

## Legal Review of The Criminal Action of Defamation Through Social Media Based on The Values of Justice

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**Abstract.** *The development of information technology has brought significant changes in the way people interact, especially through social media. However, the ease of expressing opinions in digital spaces has also given rise to new legal problems, one of which is the crime of defamation. This study aims to analyze how positive legal provisions in Indonesia regulate defamation through social media and how the application of these laws can reflect the values of justice. This study uses a normative legal approach with secondary data in the form of laws and regulations, literature, and related court decisions. Based on the results of the analysis, it was found that the provisions in Article 27 paragraph (3) of the ITE Law often give rise to multiple interpretations and have the potential to violate the principle of substantive justice. Law enforcement against cases of defamation through social media has not fully considered the context and motives of the perpetrators, and has not been optimal in protecting the rights of victims and suspects. In many cases, a repressive approach is preferred over a restorative approach. Therefore, there needs to be legal reform and reinterpretation of norms so that the law is not only legalistic, but also reflects the values of social justice. The conclusion of this study confirms that the regulation and application of law against criminal acts of defamation on social media must be aligned with the principles of justice, proportionality, and protection of human rights. Regulatory reform and digital education for the public are strategic steps to achieve a fair and balanced legal system in the digital era.*

**Keywords:** Defamation; Justice Values; Social Media.

### 1. Introduction

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia emphasizes that Indonesia is a country based on law. Consequently, all aspects of community life are regulated and limited by applicable legal norms, both in the social, political, cultural, economic and other fields.<sup>1</sup> Law functions as an instrument to regulate social behavior to

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<sup>1</sup>Bobi Aswandi and Kholis Roisah. "The rule of law and Pancasila democracy in relation to human rights (HAM)." *Journal of Indonesian Legal Development* 1.1, (2019), pp. 128-145.

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prevent disputes and ensure social order.<sup>2</sup>Therefore, every problem that arises in community life must be resolved based on applicable legal provisions. However, in practice, there are still many violations of legal norms that show a discrepancy between applicable rules and community compliance in implementing them.

The rapid development of information technology has brought about major changes in the social life of society, including in Indonesia. This progress has had a significant impact on various sectors, especially in the field of communication and information dissemination.<sup>3</sup>In the era of globalization, information technology not only makes work activities easier, but also allows communication to be carried out quickly and without limits through various digital platforms. One of the results of this technological development is the emergence of various social networking sites or social media that allow interaction without geographical or temporal barriers.<sup>4</sup>

The development of digital technology has brought significant changes in human communication patterns, with social media becoming one of the main platforms in daily interactions. Social media allows individuals to share information quickly, reach a wide audience, and express their opinions freely. Platforms such as Facebook, Twitter, Instagram, and TikTok have become the main means for people to communicate, convey aspirations, and access various information.<sup>5</sup>This ease of disseminating information has created a dynamic digital environment, but has also given rise to various challenges, including the potential for abuse in the form of defamation.

Social media has become the primary means for people to communicate, share information, and express opinions. Freedom of expression facilitated by digital technology has positive impacts in various aspects, such as increasing public participation in social and political issues, and ease of access to information.<sup>6</sup>However, on the other hand, this freedom can also be misused for negative purposes, such as spreading false information, slander, or defamation. Misuse of social media for purposes contrary to the law can result in legal consequences for the perpetrator and losses for the victim.

Freedom of expression on social media provides major benefits, such as increasing public participation in various social and political issues, accelerating the spread of information, and strengthening social networks between individuals.<sup>7</sup>However, on the other hand, this freedom also has negative impacts, especially when the information disseminated contains elements of slander, hoaxes, or insults that can harm others. The speed at which an upload goes viral often results in great losses for the victim before the truth can be

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<sup>2</sup>Naufal Kevyn Andiarofi. "Advice in the Perspective of Law and Society: Analysis of Conflict of Interest and Crimes Against Humanity." *Multidisciplinary Journal of Academic Sciences* 1.3 (2024): 447-458.

<sup>3</sup>Nazwa Salsabila Lubis and Muhammad Irwan Padli Nasution. "The Development of Information Technology and Its Impact on Society." *Cohesion: Journal of Science and Technology* 1.12 (2023): 41-50.

<sup>4</sup>I Subagio, Komang Adil and Asnah Marlina N. Limbong. "The Impact of Information and Communication Technology on Educational Activities." *Journal of Learning and Technology* 2.1 (2023): 43-52.

<sup>5</sup>Adela Defriyanti and Nur Elisa Fitri. "A qualitative approach in studying social media and consumption patterns of the millennial generation." *Multidisciplinary Journal of Religion and Social Sciences* 1.1 (2024): 10-19.

<sup>6</sup>Faisal Fadilla Noorikhshan, et al. "Internet Dynamics, Social Media, and Politics in the Contemporary Era: A Review of State-Society Relations." *Journal of Political Issues* 5.1 (2023): 95-109.

