

Online Fraud in Positive Law

Astrid Laena Putri¹, Zudan Arief Fakrulloh²
{idrislaenaofficial@gmail.com}

Universitas Borobudur, Jakarta, Indonesia¹²

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: Fraud; Online; Crime; Positive Law

1 Introduction

The introduction of virtual entertainment with complete innovative offices permits clients to speak with different clients who are far away, yet as though they are at a nearby distance. The presence of web-based entertainment additionally gives numerous accommodations, going from the simplicity of trading messages and data to the convenience of a user who wants to publish his work so that others can know, removing generational boundaries and expanding the discourse that can be exchanged. Social media has also played a broad role in the economic and trade fields with its ability to support product marketing activities to buying and selling activities [1].

Since the web has turned into a need for certain individuals, the most common way of trading through the web is no more bizarre. Since the web isn't just consumed by specific gatherings like ages ago yet has entered the lower working class of society. Where the most common way of trading on the web/online business is called online business or electronic trade, essentially part of electronic business [2].

Electronic exchange (E-business) is an exchange contact among venders and purchasers by means of web media, where for requesting, conveyance to how the installment framework is imparted through the web. With online business, each exchange did by the two gatherings included (vender and purchaser) doesn't need an up close and personal gathering to arrange [3]. The internet-based business makes it more straightforward for fraudsters to complete their activities.

Extortion with the method of selling by means of the web of late, by guaranteeing minimal expense costs available so it makes many individuals keen on getting it, albeit some web-based business misrepresentation has been uncovered, many individuals have not made a move against

these activities due to the law. It is on the grounds that internet-based extortion casualties are hesitant to answer to policing fake wrongdoings are sorted as conventional offenses.

In social life, there is often noise and violations of the law, one of which is online buying and selling fraud. This online buying and selling fraud case occur along with the development of technology, which facilitates all human activities. The online buying and selling fraud model usually use the internet to attract people's attention at a relatively cheap price, so that people are interested in buying it. The world of the internet or online can be beneficial and make it easier for people to relate, transact, and so on. However, some misuse the internet, so the law is enacted to provide a deterrent effect for people who abuse the internet.

Cybercrime is a wrongdoing that uses the advancement of PC innovation, particularly the web. The web that gives the internet its computer-generated simulation offers people different expectations and accommodations. Nonetheless, behind that, an issue emerges as a wrongdoing called cybercrime, both the PC network framework itself is the objective and the actual PC is a way to perpetrate violations. Of course, if we see that information itself has become a commodity, then efforts to protect these assets are very necessary. One of the protection efforts is through criminal law, both with penal and non-penal facilities [4].

The legitimate game plan in regards to the crook demonstration of misrepresentation is as yet restricted in the utilization of the Criminal Code and depends on Law Number 11 of 2008 concerning Information and Electronic Transactions. Policemen frequently experience troubles and snags in trapping culprits of fake violations. This fake wrongdoing can be accused of Article 378 of the Criminal Code as a lawbreaker demonstration of extortion or Article 28 passage (1) of the ITE Law concerning the guideline with respect to the spread of bogus and deluding news that hurts buyers [5]. Or it can be charged based on both articles at once, namely, 378 of the Criminal Code Article 28 paragraphs (1) and Article 45 paragraph (1) of Law No. 11 of 2008 concerning fraud and or ITE crimes [6].

The criminal law (KUHP) furthermore, regulation Number 19 of 2016 concerning data and electronic exchanges give legitimate authorizations against the culprits of this false wrongdoing. For cases like this, it will be authorized utilizing these two articles, in particular as follows:
Article 378 of the Criminal Code:

Any individual who with the aim to help himself or someone else unlawfully, by utilizing a misleading name or bogus respect, by double dealing, or by a progression of untruths actuates someone else to surrender something to him, or to give an obligation or discount an obligation, is compromised with misrepresentation with a greatest detainment of 4 years [7].

