

41. Hate Speech through Social Media in Indonesia: Based on Space Transition Theory in Cyber Criminology

by Kapin Proceeding

Submission date: 15-Jul-2021 02:36AM (UTC+0900)

Submission ID: 1619611338

File name: 41._Efrizal_Harun_Sharief_dkk.pdf (518.73K)

Word count: 5344

Character count: 28677

Hate Speech through Social Media in Indonesia: Based on Space Transition Theory in Cyber Criminology

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Abstract. The feelings legitimate expression experienced a cyberspace polarization in absolutism and totalitarianism by the State has been seen as a reprehensible deed in the form of hate speech. The Space Transition Theory use in Cyber Criminology on writing this in order to verify the extent to which the scope of the postulates that have been built, can justify causality relationship hate speech in the virtual world with the reality world.

Keywords: Hate Speech, The Space Transition Theory, Cyber Criminology

1 Introduction

Indonesia classified as a country with a continental European legal system (civil law), based on the concordance principle of the Netherlands colonial law after independence through Transitional Rules article II of the Constitution of 1945., with the use of wetboek van strafrecht voor indonisie which is then passed as the book of the law of criminal law through Act No. 1 of 1946.

The provisions in the criminal code still mostly is translation result process with equivalent words search that match the Indonesia grammar. Therefore, the pattern thought in reading the authoritative text in the criminal code following the activities over the years as taught by expert Netherlands criminal law. Therefore, in general it can be said that Indonesia did not yet have its own political criminal law, particularly with regard to acts that are codified in the criminal code. Currently, in modern times started to feel the presence of the criminal code failed as a result of the widespread behavior pattern or society deeds by modification some novelty aspects.

Bagir Manan [1] explained that any legislation have congenital defects (natural defects) and artificial defects, which is a consequence form of Written law which resulted in the regulation has limited coverage — just opname moment from elements of political, economic, social, cultural and the most influential defense and security at the time, because it's easy "out of date" when compared with the changes society.

One of the modified Act is regulated in article 310 of the criminal code and article 311 of the KUHP where the two terms are arranged under Chapter XVI of humiliation criminal acts. Article 310 of the criminal code confirms the following (1) Anyone who deliberately attacked the honor or someone's good name with accusing, which means that the light so that it is known to the public, was threatened with imprisonment because contamination longest nine months or criminal fines at most four thousand five hundred rupiah, (2) If it is done by post or picture, broadcast, display affixed in public, then threatened due to libel is written with imprisonment of no longer than one year and four months or a criminal fine of at most four thousand five

hundred rupiah, (3) No libel or contamination is written, if the Act is clearly done for the sake of public interest or because it is forced to defend himself.

Whereas in Article 311 of the CRIMINAL CODE confirms the following: (1) If the libel or contamination crime writing is allowed to prove what is alleged is true, it does not prove it, and the charge is carried out contrary to what is known, he was threatened with criminal libel doing jail the longest four years, (2) Rights revocation under article 35, no. 1-3 can be dropped.

Its development, both the criminal deeds is experiencing a transformation of the form in relation to the phrase "public" and the phrase "publicly". That is, how to make something that fit in the classification in article 311 of the criminal code Article 310 jo's can no longer as an act by classic means a during the criminal code enacted.

In the globalization era and new technologies industrialization, the society development affecting information technology makes the interconnectivity world between individuals become indefinitely. So, there was a shift in values, socio-cultural, economic and even political that made each individual can be inter-connected well access or accessed.

Legal developments in Indonesia is currently pretty taste, along with population growth and social development. Various diseases society that demands and requires the law to move forward as a social control to become the leading guard in creating an orderly society, advanced and prosperous. The development of the law itself is characterized by the development of the law components itself, in terms of the legal system, that is, the attendance products variety and the special nature of the new law/lex specialist [2].

The conditions that created the convergence of information technology and telecommunications development in recent years, have resulted in growing various also multifarious services existing telecommunication facilities, as well as increasingly sophisticated information technology capable products commercial all media information integrated. In the middle of a communication that is increasingly integrated globalization (global communication network) with the growing internet popularity has made the world seems increasingly shrunk (the shrinking) and increasingly fades the boundaries following the country's sovereignty and public order. Ironically, the dynamics of the new Indonesia community grow and develop as an industrial society and the information society, as it still seems premature to usher the technological development [3].