<sup>7</sup>Ahmad Fauzy and Ety Ratnawati. "THE IMPACT OF SOCIAL MEDIA ON SOCIAL CHANGE IN SOCIETY." *Nusantara Intellectual and Scholars Journal* 1.6 (2024): 10571-10581.

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verified.<sup>8</sup>Therefore, legal regulation is important in balancing freedom of expression with the protection of individual rights so as not to become victims of defamation on social media.

The development of information and communication technology has brought significant progress in various aspects of life, including in terms of social interaction.<sup>9</sup>However, on the other hand, this progress also raises various new challenges, one of which is the rampant cases of defamation that occur in the digital world. Defamation in the digital era usually occurs through the dissemination of information containing elements of insults, slander, or baseless accusations that can harm a person's reputation.<sup>10</sup>This can happen through various social media platforms, such as Facebook, Twitter, Instagram, or instant messaging applications such as WhatsApp and Telegram.

The increasing cases of defamation in the digital world are influenced by several factors, one of which is the ease of spreading information quickly and widely. Without adequate verification, someone can easily upload or share information that is not necessarily true, thus causing negative impacts on the targeted party. In addition, the anonymity offered by cyberspace often makes perpetrators feel freer to commit unlawful acts without fear of real legal consequences.<sup>11</sup>

The impact of defamation in the digital world is very significant, not only in the legal aspect, but also in the social and psychological aspects for the victim. Socially, the victim can experience a decline in image or reputation which has an impact on their personal and professional life.<sup>12</sup>In some cases, defamation can even lead to job loss, damaged social relationships, and even exclusion from society. Psychologically, victims often experience stress, depression, and anxiety disorders due to pressure from public opinion formed through social media.

Defamation in Indonesia has been regulated in various laws and regulations, both in the Criminal Code (KUHP) and in the Republic of Indonesia Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE). This regulation aims to protect a person's honor and reputation from detrimental actions due to the spread of false or slanderous information.<sup>13</sup>Along with the development of technology and social media, the rules regarding defamation have changed and been adjusted to face new challenges in the digital world.

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<sup>8</sup>Vanessa Stefanie Virginia. "Legal Protection of the Spread of Information as Defamation on TikTok Social Media." *SUPREMASI: Journal of Law* 5.2 (2023): 134-143.

<sup>9</sup>Daryanto Setiawan. "The impact of the development of information and communication technology on culture." *SIMBOLIKA JOURNAL Research and Learning in Communication Study* 4.1 (2018): 62-72.

<sup>10</sup>Erwin Asmadi. "Formulation of Crimes and Punishment for Criminal Acts of Defamation on Social Media." *De Lega Lata: Journal of Legal Studies* 6.1 (2021): 16-32.

<sup>11</sup>Fini Nuralifa. "Law Enforcement Against Criminal Acts of Defamation Through Social Media Linked to Article 27 Paragraph (3) Juncto Article 45 Paragraph (3) of Law Number 19 of 2016 Concerning Information and Electronic Transactions." *Jurnal Kebaruan* 1.1 (2023): 25-32.

<sup>12</sup>Fajar Andi Sutanto, Elza Qorina Pangestika, and Desy Yulianti. "INVESTIGATION OF CYBERBULLYING CRIMINAL ACTIONS AGAINST CHILDREN IN SCHOOLS IN SLEMAN DISTRICT." *Hukum Dinamika Ekselensia* 6.4 (2024).

<sup>13</sup>Zariah Nur. "Implementation of the Electronic Transactions Law (UU ITE) Reviewed Based on the Criminal Code (KUHP) Against Community Freedom of Expression on Social Media." *Smart Law Journal (JSH)* 1.1 (2022): 223-228.

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In Law Number 1 of 2023 concerning the Criminal Code, defamation is regulated in Article 433. This article stipulates that anyone who verbally attacks the honor or good name of another person by accusing something with the aim of making it publicly known can be punished with a maximum imprisonment of nine months or a maximum fine of category II (IDR 10,000,000.00). If defamation is carried out in the form of writing or images that are broadcast, shown, or posted in a public place, then the act falls into the category of written defamation and can be subject to a maximum imprisonment of one year and six months or a maximum fine of category III (IDR 50,000,000.00).

In addition, in the context of the digital world, defamation is also regulated in Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE) which has been updated by Law Number 1 of 2024. Based on Article 27 paragraph (3) of the ITE Law, anyone who intentionally and without the right distributes, transmits, and/or makes accessible electronic information or electronic documents that contain insults and/or defamation may be subject to criminal sanctions. This provision is clarified in Article 27A of the ITE Law, which states that defamation through an electronic system can be punished with a maximum imprisonment of two years and/or a maximum fine of IDR 400,000,000.00 as regulated in Article 45 paragraph (4) of the ITE Law.

