

Law Enforcement of Criminal Defamation on social media

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Abstract. This paper aims to describe the law enforcement of criminal defamation in social media. A qualitative approach using normative juridical methods and assisted through descriptive analysis to find policies for criminalizing defamation offenses on social media. From the analysis carried out, two conclusions were obtained. First, the basis of justification for criminalizing defamation offenses is moral theory and individualistic liberal theory. The criminalization of defamation offenses is in line with the cultural values of the people and the religious values of the Indonesian nation, as well as the protection of the material and immaterial interests of the community.

Keywords: Good Name; social media; Law Enforcement; Crime

1 Introduction

Pancasila as the highest legal norm (grundnorm) must be understood not only as a source of law (source of law) for the Indonesian nation but also as a source of ethics (source of ethics) (Asshidiqie, 2014). The rights mandated by the constitution are stated in Article 28 E paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states "Everyone has the right to freedom of association, assembly, and expression." Freedom in expressing opinions can mean that freedom of expression has been guaranteed in a state free from pressure to express ideas or thoughts, both orally and in writing, and so on freely and responsibly following the provisions of the applicable laws and regulations [1]. Recognition and regulation of freedom of expression necessitate the freedom to seek, receive, and impart information in any way [2].

In the development of increasingly sophisticated technology, people are faced with information that helps ease human work. With the sophistication of the modern era, law enforcers are required to be careful and smart in handling cases, including crimes in cyberspace [3]. With freedom and convenience, people often forget that in expressing and expressing opinions, they must maintain behavior and ethics in interacting through social media, especially electronic media, thus triggering unlawful acts such as defamation, fraud, blasphemy, and so on. Judging from the Criminal Code, defamation is termed as an insult or blasphemy against someone [3].

Judging from the Criminal Code, defamation is termed as an insult or blasphemy against someone. The right to freedom of expression through any media is universal and fundamental. statement of one's opinion in the media can be subject to a criminal act, in this case, the provisions in Article 27 paragraph (3) of the ITE Law [3].

Law on Information and Electronic Transactions Number 11 of 2008 Article 27 paragraph (3) states "Everyone intentionally and without rights distributes and/or transmits and/or can be accessed by Electronic Information and/or Electronic Documents that have defamation content" with the explanation of Law Number 19 of 2016 article 27 paragraph (3) which states "the provisions in this paragraph refer to the provisions for defamation and/or slander as regulated in the Criminal Code" The article only distributes and does not transmit [4].

To guarantee order and regularity in the use of social media, the government responded by issuing Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (hereinafter referred to as UU ITE). From 2008 to the end of June 2018, 49.72 percent of the articles used as the basis for reporting were Article 27 paragraph (3) of the ITE Law which refers to the provisions for defamation. The peak use of this article occurred in 2016 with a total of 54 cases and in 2017 with a total of 32 cases reported. The case is subject to Article 310 of the Criminal Code [3].

There is one case where someone commits insults through social media, through private messages (not accessible to many people) but the perpetrator cannot be charged with Article 27 paragraph (3) of the Electronic Information and Transaction Law Number 11 of 2008, there is the word transmit which means the transmission is spreading one person to another. So there are doubts in law enforcement about defamation through social media [5].

Several previous studies regarding criminal defamation, including discussing defamation through information facilities and electronic transactions based on a review of the Constitutional Court's decision [6], Judges' Considerations in Defamation Cases Through Social Media (Study of Decision Number: 324/Pid./ 2014/PN.SGM) [7]. Adrian Leka's research (2018) discusses uncovering the history of defamation law in Albania, the difficulties of its application, issues regarding the legal status of defamation, and analysis of international civil law issues regarding what the law should apply to cross-border defamation claims in the media. (Mills, 2015), other research that also examines this is related to the legitimacy of the dissemination of information which in general can cause defamation to parties (Guntara, 2018), examines efforts to make policies in terms of overcoming criminal acts of defamation (Wibowo, 2012) [8][9][10].

"From the phenomena that have been described above, the authors are interested in proposing research on law enforcement of criminal defamation through social media to take action against these problems, the problems can be formulated as follows: how is the regulation of criminal acts of defamation through social media? how to enforce defamation law through social media?

2 Research Methods

This study uses a normative legal approach and an empirical legal approach. This type of normative legal research is a process to find a rule of law, various legal principles, and various legal doctrines to answer legal issues raised or faced. Empirical legal research approach, namely legal research whose data are obtained from the field or from primary data obtained directly from respondents who are determined according to the research problem.

This research is descriptive legal research, so that it describes systematically, factually, and accurately various matters relating to research problems. In this study, primary data and secondary data were used. Primary data is data obtained from the field, namely those obtained from respondents and which have been determined or selected. Secondary data include, among others, various legal books related to research problems, research results in the form of reports, and legal journals related to research problems.

Data analysis used descriptive-qualitative data analysis, namely the presentation of data and information which was then analyzed qualitatively. Qualitative descriptive is research that seeks to describe and interpret existing conditions or relationships, various opinions and consequences that occur, or trends that occur. This descriptive analysis technique is used to interpret and describe the data that has been obtained from the results of literature searches and documentation as well as data from the questionnaire results.