Advances in information technology now and chances are on the impetus future which performed by communication technology development and computer technology, computer technology and telecommunications while driven by Microelectronics technologies, material and software. The combination of computer and communication technology gave birth to the internet that became the information technology backbone. Internet developments triggered by the launch of Sputnik by the Soviet Union-owned aircraft that are taken by the United States by creating a project spacecraft launch and the internet development in the 1960s (Kompas, June 28, 2000).

Scope being someone in cyberspace access (cyber world) through a wide range of applications in various forms of social media to create a situation where someone can establish communication with other people who "sometimes" has social values background and different cultures.

The development of social behavior patterns in the society commented upon by Soedjono Dirdjosisworo [4] stating the change and adjustment of social as well as technological development since 1958 (Act No. 73 of 1958) so rapid, and the rapid development of social and technological as well as influential globalization and continue to be driven by information and communication technology is absolutely feels that the book of law criminal law already since a long time not being able to perfectly accommodate and anticipate an increasing crime both

qualitative as well as quantitative, with type, pattern and modus operandi which is not contained in the criminal code and the most prominent example is the cybercrime.

The community's behavior development in conveying the views or opinions of these indeed would never release from the euphoria freedom of expression, in particular, there are still many who argue that such expression is personal due to social media is contained in the attached. Further, personal views expressions that displaces term negative connotations "hater".

The hater term itself--in Indonesia--recently known since the party of democracy or presidential election in DKI Jakarta by 2014 which is rife in social media. Those who do not support the Joko Widodo as a presidential candidate, not only has the disagreement behavior in support however lead to hatred [5]. Since that time, to this day, any criticism expression or disapproval even dislikes to any person in particular who have public figure status are always classified as "haters".

2 The "haters" phenomenon make State police of the Republic of Indonesia (Polri) issued circular letter of the head of Indonesian National Police num 29 SE/6/X/2015 about Hate Speech Handling at October 8, 2015. Where according to the National Police Headquarters public relations Division Head Inspector General Anton Charliyan tried to set the record straight that the SE it just reminded not to carelessly speak. It further explained that the circulars to remind the public that anyone issued opinions in public speaking/speech in cyberspace so carefully, do not carelessly. Don't insult, defamation, provocation, deeds do not soothe the related tribes, religious, racial, gender, disabilities and others (gatra.com, accessed on March 10, 2017). Hate speech classification in the circular letter are: H24 liation, Libel, Sacrilege, Unpleasant behavior, Provoke, Incite, Spread hoax news, All the above actions have goals or could have an impact on discrimination acts, violence, disappearances, and the the social conflict life.

The Circulars letter specifically mentions social media networking as one means of doing the hate speech.. And specifically, Circulars letter of The Indonesian National Police contain basic ruling as follows: (1) Article 156 of the Criminal Code, (2) Article 157of the Criminal Code, (3) Article 310 of the Criminal Code, (4) Article 311 of the Criminal Code, (5) Article 28 jis Article 45 paragraph (2) of the law number 11 Year 2008 of the information and electronic transactions, (6) Article 16 of Act No. 40 of the year 2008 on elimination of racial discrimination and ethnic

In fact, the hate speech phenomenon through the social media networking gets special attention from President Joko Widodo. President of Joko Widodo deploying Limited Meetings discussing the anticipation associated with social media. In the meeting, the President of Joko Widodo asked legal apparatus did a firm action and hard for social media users who throw the speech of hate and slander (news.d21.com, accessed on March 10, 2017). The request was met with he did the amendment to the law number 11 Year 2008 of the information and electronic transactions through law number 19 Year 2016 about changes in the law 35 mber 11 Year 2008 of the information and electronic transaction 13 Where the changes are contained in article 45 paragraph (3) which confirms the following: Any person who intentionally and without rights to distribute and/or transmit and/or make can be accessible electronic information and/or electronic document which has the insult charge or defamation as 23 pulated in article 27 paragraph (3) are convicted with imprisonment of no longer than 4 (four) years and/or a maximum fine of Rp 750.000.000 (seven hundred fifty million rupiah)."