From the law enforcement side, there are several challenges in handling defamation cases on social media. One of the main challenges is the often subjective interpretation of the law, especially in determining the boundaries between defamation and freedom of expression. In addition, the process of providing evidence in digital-based defamation cases is also a challenge in itself, considering that electronic evidence can be easily manipulated or deleted by the perpetrator. It is also not uncommon for defamation cases on social media to raise debates regarding the use of articles in the ITE Law, especially because these provisions are often considered open to multiple interpretations and have the potential to threaten freedom of expression.

Legal studies on defamation on social media are very important considering the increasing cases involving the dissemination of information that is slanderous or detrimental to a person's reputation. Existing regulations, such as the Criminal Code and the ITE Law, have indeed regulated defamation in the digital world, but their implementation still faces various challenges. Further research is needed to analyze whether the applicable legal provisions are effective enough in providing legal protection for victims while maintaining a balance with freedom of expression. In addition, research can provide a deeper understanding of the criminal aspects of defamation cases, including the boundaries that distinguish criticism, opinion, and insults that can be subject to criminal sanctions.

One of the problems in implementing legal regulations related to defamation on social media is the potential for multiple interpretations in the articles used. Several cases show that articles in the ITE Law, especially Article 27A and Article 45 paragraph (4), are often used as tools to silence legitimate criticism, especially in the political and social realms. In addition, there are challenges in proving defamation cases in the digital world, especially in tracing electronic traces, ensuring the authenticity of evidence, and enforcing the law fairly for all parties. Therefore, more in-depth legal research is needed to propose revisions or harmonization of regulations to be more in line with technological developments and

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human rights principles, so that the law can be applied proportionally, fairly, and does not result in excessive criminalization of public expression.

One concrete example of the rampant cases of defamation through social media can be seen from the report filed by a public figure, Olla Ramlan, to the Metro Jaya Regional Police (Polda). In the report that has been registered with the number LP/B/6234/X/2024/SPKT POLDA METRO JAYA dated October 15, 2024, Olla Ramlan reported a number of social media accounts, including Instagram and TikTok accounts with the username *contraflow.free*, for alleged defamation and slander carried out through electronic media.<sup>14</sup>

The report was filed on the legal basis of Article 27A in conjunction with Article 45A paragraph (4) of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE), and/or Article 311 of the Criminal Code (KUHP). In his complaint, the reporter stated that he felt morally and reputationally harmed due to statements containing elements of insults, such as accusations of "parasite", "unsellable", and various other forms of insults conveyed in the uploads on the social media account. The reporter has also shown initial evidence in the form of screenshots of uploads suspected of containing elements of defamation. The police stated that the report would be followed up with a process of in-depth examination of the statements of the reporter and relevant witnesses.

## 2. Research Methods

This study uses an empirical legal method, which is a legal research approach that not only examines written legal norms, but also observes the application of the law in real practice in society. This approach emphasizes the study of how law enforcement officers such as police, prosecutors, and judges apply legal provisions regarding defamation through social media, and how society as a legal subject responds to these provisions.

This research is also equipped with a comparative approach to Islamic law, in order to see how the Islamic perspective responds to insults or defamation, both from a moral perspective and the provisions of *jinayah* fiqh. It is hoped that this approach can broaden the horizons of analysis and offer alternative solutions that are more contextual to the local and religious values of Indonesian society

## 3. Results and Discussion

### 3.1. Current Law Enforcement Regulations for Criminal Defamation via Social Media

Defamation is a form of violation of a person's honor or dignity that is explicitly prohibited by criminal law. In the context of social media, defamation has undergone a significant transformation due to the digitalization of communication that allows for the instant, widespread, and often uncontrolled dissemination of information. Social media such as Facebook, Instagram, Twitter (X), and TikTok have become the main place for people to express their opinions or convey criticism, but often these expressions turn into insults or accusations that damage a person's reputation. The characteristics of social media that allow

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<sup>14</sup>Wildan Noviansah, "Olla Ramlan Reports Social Media Account to the Police for Defamation and Slander", *detik news.com* viewed on April 15, 2025: <https://news.detik.com/berita/d-7590570/olla-ramlan-polisikan-akun-medsos-soal-pencemaran-nama-baik-dan-fitnah>



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for anonymity, rapid distribution, and minimal content filtering increase the potential for digital defamation. Digital spaces that are public but not directly limited by social norms often blur the line between freedom of expression and violations of the rights of others. Social media users are also not always aware that their actions in cyberspace have real legal consequences. This situation encourages the need for legal regulations that can reach and effectively address defamation in the digital realm.

The provisions of the Indonesian national criminal law have basically regulated defamation for a long time through articles in the Criminal Code (KUHP). Article 310 of the Criminal Code contains provisions regarding defamation committed by conveying accusations to third parties openly, which can damage a person's honor or good name. In addition, Article 311 of the Criminal Code emphasizes that if the accusation is made with bad intentions and cannot be proven true, then the perpetrator can be subject to criminal penalties on the basis of slander. These regulations are more directed at conventional acts carried out directly in social interactions in the real world. However, when defamation occurs in the digital world, it is necessary to examine a more relevant and responsive legal approach to this new medium. The permanent nature of digital content and unlimited audience reach make damage to a person's reputation more severe than verbal insults in physical spaces. This causes conventional criminal law provisions to be considered inadequate to address the complexity of defamation problems on social media.

