



Criminal Sanctions for Insults on Social Media Have Aspects of Noncompliance of Criminal for Investigators

Martini¹; Stefanus Budi Juwono²; Warmiyana Zairi Absi³

¹ Law Faculty, Muhammadiyah University, Palembang, Indonesia

² Law Faculty, Dr. Soetomo University, Surabaya, Indonesia

³ Law Faculty, Sekolah Tinggi Sumpah Pemuda, Palembang, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v11i6.5949>

Abstract

The application of the law to a criminal for an act that is against the relevant legal requirements is known as criminal responsibility. Because defamation involves insults that cause the reputation of another person to be tarnished, it is inherently a crime against honor. Article 310 of the Criminal Code states that it is forbidden for anyone to purposefully harm another person's reputation or honor by spreading false information, particularly if the accusation is made in writing or through an image that is shared, broadcast, or posted online. Nonetheless, advancements in technology allow for the use of social media for defamatory conduct. This research aims to explain law enforcement against criminal acts of defamation committed via social media based on Law Number 11 of 2008 concerning Electronic Information and Transactions. The method used in this research is normative legal research. The study's findings clarify that, by Law Number 11 of 2008 concerning Electronic Information and Transactions, Article 27 Paragraph (3) prohibits anyone from willfully and without authorization disseminating, transmitting, or creating accessible electronic information or documents. The process of putting the law into effect and punishing lawbreakers is known as law enforcement. Penalties for criminal defamation on social media may include jail time or fines, depending on the terms of the relevant legislation.

Keywords: *Criminal Sanctions; Insult; Social Media*

Introduction

The progress and development of technology, especially social media, is like a double-edged sword; on the one hand, it is very useful, but on the other hand, it is also dangerous and can cause losses if used incorrectly. If social media is not used wisely, it can cause harm to users and other people because anyone can enter and become involved as a consumer and producer of information. Information technology contributes to increasing welfare, and progress, and facilitating humans; it can also carry out the same kind of effective action against the law. Law number 11 of 2008 concerning electronic information and transactions through Law no. 19 of 2016 as a legal umbrella for the use of information technology that needs to be known by the public on certain social media users (Suryani & Suhendar, 2022).

Through the world of the internet, also called cyberspace, anything can be done. From a positive aspect, cyberspace certainly adds to the trend of world technological development with all forms of human creativity. However, negative impacts cannot be avoided. When pornography is rampant on social media, people can't do much about it. Along with the development of technology, this has led to the emergence of crimes called cyber crimes or crimes through social media. The emergence of several cases of cybercrime in Indonesia, such as credit card theft, defamation, hacking several sites, intercepting other people's data transmissions, for example, email, and manipulating data by preparing unwanted commands on the computer, Computer crime allows for formal offenses and material offenses. A formal offense is an act of someone entering another person's computer without permission, while a material offense is an act that causes harm to another person. The existence of insults in cybercrime has become a threat to stability, making it difficult for the government to balance the techniques of crimes committed with computer technology, especially internet networks. (Luh Putu Yustika Riani Kusuma et al., 2022).

Based on the Criminal Code, Chapter 4, a maximum of nine months or a maximum fine of Rp. 4500. Paragraph (2) states that if this is done using writing or pictures that are broadcast, displayed in public, or posted, then the person who does so will be punished for blasphemy, with a maximum prison sentence of one year and four months or a fine of up to Rp. 4,500. This sanction is also regulated in Article 311 paragraph (1), which reads: Whoever commits the crime of blasphemy or defamation by writing if he is permitted to prove the accusation if he cannot prove it, and if the accusation is made and he knows it is not true, he will be punished for being wrong. slander with a maximum prison sentence of four years (Arifiyanto & Pribadi, 2019).

According to Oemar Seno Adji, material insults consist of a fact, including an objective statement in verbal or written words, so the determining factor is the content of the statement, whether used in writing or orally. There is still the possibility of proving that the accusation was carried out in the public interest. Meanwhile, formal insults in this case do not reveal the content of the insult but rather how the statement in question was made. The form and method are the determining factors. In general, the way to express it is in a harsh and non-objective way. The possibility of proving the truth of the allegations does not exist, and it can be said that such a possibility is closed (Fitrah, 2021).