Concerns against the uncontrolled hate speech through social media that ought to be permissible, where according to Sarlito Wirawan Sarwono [5], if the person does not have a sense of sincere or not being able to accept what is expected does not fit his desire then it will happen "Deprivation". If deprivation occurred cumulatively would cause anger. The

phenomenon of hate speech, in fact is not new in the world of law in General. In addition to Indonesia, there are some countries that provide settings regarding submission of expressions or opinions, i.e., among others:

- a. In the United Kingdom there are two provisions, namely the Public Order Act 1936 which amended in 1986 that governs and The Criminal Justice and Public Order Act 1994 which regulates a number of acts that are classified as "anti-social". In 1998, enacted The Crime and Disorder Act 1998 that has scope against Anti-Social Behavior Orders, Parenting Orders and give more responsibility to local institutions to implement strategies to reduce crime and disorder and introduced the law, which specifically led to the offence of racial and religious offences (Section 28 until 32 of The Crime and Disorder Act 1998). The police record just under 43,000 hate crimes a year - about 1% of all recorded crimes - other source suggests that the real figure could be more than six times that amount. The CSEW suggests that there are actually about 278,000 hate crimes a year, which is way above the number recorded by the police (theguardian.com, accessed on March 12, 2017)
- b. In America there is The Hate Crime Prevention Act of 2003 was passed by the House of Senate as law on June 15, 2004. The submission rules, is based on reports from the FBI in 2002, there were 7462 crimes hate speech reported.
- c. In Hong Kong there is The Public Order Ordinance 1967, last amended in 1997. This Act is the most controversial arrangements in Hong Kong due to prohibit freedom of expression and freedom of Assembly. The prohibition is based on the State security Interests and protecting human rights and freedom of others.
- d. In Pakistan there is "The West Pakistan, Maintenance of Public Order Ordinance, 1960" which provides the power and authority to the Government to use all means, including making arrests and detention by order in writing, against a person considered doing the harm public safety and the public order maintenance (Article 3 verse (1) The West Pakistan Maintenance of Public Order Ordinance, 1960).

⁶ *Hate Speech itself in the international world better known as Hate Crime.* "Hate crime" generally refers to criminal acts which are seen to have been motivated by bias against one or more of the types above, or of their derivatives. Incidents may involve physical assault, damage to property, bullying, harassment, verbal abuse or insults, hate crime or offensive graffiti or letters (hate mail) (en.wikipedia.org, accessed on March 12, 2017)

That becomes interesting to note is how a speech or expression can be classified as a hateful, but contains the actual content? And in a form that, when the activities of such speech has a form of digital text, would later be classified as cybercrime? How does Criminology looks at the phenomenon of hate speech containing religious truth?

2 Methods

¹⁹ The methods used in this research is a case study. According to Yin [6] research case study is the empirical studies that investigates a contemporary phenomenon in real life terms, especially when the boundaries between phenomenon and context are not clear. While according to Eisenhardt [6] case study is a study that focuses on a time to understand and explain the dynamics.

3 Results and Discussion

3.1 Result: ²⁷ No. 11/2008 as Cyber Law in Indonesia

Finally, law number 11 Year 2008 of the information and electronic transactions has been endorsed and enforced. So that is a plus for Indonesia's response to the international world, that

evidence electronically gets recognition in law. And can be used in the authentication process in front of the examination proceedings, where previously things relating to proof set in law No. 8 of 1981 on the criminal code procedure and Indonesian civil code.

The technological information progress, like the two sides of the coin are side by side, where in addition to the technological advances over the information expediency makes the world without limits (borderless), but can also have an impact on the utilization of which is the Act of breaking the law. The inception of the law No. 11/2008 is a great milestone for the legal use of Telematics Cyber or legal (cyber law) in Indonesia. Cyber law, internationally used for legal terms associated with the information utilization and communication technology. Similarly, the telematics law is a convergence embodiment of the telecommunications law, internet law, and legal informatics. The term is also used in other information technology law (law of information technology), virtual world law, and the law of e-commerce. Those terms born considering activities conducted through a computer network systems and communications systems both in the local scope and global (Internet) by utilizing information technology-based computer system that is an electronic system that can be seen virtually.

On the law application, it turns out that a lot of pros cons raises in practice. Pros-cons that appear along with popping up the victims be snared by Act No. 11/2008. That in fact the victim-perpetrator instead was the one business that uses telematics means for his intense business interaction.

