

The Ideal Concept of Legal Regulation of Defamation Through Social Media Based on Pancasila Justice Values

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Abstract. *Digital platforms have become the primary means for people to interact without the constraints of time and space, but they are also vulnerable to being used to attack the honor or humiliate others. Phenomena such as cyberbullying and the spread of hate speech have serious psychological impacts. The purpose of this study is to identify and analyze the regulation of defamation through social media in Indonesia, and to identify and analyze the ideal concept of a just and just legal regulation of defamation through social media. The type of research used in this thesis is normative law. Regulation of defamation through social media ideally maintains a balance between protecting an individual's dignity and reputation and freedom of expression, as stipulated in the Criminal Code, the ITE Law, and the Constitutional Court's decision, which affirms this offense as a complaint offense and only applies to false accusations that cause serious harm. However, vague phrases such as "something" in Article 27A of Law 1/2024 still have the potential to give rise to multiple interpretations and abuse. Because digital information spreads rapidly, law enforcement must consider context, intent, impact, and the principle of proportionality, with imprisonment as the ultimum remedium. Remedial mechanisms such as corrections, the right of reply, clarification, content removal, apologies, and civil and restorative schemes should be prioritized, along with proportional obligations for digital platforms to respond to reports. Lessons learned from other countries such as the UK, Germany, and Singapore demonstrate the importance of the "serious harm" standard and a swift correction mechanism. Harmonization of regulations, increased capacity of officials, and strengthening of digital literacy and a culture of ethical communication are necessary to ensure that defamation articles do not become a tool for silencing, and that the digital space remains healthy, fair, and democratic.*

Keywords: Concept; Defamation; Ideal; Justice.

1. Introduction

Currently, our country, the Republic of Indonesia, has been independent since its independence was proclaimed on August 17, 1945.¹As time passes, we now live in the era of globalization. In this era of globalization, growth and development are occurring in various sectors. One sector that has seen significant growth is information technology. So, what is freedom like in this sophisticated era? Humans are social creatures who undoubtedly require interaction with others in their daily lives. In these interactions, opinions naturally arise, as we all know that each person has a different perspective on and assessment of life. The freedom to express thoughts and opinions, both verbally and in writing, belongs to all Indonesians.²Likewise, as a state with the sovereignty of the people and based on law (*rechstaat*), and not based on mere power (*machstaat*), Indonesia recognizes that the freedom to express thoughts and opinions verbally and in writing, freedom of expression, and freedom of the press are basic rights that must be enjoyed by all levels of society and are also the basis for upholding the pillars of democracy.

Without freedom of expression, people cannot express their ideas or criticize the government. Therefore, there would be no democracy.³Defamation is a specific form of unlawful act. Some terms use defamation, while others use insult. The criteria for categorizing an act as defamation remain unclear, as many factors must be examined. In the case of defamation or insult, what is being protected is the obligation of every person to respect others' honor and reputation, even if that person has committed a serious crime.⁴Honor is a person's feeling of respect in the eyes of society, where everyone has the right to be treated as an honorable member of society.⁵Attacking honor means committing an act that is generally considered an attack on someone's honor. Respect and actions that fall into the category of attacking someone's honor are determined by the social environment in which the act takes place. Meanwhile, good name is a good assessment according to general assumptions about a person's behavior or personality from a moral perspective. A person's good name is always seen from the perspective of others, namely good morals or personality, so its measure is determined based on

¹Wifaqi, Hikmah, and Nur Chamidah. "THE PROCLAMATION OF 1945: A HISTORICAL MILESTONE TOWARDS INDONESIAN INDEPENDENCE." *Social Dynamics: Journal of Social Science Education* 3, no. 3 (2024): pp. 297-305.

²Febrianti, Bella. "The Rengasdengklok Incident Became the Opening Ceremony for Indonesian Independence." *JEJAK: Journal of History & Historical Education* 4, No. 2 (2024): pp. 20-31.

³Febrianasari, Sinta Amelia. "Freedom of Expression from the Perspective of Popular Sovereignty." *Sovereignty* 1, no. 2 (2022): pp. 238-246.

⁴Kurniawan, Ervin, and August Hamonangan Pasaribu. "Legal Traps for Defamation Offenders via Social Media." *Citizenship Journal* 6, no. 1 (2022): pp. 2182-2189.

⁵Sueni, Annisa Sabilla, and MH SH. "EFFICIENCY IN THE KUHP: CLASSIFICATION, ELEMENTS AND LEGAL ANALYSIS (EFFICIENCY AGAINST HONOR: DEFAMATION)." *Crimes in the KUHP: Classification, Elements and Legal Analysis* (2025): p. 29.

general assessments in a particular society where the act takes place and the context in which the act is carried out.