Article 28 passage (1) of Law Number 19 of 2016

Everybody purposefully and without freedoms gets out bogus and deceiving word that outcome in shopper misfortunes in electronic exchanges [8]. 1.1 In view of the depiction of the foundation above as expressed by the creator, it just so happens, the fast improvement of science and innovation is generally followed or joined by the advancement of progressively complex and high-level wrongdoings or criminal demonstrations. It is set apart by the fast advancement of the usual methodology and the devices utilized. Consequently, it is important to find out about this internet-based business extortion wrongdoing and what guidelines are utilized in endeavors to conquer it by policing. Law Enforcer

A law enforcer is someone who is authorized by laws and regulations to carry out investigations, prosecutions, prosecutions, and defenses.

a. Police

Police personnel (police) are law enforcers based on the provisions of Law No. 2 of 2002 concerning the Indonesian National Police, especially the section Considering letters a and

- b; Article 1 number 1, number 5, and number 6; Section 2; Article 3; Article 4; and Article 5. From the provisions of the articles above, in essence, police personnel are part of the police force, which is a unit, one of whose functions is law enforcement, and its existence aims, among other things, to create order and the rule of law.
- b. Attorney
Prosecutors' personnel (prosecutors) both as structural, functional, and public prosecutors are law enforcers under the command of the Attorney General based on the provisions of Law No. 16 of 2004 in particular Article 1, Article 2, Article 33, and Article 35.
 - c. Judge
The judicial power carries out the function of law enforcement which is carried out by the Supreme Court and the judicial bodies below it, where judges carry out their primary duties and functions. "Judicial power is the power of an independent state to administer the judiciary to enforce the law...etc," says Article 1 of Law No. 4 of 2004 concerning Judicial Power.
 - d. Advocate
Advocates are law enforcers but are unincorporated in judge Saripin's list of law enforcers in the consideration of his decision. "Advocates have the status as law enforcers, free and independent guaranteed by law and legislation," stated Article 5 of Law No. 18 of 2003 concerning Advocates [9]

1.2 Criminal Action

The term criminal act is a translation of "strafbaarfeit," in the book of criminal law there is no explanation of what exactly is meant by strafbaar feit itself. Usually, criminal acts are synonymous with delict, which comes from the Latin word delictum. The Indonesian dictionary is listed as follows:

"Delict is an act that can be punished because it is a violation of the criminal law."

Based on its formulation, the offense (strafbaar feit) contains the following elements:

- a. A human act
- b. The act is prohibited and is threatened with punishment by the law
- c. The act was done by someone who could be held accountable. A criminal act is an act that is prohibited by law and is threatened with punishment, where the meaning of the act here is in addition to active acts (doing something that is prohibited by law) also passive acts (not doing something that is required by law) [10].

After knowing the definition and a deeper understanding of the crime itself, then in the crime there are elements of a crime, namely:

- a. Objective Element
Elements that are out of character. The element that has to do with the circumstances, that is, in the circumstances in which the actions of the perpetrator must be performed.
- b. Subjective Element
Elements that are present or attached to the self of the character, or that are connected with the self of the character and included in it everything that is contained in the heart.

1.3 Fraud

The lawbreaker demonstration of extortion in its chief structure as controlled in Article 378 of the Criminal Code, comprises of the accompanying components:

- a. Subjective Element: With the intention (met het oogmerk) to benefit oneself or others against the law.

b. Objective elements:

- 1) Whoever:
- 2) Move another person or the other person:
 - hand over something
 - enter into a debt alliance
 - cancel a receivable.
- 3) By using:
 - fake name
 - false nature
 - tricks
 - series of false words

To be able to prove someone has committed fraud, the judge must conduct an examination, namely whether it is true that the defendant has:

- a. Proven to meet the element of intent (Opzet)
- b. Proven to meet all elements of the crime of fraud.

Whoever this word indicates a person, if he fulfills all the elements of the crime of theft as regulated in Article 378 of the Criminal Code, then he can be called the perpetrator or father of the crime of fraud. Motivating other people (iemand bewegein) Bewegein in addition to being interpreted to move, some experts also use the term persuade or move the heart. The Criminal Code does not provide a clear explanation of the term bewegen. Moving here is defined as the act of influencing or influencing others, the object of which is one's will. What is clear is that the way is not right, because if it is done in the right way, how could other people (victims) be affected?