3 Results and Discussion

3.1 Setting the Crime of Defamation Through Social Media

In Indonesia, the general regulation (*lex generalis*) regarding defamation is in the Criminal Code which is a legacy from the Dutch colonial era known as *Wetboek van Strafrecht* (WvS). The Criminal Code has general principles that can be used as the basis for all criminal provisions. regulated outside the Criminal Code. (Aldyputra, 2012) Pollution itself is regulated in Article 310 of the Criminal Code, where pollution is divided into two, namely verbal pollution (*smaad*) and written pollution (*smaadschrift*) as follows:

Article 310

- 1) "Anyone who intentionally attacks someone's honor or reputation by accusing someone of an act, the intent of which is clear so that it is known to the public, is threatened with libel with a maximum imprisonment of nine months or a maximum fine of four thousand five hundred rupiahs."
- 2) "If this is done utilizing writing or pictures that are broadcast, displayed, and pasted openly, the threat of written libel is punishable by a maximum imprisonment of one year and four months or a maximum fine of four thousand five hundred rupiahs."
- 3) "It does not constitute libel or written defamation if the act is carried out in the public interest because it is forced to defend itself."

Article 311 paragraph (1) of the Criminal Code states: "Anyone who commits the crime of blaspheming or blaspheming in writing if he is allowed to prove the accusation, if he cannot prove it and if the accusation he commits is found to be untrue, he is punished for wrongly slandering with a sentence of slander. imprisonment for four years."

According to the Big Indonesian Dictionary, slanderous acts are words of lies or without truth that are spread to vilify people. Whereas in the science of criminal law, slander is blasphemy or blasphemy with a letter/writing but the person who commits the act is allowed to prove it and turns out to be unable to prove it [11].

The elements of the Criminal Acts of Defamation in the Formulation of the Criminal Code are as follows. Article 310 of the Criminal Code paragraph (1) has the following elements:

- a. Objective Elements ;
 1. Whoever; The word indicates a person who if that person is proven to have fulfilled all the elements referred to in Article 310 of the Criminal Code then he can be called a perpetrator.
 2. Attacking someone's honor or reputation; Namely, every word or action that offends self-respect and honor, and a person's good name, in this case, is a person (*natuurlijk persoon*), not an institution or business entity.
 3. Accusing something; This blasphemy act is done by accusing someone else of doing a certain act. It must be an act that is so precisely specified or so directed precisely and unequivocally so that it is not only explicitly stated what type of action it is but must also state the particular type of action of the type group in question and the place and time of the act is conducted.
- b. Subjective Elements;

1. With a clear intention (met het kenlijk doel) so that the accusation is made public (ruchtbaarheid te geven); It is clear in Article 310 of the Criminal Code that there is an element of "broadcasting accusations so that it is known to the public" this is very vulnerable to being manipulated by law enforcement officers (abuse of power) who receive reports of defamation. This element means that it does not have to meet the requirements that the accusation has been spread (spread) but is enough to be conveyed to someone likely to spread it to others. It is where it finally becomes dangerous because people will easily report other people because they have done defamation (insult).
2. On purpose (opzettelijk); according to the doctrine, actions are deliberately aimed at actions. That is, the perpetrator knows this action, the perpetrator is aware of saying his words that contain a violation of the honor or good name of others or other meanings: there is no need for what is called 'animus injuriandi'.

3.2 Law Enforcement of the Crime of Defamation Through Social Media

Criminal provisions in the ITE Law are regulated in Articles 45 to 52, but in this article, they are only limited to articles directly related to the issue of defamation. Regulations related to defamation carried out on social media are contained in Article 27 paragraph (3) in conjunction with Article 45 paragraph (3) of the ITE Law which contains provisions that state:

Article 27 (3)

"Every person intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have insulting and/or defamatory contents."

The article consists of a subjective element and an objective element as follows:

- a. The Objective Elements consist of:
 1. Deed: distribute; transmit; make it accessible;
 2. Against the law: without rights.
 3. The object is the electronic information and/or electronic document which contains insults and/or defamation.
- b. The subjective element is Error: on purpose.

Law enforcement of criminal acts of defamation through the internet is carried out by law enforcement officers, in this case, the police. However, the provisions regarding the duties and authorities are not explicitly formulated in the laws and regulations related to the Police agency. The judicial system in resolving criminal defamation cases through social media is as follows:

 1. The existence of Law number 19 of 2016 concerning Information and Electronic Transactions. Investigation of a term that reports or complaints of defamation through social media. Insults or defamation can be legally processed, therefore, as a complaint offense, only the person who is the direct "victim" may report an alleged libel.
 2. There are allegations of criminal events that have occurred. Elements that are categorized as defamation must be met are [13].
 - a. There are things or circumstances that are not true that are communicated via the internet.
 - b. The thing or condition concerning a person or a body.
 - c. The matter or condition is published to other people.
 - d. The publication causes harm to someone who is the object.
 3. There is an allegation of a criminal event that has occurred, Tempos delicty or the time of the incident to explain the time the criminal event occurred, with the existence of the criminal time will provide an understanding of when the criminal event occurred.