Criminal act of insult or defamation (*beleediging*)⁶ is a crime regulated in Chapter XVI of Book II of the Criminal Code, which protects the legal interests of a person's honor (*eer*) and good name (*goeden naam*). Although the term "insult" is not explicitly defined in the law, legal experts interpret it as an act that attacks the honor or good name of another person. The Criminal Code distinguishes between general insults and specific insults. General insults include verbal and written defamation (Article 310), slander (Article 311), minor insults (Article 315), and false accusations (Articles 317–318). Meanwhile, specific insults can be found in laws outside the Criminal Code, such as Article 27 paragraph (3) of Law No. 11 of 2008 concerning Electronic Information and Transactions (ITE Law), which regulates the distribution of electronic information containing insults or defamation.⁷

In Article 310 of the Criminal Code, defamation is defined as an act of intentionally attacking someone's honor or good name by accusing them of committing an act so that the accusation becomes public knowledge. If done verbally, it is called verbal defamation (*smaad*) according to paragraph (1), while if done in writing or with pictures, it is called written defamation according to paragraph (2). However, there are exceptions if the act is done in the public interest, self-defense, or revealing the truth. Article 311 of the Criminal Code emphasizes the act of slander (*laster*), namely accusing someone of something that is known to be untrue, and after being given the opportunity to prove the truth is unable to prove it. An important element of defamation is the intentional spreading of false accusations that attack another person's honor, with the threat of imprisonment of up to four years.

In the modern world, defamation crimes often occur through social media.⁸ Digital platforms are now society's primary means of interaction without the constraints of time and space, but they are also vulnerable to being used to attack the honor or humiliate others. Phenomena such as cyberbullying and the spread of hate speech have serious psychological impacts.⁹ including depression and even suicide.

⁶Rahmah, Andi, and Asrul Aswar. "Legal Review of Cyber Crime Criminal Acts Against Defamation in Makassar City (Study of Decision No. 255/Pid. Sus/2021/PN. Mks)." *Pledoi Law Journal* 1, no. 02 (2023): 128-146.

⁷Bahrul, Maulana, Mulyati Pawennei, and Azwad Rachmat Hambali. "Juridical Analysis of the Criminal Act of Insult with Implications of Defamation: Case Study of Decision No. 1675/Pid-Sus/2019/Pn. Mks." *Journal of Lex Generalis (JLG)* 3, no. 2 (2022): pp. 233-249.

⁸Asmadi, Erwin. "Formulation of Crimes and Punishment for Criminal Acts of Defamation on Social Media." *De Lega Lata: Journal of Legal Studies* 6, no. 1 (2021): pp. 16-32.

⁹Siddik, Sayyidil Anwar, Rizaldi Alfaiz, and Mhd Daniel Rezza Kusnanda. "The Phenomenon of Cyberbullying in the Perspective of Communication Ethics on Social Media and Law Number 11 of 2008 Concerning Information and Electronic Transactions." *Journal of Sciencetech Research and Development* 6, no. 1 (2024): pp. 985-997.

Therefore, it is important for the public to recognize that freedom of expression online is limited by legal and moral responsibilities. The phrase "your mouth is your tiger" has now become "your finger is your tiger."¹⁰emphasizes that what is written in the digital world can result in legal and social sanctions. Therefore, every individual must respect the dignity and honor of others and refrain from actions that could harm others.

The easy use of social media has negative consequences in the form of defamation, which is one of the many cases we have heard about recently.¹¹This action constitutes a criminal offense. Defamation is an act that falls under the category of insulting, degrading, or spreading false information regarding the reputation of a person, group, race, religion, or class. Besides being an unpleasant act, this case can also fall under criminal law. Therefore, the perpetrators can be brought to justice and face strict sanctions.

Social media can be a platform for defamation in various ways,¹²This includes user-posted content and the spread of false information. Users can post content that harms someone's reputation with the aim of defaming or spreading harmful false information. For example, they might upload photos or videos that are incorrectly edited or claim false information about someone. Users can also spread false or defamatory information through various means, such as creating fake accounts to spread rumors or spreading fake news that can damage someone's reputation. Furthermore, public awareness of the risks of defamation and the importance of verifying information before spreading it can also help mitigate its negative impact.

The enactment of Law of the Republic of Indonesia Number 1 of 2024, which complements Law Number 19 of 2016, amending Law Number 11 of 2008 concerning Electronic Information and Transactions, aims to regulate the behavior of Indonesian citizens in the digital realm and make society more cautious.¹³The number of acts classified as criminal offenses is increasing. However, when these laws are implemented, they often spark differences of opinion within the public, with some supporting them and others opposing them. Following the enactment

¹⁰Azhar, Maulida Fathia, Elfina Rahayu, and Aryo Fadlian. "Defamation Criteria: Defamation Criteria Reviewed in the Electronic Information and Transactions Law Number 11 of 2008 (Regarding the Galih Ginanjar Case)." *De Juncto Delicti: Journal of Law* 2, no. 1 (2022): pp. 31-48.

¹¹Mutiarani, Unika Putry, Iztiyaul Nur Karimah, and Yudistira Phrygian Syarafa. "Communication Ethics in the Use of Social Media Among College Students." *Jurnal Harmoni Nusa Bangsa* 1, no. 2 (2024): pp. 204-215.

¹²Virginia, Vanessa Stefanie. "Legal Protection for the Dissemination of Information as Defamation on TikTok Social Media." *SUPREMASI: Journal of Law* 5, no. 2 (2023): pp. 134-143.

¹³Rahmatullah, Muhammad, B. Farhana Kurnia Lestari, and Dhina Megayati. "Legal Review of Online Gambling Based on Article 27 Paragraph 2 Jo. Article 45 Paragraph 2 of the Republic of Indonesia Law Number 19 of 2016 Concerning Amendments to the Republic of Indonesia Law Number 11 of 2008 Concerning Electronic Information and Transactions." *Unizar Recht Journal (URJ)* 3, no. 3 (2024): pp. 414-424.

of these laws, there have been differences of opinion at various levels, both within the public and in legal practice.