Crime as a social phenomenon that occurs on earth may never end in line with developments and social dynamics that occur in society. Both in terms of quality and quantity, the problem of this crime seems to continue to grow and will never subside, the development creates unrest for the community and the government [11]. Wrongdoing is a type of freak conduct that generally exists and is inborn in each type of society, as in criminal demonstrations will continuously exist, for example, ailment and passing that generally rehashes the same thing similarly as with the seasons that continually change from one year to another.

Criminal regulation as an instrument or means for tackling these issues is supposed to give the right arrangement. Thusly, the advancement of regulation and criminal regulation, specifically, should be additionally improved and sought after in a coordinated and incorporated way, including the codification and unification of explicit legitimate fields along with the arrangement of new regulations that are critically expected to answer every one of the difficulties of increasing crime and the development of criminal acts.

Various kinds of criminal acts occur in society, one of which is the crime of fraud, even today are a lot of criminal acts of fraud with various forms and developments that point to the increasingly high level of intellectuality of the increasingly complex crime of fraud. The fraudulent activity is always there and tends to increase and develop in society along with economic progress, even though the fraud is viewed from any angle is very despicable, because it can cause mutual distrust and consequently damage the order of people's lives.

The Criminal Code itself in article 378 confirms that a person who commits a crime of fraud is threatened with criminal sanctions. However, it is still considered ineffective in enforcing violators, because, in the enforcement of criminal law, it is not enough only to regulate an act in law, but also legal apparatus as implementers of the provisions of the law and the authorized institution to handle a crime such as police, prosecutors, and courts.

1.4 Positive Law

Positive Criminal Law is *Stafrecht* in Dutch, Criminal Law in English, in the legal dictionary it says criminal law is “legal regulations regarding crime; a law that includes requirements and prohibitions and for violators will be subject to punishment (criminal) against it.

1.5 Islamic Law

Etymologically Islam comes from the word *salama* which means safe or it can also mean surrender. While the word law etymologically comes from the Arabic root, namely *hukm / alhukm* which means to prevent, or refuse, namely preventing injustice, preventing injustice, preventing persecution, and rejecting other forms of evil. The term law in Islam has two meanings, namely *shari'a*, and *fiqh*, *shari'a* consists of the revelation of Allah and the *sunnah* of the Prophet Muhammad, while *fiqh* is the understanding and result of understanding the *shari'a* [12].

The term "Islamic law" is a uniquely Indonesian term, as a translation of *al-fiqh al-islami* or in certain contexts from *al-shari'ah al-Islami*. This term in western legal discourse is used in Islamic law. In the Qur'an and Al-Sunnah, the term *al-hukm al-islam* is not found. What is used is the word *shari'ah* which is then translated into the term *Fiqh*. *Fiqh* is a science that explains all the laws that are drawn from *tafsihili* arguments (*verses, sunnah-ijma', and qiyas*) [13].

2 Research Methods

For this research, the author utilizes a standardizing lawful exploration technique with a subjective methodology, which is a request procedure that underlines the quest for importance, figuring out, ideas, attributes, side effects, images, and portrayals of a peculiarity; centered and multi-strategy, normal and comprehensive, focusing on quality, utilizing a few strategies and introduced narratively [14].

In gathering the material utilized in this review, the creator utilizes a standardizing legitimate exploration type (lawful guideline) which puts the law as a structure or arrangement of standards. The standard framework being referred to is the standards, standards, and rules of legal guidelines, court choices, arrangements, and tenets [15]. So, this research uses a library research method (library study) with a qualitative approach in this study also uses a comparative approach, in which in this study the author compares positive law, namely the article contained in the Criminal Code regarding crimes against online business fraud with Islamic criminal law [16].

The research sources consist of two sources including primary legal materials and auxiliary lawful materials. Essential legitimate material is information that is definitive, implying that it has authority. Essential legitimate materials comprise of regulation, official records or minutes in the creation of regulation, as well as meetings with respect to the issues to be raised. The optional legitimate materials are generally distributions on a regulation that are not official archives, distributions on regulation incorporate course readings, lawful word references, and legitimate diaries [16].