The first victim was a journalist named Iwan Piliang (November 2008), allegedly defiled the either name the House of Representatives member through his writing on the internet and be snared with article 27 paragraph (3) of Act No. 11/2008. Second, Erick J. Ardiansjah (November 2008), an Account Executive at Bahana Securities Equity in Jakarta, which convey information limited non-confirmations to clients who then circulating in Mailing List, then Erick detained at V Cyber Crime Police Headquarters because it is considered violating Act No. 11/2008, article 27 paragraph 3 and article 28 paragraph 1 (spread hoax news through electronic systems). Erick was suspended from his company and the examination of the case is still underway. Third, Prita Mulyasari, a span of August 2008 – present, suspect the libel case against Prita Omni International. Prita dijerat with article 27 paragraph (3) of ACT No. 11/2008, with a maximum imprisonment penalties of 6 yrs and/or a fine of a maximum of 1 billion dollars. Fourth, Nur Arifah/Farah (July 2009 – present), a High School student, who did scorn through facebook, and social media in the snare of Article 310 and 311 of the Penal Code and Article be considered for be snared with the law No. 11/2008 article 27 paragraph (3). Fifth, Luna Maya, artist (December 2009), berate infotainment workers through social networks Twitter, and have been reported with article 27 of Act No. 11/2008, although in the end peace.

In addition to the five cases, the number of victims of the law No. 11/2008 that continues to grow. Of existing cases, article 27 of ACT No. 11/2008 specifically paragraph (3) becomes the extension of article 311 of the Criminal Code and article 310 in cyberspace.

3.2 Discussion: The Criminology Convergence and Cyber Law

Cyberspace is a term first used by William Gibson in his novel *Neuromancer*, entitled scientific fiction. Cyberspace is showing the reality, but not reality that is real as we seen bias, but rather virtual reality (virtual reality), virtual world, a world without borders. This is actually is a borderless world, as indeed in cyberspace knows no State boundaries, the loss of the boundary dimensions of space, time and place so residents-residents bias associated with anyone and anywhere. In fact the cyberspace offers men to “live” in the alternate world. A world that can take over and replace the existing reality, which is more fun than fun, more fantastic than the fantasies that exist, the more exhilarating than excitement. Cyberspace universe has led the

community in different sides of the new reality that never imagined before, hope full, pleasure, convenience and adventure, such as teleshopping, teleconferences, teledildonic, virtual café, virtual architecture, virtual bawdy, cybersex, cyber party, and cyber orgasm [7] even included as a means of spreading propaganda in various political and propaganda of terrorism..

The convergence of computing and communication and the potential growth of digital technology have brought enormous benefits to modern society. With these developments has come awareness that "information security" is no longer a matter for the technical and computer specialist, but for millions of people who now engage these new media every day for business, communications and leisure (Broadhurst and Grabosky, 2005).

Against such developments, Sarah Lowman (lowmanio.co.uk, accessed on March 10, 2017) explains as follows with the huge growth in computer connectivity and usage over the last decade there has never been such a wealth of opportunity for prospective criminals.

Similarly explained by Jose R. Agustina as cybercrime has proliferated exponentially across the globe, those in the criminal justice field have lacked suitable and updated knowledge concerning the pedestrian reality of modern cybercrime.

Since 2000, cyberspace has changed the ideological perspectives of criminologists. The paradigm shift created by the development of the Internet and its sophisticated forms of communication and its ugly off shoot, cybercrime, have broken the traditional barriers of research done by conventional criminologists (Jaishankar, 2011).

According to [8] that, the technological developments associated with cybercrime mean that -- while traditional laws can be applied to some extent -- legislation must also grapple with new concepts and objects, not traditionally addressed by law.

One of the activists in this case is [9] has declared his theory to explain the phenomenon of cybercrime, the Space Transition Theory. The theory is used to explain the causation of crime in cyberspace (cyberspace). K. Jaishankar believes it is important to separate the special theory for cybercrime with conventional criminological theory. Therefore, the explanation through a general theory that there has been inadequate in explaining the whole cybercrime phenomenon. K. Jaishankar [9] describes as follows Space Transition Theory is an explanation about the nature of the behavior of the persons who bring out their conforming and non-conforming behavior in the physical space and cyberspace. Space transition involves the movement of persons from one space to another (e.g., from physical space to cyberspace and vice versa). Space transition theory argues that, people behave differently when they move from one space to another.