4. The place or location of the criminal act of defamation. The Investigative Institute for criminal defamation through social media has been running since the enactment of Law Number 11 of 2008 in conjunction with Law number 19 of 2016 concerning Information and Electronic Transactions.

To formulate the ideal formulation of the criminal act of defamation, it has been previously stated that there are 3 (three) main problems in criminal law, namely criminal acts, criminal and criminal liability, and punishment. Each of these sub-systems is a pillar of the entire punishment system building. This article only focuses on the problem of the ideal criminal act of defamation and becomes the basis for the formulation of future criminal law reforms, taking into account the following matters:

- a. Juridical Qualification for the Crime of Defamation

The weakness of the ITE Law which does not include juridical qualifications will have an impact on law enforcement. Quoting the opinion of Barda Nawawi Arief, that the explicit mention of the qualification of the offense (crime or violation), is not only giving a name, but also a "stipulation of juridical qualifications", both those that have material consequences/consequences (that is, they are bound by the general rules of the Criminal Code) as well as juridical consequences. formally (in the Criminal Procedure Code). The application of this juridical qualification is necessary because the criminal system outside the Criminal Code is an integral part of the entire criminal system. Thus, the function of the stipulation of juridical qualifications is to "bridge" the application of the general rules of the Criminal Code to matters that are not regulated in the laws outside the Criminal Code.

- b. In the formulation of a criminal act in the form of a violation, basically, there is no mention of intentional or negligent behavior, meaning that it is not stated whether the act was done intentionally or negligently. It is important for the Criminal Procedure Code because it does not need to be included in the indictment and does not need to be proven if it is not stated in the formulation.

General legal principles recognized by the people of nations Based on the criteria of the juridical basis above, freedom of opinion and expression in international general law principles is regulated in Article 19 of the Universal Declaration of Human Rights which states that:

(Unesco, 2018)

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and share information and ideas through any media and regardless of frontiers".

The investigation is a term that is meant by the meaning of *opsporing* (Dutch) and investigation (UK) or tactics or tactics (Malaysia). Therefore, the National Police is an institution that has the authority to investigate a criminal act following Article 1 point 2 of Law Number 8 of 1981 concerning the Criminal Procedure Code. [14].

The proof is a stage that plays a role in the process of investigation because it determines whether or not a criminal case can be continued. In the confirmation of the criminal act of defamation, the evidence is the goods used by the suspect in committing the crime, such as his account, email and password, cellphone, cellphone memory, cellphone number used and computer, witness testimony, expert testimony, letters, instructions and the defendant's statement [15].

The arrest is equal to arrest, while detention with detention time is not long in the case of being caught red-handed, the arrest only lasts between the arrest of the suspect and the nearest police station. that there is a change in the detention process for suspected criminal acts of

defamation, namely, detention of criminal acts of defamation cannot be carried out, no arrests or detentions are made because the imprisonment is given under 5 years [15].

Article 43 paragraph (3) i.e. Search and/or confiscation of electronic systems related to alleged criminal acts must be carried out with the permission of the chairman of the local district court. After the file is declared P21 (Notice that the results of the investigation are complete) by the Prosecutor's Office, the authority to conduct an investigation has been handed over to the Prosecutor's Office. This stage also ends the task of the Police. However, if the Prosecutor's Office states that the case file is P19 (Return of Case Files to be completed) [16].

Furthermore, the Panel of Judges allowed the Public Prosecutor to read out the indictment, following Article 143 of the Criminal Procedure Code to determine the terms of the indictment which contained:

- a. Full name, place of birth, age or date of birth, gender, nationality, place of residence, religion, and occupation of the suspect.
- b. A detailed, clear, and complete description of the criminal act charged with mentioning the time and place where the crime was committed.

4 Conclusion

Based on the results of research and discussion in this thesis, the authors conclude that:

Accessibility of electronic information that has defamation content is regulated in Article 27 paragraph (3) Number 11 of 2008 following Law Number 19 of 2016 amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, in the explanation of article 27 paragraph (3), but there is a legal conflict between the material article and the authentic interpretation wherein the explanation of article 27 paragraph (3) of Law Number 11 of 2008 states it is only by the article on defamation or insult and in the Criminal Code it means that the insult must be known by more than one person while in the material article there is an element of transmitting that is sent to one party (Tongat, 2018). the formulation of new regulation and on this basis, it is necessary that the judge's interpretation is not misused, it is necessary to have clear boundaries for the concept in the public interest. The idea of reformulating the crime of pollution in the future, both in the Draft Criminal Code and Special Laws outside the Criminal Code, is expected to no longer injure people's rights. This is where the role of law as a bridge is to create the principles of benefit and justice for the community so that the right to freedom of opinion and expression is protected in terms of delivering fair comments, criticisms, and public opinion.

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