The information got from the examination results are then ordered. From that point forward, the author dissects utilizing subjective techniques, specifically utilizing legitimate understanding, lawful thinking, and reasonable argumentation, then the information is presented in narrative form so that it becomes clear and understandable sentences [14].

3 Results and Discussion

3.1 Factors Causing Online Business Fraud

The factors that cause online business fraud include:

- a. Lack of public legal awareness is awareness of what we should or should not do about the rules or laws that apply in society. Currently, the public's legal awareness is still considered lacking about cybercrime activities. It is due to a lack of understanding related to cybercrime, both in terms of actions and effects. Many people are less or not aware of the actions taken related to activities in cyberspace. Starting from rampant acts of defamation to acts of hijacking other people's social accounts. These small acts are considered normal and commonplace in society, even tend to be a joke.
- b. Through an understanding of cybercrime, the community plays an important role in efforts to combat cybercrime. Without an understanding of cybercrime, perpetrators will be rampant because people do not know what they are doing until in the end they are deceived, their accounts are burglarized and various other losses.
- c. Security Cybercrime perpetrators will certainly feel safe when carrying out their actions that are none other than the media used in carrying out crimes in the form of internet access which is commonly used anywhere, whether it is a closed or open place. The lack of a security system on the internet makes anyone free to express themselves in cyberspace without the need for restrictions to encourage the growth of cybercrime.

3.2 Legal Sanctions for Online Buying and Selling Fraud according to Positive Law

Regulation Number 11 of 2008 concerning Information and Electronic Transactions, Internet purchasing, and selling exchanges are remembered for exchanges that utilization the electronic arrangement of the Internet, so in the legitimate language, it is called electronic exchanges. The meaning of electronic exchanges in article 1 of the ITE Law thing 2 expresses that electronic exchanges are: "legal acts performed using computers, computer networks, and/or other electronic media" [17].

The criminal acts of fraud under article 378 of the Criminal Code are: for a maximum of four years and a maximum fine of nine hundred thousand rupiahs" [18].

With the criminal sanction of article 45 paragraph (2) of the ITE Law that "every person who meets the elements as referred to in article 28 paragraph (1) and (2) shall be punished with imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp 1,000,000,000.00 (one billion rupiahs)" [19].

In many cases of fraudulent crime due to electronic transactions, criminals as sellers open counterfeit shops whose contents are full of pictures of engineered goods, then the perpetrators offer goods that are sold at very cheap prices (the price of goods is lower than the normal price of the goods sold), on the market). After the perpetrator got a buyer who was tempted by the low-cost price of the goods, the perpetrator ordered to transfer the money first, after the buyer did what the perpetrator asked, then the goods were not sent and the perpetrator left a trail by changing the cellphone number and deleting the online stall and the perpetrator's perspective as a buyer, rare cases of fraud in terms of perpetrators as buyers that occur in Indonesia.

Buying and selling transactions on the internet are only based on mutual trust, this case occurs because no written deal and buy arrangement can reinforce the gatherings as proof with the goal that wrongdoings emerge from one party in web based trading exchanges. Under the watchful eye of the Law on Information and Electronic Transactions, the handling of e-commerce cybercrimes was difficult to investigate because of the lack of elements of regulating this crime which was regulated in Article 378 of the Criminal Code, then the police were

difficult to find evidence in catching perpetrators of online business fraud because there are no witnesses in the sale and purchase transaction, the sale and purchase agreement is only based on mutual trust with an oral sale and purchase agreement so even though the police have arrested the perpetrator with evidence of an account book with a sum of money transferred by the victim, they still have not been able to prove the suspect. as perpetrators of criminal acts, even though in the Criminal Procedure Code article 5 paragraph (1) part A point 2, during the examination the police are obliged to look for real evidence that the suspect has committed a crime.

To bring the case to proceed to the prosecution stage, at least the investigators must find at least 2 (two) valid pieces of evidence. So that if the investigator cannot find at least 2 (two) pieces of evidence, then according to Article 7 paragraph (1) point 1 of the Criminal Procedure Code, the investigator can terminate the investigation by issuing a warrant for the termination of the investigation (SP3).