Based on the Transition Spaces Theory postulates, then according to the author it can be drawn a conclusion that in fact the new concept is a breakthrough in the field of Criminology in the study of the encounter between hosts the science of sociology, communication sciences and the psychology science in the public space.

At issue is whether the theory postulates-with postulates can be in absolute terms to explain hate speech phenomenon in social media in the context of the Republic of Indonesia? Although, it cannot be said as the State Religion but it is certainly Indonesia is not a secular State. Through the Indonesia, there are 6 (six) legally recognized religion and a variety of beliefs that is growing and growing in fertile. Religion has an important role in the society life, in addition to the existence of the indigenous culture. So, certain religions and beliefs that have the potential to affect the climate of politics, law, economy and culture. It is this pluralistic schemes that often play in the entire realm of areas of life in particular political, economic and cultural.

As a country of civil law-keepers, with the teachings influence of the Roscoe Pound developed by Mochtar Kusumaatmadja, influencing the legal system formation in Indonesia that is bottom up. The spirit of the rule of law in order in the National legal system, the suspected

cause frustration on the certain groups.

Many dark history that happened in Indonesia, which isn't managed properly, but instead developed the principles of Ethics are strictly a categorical Imperative. For example, the occurrences Act No. 40 of the year 2008 on the Elimination of racial and Ethnic Discrimination, ought to be suspected as an effort of State absolutism and totalitarianism do emphasis-emphasis the understanding behind fictile theory. Coercion against the attitude ought to be to the regulations thus gave rise to many questions of interests who are covered by that province regulation.

Things that are interesting and worth to ponder when Writers associate with the view of Tb. Ronny Nitibaskara Rachman [10], that a crime will be perfect (the perfect crime), when an abuse of power or detournement de pouvoir or onrechtmatige overheidsdaad. Then, with all the attributes, the law legally change its functions into law as a tool of crime. The State also showed the presence of miss-understanding the Basic Law of the State with regard to a more meant as a State law, which is considered as a means of changing society, so that the State made the law as an instrument for justification based on the principle of positivistic-instrumentalistik to impose maksim-maksim universal legitimate.

Space Transition Theory in Cyber Criminology examines barriers experienced in causality through postulates-postulatnya when confronted with an inner attitude of society Indonesia, for example, Muslims in Indonesia, which in absolute terms must acknowledge an understanding the tolerance concept is based on the statutory universal through maximum

Rocky Marbun [11] submits arguments using evidence from the Qur'an, Surat Al-verse 120, Baqaraah and Al Qur'an Surat An-Nisaa ' verse 34, in order to illustrate the phrases that frequently appear in Social Media Networks as well as religious lectures when relating to the transition of national leadership is loaded with issues of religion and gender, which is explained as follows:

Al Qur'an Surat Al-verse 120 Baqaraah to mean as follows: "And the Jews will not be pleased with thee, nor will the Christians, till thou follow their creed..." If a listener this verse when spoken in the Mosque or *Mushallain* media lecture, is religion other than Islam, can then the non-Muslim the report it as hate speech? Whether it can be classified as criminal acts of hate Speech? However, if social conditions are indeed in conditions potentially emerging social conflict, then the verse continues to blow, very likely occur Party Police argued it was included to the hate speech. However, it is not because of its content which can be categorized as hate speech, but the conducive conditions that should be built so that put a damper on the content of the lectures became important. While the paragraph content itself is not a hate speech category. Or, we are trying to put a condition among the "religious talk" with "in campaign activities" Oration.

In the political conditions in Indonesia which is pluralistic, then critical interface interests often occurs. In the political situation history in the Indonesia, appears to have once occurred friction between the interests of a group of religious-based political interests. For example, by the Megawati Sukarnoputri advance as presidential candidate.

In the Qur'an, Sura An-Nisaa ' verse 34 is defined as follows: "Men are in charge of women..." *It was narrated from Abu Bakar said, When up to the Messenger news that the Persians lifted the King Emperor 's daughter, he said, will never be the lucky circumstances of a people who handed the leadership on a woman.* (Narrated by Al-bukhaari, Al-nisaa 'i and Turmudzi).

Within the campaign period for the sake of Megawati Sukarnoputri, when these verses and Hadith is echoed in various lecture-religious talk, then the question is whether these verses and Hadith is the behavior of hate speech? Which are then supported by arguing that the groups

that don't like the women's leaders harness the verse and Hadith for his political interests. It certainly goes back to the orientation of a person or a people group who are separating between the religious lives with the life of a country or separate between religion and politics.