The regulation that specifically regulates criminal acts in the digital space is Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE), which was later updated by Law Number 19 of 2016. In the ITE Law, provisions regarding defamation are explicitly regulated in Article 27 paragraph (3), which states that everyone is prohibited from distributing, transmitting, or making accessible electronic information containing insults and/or defamation. Violations of this article are subject to a maximum imprisonment of four years and/or a maximum fine of IDR 750,000,000 based on Article 45 paragraph (3). This regulation marks a change in the paradigm of law enforcement from physical interaction to supervision of cyber activities. However, there is much debate regarding the phrase "content of insults and/or defamation" which is considered to be open to multiple interpretations and too broad in scope. Many parties consider that this provision can be misused to criminalize public expression, especially criticism of public officials or state institutions. Most legal cases related to defamation through social media refer to articles in the ITE Law, no longer the Criminal Code.

The ITE Law has a position as *lex specialis* that overrides the general provisions in the Criminal Code in terms of criminal acts in the electronic world. This *lex specialis* approach emphasizes that cybercriminal law must be treated differently because it has special characteristics. Digital forms of communication have speed, efficiency, and broad impacts that are not found in conventional communication. The use of the ITE Law to ensnare perpetrators of defamation reflects the state's efforts to adjust its legal system to developments in information technology. However, the fact that the articles of the ITE Law are used massively against social media reporters shows that this provision does not fully operate within the corridor of justice. Criminalization of public criticism often occurs under the pretext of defamation, even though the substance of the criticism is related to the public

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interest. This reality shows that the use of the ITE Law still faces serious problems in its implementation, especially in terms of protecting freedom of expression.

The provisions in the ITE Law do provide more concrete legal instruments in prosecuting perpetrators of digital defamation, but their implementation requires caution so as not to violate the constitutional rights of citizens. The principle of justice in criminal law demands that every legal action be proportional to the violation that occurs. Law enforcement officers need to have a good understanding of the boundaries between legitimate criticism and personal insults. The ambiguity of these boundaries will make law enforcement repressive, not protective. In practice, many cases do not go through a comprehensive contextual analysis, so that people who submit complaints, criticisms or reports are instead processed as perpetrators of criminal acts. This condition certainly leads to violations of human rights, especially the right to express opinions in public spaces. The need for a balance between protection of personal reputation and protection of freedom of expression is an important basis for assessing the validity of the defamation articles in the ITE Law.

Criminal provisions stipulated in the ITE Law are also often not accompanied by a restorative approach. In cases of defamation, the criminal approach tends to be taken first rather than peaceful resolution or deliberation. In fact, in the context of restorative justice, the main objective of criminal law should not only provide a deterrent effect, but also improve the relationship between the perpetrator and the victim. Social media should be positioned as a medium that allows for healthy public discourse, not as a tool for criminalization. The state is obliged to develop a more progressive legal approach by encouraging mediation and dispute resolution outside the courts. In addition, it is necessary to form derivative regulations or technical guidelines for law enforcement officers so that they can properly distinguish between content containing real insults and legitimate expressions protected by law. The implementation of laws that support social justice is an important foundation in reconstructing regulations on defamation.

The controversy over the defamation article in the ITE Law has prompted the government and stakeholders to conduct a comprehensive evaluation of the regulation. Several revision discourses have been submitted, including plans to clarify the definition of insult and defamation, and to limit this offense to personal reports (complaint offenses). Recommendations from various institutions such as the National Human Rights Commission and the Legal Aid Institute also indicate that the misuse of the defamation article must be stopped through real legal reform. Public understanding of digital law also needs to be improved so that they can use social media with adequate legal responsibility. Digital literacy is an important factor in preventing the spread of unlawful content without sacrificing the right to express opinions. The weaknesses in the current law open up great opportunities for injustice to occur for social media users from various backgrounds. Improvements to the regulation must be directed at the formation of fair, transparent, and participatory laws.

The main principles in criminal law such as the principle of legality, the principle of legal certainty, and the principle of non-discrimination must be the guidelines in compiling and interpreting articles related to defamation. The principle of legality ensures that no act can be punished without clear legal rules beforehand, so that the application of the ITE Law must not exceed the specified limits. The principle of legal certainty requires that every citizen have a clear understanding of which acts are legal and which are unlawful.

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Meanwhile, the principle of non-discrimination emphasizes that the law must be applied equally without regard to a person's social, economic, or position status. These three principles often do not work optimally in handling defamation cases on social media. Many cases show the inequality of legal treatment between ordinary people and influential figures or state officials. This situation reinforces the urgency of reform in the regulatory system and law enforcement against digital defamation.

