

The Law Enforcement of the Criminal Act of Defamation through Social Media

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Abstract. Defamation is also known as humiliation, which is basically attacking the good name and honor of someone who is not in a sexual sense so that person feels harmed. Crime is accepted as a fact that is detrimental to society, both in the simplest (primitive) society and in modern society. Defamation can be made by irresponsible individuals through various media and methods. This study uses a normative juridical approach. As for obtaining data from this discussion, researchers use legally binding materials, namely laws. Data analysis using juridical analysis. Data analysis techniques are qualitative analysis in the form of presentations, descriptions, and descriptions of research results. The results of the study that The criminal act of defamation is a special form of unlawful act. This offense in the Criminal Code is regulated in Article 310 of the Criminal Code. Meanwhile, defamation through electronic media is regulated in Article 27 Paragraph (3) of Act No. 11 of 2008 regarding the amendment to Act No. 19 of 2016 concerning Information and Electronic Transactions. For perpetrators, they will be sentenced to a maximum of 4 years in prison or a maximum fine of IDR 750,000,000.00 (seven hundred and fifty million rupiah). Obstacles in law enforcement are influenced by several factors, namely, the proof is more complicated compared to ordinary crimes, witnesses are not can see directly because of the incident via social media, cannot know the details of the loss, defamation through fake accounts is not clear.

Keywords: Criminal; Defamation; Media.

1. Introduction

Indonesia is a country that adhering to the rule of law (*Rechtsstaat*) and not a State of Power (*Machstaat*). One that is regulated by law is regarding the right to communicate and obtain information, as stated in Article 28F of the 1945

Constitution which expressly states that: "Everyone has the right to communicate and obtain information in order to develop his personality and social environment and has the right to seek, obtain, possess, store, process, and convey information using all available channels.

Technological advances in the era of globalization have developed so fast. Technology, which is a product of modernity, has experienced an extraordinary leap, because at such a rapid pace, in turn, humans who are the creators of the technology themselves are confused about how to control it. It could even be said that technology reversed direction to control humans.¹ In this period of technological development, the information society emerged with the emergence of this information society which has played an important role both in the present and in the future.²

It's just that the progress of information technology does not only have a good impact on human life, because of the principle of freedom (liberalism) that lies behind the use of this information technology. Therefore, even though the user is given an agreement (terms and conditions) when accessing and using information technology such as YouTube, Instagram, and Facebook, there is no application that can detect disrespectful or insulting statements written by a user and carry out preventive measures before sharing his statement, so that someone can easily spread and provoke someone, defame or commit other despicable acts.³

The State of Indonesia also regulates the protection of self-respect, human dignity as stated in the Criminal Code (KUHP) Chapter XVI. Book II of which in Article 310 paragraph (1) states:

"Anyone who deliberately attacks someone's honor or reputation by accusing something. What he clearly means is that this matter becomes public knowledge, shall be punished for defamation with a maximum imprisonment of nine months or a maximum fine of three hundred rupiahs."

Defamation is also known as humiliation, which is basically attacking the good name and honor of someone who is not in a sexual sense so that person feels harmed. Crime is accepted as a fact that is detrimental to society, both in the simplest (primitive) society and in modern society. Defamation can be made by irresponsible individuals through various media and methods. A person is categorized as committing defamation if he takes direct and active action in the

¹Masduki, 2003, *Freedom of the Press and Journalistic Code of Ethics*, UII Press, Yogyakarta, p. XII

²Septa Candra, et al, 2012, *Criminal Law in Perspective*, Larasan Library in collaboration with the University of Indonesia, Laiden University, University of Groningen. Balinese, page 124

³Achmadudin Rajab, "Urgency of Law Number 19 of 2016 Concerning Amendments to Law Number 11 of 2008 Concerning Information and Electronic Transactions as a Solution to Build Ethics for Media Users", *Journal of Indonesian Legislation*, Vol. 14 No. 04, 2017, p. 463.

sense of the accuser and the person accused of meeting directly and defaming him by saying bad words and offending someone about someone else and this information is known to that person through issues, or through the mass media and electronic media.