Article 27 paragraph (3) is deleted and replaced with Article 27 A of Law Number 1 of 2024 concerning Information and Electronic Transactions Regarding the Second Amendment to Law Number 11 of 2008 concerning ITE. Article 27 A reads "Any person who intentionally attacks the honor or good name of another person by accusing something, with the intention that this matter becomes publicly known in the form of Electronic Information and/or Electronic Documents carried out through the Electronic System". Article 27A which has been criticized by the public, academics, practitioners, NGOs is considered a rubber article that is ambiguous. This article can be used subjectively by law enforcement or parties interested in the dissemination of news through ITE.

Article 27A is highly worded and can be interpreted liberally and broadly by law enforcement. This article can ensnare any party, whether an individual or a government official, who feels their reputation has been defamed. This article creates legal uncertainty and can deprive those who spread defamation of their reputation of their basic human rights. Even if they are suspected of defaming someone, they still deserve legal protection as legal subjects.

A case related to defamation also took place in the West Lombok area, namely between MZA, the head of RT BTN Sudak Palace Labuapi, West Lombok, who reported Haeratun alias EG (known as E) for alleged defamation via her Facebook account. This case began with E's post which was deemed detrimental to MZ A's reputation. As a result of the post, MZA reported EG for alleged defamation on social media platforms. Finally, this case was closed with a court ruling stating that Egy was found guilty of committing the crime of defamation. good name via social media as the sole indictment of the Public Prosecutor. In the case involving Muammar ZA, the head of RT BTN Sudak Palace Labuapi, and Haeratun alias E G. The issue of justice is also a major highlight. EG was reported for alleged defamation after posting a statement on social media that was deemed detrimental to MZ A's reputation. The court's decision stating that E was found guilty of defamation on social media shows how the law is applied to protect individuals from reputational harm. However, the deeper question concerning the values of justice in a case like this is whether the court has also considered E's right to access the road to his own house and whether the court has also considered E's right to express his opinion in the public space, especially in the context of social media which is often a platform for citizens to express their views or criticism.¹⁴

¹⁴Rumondor, Alfian Maranatha Seichi. "A Legal Analysis of Legal Responsibility for Defamation Through Social Media: The Perspective of Law Number 1 of 2024 concerning Electronic Information and Transactions." *LEX PRIVATUM* 13, no. 5 (2024), p. 5

The case between MZA and EG illustrates the importance of justice in the legal process. Focusing solely on defamation without considering freedom of expression risks the law becoming a tool to silence legitimate criticism or opinions. Conversely, if freedom of expression is prioritized without limits, it can lead to serious violations of a person's right to reputation. Therefore, the court's decision in this case should be seen not only as a form of law enforcement but also as an effort to uphold justice, balancing the individual's right to protect their reputation with the right of others to speak freely.¹⁵

Social media is essentially a human connection. Fake Twitter accounts are popping up, publishing false news that ultimately harms others.¹⁶ For example, the "honor and dignity" of the Indonesian people, based on Pancasila, encompasses faith in God and a just and civilized humanity, and is enshrined in several articles. However, the 1945 Constitution still frequently includes acts of defamation, despite being clearly regulated by law. This is because increasingly advanced technology has created opportunities. Some crimes can occur via the internet. Defamation on the internet is considered a real act or legal action, even if it occurs virtually.

2. Research Methods

The type of research used in writing a thesis is normative law, the enforcement or implementation of normative legal provisions (in abstract), specific legal events (in concrete), and their results. In normative legal research, research will be conducted on legal documents related to the relevant parties.¹⁷

3. Results and Discussion

3.1. Regulation of Defamation Through Social Media in Indonesia

The rise in legal cases related to technology, specifically the internet and social media, includes defamation cases via social media. In fact, similar cases occur almost daily, driven by the increasing freedom people have to express their opinions online, particularly on social media. One particularly frequent case involves insults or defamation via social media.

Before the existence of social media, the provisions regarding defamation were regulated in the provisions of the articles of the Criminal Code as follows: Article 310 of the Criminal Code, which reads: (1) Whoever intentionally damages the honor or good name of someone by accusing him of committing an act with the clear intention of broadcasting the accusation, shall be punished for defamation,

¹⁵Ibid

¹⁶Ariyadi, Ariyadi, Mohamad Noor Fajar Al Arif, and Dadang Herli. "Criminal Law Enforcement Against Perpetrators of Hate Speech on Social Media Using Fake Accounts." *Journal of Innovation Research and Knowledge* 4, no. 6 (2024): pp. 3463-3480.

¹⁷Soerjono Soekanto, *Introduction to Legal Research*, UI Press, Jakarta, 1981, p. 201

with a maximum prison sentence of nine months or a maximum fine of Rp. 4,500,- . (2) If this is done with writing or images that are broadcast, shown to the public or posted, then the perpetrator shall be punished for defamation by writing with a maximum prison sentence of one year and four months or a maximum fine of Rp. 4,500,-.

Article 315 of the Criminal Code, which states "Every deliberate insult that is not defamatory or written defamation committed against a person, whether in public orally or in writing, or in front of that person himself or herself orally or in a letter sent or received by him, is punishable as a minor insult by a maximum imprisonment of four months and two weeks or a maximum fine of four thousand five hundred rupiah."