Regulations on defamation in the context of social media cannot be separated from the social and political dynamics that surround it. Social media has become a tool for expression, advocacy, and criticism of public policy, so that every legal regulation must be in line with democratic principles. Unfair law enforcement will cause public distrust of law enforcement agencies themselves. In the long term, this can weaken the legitimacy of the law and create social instability. The government's openness in receiving input from the public, academics, and civil society organizations is key to improving regulations. If regulations are left open to multiple interpretations and repressive, the democratic space on social media will become increasingly narrow. The success of the legal system in dealing with defamation on social media depends heavily on the balance between protecting individuals and respecting freedom of expression.

Restructuring defamation regulations in the digital space requires a multidisciplinary approach involving legal, technological, and human rights perspectives. The legislative process and implementation of the law cannot simply rely on written norms, but must also consider social dynamics and the need for justice that exists in society. Law enforcement that is adaptive to the development of social media and maintains the basic principles of criminal law is a prerequisite for creating a just system. Academic studies and policy recommendations based on evidence are essential in forming regulations that are able to answer the challenges of the digital era. Harmonization between criminal law norms, public policy, and democratic values is the main foundation in creating laws that are not only repressive but also educative. A review of the provisions on defamation on social media must be carried out comprehensively to ensure substantive justice for all parties. A healthy and just legal system will only be realized if the law is enforced wisely, proportionally, and in accordance with the true values of justice.

### **3.2. Weaknesses in Current Law Enforcement Regulations for Criminal Defamation via Social Media**

Law enforcement against criminal acts of defamation through social media still experiences various fundamental weaknesses that affect the effectiveness of legal protection and justice. One of the main problems lies in the unclear boundaries between criticism, suggestions, or opinions and forms of defamation. Many individuals who express opinions on social media are actually caught in the law because the interpretation of certain articles is considered too flexible and subjective. Law enforcers often use a formalistic approach in assessing whether a statement meets the elements of a crime, without considering the social context and the intentions of the content creator. This raises concerns in society because it can suppress freedom of expression guaranteed by the constitution. People become hesitant to express critical opinions for fear of being reported for alleged defamation. Freedom of expression, which should be the foundation of democracy, is actually constrained by unclear legal boundaries.



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The overlap between the provisions in the Criminal Code (KUHP) and the Electronic Information and Transactions Law (UU ITE) complicates the legal issues of defamation in the digital world. The Criminal Code still regulates the offenses of insult and defamation in general, while the ITE Law contains specific articles because they are adjusted to the context of information technology. The disharmony between the two regulations has given rise to debate about which one should be used in the legal process. Law enforcement officers are often faced with a dilemma in choosing a legal basis to ensnare the perpetrators. As a result, the law enforcement process becomes inconsistent and does not provide legal certainty for the public. The use of dual articles also has the potential to violate the principle of *ne bis in idem*. There needs to be synchronization of regulations so that officers do not make mistakes in applying the law.

The unclear definition of the elements of the crime of defamation in the ITE Law is a serious weakness in the legal system. Terms such as "distributing", "transmitting", or "making accessible" still give rise to multiple interpretations in practice. Interpretations of these elements often do not take into account the elements of the perpetrator's intent or intention. Many social media users who only comment on or share content are still prosecuted without strong evidence of intent to defame. Regulations that do not accommodate technological developments and communication patterns on social media will continue to lag behind the dynamics of society. Inconsistent interpretations between investigators, prosecutors, and judges will lead to injustice in sentencing. This has a false deterrent effect because social media users are afraid to exercise their right to communicate.

The absence of objective parameters in assessing the element of "attacking honor" or "good name" makes complaints very subjective. Reports are often based on the reporter's personal feelings without considering objectivity or the real impact on reputation. This situation strengthens the potential for criminalization of legitimate expression. Criminal law should only be used for actions that truly endanger the legal interests of society, but in this context it is used to protect personal egos. When the assessment of an action depends on subjective perception, justice becomes difficult to achieve. The absence of technical guidelines or clear parameters for measuring "damage to good name" is a gap in regulation. Personal legal protection must be limited so as not to sacrifice the wider public interest.

Current regulations also still give minimal consideration to the principle of *ultimum remedium* in criminal law. Many defamation cases that can be resolved through non-litigation channels such as mediation or clarification are instead brought directly to the criminal process. This repressive law enforcement reflects a low awareness of the principle of restorative justice. An approach that emphasizes criminalization tends to damage social relations and worsen conflicts in society. Regulations should provide more space for peaceful dispute resolution. The state must be present to balance protection for victims and perpetrators, not just punish. Emphasis on *ultimum remedium* will make the legal system fairer and more proportional.

Lack of socialization and legal literacy to the public is one of the causes of the high number of defamation cases that end up in criminal proceedings. Many citizens do not yet understand the limits of legally safe social media use. This ignorance is then exploited by certain parties to ensnare ordinary users through defamation reports. The imbalance of legal

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information between the reporter and the reported creates an imbalance in the protection of rights in the legal process. The government and law enforcement officers have not been optimal in providing legal education evenly. The lack of public access to legal assistance also worsens this condition. Complicated regulations that are not explained popularly to the public will continue to be a source of problems.