Losses incurred can be in the form of losses in the sense of material or immaterial. Material losses, for example victims of crime and damage or destruction of property as well as the increased costs that must be incurred for handling it. Immaterial losses can be in the form of reduced or lost public trust in the implementation of law enforcement by law enforcers.

Human life in society cannot be separated from the rules in society, which are called norms. Norm is a statement that must be acknowledged, that where there is society there are norms or rules legal experts and sociologists view that it is a fact, that law performs its function in society. Law can affect patterns of human behavior individually or in groups in society, and vice versa, society can also affect the value and form of law.⁴

Based on the description above, there is a phenomenon regarding this matter become the main attraction for the author to examine this matter more deeply by conducting research on Law Enforcement of the Criminal Act of Defamation Through Social Media. The purpose of this study is to find out the application of criminal defamation sanctions through social media and what are the obstacles in enforcing the law.

2. Research Methods

This research uses a type of qualitative research method which is also called a literature study with a normative juridical approach. As for obtaining data from this discussion, researchers use legally binding materials, namely laws. Data analysis uses juridical analysis, which is an analysis method that originates from laws, regulations, law books and legal journals. Data collection was carried out through literature study by reviewing literature related to research problems. The data analysis technique is qualitative analysis in the form of presentation, description, and description of the research results.

3. Results and Discussion

3.1. Application of Criminal Defamation Sanctions through Social Media

The definition of defamation in English is often referred to as Defamation and in other countries, namely Slander, Clumny and Vilification, these three terms are

⁴Fathul Djannah, 2004, Introduction to Law, Duta Azhar, Medan, h. 11.

used for verbal defamation. And defamation in writing is often called libel. Meanwhile, according to Black's Law Dictionary Defamation is an act that endangers the reputation of others by making false statements to third parties. In Civil Law countries the crime of defamation is often included in the category of criminal law crimes.⁵

The application of a criminal offense to a criminal offense is the best way in which justice must be upheld. Criminal crimes cause suffering to victims physically, embarrassingly, and also mentally but psychologically, which must be given special attention to Mr. Officers. The crime of defamation is a special form of unlawful act. This offense in the Criminal Code is regulated in Article 310 of the Criminal Code. Meanwhile, defamation through electronic media is regulated in Article 27 Paragraph (3) of Act No. 11 of 2008 regarding the amendment to Act No. 19 of 2016 concerning Information and Electronic Transactions which reads:

"Anyone who intentionally and without rights distributes and or transmits and or makes accessible electronic information and or electronic documents that contain insults or defamation."

Based on the article above, every person who writes or utters intentionally with the intent to insult or defame someone in electronic media can be subject to criminal sanctions. Where the fines and sanctions are regulated in Article 45 Paragraph (3) Act No. 11 of 2008 regarding the amendment to Act No. 19 of 2016 concerning Information and Electronic Transactions, namely:

Everyone who intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain content of insult and/or defamation as referred to in Article 27 paragraph (3) shall be punished with imprisonment for a maximum 4 (four) years and/or a maximum fine of IDR 750,000,000.00 (seven hundred and fifty million rupiah).

Based on the Criminal Code Chapter XVI concerning Humiliation is regulated in Article 310 paragraph (1) which states that Whoever deliberately damages the honor or reputation of a person by accusing him of doing something with a real intention will spread the accusation, punished for insulting, with a prison sentence of up to -Nine months in length or a maximum fine of IDR 4500. And Paragraph (2) states that if this is done with writing or pictures that are broadcast, shown publicly or posted, then those who do that are punished for blasphemy, with a maximum prison sentence of one year and four months or a maximum fine of IDR

⁵Ari Wibowo, "Policy on the Criminalization of Defamation in Indonesia", *Pandecta Journal*, Vol. 7, No. 1, 2012, p. 3.