Defamation, whether committed directly or through social media or the internet, is a complaint-based offense, meaning it can only be prosecuted by the police if a complaint is filed by the victim. Without a complaint, the police cannot investigate the case.

Meanwhile, for the complaint offense itself, based on the provisions of Article 74 of the Criminal Code, it can only be reported to investigators within a period of 6 (six) months from the time the incident occurred. This means that after the 6 (six) month period has passed, cases of defamation, whether directly or through social media/the internet, can no longer be investigated. Therefore, anyone who feels their good name has been defamed, either directly or through social media/the internet, must report it within that time period.

The Constitutional Court partially granted the petition of a Karimunjawa resident in Jepara Regency named Daniel Frits Maurits Tangkilisan in the material review of Article 27A in conjunction with Article 45 paragraph (4) of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law).

In the Court's legal considerations read by Constitutional Justice Arief Hidayat, it was stated that, in essence, criticism in relation to Article 27A of Law 1 of 2024 is a form of supervision, correction, and suggestions regarding matters relating to the public interest. Therefore, to apply Article 27A of Law 1 of 2024, it is necessary to refer to the provisions of Article 310 paragraph (1) of the Criminal Code, which regulates defamation of a person or individual. In other words, this article can only be applied to defamation directed at an individual.

Article 27A of Law 1 of 2024 with Article 45 paragraph (5) of Law 1 of 2024 related to violations of the prohibition provisions in Article 27A of Law 1 of 2024 is a complaint crime (complaint offense) which can only be prosecuted based on a complaint from the victim or person who is the victim of the crime or person whose good name is defamed. In this case, continued Constitutional Justice Arief, even though a legal entity is a victim of defamation, it cannot be the complainant

or reporting party through electronic media. Because only the victim (individual) whose good name is defamed can report to law enforcement officials regarding criminal acts against him and not his representative.

The explanation concerns the phrase "something" in Article 27A of Law 1/2024, which the Petitioner believes creates ambiguity or multiple interpretations in its enforcement. According to the Court, the phrase "something" refers to making an accusation with the intention of making it public. This norm prohibits the act of attacking the honor or reputation of "another person" by "making an accusation" through an electronic system.

From a legal perspective, defamation is regulated in Article 310 paragraphs (1) and (2) of the Criminal Code, which stipulates criminal sanctions for anyone who intentionally attacks the honor or good name of another person through words or writing. This article also emphasizes that defamation is a complaint-based offense, so law enforcement can only be carried out if the victim files a complaint. In addition, related regulations are also reaffirmed in Law Number 1 of 2024 concerning Information and Electronic Transactions (UU ITE), which regulates its application to activities in the digital realm. In addition, the rules regarding defamation are also clarified in Law Number 1 of 2024 concerning Information and Electronic Transactions (UU ITE), which emphasizes its application to activities in the cyber world.¹⁸Based on Article 27A in conjunction with Article 45 paragraph (4) of the ITE Law, actions that demean a person's honor or reputation through electronic media can be punished with a maximum prison sentence of 2 years or a fine of up to IDR 400 million. Furthermore, Article 45A paragraph (2) of the ITE Law also emphasizes the prohibition on the dissemination of information containing elements of hatred based on ethnicity, religion, race, and intergroup relations (SARA), with the threat of a maximum prison sentence of 6 years and/or a fine of IDR 1 billion.¹⁹In addition to the criminal aspect, defamation also has civil consequences. This is because defamation can be classified as an unlawful act as regulated in Article 1365 of the Civil Code: Every act that violates the law and causes harm to another person, requires the person whose fault caused the loss to compensate for said loss. Therefore, victims of defamation can claim compensation for immaterial and material losses suffered due to the damaged reputation.

However, in Article 27A in conjunction with Article 45 paragraph (4) of Law 1 of 2024, the phrase "a matter" is not accompanied by further explanation, so it has the potential to give rise to multiple interpretations if no clear normative boundaries are provided. When referring to the Big Indonesian Dictionary, the word "matter" has a very general and diverse meaning, ranging from events,

¹⁸Lumenta, A. A legal review of the crime of defamation according to the Criminal Code and Law Number 19 of 2016 concerning ITE. *Lex Crimen*, 9(1). 2020, p. 22

¹⁹Dacosta, SC The crime of defamation through cyberspace. *Lex Privatum*, 15(4). 2025, p. 223

circumstances, affairs, problems, to about or concerning. Therefore, the use of the phrase "a matter" in the context of the crime of defamation can cause confusion between the act of defamation and ordinary insults. If the phrase is interpreted too broadly, there will be a disproportionate combination between two different forms of action, which ultimately creates legal uncertainty.

To prevent the expansion of interpretation, guarantee fair legal certainty, and prevent the misuse of criminal law as an instrument to silence freedom of expression, according to the Court, the phrase "other people" in the norms of Article 27A and Article 45 of Law 1/2024 must be declared conditionally contrary to the 1945 Constitution of the Republic of Indonesia as long as it is not interpreted as "except for government institutions, groups of people with specific or certain identities, institutions, corporations, professions or positions".

Meanwhile, the phrase "something" in the norms of Article 27A and Article 45 paragraph (4) of Law 1/2024 must also be declared conditionally contrary to the 1945 Constitution of the Republic of Indonesia as long as it is not interpreted as an act that demeans a person's honor or good name. However, because the Court's interpretation is not as requested by the Applicant, the application regarding the unconstitutionality of the norms of Article 27A and Article 45 paragraph (4) of Law 1/2024 is legally justified in part.