Various cases that have emerged since the ITE Law came into existence have targeted the use of various media in information systems and electronic devices, which are not limited to media that may be accessible to the public or in public but through other, more personal media. Almost all media can be charged under this law. Reporting in online media, online discussion forums, Facebook, Twitter, blogs, electronic mail (email), short messages/SMS, using compact disks/CDs, status on BBM, media for advocacy, and so on are examples of social media. used. According to S. Sudarman, the public is becoming increasingly afraid to speak out, "express opinions, and criticize the government and its officials, including complaining about the poor service of government and private agencies via social media and other electronic means. This development ultimately resulted in a network known as cyberspace, which is a technology that contains a collection of information that can be accessed by everyone in the form of computer networks called the internet network. There are several possibilities behind the perpetrator committing this criminal act, namely the element of envy because of the success that the victim has achieved. Meanwhile, the aim is for the writing and/or speaking to be known to many people, reducing the honor of the victim's good name. This problem is included in the complaint offense, which means that the victim may report it to law enforcement officials and continue until trial; the victim may not report it and there will be no charges; the victim has reported it but can withdraw the report because there is an agreement between the victim and the perpetrator that they will not continue the case.

Punishment is essentially an imposition of suffering, misery, or other unpleasant consequences. The punishment is given intentionally by a person or body that has power (by authority). This penalty is imposed on someone who has committed a criminal offense according to the law. A crime is a statement

of censure by the state against a person for violating the law, according to (Moeljatno, 1983), who states that one of the criminal acts in society that is often questioned is defamation.

In 2021, the National Police received at least 2,207 reports of criminal acts using the ITE Law. Data from January–September 2021 shows that the most reported case is online defamation, and the second is online fraud. The impact of the use of information and electronic technology is very broad in people's lives. Having the latest electronic equipment (a smartphone, laptop, PC, or tablet) is a must for families at home. Finally, individual-to-individual communication is carried out online and, to a limited extent, offline. This has an impact on our lives as humans, who are social creatures who need socialization with others. The use of social media is designed to widen social interactions between people through technology and the internet.

By looking at the considerations above, fake news is seen as information that is not true, including myths, rumors, conspiracy theories, hoaxes, and deceptive or false content intentionally or unintentionally disseminated on social media platforms. As a result, the spread of fake news may not be intentional, but when it is created, it can be very deliberate. People can re-share false information content to help society without first filtering the information to see whether it comes from a valid source or not.

Research Method

In this research, researchers used empirical juridical research. The empirical legal research method, or empirical juridical research method, is a method of "legal research that examines applicable legal provisions and what is happening in reality in society, or research carried out on actual conditions that occur in society, to find facts that are used as research data. Then the data is analyzed to identify problems, which ultimately leads to problem-solving" (Bambang Waluyo, 2002).

Result and Discussion

Crimes that are classified by law as defamation or blasphemy (*smaad*) and written defamation (*smaadschrift*) are fully formulated in 310 of the Criminal Code. If the formulation of the crime of pollution is in Article 310, paragraph (1), it consists of objective elements and subjective elements. The first objective element is the action, where the action is offensive; the second is the object, where the object is the person's honor and good name; and the third is the method of accusing certain actions. If the subjective element is an intentional error and the intention is clear, then it is generally known. The act of attacking (*aanranden*) is not physical, because what is attacked (the object) is not physical but feelings about honor and feelings about the person's good name. The meaning of attack here is conveying statements by accusing them of committing certain acts, and the attack is aimed at a person's honor and good name, which results in that person's sense of self-worth or dignity being defamed, humiliated, or humiliated. The object that is attacked is a sense of self-worth regarding honor and a sense of self-worth regarding a person's good name. A sense of self-respect in humiliation is a sense of self-respect in the area of honor, and a sense of self-respect in the area of good name. The sense of self-esteem in the field of honor is different from the sense of self-esteem in the field of good name, even though both have the same characteristics. The similarity between the two lies in the consequences of the attack. Both attacks on honor and good name cause feelings of decline, fall, or contamination of a person's sense of self-worth or dignity, which makes the person humiliated and embarrassed (Lompoliuw, 2019).