.4500. This sanction is also regulated in Article 311 paragraph (1) which reads: whoever commits a crime of defamation or defamation by writing,

Juridically, the offense of defamation is regulated in several laws and regulations. Before discussing the regulations for special defamation of honor, it is better to first discuss general defamation, outlined from the most general rules according to the principle of *lex specialis derogate lex generalis*.⁶ After the amendment to the ITE Law, the punishment for perpetrators of defamation or insults has decreased both in terms of confinement or fines. before being revised, perpetrators of defamation are punished with imprisonment for a maximum of 6 years and a fine of up to IDR 1,000,000,000.00 (one billion rupiah).

In the ITE Law, insult/defamation is an ordinary offense so that it can be legally processed even if there is no complaint from the victim, but by referring to the Criminal Code as meant in the 2016 ITE Law, the offense turns into a complaint offense (*klacht delict*) which requires the victim to make a complaint to the party the authorities.⁷

3.2. Obstacles in Enforcing the Criminal Act of Defamation through Social Media

There are many law enforcement or law applications for perpetrators of crimes of insult or defamation through social media, there are several inhibiting factors in the application of criminal offenses against perpetrators, namely:

- a. Proof is more complicated than ordinary crimes because you have to present experts regarding the evidence used as evidence in a trial
- b. The witnesses presented (other than victim witnesses) cannot witness directly at the crime scene but can only witness through social media
- c. It is not possible to know in detail the loss because there is no benchmark for the loss suffered by the victim in the form of material, because this punishment has more social impacts such as shame, more to the psychological impact experienced by the victim.
- d. Defamation through a fake account is unclear, meaning that the account does not have a clear identity or to whom a criminal responsibility is requested so that investigators in investigating the case experience obstacles.

⁶Luh Putu Yustika Riani Kusuma. Etc., Criminal Sanctions for Defamation through Social Media, Journal of Legal Construction Vol. 3, No. 2, April 2022, p.336

⁷ <https://badilum.mahkamahagung.go.id/artikel- Hukum/2452-aspect- Hukum-pencemaran-nama-baik-melalui-facebook.html> accessed on January 11, 2023 at 14.12 WIB

In addition to the four inhibiting factors above, it is also difficult for judges to thoroughly know the losses suffered by the victim in the form of material, because the crime of insulting or defaming through social media has more psychological impact, embarrassment, the social impact experienced by the victim. The lack of facilities and experience in handling cases of defamation or insulting someone through social media is still quite certain.

A set of elements that are regularly interrelated so as to form a totality of evidence that makes it difficult for judges to work on a cybercrime case. What is used to achieve the purpose of stating the truth of an event is the issue of evidence faced by judges in cybercrime cases, cybercrime media are data and/or computer systems or internet systems that are easily changed, deleted or hidden by the perpetrator. In addition, the media is a media recording device whose position (recover) has not been recognized by the Criminal Procedure Code as valid evidence.⁸

4. Conclusion

The criminal act of defamation is a special form of unlawful act. This offense in the Criminal Code is regulated in Article 310 of the Criminal Code. Meanwhile, defamation through electronic media is regulated in Article 27 Paragraph (3) of Act No. 11 of 2008 regarding the amendment to Act No. 19 of 2016 concerning Information and Electronic Transactions. The perpetrators will be sentenced to a maximum of 4 years in prison or a fine of up to IDR 750,000,000.00 (seven hundred and fifty million rupiah). Obstacles in law enforcement are influenced by several factors, namely, the proof is more complicated compared to ordinary crimes, witnesses cannot see directly because of the incident via social media, cannot know the details of the loss, defamation through fake accounts, the object is not clear

5. References

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⁸Hamzah, Andi. (2012) "Computer-Related" Crime, Jakarta: Sinar Graphic, p. 81

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The Criminal Code (KUHP)