In the digital age, social media plays a significant role in shaping public opinion. A person's good name represents a reputation built over time, but it can be destroyed in seconds by a single negative post. Article 28E paragraph (3) of the 1945 Constitution guarantees freedom of expression. However, Article 28J of the 1945 Constitution emphasizes that this freedom is not absolute, but rather limited by respect for the human rights of others, including the right to honor and a good name.²⁰ Thus, a legal analysis of civil liability is very relevant in order to uphold the principles of justice, certainty and legal protection for victims.

Regulations on defamation through social media in Indonesia strive to maintain a balance between protecting personal reputation and freedom of expression. The ever-evolving dynamics of the digital space present new challenges to the law, as interactions on social media are rapid, massive, and often uncontrolled. This situation makes it easier for acts detrimental to a person's dignity to occur, so regulations must provide clear guidelines to maintain a healthy digital space.

Indonesia's legal framework regulates defamation through the Criminal Code and the Electronic Information and Transactions Law. These two instruments serve as the basis for law enforcement when someone spreads accusations, insults, or statements that attack another party's honor. However, technological

²⁰Hsb, MO Ham and freedom of opinion in the 1945 Constitution. *Al WASATH Journal of Legal Studies*, 2(1), 2021, pp. 29-40

developments require a more proportionate interpretation to ensure that law enforcement mechanisms do not violate human rights.

The defamation provisions in the ITE Law initially drew considerable criticism for being overly broad. The vagueness of the norm often led to uncertainty in law enforcement and the potential to implicate protected expression. The revised ITE Law seeks to clarify the boundaries of the article's elements and emphasizes the need for stricter scrutiny of intent.

In several of its rulings, the Constitutional Court has emphasized that defamation laws cannot be used to silence criticism. The interpretation of the articles must be placed within the framework of protecting citizens' rights to maintain democratic space. This view demonstrates that defamation is not merely a technical issue, but a question of values in social life.

Social media has different characteristics than conventional media, so applicable regulations require a different approach. The speed at which information spreads can magnify the impact of a damaging statement, especially when many users share information without verifying its veracity. In this context, defamation regulations must be able to anticipate the potential for broader harm.²¹

The application of defamation laws should not rely solely on the formal aspects of statements deemed harmful. Law enforcement officers are obliged to examine the social context, the perpetrator's intent, the relationships between the parties, and the impact of the content's dissemination. The principle of proportionality is key to preventing excessive action in law enforcement.

Through clarification mechanisms, the right of reply, and public correction, defamation disputes can be resolved constructively. Social media provides a space for rapid correction mechanisms that can mitigate reputational impact without requiring the parties involved to take them to criminal proceedings. This approach reflects a more adaptive approach to justice in the digital age.

Despite regulatory changes, challenges remain because the public lacks adequate digital literacy. Misunderstanding information often leads to emotional comments that damage others' reputations. Justice in this context demands improved digital education so that the public can use social media responsibly.

Law enforcement officers must also understand the nature of digital communication to avoid misreading evidence and context. Without adequate understanding, law enforcement can easily lead to injustice and undermine public

²¹Kusnanto, Kusnanto, Candra Gudiato, Blasius Manggu, and Benedhikta Kikky Vuspitasari. "The Influence of the Internet and Conventional Media on Public Perception of Social Issues." *Sebatik* 27, no. 2 (2023): pp. 690-698.

trust in legal institutions. Therefore, specialized training is essential to ensure the professionalism of officers.

Defamation regulations must adapt to technological developments such as artificial intelligence, digital manipulation, and automated content. This challenge cannot be addressed simply by increasing sanctions, but by strengthening the state's ability to identify patterns of harmful content distribution. Such measures will better reflect substantive justice.

Changes in society's digital culture are a crucial factor in the implementation of defamation regulations. Justice is not achieved solely through written law, but through a culture of respecting the dignity of others in communication. As digital culture matures, the need for repressive law enforcement will diminish.

From a justice perspective, regulations must be directed at preventing abuse of the law by parties seeking to silence criticism. Mechanisms to protect citizens' expression must go hand in hand with protection for victims of defamation. This balance keeps the public sphere vibrant and healthy.

Law enforcement cannot be separated from the responsibilities of digital platforms. Platforms have the technical capacity to remove problematic content and provide effective reporting tools. Collaboration between the state and platforms reflects a new, collective form of justice in digital governance.

Defamation in the social media era must be viewed as a social problem that cannot be resolved solely through criminal channels. Justice requires educational efforts that encourage people to communicate ethically. This approach prioritizes prevention over simply imposing sanctions.

Regulations need to ensure that victims of defamation receive reputational restoration. This restoration can be achieved through public clarification or an apology. This form of restoration is more in line with the principles of restorative justice than imprisonment, which fails to address the root cause.

Going forward, defamation regulations must be continually updated to keep up with technological developments. The development of new policies should involve academics, civil society, and technology practitioners to produce fairer and more democratic regulations. An inclusive approach will strengthen the law's legitimacy in the public eye.

Defamation regulations in Indonesia will be effective if implemented with the principle of justice, which balances the protection of personal honor and the guarantee of freedom of expression. Justice exists when the law is not used repressively, but rather serves as a guideline that fosters healthy, ethical, and respectful digital communication.