In ITE Law No. 11 of 2008, Chapter VII, regarding prohibited acts, namely Article 27 paragraph (3), every person intentionally and without right distributes, transmits, and/or makes accessible electronic information and/or electronic documents that contain insulting and/or defamatory content. This is also regulated in Article 28 paragraph (1), which states that every person who intentionally and without right

spreads false and misleading news, which causes consumer losses in electronic transactions, and Article 36 states that every person intentionally and without right or against the law commits an act, as intended in Articles 27 to 34, which results in harm to other people.

The ITE Law is the *lex specialis* of the Criminal Code. It is known that Law No. 11 of 2008 concerning Information and Electronic Transactions, Article 27, Paragraph (3), regulates defamation on social media. This article has a subjective element, namely intentionally, and an objective element, namely distributing and/or transmitting and/or making accessible electronic information and/or electronic documents that contain insulting and/or defamatory content. Even though there are still unclear norms in the sentence transmitting and/or distributing regulated by Article 27 paragraph (3) of the ITE Law, up to now this article is still used by law enforcement officials to avoid a legal vacuum. In the 2015 RKUHP regarding defamation, there are several changes compared to the previous Criminal Code. The 2015 RKUHP regarding defamation is quite clear because it regulates in what media the act is carried out. It is known that defamation in the 2015 RKUHP is regulated in Book II, Chapter Meanwhile, the ITE Law has not yet received any changes to Article 27 paragraph (3). Therefore, in the future, the ITE Law needs to be clarified in what media these acts were carried out and their limitations, because to demand criminal responsibility, the actions carried out by the perpetrator must be very clear in what media. Defamation in the RKUHP and the ITE Law in the future In the future, it is hoped that the government will continue to maintain its existence because this article protects the honor and dignity of every person whose honor is insulted by others using criticism. Starting from this explanation, it can be said that defamation in the RKUHP still exists. Meanwhile, in the future of the ITE Law, the government should be able to create a special chapter that regulates defamation on social media and overcome the unclear norms of Article 27 paragraph (3) of the ITE Law (Immanuel & Sonbai, 2016).

Actions that are considered to contain the nature of injustice and based on their nature, should be prohibited and threatened with punishment by law are distributing, and/or making accessible electronic information, and/or electronic documents, which can disrupt the nature of the injustice. This act contains elements of a full offense if the offense that arises is an offense that is deemed to have been fully committed by the commission of a prohibited act. Thus, this offense is a formal offense or an offense with a formal formulation, namely defamation. Criminal sanctions for defamation are regulated in the ITE Law Chapter be punished with imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of IDR 1,000,000,000.00 (one billion rupiah) (Lengkong et al., 2023). The legal offense of defamation is regulated by several laws and regulations. Before discussing the rules for defamation of special honor, it would be better to first discuss general defamation, outlined from the most general rules by the principle of *lex specialis derogate lex generalis* (Djatmiko Andrie et al., 2023).

Defamation is an act or action that is considered a form of injustice before it is declared in law because it violates the rules of courtesy. There are several important notes related to the offense of defamation, namely:

1. First, the offense is very subjective. This means that the assessment of defamation depends on the person or party whose reputation is attacked. Therefore, defamation is a complaint offense that can only be processed by the police if there is a complaint from a person or someone who feels their good name has been defamed;
2. Second, defamation is an offense of dissemination. This means that substances containing pollution are distributed to the public or carried out in public by the perpetrator;
3. Third, the person who commits defamation by accusing someone of something that is considered an attack on the good name of another person or party must be allowed to prove the accusation.

The concept of criminal law theory that is often discussed is about criminal acts, criminal responsibility, and punishment. Next, what will be discussed is criminal liability. Criminal responsibility, or what can be called criminal responsibility, which leads to the punishment of the perpetrator, aims to determine whether a defendant or suspect is responsible for a criminal act that occurred or not. A person can be subject to criminal sanctions when they commit a criminal act and can be held criminally responsible. Only then can the person know what type of sanction is appropriate, how severe it is, and the length of time the punishment can be imposed. Accountability for criminal acts of defamation through social media can be imposed with imprisonment or fines following the provisions of the applicable law. This responsibility is imposed by the criminal elements that have been reviewed in the terms of criminal liability so that perpetrators of criminal acts of defamation through social media can be held accountable for their actions as decided in court. (Hutomo, 2021).