Court decisions in social media defamation cases show striking inconsistencies between cases. Judges have broad discretion in interpreting criminal elements, so that in many cases, two similar incidents can result in different verdicts. This inconsistency makes it difficult for the public to predict how the law will be enforced in a particular case. The public's sense of justice is also damaged because the law does not appear to side with the value of objectivity. This kind of legal uncertainty can reduce public trust in the judicial institution. The absence of fixed jurisprudence or official guidelines from the Supreme Court exacerbates the chaos of interpretation. Substantive justice can only be achieved if there is uniformity of principles in decisions.

Current regulations have not yet addressed new phenomena in the development of social media such as the use of anonymous accounts, bots, or AI that have the potential to defame. Law enforcement has difficulty tracing perpetrators who use fake identities or hide their whereabouts through international networks. Traditional criminal law is not agile enough to respond to new technology-based modus operandi. As a result, regulations lag behind reality and become less relevant in practice. Law enforcement requires the support of sophisticated digital systems and regulations that are responsive to technological innovation. The government needs to update its regulations so as not to lag behind cybercriminals. A stagnant legal system will be increasingly vulnerable to failure in protecting citizens.

Many articles in the ITE Law, especially Article 27 paragraph (3), are considered to have a rubber clause content because their use can be very flexible according to subjective interpretation. The phrases in the article do not include a specific definition or criteria that can be used as an objective reference. The use of this article without a filter can open up opportunities for criminalization of expressions that are actually legitimate. The absence of clear legal parameters encourages the use of this article for the interests of power or protection of the good name of officials. This is contrary to the principle of legality in criminal law which requires clear, firm, and unambiguous norms. Efforts to improve regulations must include a review of articles that are open to multiple interpretations. Legal norms must be able to provide clear boundaries for every citizen.

The inconsistency between regulations and international legal principles is also a weak point that needs to be considered. In various international instruments, including the International Covenant on Civil and Political Rights (ICCPR), freedom of expression is expressly guaranteed with very limited exceptions. Indonesia, as a country that has ratified the convention, has an obligation to adjust domestic regulations to international standards. Unfortunately, current regulations still contain many provisions that conflict with the principles of proportionality and legal certainty. This deviation can tarnish Indonesia's reputation in the realm of international law. Harmonization of national and international law is a necessity that cannot be postponed. This inconsistency also has the potential to lead to lawsuits in international forums if not immediately corrected.

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In practice, victims of defamation who actually suffer real losses often lose in court due to the weakness of the digital evidence system. Digital evidence such as screenshots, recordings, or digital footprints are often not fully recognized if not supported by adequate digital forensic expertise. Law enforcement officers also still lack the tools and technical skills to handle electronic evidence with the correct procedures. This weakness makes the legal process inefficient and vulnerable to irregularities. A legal system that is not technically ready will only exacerbate injustice for those seeking justice. Updates to the rules of evidence and intensive training for officers are needed. Strengthening technological capacity is a must in the digital era.

The complaint mechanism in defamation cases tends to have a domino effect in the form of abuse of legal procedures. Parties who feel aggrieved often immediately use the criminal route without going through clarification or initial settlement intentions. This attitude shows how the law is used not as a tool for resolving conflicts, but as a weapon to suppress opponents. This abuse is exacerbated by officials who do not objectively verify reports. False or baseless reports are still processed because officials prefer to resolve them procedurally rather than substantively. Criminal law should not be used for trivial or emotional matters. Without updating the complaint system and filtering of reports, the law will continue to be used as a tool for criminalization.

The absence of a special institution that functions as a filter before defamation cases enter the criminal path makes the burden on law enforcement agencies even heavier. Each report is directly handled by investigators without any mandatory initial mediation process. The state has not provided an effective and trusted alternative forum to resolve digital conflicts with a win-win solution approach. The absence of such an institution shows that the legal system is not yet adaptive to the realities of modern societal interactions. Digital mediation can be an innovative solution that reduces the burden on the courts and increases the satisfaction of the parties. The application of this approach can also strengthen the value of deliberation in dispute resolution. Institutional innovation needs to be part of comprehensive regulatory reform.

A comprehensive evaluation of the legal framework governing defamation on social media is an urgent need that cannot be ignored. Loose, multi-interpretable, and overlapping regulations will only damage public trust in the law. The state must demonstrate its commitment to improving the system to ensure justice and legal certainty for all parties. Improvement of regulations must involve legal experts, practitioners, and civil society so that the resulting legal products are inclusive and relevant. Legal reform must not stop at the normative aspect, but must touch on institutional and technical aspects. Collective awareness must be built that the law is not a tool of power, but rather a means of guaranteeing human rights and dignity. Without fair and progressive regulations, the potential for oppression through the law will continue to recur.

