emphasizes legalistic and procedural aspects, while *fiqh jinayah* emphasizes moral, social, and spiritual aspects. The combination of the two can produce a legal approach that is more just, effective, and in accordance with the character of Indonesia's religious and diverse society. Therefore, it is important for law enforcers and policy makers to integrate the values of Islamic law into the national legal system, especially in dealing with increasingly complex information crimes in the digital era.

### **C. The Relevance of Fiqh Jinayah Values in Countering Information Crimes in the Digital Age**

The development of information technology has had a tremendous impact on human life. On the one hand, digital advances provide easy access to information, accelerate communication, and expand social networks. But on the other hand, these advances have also posed great challenges in the form of information crimes, such as the spread of hoaxes, hate speech, and manipulation of public opinion. These information crimes are no longer local or limited but spread quickly and widely, causing social unrest, horizontal conflict, and even threats to national stability. In this context, positive laws, such as the Electronic Information and Transaction Law (UU ITE), have indeed provided a legal basis for prosecuting hoax perpetrators. However, the complex dynamics of digital crime require a more comprehensive approach, not only from legalistic aspects but also from ethical, moral, and spiritual aspects. This is where the values in *fiqh jinayah* can make an important contribution in strengthening the fight against information crime.

*Fiqh jinayah*, as a branch of knowledge in Islamic law that regulates criminal acts and punishments, does not only focus on formal legal aspects, but also relies on value principles rooted in *maqasid al-syariah* (the main objectives of Islamic law), the *ta'zir* sanction system (discretionary punishment), and the social responsibility of individuals towards society. These three components have enormous relevance in the current context of digital information crime.

*Maqasid al-syariah* is an important foundation of the Islamic legal system. It serves as a framework for the purpose of the implementation of sharia, which is to preserve and protect the five basic aspects of human life: religion (*din*), soul (*nafs*),

intellect (*'aql*), offspring (*nasl*), and property (*mal*). In the context of information crimes, such as hoaxes, the *maqasid* goal becomes very relevant because hoaxes directly threaten the stability and sustainability of these five aspects.

First, hoaxes can damage religion, for example when false information targets religious issues that trigger hostility between religious communities, creating division and even violence. Second, hoaxes can endanger lives, such as misleading information about drugs or vaccines that can threaten public safety. Third, the spread of hoaxes also has the potential to damage the mind by making people lose the ability to think critically due to being flooded with manipulative information. Fourth, in moral or pornographic issues, hoaxes can damage offspring and family honor, while in the economic dimension, hoaxes have the potential to deceive people into losing their wealth, as in the case of digital fraud or fake investments.

The application of *maqasid al-syariah* thus provides a moral and spiritual basis for responding to information crime. This approach not only sees the offense as an act against the law but also as an act that damages the value system and the benefit of the people. Therefore, law enforcement against hoax perpetrators must be oriented towards preventing damage (*dar'ul mafasid*) and achieving benefit (*jalb al-mashalih*), as is the main objective of *maqasid al-syariah*.

In the Islamic legal system, criminal sanctions are divided into three categories: *hudud* (fixed penalties for serious offenses), *qishash/diyat* (retribution or compensation for violent acts), and *ta'zir* (discretionary penalties determined by legal authorities based on discretion and social conditions).<sup>20</sup> In the case of hoaxes, which are not explicitly listed in the categories of *hudud* or *qishash*, the sanctions fall under the category of *ta'zir*.

*Ta'zir* gives flexibility to the judge or government to determine the form and severity of punishment based on considerations of *maslahat* and the level of damage caused. In the context of the digital era, this approach is particularly relevant because the nature and impact of hoaxes vary widely-from mild false information to provocations that lead to mass riots. With the principle of *ta'zir*, the punishment can be tailored to the context and intention of the perpetrator: whether he intentionally spreads hoaxes, whether he has economic or ideological motives, and how extensive the social damage inflicted.

In practice, *ta'zir* punishment can take the form of imprisonment, fines, reprimands, bans on the use of social media, corrections, or public education campaigns. This approach allows the legal system to be not only repressive but also educative and preventive. In today's information age, this kind of punishment can have more impact on the perpetrator and the wider community than mere imprisonment, as it aims to build ethical awareness of digital responsibility.

In a hadith of the Prophet SAW, it is mentioned:

مَنْ غَشَّنَا فَلَيْسَ مِنَّا، وَالْمَكْرُ وَالْخَدَاغُ فِي النَّارِ

Meaning: "Whoever deceives us is not one of us." (HR. Muslim)

This Hadith not only forbids fraud in the form of transactions but also in the form of information. Spreading hoaxes is a form of social fraud that leads to the destruction of public trust. Thus, the principle of *ta'zir* is a form of protection for the social and moral integrity of the people.