Defamation regulations in Indonesia are essentially based on three main legal frameworks, namely the Criminal Code, Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law) and its amendments, and the decisions of the Constitutional Court. In the Criminal Code, this offense is qualified as insult and slander, while in the ITE Law the regulation is contained in Article 27 paragraph (3) and Article 45 paragraph (3) which emphasizes the prohibition on distributing or transmitting content containing insults or defamation through electronic media. The Constitutional Court's affirmation through Decision No. 50/PUU-VI/2008 that this offense is a complaint offense emphasizes protection so that the law is not used excessively. This framework shows that the state is trying to maintain a balance between protecting human dignity and freedom of expression in the digital space.

When viewed through the Pancasila Theory of Justice, particularly the second principle, which emphasizes the principle of "justice for all people while taking into account human dignity," defamation regulations serve to guarantee personal justice for every citizen harmed by attacks on their reputation. Pancasila views human dignity as the highest normative element, thus acts of defamation that degrade dignity or reputation deserve to be categorized as reprehensible acts that require law enforcement. However, Article 2 also demands that protection for victims does not eliminate the perpetrator's right to be treated fairly, for example by limiting cases to only being processed when the victim files a complaint. This reflects the moral balance that the law must not become a tool of repression against freedom of expression, but must still maintain human dignity and social order.

Furthermore, the fifth principle of Pancasila, which emphasizes "justice in social relations based on the spirit of kinship, harmony, and deliberation," emphasizes that the resolution of defamation conflicts should ideally prioritize dialogue and relationship restoration, not simply imprisonment. In the context of social media—which is prone to miscommunication and emotions—a restorative approach becomes relevant so that dispute resolution better reflects humanitarian values and digital civilization. Therefore, several updates to the ITE Law and more selective law enforcement policies (restorative justice, clarification, digital mediation) are forms of implementation of Article 5, which emphasizes social harmony as the ultimate goal of the law. Thus, the regulation of defamation through social media becomes not only a repressive tool but also an instrument that maintains public morality, media decency, and harmonious social relations in the digital space.

3.2. The Ideal Concept of Legal Regulation of Defamation Through Social Media Based on the Value of Justice

Law enforcement is crucial for achieving security, harmony, and order in a society. Law enforcement, which primarily protects human interests, is the only way to

achieve a peaceful and orderly society. Indonesia is recognized as a state based on the rule of law, as stipulated in Article 1, Paragraph 3 of the 1945 Constitution of the Republic of Indonesia. Furthermore, in carrying out national and state affairs, the Indonesian state is obliged to comply with all applicable laws and regulations. Furthermore, the Indonesian government guarantees everyone the right to hold positions of political and legal authority.²²

Society is faced with a wealth of information resources in an era of ever-evolving technology, which significantly contributes to the ease of many human tasks. Law enforcement officers are expected to handle various cases accurately and intelligently in the face of current technological advancements, including crimes occurring in the digital realm.²³

In a social context, people communicate with one another. Humans sometimes engage in negative and positive actions during these encounters. People should behave morally in social settings by doing good things. The way members of society behave has negative consequences, whether we realize it or not. Generally, evil is characterized as human actions that have harmful consequences.

Every aspect of human life, including the legal profession, has been profoundly impacted by the rapid advancements in data innovation and electronic exchange. While these advances bring numerous benefits to society, they also bring new challenges, one of which is the rise in crimes committed through technology. Information and electronic transaction crimes, including online fraud, the distribution of false information, data privacy violations, and defamation on social media, are becoming increasingly likely due to the growing popularity of information technology.²⁴

Faced with the freedom and ease of communication, people often overlook the importance of maintaining proper ethics and behavior when interacting via social media, especially in the digital realm. This can lead to illegal actions or behavior such as defamation, scams, blasphemy, and so on.

The ideal concept for regulating defamation laws through social media places human dignity as the starting point. Every person's reputation is part of the honor guaranteed by the constitution, and is also related to the right to security and protection from baseless attacks. An ideal regulatory framework must be able to safeguard an individual's reputation without sacrificing freedom of expression, which is also protected as a human right. The balance between these two rights is

²²Irawan, Anang Dony. "Analysis of law enforcement and human rights in Indonesia." *Journal of Citizenship Virtues* 4, no. 2 (2024): pp. 848-857.

²³Aminudin, Amin. "Facing digital news content disinformation in the post-truth era." *Journal of Communication Pearl Lens* 6, no. 2 (2022): 283-292.

²⁴Akhmaddhian, S., & Agustiwi, A, "Legal Protection for Consumers in Electronic Buying and Selling Transactions in Indonesia." *UNIFIKASI: Journal of Legal Studies* 3, No. 2 (2016) p. 40

the primary parameter of justice in the formulation and enforcement of defamation laws in the digital space.

Positive regulations in Indonesia have relied heavily on the Criminal Code and the Electronic Information and Transactions Law, along with its amendments. These norms punish acts of assault on honor through accusations that damage a person's reputation, including those made through digital platforms. Recent developments, including amendments to the ITE Law and Constitutional Court rulings, demonstrate the awareness that overly broad formulations can threaten freedom of speech, leading to a tightening of interpretations to ensure that only behavior that truly exceeds the limits of reasonable criticism is punishable.²⁵

The value of justice requires regulations that clearly distinguish between criticism, harsh opinions, and attacks on honor based on false facts or baseless accusations. Criticism of public officials or state institutions should receive greater protection because it concerns accountability, while baseless criminal accusations against ordinary citizens deserve a more serious view. This line needs to be clearly defined in norms to prevent judges, prosecutors, and investigators from becoming overly subjectivist when assessing digital content.