The Praxis operates ratio in the philosophy of Immanuel Kant consciousness or philosophy of the subject. Immanuel Kant assumes the subject action as something that weigh up autonomously about what she should do. The subject is autonomous weigh up which actions can the maxim goes into effect to everyone. Furthermore, Immanuel Kant formulated the action in "maxim imperatives of his" categorical "Act in such a way, so that your will may apply the maxim at any time at once can be specified as a law that is universal." The ratio of Praxis that is taken as a monologue, because without any consensus with other subjects. The ratio of praxis in Immanuel Kant's "categorical imperative" is based on the methodical solipsism (accessed on March 12, 2017), which is interpreted by Jürgen Habermas in the philosophy intersubjectivityhorizon. The ratio of Praxis Immanuel Kant's can no longer be applied in social theory and political theory. Therefore, how to reflection is monological, so the worth and totalitarian absolutism are suspected. Absolutism of the ratio of Praxis, as contained in the "categorical imperative", is a command that must be obeyed by the subject without conditions with no opportunity of dialogue with other subjects or in monological who later claimed to be the "essential". Anything that is real then it was total, so that the truth of knowledge gained from the subject that monological will be considered for all rational beings legitimate. The totalitarian nature of the subject emerges from the ratio of the Praxis imposes both mind and will to all the people without dialogue. So, simply put in place a totalitarian basis through universal principles that can be understood in essentialism(Hardiman, 2013).

Based on that, hate speech through social media networking that happens in Indonesia is now one of the things that cannot be applied to the theory of the transition Spaces intact, therefore there is room and not accommodatedgaps in postulates. The most important thing in understanding hate speech through social media, which is meant by the authoritarian State as forms of cybercrime, in the form of expressions of belief in pure i32 not can be a legitimize which postulates. The tendency of United in the virtual world is not based on the trend of doing a crime, but based on the commonality of views and opinions even beliefs diversity.

With regards to the descriptions above, according to the author, there is an understanding that is mistaken in understanding hate speech, which in this case is often exchange experienced between the confidence expression in the diversity pluralistic believed was hate speech with one cybercrime form that is a cyber-bullying.

In the context of cyber bullying, according to K. 1ishankar (2011) – a sample of students as subjects of cyber bullying – explains as follows: "Scenes like this are playing out in schools around the world. Students, especially adolescent girls, are increasingly victims (and, sometimes, perpetrators) of degrading, threatening, and/or sexually explicit messages and images conveyed electronically via cell phones, e-mail, chat rooms, and personal online profiles. As Harmon (2004) observed, the Internet has provided young people with an arsenal of weapons for social cruelty. The phenomenon is called *cyber bullying*, which Patchin and Hinduja (2006) define as "willful and repeated harm inflicted through the medium of electronic text". Cyber bullying has its roots in traditional bullying that takes place in the physical school setting; however, the medium of cyberspace allows it to flourish in distinct ways, creating numerous challenges."

When setting against hate speech if you want to be associated with cybercrime, cyber bullying construction then more appropriate use in events that disrupt public security (public order). So, the delivery of knowledge especially prolific religiosity can be drawn out of the classification of hate speech, all have built a diagonal construction first. So, the Transition space

theory should experience a special modification when associated with specific conditions and circumstances that are unique in Indonesia.

4 Conclusion

Hate speech as well which is a feeling expression or containing a certain belief, although expressed in cyberspace, is not making it a cybercrime. Therefore, a normative expression as an ignoble deeds is not able to monologue based on power. Hate speech determination in social media networks, is part of the legitimate feeling in certain people groups, so dialogist process is the only solution in solving hate speech.

Space Transition Theory will find more compatibility on the physical actions in the virtual world that gave rise to bodily harm. Whereas in the hate speech, Space Transition Theory will find obstacles causality in expressions that are based on the legitimate feeling. How to measure an act that has the tendency is a form of crime in virtual worlds is to have the same tendency with the real world--and vice versa--in the real world in fact is not an ignoble deeds, but became deplorable when entered in the cyberspace. This is the main difficulty of the Space Transition Theory if it is dealing with hate speech as cybercrime.

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