### **3.3. Law Enforcement of Criminal Defamation Acts Through Social Media in the Future**

The development of digital technology has drastically changed the communication patterns of society, including the use of social media as a means of expression and interaction. Social media allows every individual to express their opinions to the public directly and without geographical boundaries, but at the same time raises the risk of misuse in the form of hate speech, insults, and defamation. This development shows that cybercrime, especially

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defamation, is becoming increasingly complex to handle because of its cross-regional characteristics and is difficult to prove conventionally. The main challenge in law enforcement lies in the aspect of digital evidence which often requires forensic expertise, as well as the absence of adequate technical regulations in handling electronic evidence legally. Jurisdiction is also an important issue because social media is transnational, requiring cross-country legal cooperation that has not yet been fully established. The imbalance between the protection of personal honor and the right to freedom of expression often creates legal uncertainty, especially in the interpretation of criminal articles amidst rapid social change.

Legal provisions in Indonesia regarding defamation can be found in Article 310 and Article 311 of the Criminal Code (KUHP), as well as in Article 27 paragraph (3) in conjunction with Article 45 paragraph (3) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE). Although these provisions are intended to provide protection for an individual's reputation and good name, their implementation often gives rise to controversy and public debate. There is overlapping regulation between the Criminal Code and the ITE Law, which causes ambiguity in the application of the law, especially regarding the appropriate forum for resolving defamation disputes: whether through criminal or civil channels. Multiple interpretations of the element of "defamation" in Article 27 paragraph (3) of the ITE Law open up opportunities for criminalization of freedom of expression, especially in the context of criticism of public officials or state institutions. Existing legal instruments do not explicitly distinguish between personal insults and expressions that contain social criticism. Law enforcement practices also often show inequality in the treatment of perpetrators and victims, where those with power tend to have easier access to legal protection than ordinary people.

The Indonesian legal system has yet to show consistency in limiting or facilitating a healthy and fair digital expression space. The existence of rubber articles such as Article 27 paragraph (3) of the ITE Law continues to be in the spotlight because it has the potential to restrict freedom of expression as guaranteed in Article 28E paragraph (3) of the 1945 Constitution. On the other hand, Article 28G paragraph (1) of the 1945 Constitution guarantees the right of every person to personal protection, including honor and good name. The tension between the two constitutional norms should be bridged through implementing regulations that are balanced and oriented towards the principle of justice. The lack of clear technical guidelines in handling defamation reports has led to inconsistent law enforcement and the potential for abuse of authority by law enforcement officers. There are many cases that show that the legal process runs quickly when the reporter is a public figure, but is slow or even ignored when the reporter is an ordinary citizen. This indicates that our legal system is still more oriented towards procedural formalities than substantive justice.

The United States has a very strong approach to freedom of expression, as outlined in the First Amendment to the US Constitution, which states that "Congress shall make no law... abridging the freedom of speech, or of the press." In this context, defamation is not prosecuted as a criminal offense, but rather through civil lawsuits with principles such as actual malice for public figures as affirmed in the case of *New York Times Co. v. Sullivan* (1964). This concept provides maximum protection for freedom of the press and opinion, and places the burden of proof on the plaintiff that the statement made is false and made

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with malice. American law also recognizes the importance of context and satire, so that not every offensive statement will be considered defamatory. This model provides more space for public debate and criticism of the government without fear of criminalization. This civil approach also allows for proportionate remedies, in the form of damages without excessively sacrificing free speech rights.

Germany has a different approach, maintaining defamation as a criminal offence, but applying a high degree of caution in its enforcement. According to the Strafgesetzbuch (StGB) or German Criminal Code, Articles 185 to 187 regulate the crimes of insult (Beleidigung), defamation (Üble Nachrede), and slander (Verleumdung). The German legal system places great emphasis on protecting human dignity as stated in Article 1 of the Grundgesetz (German Constitution), but at the same time maintains a balance with freedom of expression under Article 5(1). Judges in Germany make a contextual assessment of the case, including considering whether the statement is in the public interest or is merely a personal attack. This legal model integrates the principles of proportionality and protection of democratic pluralism, thus preventing the criminalization of legitimate dissent. Strong judicial control also ensures that the law is not used as a tool to silence criticism, but rather as a protection against real violations of reputation.

Singapore is known for its strict digital regulation, taking a comprehensive approach to misleading and harmful online content. In addition to Section 499 of the Penal Code to criminalize defamation, Singapore has enacted a special law called the Protection from Online Falsehoods and Manipulation Act (POFMA) since 2019. This regulation gives the minister the authority to issue correction orders or block online content deemed to be spreading false or defamatory information. Although this approach has been criticized as a form of restriction on freedom of speech, the Singaporean government argues that this control is necessary to maintain public order and social stability. Legal procedures remain available for citizens to appeal against government decisions, although the effectiveness of such control depends on the independence of the judiciary. Singapore's approach demonstrates a centralized and state-based regulation model, with direct participation of the authorities in real-time monitoring of digital content.