The digital space has a high viral nature, making the impact of defamation far more widespread than traditional communication. Once a post is shared, its traces are difficult to completely erase and can remain attached to the victim's identity for years. This situation could justify the state establishing specific forms of responsibility for both perpetrators and social media platforms, provided that sanctions are proportional and criminal law is not the sole instrument used.²⁶

The value of social justice requires realistic access to redress for victims. Correction mechanisms, the right of digital reply, content takedowns, and public apologies should be an integral part of the defamation handling system on social media. Reputational restoration is often far more meaningful to victims than simply punishing the perpetrator. Therefore, an ideal arrangement should provide ample space for restorative resolutions that focus on repairing damage to reputations in the public sphere.

The use of criminal imprisonment for defamation should be viewed as the ultimum remedium. Implementing too lenient a prison sentence risks creating a chilling effect, where the public is afraid to voice legitimate criticism, especially of those in power. A justice approach demands that criminal sanctions be directed more

²⁵Astiti, Ni Made Yordha Ayu. "Regulation of Electronic Fraud Crimes in Indonesian Positive Law." *Widyasrama* 37, no. 2 (2024): pp. 1-12.

²⁶Widayoko, Gian, Sugeng Dwi Harianto, and Abdul Basit. "Portrait of Mad'u in Digital Space: Integration of Audience Characteristics and Optimization of Social Media Platforms." *Pendas: Scientific Journal of Elementary Education* 10, no. 04 (2025): pp. 248-273.

toward serious cases involving clear malicious intent, significant harm, and the perpetrator's refusal to repair the damage through non-criminal means.

Civil legal instruments should be strengthened as the primary avenue for redress. Lawsuits for material and immaterial damages accompanied by court orders to remove content, publish clarifications, or display decisions on specific platforms can be a more proportionate means of justice. Strengthening digital mediation and arbitration institutions can also reduce the burden on the courts and provide a faster path for aggrieved individuals, eliminating the need to face complex criminal proceedings.

Administrative mechanisms should also be designed to allow specific authorities to collaborate with platforms to address clear and verified defamation reports. A transparent notice-and-takedown model with objective assessment standards will help prevent abuse of authority. Procedural fairness requires that any party whose content is removed be given the right to object and explain, to avoid the appearance of unilateral censorship.²⁷

Justice demands that regulations not be used to shield those in power from legitimate public criticism. The norm against defamation through social media should not be a "rubber-case" aimed at journalists, activists, or citizens who advocate for public interests based on data. The doctrine of public figures being in a different position than ordinary citizens can be used as a reference, where public officials should face a higher level of criticism as long as the accusations are factually based and in good faith.

The ideal concept also encompasses regulations regarding social media platforms as part of an ecosystem. Platforms retain control over content distribution algorithms, reporting systems, and community standards. Future regulations in Indonesia could impose proportionate legal obligations on platforms to respond to defamation reports promptly, transparently, and accountably, without making them the sole arbiters of truth, but rather partners with the state and society in maintaining a healthy digital space.

The experiences of several countries can serve as a model. The UK, for example, regulates defamation primarily through civil channels, with a strict standard requiring claims to demonstrate serious harm to reputation. English courts emphasize proof of actual impact and place a strong emphasis on press freedom.²⁸ This model emphasizes the balance between protecting reputations

²⁷Mayana, Ranti Fauza, Tisni Santika, and Zahra Cintana. "Digital Copyright Protection as a Form of Implementation of Intellectual Property Development in Electronic Systems." *Legal Reflections: Journal of Legal Studies* 8, no. 2 (2024): pp. 269-290.

²⁸King-Martin, Bradley. "The Defamation Act 2013: Failing to Re-Balance the Right to Reputation and the Right to Freedom of Expression in the Era of SLAPPs." *City L. Rev.* 5 (2023): p. 67.

and the public interest in obtaining information, so that lawsuits are not easily used to silence legitimate criticism.

Countries like Germany retain defamation offenses in their criminal law, including insults and slander, but place them within the context of the protection of human dignity, which is deeply enshrined in the constitution. German courts have developed jurisprudence that clearly distinguishes between harsh criticism of public figures and merely insulting personal attacks. This approach demonstrates how criminal norms can remain in place while being tempered by judicial interpretation consistent with fundamental rights.

Singapore takes a relatively stricter approach to regulating speech in the digital space, including defamation, with a combination of civil and criminal mechanisms. The courts there are known for their willingness to award substantial damages in defamation cases against officials or public figures, thus creating a deterrent effect. At the same time, regulations like the POFMA (Positive Information Protection Act) provide the government with the opportunity to correct information deemed false, although this approach has often been criticized for potentially suppressing political opposition if not enforced by strict human rights standards.²⁹

Learning from the UK, Indonesia could adopt a serious harm standard as a prerequisite for enforcing defamation cases on social media. This standard would prevent overreporting of minor statements or reasonable debates, while ensuring that only cases that seriously damage reputations are prosecuted. Strengthening the paradigm that reputational disputes are primarily the domain of civil law would help reduce the criminalization of citizens for their expression in the digital space.