4 Conclusion

- a. The wrongdoing of extortion as per article 378 of the Criminal Code is: "Whoever to help himself or someone else illegal, by utilizing a misleading name or a progression of falsehoods, moves someone else to surrender something to him or to give an obligation or compose off a receivable and imprisonment for four years and a fine of nine hundred thousand rupiahs. Then the criminal act of fraud due to this online transaction resulted in consumer losses on the internet media, the criminal act of fraud in article 378 of the Criminal Code is connected (juncto) with article 28 passage (1) of Law no. 11 of 2008 concerning data and electronic exchanges. With criminal assents in Article 45 passage (2) of the ITE Law: "Each and every individual who satisfies the components as alluded to in Article 28 section (1) and (2) will be rebuffed with detainment for a limit of 6 (six) years or potentially a fine of a greatest of Rp. 1.000.000.000,00 (one billion rupiah).
- b. In Islamic law, the crime of online buying and selling is included in the ta'zir finger. Jarimah ta'zir is a criminal act whose form and legal threat are determined by the authorities as lessons for the perpetrators (ta'zir means: teachings or lessons).

References

- [1] Agus Rusmana, "Penipuan Dalam Interaksi Melalui Media Sosial," vol. 3, no. 2, pp. 187–188, 2015.
- [2] Niniek Suparni, *Cyberspace Probelamtika & Antisipasi Pengaturannya*. Jakarta: Sinar Grafika, 2009.
- [3] Zulkifli damanik, "Kekuatan Hukum Transaksi Jual-Beli Secara Online (E-commerce)," universitas simalungun, 2012.
- [4] "Cybercrimedanpenanggulangannya." [Online]. Available: [http://jhohandewangga.wordpress.com/2012/08/01/cybercrime-dan-penanggulangannyadengan-penegakan-hukum-pidana-dan-undang-undang-nomor-18-tahun2008-di-indonesia/\(diakses%0A%0A9%0AJuni%0A2013\)%0A](http://jhohandewangga.wordpress.com/2012/08/01/cybercrime-dan-penanggulangannyadengan-penegakan-hukum-pidana-dan-undang-undang-nomor-18-tahun2008-di-indonesia/(diakses%0A%0A9%0AJuni%0A2013)%0A).
- [5] "Pasal 378 KUHP tentang tindak pidana penipuan."
- [6] "Pasal 45 ayat (1) UU No 11 Tahun 2008 tentang penipuan dan atau kejahatan ITE."
- [7] "Kitab Undang-Undang Hukum Pidana (KUHP)."
- [8] "Undang-Undang Nomor 19 Tahun 2016 Tentang Informasi dan Transaksi Elektronik."
- [9] M. S. Teguh prasetyo, S.H., *Hukum pidana*. Jakarta: PT Rajagrafindo persada, 2015.
- [10] Arif Gosita, *Masalah Korban Kejahatan*. Jakarta: Akademika Pressindo, 1983.
- [11] M. . Abdul ghofur ansori, S.H., *Hukum islam*. Yogyakarta: Kreasi total media, 2008.
- [12] Muhammad hasbi ash shiddieqy, *Hukum-hukum fiqih islam*. Yogyakarta: Pustaka islam, 1960.
- [13] A. Muri Yusuf, *Metode Penelitian; kuantitatif, Kualitaitaif, dan Penelitian Gabungan*. Jakarta: Prenada Media, 2012.

- [14] dan J. A. Fahmi M Ahmadi, Metode Penelitian Hukum. Ciputat Lembaga Penelitian UIN Jakarta, 2010.
- [15] Peter Mahmud Marzuki, Penelitian Hukum. Jakarta: Kencana Prenada Media, 2014.
- [16] “Pasal 1 butir 2, undang-undang tentang informasi dan transaksi elektronik.” .
- [17] “Kitab Undang-Undang Hukum Pidana, Bab XXV, Pasal 378.” .
- [18] “Undang-Undang No. 11 Tahun 2008 jo Undang-Undang No. 19 Tahun 2016 Tentang Informasi Dan Transaksi Elektronik, Pasal 28 ayat (1).” .