<sup>20</sup> Sumardi Efendi, "Analisis Sanksi Pidana Dalam Hukum Islam Pendekatan Teoritis Dan Pustaka," *MAQASIDI: Jurnal Syariah Dan Hukum* 3, no. 2 (September 30, 2023): 151–62, <https://doi.org/10.47498/maqasidi.v3i2.3524>.

One of the advantages of the *fiqh jinayah* approach is that it does not only emphasize individual legal aspects but also social responsibility (*mas'uliyah ijtimai'iyah*). In Islam, every individual is not only responsible for himself, but also for the surrounding community. This is confirmed in the words of the Prophet Muhammad SAW:

كُلُّكُمْ رَاعٍ فَمَسْئُولٌ عَنْ رَعِيَّتِهِ

Meaning: “Each of you is a leader, and each of you will be held accountable for his leadership.” (HR. Bukhari and Muslim)

In the context of digital information, this means that each individual is the “leader” of his or her social media account, of the content he or she shares, and of the possible impact of what he or she spreads. Thus, spreading hoaxes is not only a violation of the law, but also a betrayal of social responsibility. This principle of responsibility requires people to not only be critical of the information they receive, but also actively prevent the spread of damaging information.

*Fiqh jinayah* also encourages community involvement in maintaining public order and morals, not just leaving it to the law enforcement. In the digital context, this can be translated into information literacy, anti-hoax campaigns, media education, and the involvement of religious leaders to instill truth values in media life. In this way, fostering a culture of truth and accountability becomes a communal effort, where individuals work together to combat misinformation and promote ethical standards in media consumption. By empowering citizens through education and collaboration, society can build a more informed and resilient community that upholds integrity in the digital age.

The values of *fiqh jinayah* can complement and strengthen the national legal system, especially in dealing with digital information crimes. In the midst of various criticisms of the ITE Law, such as articles with multiple interpretations, potential criminalization, and an overly repressive approach, Islamic values offer a restorative and educative approach that is more in line with the religious and pluralistic character of Indonesian society. This approach not only aims to address the harm caused by digital information crimes but also fosters a sense of community and accountability among individuals. By integrating *fiqh jinayah* principles, the legal system can promote rehabilitation and reconciliation rather than solely focusing on punishment.

*The maqasid* approach encourages the law to be benefit-oriented, not merely punitive. The principle of *ta'zir* opens room for adaptation to the modern context, and the principle of social responsibility emphasizes the role of individuals and communities in the prevention of information crimes. All three can be a source of inspiration in national criminal law reform, including in improving the ITE Law to make it more just, humanist, and effective. Effective reforms should prioritize restorative justice and rehabilitation over simply meting out punishment. By fostering a legal environment that promotes understanding and cooperation, we can create a more equitable framework that addresses the root causes of information crimes while protecting individual rights and community welfare.<sup>21</sup>

Efforts to integrate these values can be done through Islamic law education in the curriculum, training law enforcement officers on *fiqh* values, and involving religious leaders and Islamic mass organizations in the socialization of digital ethics. Thus, hoax

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<sup>21</sup> Fajar Rachmadhani, “Tinjauan Maqâsid As-Syarī'Ah Terhadap Penerapan Sanksi Pidana Penyebaran Hoax Menurut Undang-Undang Informasi Dan Transaksi Elektronik,” *Al-Mashlahah: Jurnal Hukum Islam dan Pranata Sosial Islam*, Vol 9, No. 1 (2021): 142–156.

eradication is not only a formal legal matter but also a collective moral movement sourced from religious values that live in society.

The hoax phenomenon as an information crime requires a legal approach that is not only repressive but also educative and contextual. *Fiqh jinayah*, through the principles of *maqasid al-syariah*, the *ta'zir* system, and awareness of social responsibility, provides a very relevant value framework to strengthen the national legal system. These values do not contradict positive law, but can complement it with a deeper moral and spiritual perspective. In the midst of the information crisis and the breakdown of public trust in digital media, laws based on substantial benefit and justice are a necessity that cannot be delayed. Therefore, integrating the values of *fiqh jinayah* into hoax prevention strategies in the digital era is a wise step to build a smart, just and dignified society.

## Conclusion

The spread of hoaxes as a form of information crime in the digital era is a serious threat to social order, national security, and the moral integrity of society. In positive law, especially through the ITE Law, hoax perpetrators can be subject to criminal sanctions and fines with the aim of creating a deterrent effect and protecting the public from misleading information. However, this approach still faces various challenges, including multiple interpretations of articles and potential criminalization. In contrast, *fiqh jinayah* offers a more holistic approach by emphasizing the values of *maqasid al-syariah*, the flexibility of *ta'zir* punishment, and social responsibility as the foundation in dealing with hoax crimes. These principles not only serve to punish the perpetrators but also to educate, prevent, and restore social order. Therefore, the integration of *fiqh jinayah* values in the national legal system is very relevant to strengthening information law enforcement that is more just, moral, and contextual amid the challenges of the digital era.

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