Conclusion

Defamation in the Criminal Code and the ITE Law has not yet received a clear explanation, but to ensnare perpetrators of good defamation, articles in the Criminal Code and the ITE Law can be used to avoid a legal vacuum. Paragraph (1): "If the person who commits the crime of defamation or written defamation is allowed to prove that what is alleged is true but does not prove it, and the accusation is made contrary to what is known, then he is threatened with defamation with a maximum prison sentence of four years." Paragraph (2): "Revocation of rights based on Article 35 No. 1–3 can be imposed." The crime of slander is not an independent crime, apart from the crimes of defamation and written defamation, but is a special form of defamation. The laws and regulations in Indonesia that regulate criminal acts of defamation through social media are based on the provisions regulated in the Criminal Code; the articles used to ensnare criminal acts of defamation are regulated in Chapter XVI concerning insults contained in Articles 310 to 321 of the Criminal Code; and the ITE Law is the *lex specialis* of the Criminal Code. It is known that Law No. 11 of 2008 concerning Information and Electronic Transactions, Article 27, Paragraph (3), regulates defamation on social media.

References

- Arifiyanto, M. N., & Pribadi, E. J. (2019). IMPLEMENTASI PENEGAKAN HUKUM TINDAK PIDANA RINGAN (Suatu Diskursus Tindak Pidana Miras Di Polres Jombang). *Perspektif Hukum*, 18(1), 23. <https://doi.org/10.30649/phj.v1i1.132>.
- Djarmiko Andrie, A., Sanjaya, R., & Hidayati Khoirul, R. (2023). Dampak Yuridis Anomali Penerapan Asas Lex Specialis Derogat Legi. *Nomos: Jurnal Penelitian Ilmu Hukum*, 3(1).
- Fitrah, F. A. (2021). Perbandingan Hukum terkait Pembentukan Pasal Penghinaan terhadap Peradilan, Perzinahan, dan Santet dalam RKUHP Indonesia. *SIGN Jurnal Hukum*, 2(2). <https://doi.org/10.37276/sjh.v2i2.93>.
- Hutomo, F. S. (2021). Pertanggungjawaban Pidana Pencemaran Nama Baik Melalui Media Sosial. *Jurist-Diction*, 4(2). <https://doi.org/10.20473/jd.v4i2.25783>.
- Immanuel, A., & Sonbai, K. (2016). PERTANGGUNGJAWABAN PIDANA PELAKU TINDAK PIDANA PENCEMARAN NAMA BAIK MELALUI MEDIA SOSIAL DALAM HUKUM PIDANA INDONESIA. *Pertanggungjawaban Pidana Pelaku Tindak Pidana Pencemaran Nama Baik Melalui Media Sosial Dalam Hukum Pidana Indonesia*.

- Lengkong, L. Y., Astuti, N. K., Januar, I., & Washington H, A. (2023). Penyuluhan Hukum Pidana Penyalahgunaan Media Sosial di Desa Dalihan Natolu Kecamatan Silaen Kabupaten Toba Sumatera Utara. *BANTENESE: JURNAL PENGABDIAN MASYARAKAT*, 5(1), 212–227. <https://doi.org/10.30656/ps2pm.v5i1.6756>.
- Lompoliuw, B. O. S. (2019). Analisis Penegakan Hukum Pidana Tentang Penghinaan Di Media Sosial Ditinjau Dari Undang-Undang ITE Dan Kuhp. *Lex Crimen*, 8(12).
- Luh Putu Yustika Riani Kusuma, Anak Agung Sagung Laksmi Dewi, & Luh Putu Suryani. (2022). Sanksi Pidana Pelaku Pencemaran Nama Baik Melalui Media Sosial. *Jurnal Konstruksi Hukum*, 3(2), 333–337. <https://doi.org/10.55637/jkh.3.2.4821.333-337>.
- Moeljatno. (1983). Perbuatan Pidana dan Pertanggungjawaban dalam Hukum Pidana. *Pidato Yang Diucapkan Pada Upacara Perayaan Dies Natalies Ke- 6 Universitas Gadjah Mada Tanggal 19 Desember 1965*.
- Suryani, R., & Suhendar, S. (2022). BIJAK MENGGUNAKAN MEDIA SOSIAL, AGAR TIDAK TERJERAT SANKSI HUKUM PIDANA UU ITE. *Abdi Laksana: Jurnal Pengabdian Kepada Masyarakat*, 3(1), 162–172.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).