Lessons learned from Germany can be applied by strengthening the courts' role in developing constitutional interpretations of defamation laws. Judicial guidelines that emphasize the priority of freedom of expression in matters of public interest, while still protecting human dignity, would create a better balance. An emphasis on the parameters of malicious intent, the context of the statement, and the capacity of the perpetrator and victim could also be adopted to ensure that decisions are more fair.

Singapore's experience provides a lesson on the importance of rapid correction mechanisms in the digital space.³⁰ Indonesia could adopt the concept of an obligation to clarify or a right to electronic correction that would be easily

²⁹Foo, Cechao. "Protection from online falsehoods and manipulation act and the role of internet intermediaries in regulating online falsehoods." *Singapore Academy of Law Journal* 33, no. 1 (2021): p. 438-482.

³⁰Yin, Aaron Lim Chor. "Social Media Defamation: Can Creating, Sharing, or Liking a Post Get You Sued?." *Sing. Comp. L. Rev.* (2022): p. 21.

accessible to defamation victims. Instead of directly criminalizing the perpetrator, the state could encourage a model where the perpetrator is required to post a correction, apology, or link to an official clarification. This would help mitigate the negative impact of misinformation without immediately imposing criminal sanctions.

The dimension of procedural justice demands transparency at every stage of handling defamation cases. The reporting, investigation, and prosecution mechanisms must be subject to public scrutiny, preventing the perception that these articles are only applied when they concern the interests of certain parties. Strengthening the role of independent oversight bodies, including human rights commissions and law enforcement professional ethics councils, will help maintain system accountability.

Legal and digital literacy education are integral pillars of this ideal concept. The public needs to understand the difference between insulting, criticizing, revealing facts, and spreading baseless accusations. Synergy between the government, academics, the media, and digital platforms is necessary to build a communication culture that respects the dignity of others while being open to criticism. Cultural justice will be achieved when society itself rejects bullying and slander on social media without always waiting for state intervention.

The implementation of alternative mechanisms such as restorative justice is worth considering in certain defamation cases, particularly those involving parties from the same social circle or young people. Structured dialogue involving the perpetrator, victim, family, and mediator can restore relationships, explain the psychological impact, and encourage perpetrators to take moral responsibility. This type of arrangement reflects the Pancasila values of justice, which prioritize deliberation and the restoration of social harmony.

It's also necessary to accommodate the different contexts between ordinary individuals and businesspeople, officials, or public figures. Companies may require different reputation protection schemes, for example, through correction mechanisms and rights of reply integrated with digital rating or review systems. An ideal arrangement would provide a framework that prevents the manipulation of fake reviews without stifling honest consumer criticism, thus maintaining economic fairness and consumer protection.

Artificial intelligence and automated content moderation technologies present unique challenges. Platforms' systems for filtering speech can be biased or mislabel criticism as defamatory. An ideal regulatory framework would promote transparency in moderation algorithms and provide effective appeal channels for users. Legal certainty can only be achieved when individuals understand why their content was removed and have the opportunity to file a rebuttal.

Constructing a fair regulation requires recognizing the dynamics of time. Content that was uploaded long ago but only recently discovered by victims can raise evidentiary and statute-of-fact issues. An ideal norm would set a realistic claim deadline, while allowing flexibility when victims only become aware of reputational damage within a certain period. This aspect is closely related to the right to legal certainty and protection from endless lawsuits.

Strengthening mediation institutions at the platform level and outside the courts can bridge the interests of disputing parties. Mediators who understand the law, communication ethics, and the dynamics of social media can help find solutions that restore victims' reputations without prolonging the conflict. The existence of such institutions will also reduce the tendency for people to immediately take issues to the criminal court, which often carries high social costs.

The ideal concept of regulating defamation through social media based on the value of justice ultimately requires harmony between written norms, enforcement practices, communication culture, and technological developments. Indonesia has a strong philosophical foundation through Pancasila and the constitution to build a model that does not simply copy foreign systems, but rather integrates the protection of dignity, freedom of speech, social recovery, and legal certainty. Consistent efforts to improve the substance, structure, and culture of the law will determine whether future regulations truly protect everyone's reputation while maintaining the digital space as a healthy democratic arena.

4. Conclusion

Regulation of defamation through social media in Indonesia essentially seeks to maintain a balance between reputation protection and freedom of expression through provisions in the Criminal Code, the Electronic Information and Transactions Law, and the Constitutional Court's interpretation, which emphasizes that this offense is complaint-based and applies only to attacks against individuals. However, substantive issues remain, such as the vague phrase in Article 27A of Law 1/2024, which has the potential to lead to multiple interpretations and open up space for silencing criticism. Effective law enforcement requires the application of the principles of proportionality, context, and impact, while simultaneously placing imprisonment as the ultimum remedium, while prioritizing remedial mechanisms such as the right of reply, public correction, apology, content removal, civil lawsuits, and restorative justice schemes. Lessons learned from other countries encourage the use of the "serious harm" standard and rapid correction mechanisms in the digital space, supported by coordination with social media platforms, increased digital literacy, and the professionalism of law enforcement. Improving the substance, structure, and legal culture based on Pancasila values is key to preventing reputation protection from becoming a tool for silencing, and to maintaining a healthy and democratic digital space.

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