A comparison of the legal systems of Indonesia, the United States, Germany, and Singapore shows variations in viewing defamation, both in terms of offenses and law enforcement. The American model based on civil lawsuits encourages maximum freedom of expression, while Germany and Singapore maintain a criminal approach with strict controls that differ in their implementation. Indonesia is still in the middle between these two approaches, but with weaknesses in the interpretation and implementation system. Lessons from Germany show the importance of applying the principle of proportionality and strong judicial control in handling cases involving digital expression. Singapore's approach can be used as a reflection to strengthen specific and procedural legal instruments for digital content, but must still be adjusted to the values of democracy and human rights in Indonesia. This comparison shows that no single approach is completely ideal, but a combination of the best principles can be used to design fairer and more contextual legal reforms.

The implications of this comparative study provide a direction for legal reform in Indonesia that is more balanced between protection of personal honor and freedom of expression. The principle of actual malice from the United States can be adapted in the context of



proving the element of intent in the ITE Law. A proportionality and contextual approach like in Germany needs to be adopted in judicial practice to avoid rigid application of the law and cause injustice. The need for an independent assessment institution for digital content is also relevant, as in the Singapore model, but with strict judicial supervision. This reform does not only involve regulatory changes, but also institutional reform of the way law enforcement officers think and act. Harmonization between the Criminal Code and the ITE Law is important to prevent legal dualism that can harm justice seekers. The system of coaching and training officers on digital law and law enforcement ethics is also an integral part of systemic reform.

Future proposals for reform should be directed at revising Article 27 paragraph (3) of the ITE Law so that it has clearer boundaries and is not open to multiple interpretations. The distinction between criticism, insults, and defamation must be formulated explicitly, including the use of terms such as "intentionally to damage reputation" which are subjective. It is necessary to design a non-litigation dispute resolution mechanism, such as digital mediation facilitated by independent authorities and based on restorative justice. Criminal provisions should be a last resort (*ultimum remedium*), and more directed at cases that are serious and cannot be resolved peacefully. Law enforcement must also be based on values of social justice and inclusiveness, which take into account the social background and motives of both the perpetrator and the victim. The application of administrative sanctions or public correction can be an alternative sanction in several cases that do not require criminalization.

Strengthening the role of the Indonesian Broadcasting Commission (KPI), the Ministry of Communication and Information, and other independent supervisory institutions must also be carried out so that they are not only administrative regulators, but also facilitators of digital education for the community. Digital legal literacy must be a national program, involving schools, campuses, and digital communities to form a society that is aware of the law in using social media. There needs to be synergy between state institutions and digital platform providers such as Meta, Google, or X (Twitter) to accelerate the process of handling reports of defamatory content. International cooperation through the Mutual Legal Assistance Treaty (MLAT) and the ratification of international cyber law instruments are also strategic steps in overcoming cross-country jurisdiction issues. Law enforcement can no longer be carried out exclusively nationally, but must adopt transnational and collaborative principles. The future of defamation law requires a system that is integrative, adaptive, and upholds substantial justice.

#### **4. Conclusion**

Law enforcement against criminal acts of defamation through social media in Indonesia still faces various fundamental weaknesses, both in terms of legal substance and in terms of its implementation in the field. Regulations such as the Electronic Information and Transactions Law (UU ITE), especially Article 27 paragraph (3), often give rise to multiple interpretations that have an impact on legal uncertainty. This causes legal actions that should protect individuals from attacks on personal honor to actually become a tool of repression against freedom of expression in the digital space. Inconsistency in the implementation of the law by law enforcement officers also adds to the complexity of the problem, because there is

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still a tendency to be discriminatory and disproportionate in handling reports involving certain parties. This reality reflects that existing regulations are not fully based on the values of justice that uphold the principles of equality, proportionality, and protection of human rights. The concept of justice that should be the basis for the formulation and implementation of legal regulations has not been fully applied in the context of handling defamation cases through social media. Fair law enforcement not only prioritizes criminalization, but must also consider the social background, the perpetrator's intentions, the impact on the victim, and the potential for recovery through non-punitive means such as mediation or public clarification. Not all statements that are considered offensive are worthy of being criminalized, especially if they are part of the freedom of expression guaranteed by the constitution. Lack of understanding of the boundaries between criticism, opinion, and defamation is often a source of legal conflict that can actually be resolved outside the criminal mechanism. In this case, the law should be a means of resolving conflicts that are proportional and do not cause new social wounds. The biggest challenge in realizing regulations based on justice values is designing a legal system that is adaptive to social change and the development of information technology. Social media is a very dynamic and open communication space, so the laws that regulate it must also be able to adapt quickly. An approach that is not only normative, but also sociological, is needed so that the law truly answers the needs of society and does not merely become an instrument of action. The existence of an independent supervisory institution, legal education for the community, and updating the substance of criminal law are important parts in ensuring that law enforcement for defamation does not violate the principle of substantive justice. Therefore, legal reform cannot only be done partially, but must be comprehensive and touch on the root of the problems that exist in the practice of law enforcement so far.

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