

Comparative Analysis of the Criminal Act of Defamation in the KUHP and the ITE Law After The 2024 Mk Decision

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Abstract. *This research aims to analyze and compare the regulation of defamation offenses under the Indonesian Criminal Code (KUHP) and the Electronic Information and Transactions Law (UU ITE) after the 2024 Constitutional Court Decision. The background of this study arises from the increasing number of defamation cases, both in conventional and digital contexts, which have sparked debates between freedom of expression and the protection of individual reputation. The research applies a qualitative method with a normative and empirical descriptive approach. Data were collected through in-depth interviews with three police officers from Polresta Kupang, field observations, and documentation studies of relevant laws and court rulings. The results indicate that the KUHP focuses on traditional defamation committed through oral or written statements, while the UU ITE regulates online defamation. After the 2024 Constitutional Court Decision, Article 27 paragraph (3) of the ITE Law was reaffirmed to prevent its misuse in restricting freedom of speech. The Court emphasized the importance of context, intent, and social impact in determining criminal liability. Data from the Kupang Police show that in 2025 there were 53 criminal cases, with 21 involving defamation, reflecting the rising public awareness of legal rights. The comparative analysis reveals that the Criminal Code and UU ITE now complement each other, and their harmonization is essential to achieve fair legal certainty in the digital era.*

Keywords: *Constitutional; Criminal; Electronic; Information.*

1. Introduction

Defamation is a form of criminal act that has long been a source of debate in the Indonesian criminal law system.¹As a state based on the rule of law based on

¹ Harahap et al., "CLASSIFICATION OF DEFAMATION CRIMINAL ACTS ACCORDING TO THE KUHP AND THE ITE LAW."

Pancasila and the 1945 Constitution, Indonesia upholds the principle of freedom of expression as a constitutional right of citizens, but at the same time is also obliged to protect the dignity, honor, and respect of every individual.²In practice, these two interests often clash. On the one hand, the public has the right to express criticism and opinions, but on the other, such expression has the potential to offend or harm someone's honor, leading to legal consequences. This is what makes the crime of defamation a constant topic of discussion, especially in this era of open information and the rapid development of communication technology.

Digital life creates a public space that is open, fast, and cross-border.³However, this openness and speed also carry serious consequences, one of which is the increased potential for legal violations, particularly related to criminal defamation. This phenomenon is not merely a social problem but also a legal one that requires appropriate normative instruments to keep pace with the dynamics of digital society. This is where Indonesian criminal law is challenged to protect the honor and reputation of individuals, while ensuring that the constitutionally guaranteed freedom of expression is not excessively curtailed.⁴

The provisions regarding defamation in Indonesia have long been regulated in Article 310 of the Criminal Code. This article contains provisions concerning the act of attacking someone's honor or reputation by making accusations, with the clear intention of making the matter public knowledge.⁵However, the wording of this article was deemed open to multiple interpretations, particularly regarding the form or manner in which the act was committed. This was later corrected by the Constitutional Court through Decision Number 78/PUU-XXI/2023, which stated that Article 310 paragraph (1) of the Criminal Code was conditionally unconstitutional and must be interpreted to include acts "orally."⁶ The decision is an effort to provide legal certainty and harmonize the norms of the old Criminal Code with the new Criminal Code that has been ratified through Law Number 1 of 2023. Thus, since the decision, the elements of the crime of defamation are clearer and no longer leave room for excessive interpretation by law enforcement officials.

In addition to the Criminal Code, the development of Indonesian criminal law also recognizes the crime of defamation through electronic media which is regulated in Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE

² Nuradhawati, "Dynamics of Centralization and Decentralization in Indonesia."

³ Hernita, Daulay, and Lubis, "THE EFFECT OF DIGITALIZATION AND DIGITAL TRANSFORMATION ON INSURANCE PERFORMANCE AT PT. CHUBB LIFE INSURANCE MEDAN."

⁴ Salim et al., Exploring Criminal Law (Theory, Principles and Application).

⁵ Priambudi, "Defamation According to Article 310 of the Criminal Code and Article 27 of Law Number 19 of 2016 concerning ITE."

⁶ Antonio and Adhari, "Assessing the Implementation of the ITE Law in Upholding Legal Certainty in Defamation Cases."

Law) and its amendments.⁷ This provision, especially Article 27 paragraph (3) and Article 45 paragraph (4), has drawn sharp criticism from the start because it is often used to report public criticism of state officials and institutions.⁸ The Constitutional Court has again made corrections through Decision Number 105/PUU-XXII/2024, which confirms that defamation offenses under the ITE Law can only be filed by individuals or natural persons.⁹ Thus, legal entities, institutions, or community groups no longer have the authority to file complaints. This ruling is substantively intended to limit the excessive criminalization of freedom of expression and restore the essence of defamation as a complaint-based offense that protects an individual's personal dignity.

Criticism, opinions or expressions that have public interest value are often considered as insults or defamation by certain parties.¹⁰ This poses a serious dilemma: on the one hand, criminal law must protect individual dignity, but on the other, it must not be used as a tool to stifle freedom of expression. Therefore, a clear and proportionate mechanism for limiting the use of criminal law is necessary to ensure it remains on track, serving as the ultimum remedium, not as a means of excessive criminalization.

Legally, the Criminal Code (KUHP) focuses on acts committed directly or verbally, while the ITE Law focuses on acts committed through electronic means, such as social media posts, digital messages, or online publications. However, in practice, overlapping norms and dual law enforcement often occur. Many reports are filed dually, under both the Criminal Code and the ITE Law, leading to confusion in case handling. This phenomenon demonstrates the persistence of a normative gap and inconsistent interpretation among law enforcement agencies.

Following the 2024 Constitutional Court ruling, it was hoped that there would be a shift in law enforcement patterns toward being more selective and less repressive, especially against public criticism. However, data from the Kupang Police Department shows a continued increase in reported cases, suggesting that non-litigation resolution mechanisms such as penal mediation are not yet optimal. This indicates that the implementation of the Constitutional Court ruling has not been fully internalized at the regional level.

The gap between legal norms and their implementation indicates a serious problem. Normatively, the elements of the crime of defamation have been

⁷ Ardiansyah, Gunawan, and Siswono, "Implementation of the ITE Law in Cyber Law Enforcement in Indonesia: Case Study of Articles 27 to 37."

⁸ Suparman, Asmara, and Zunnuraeni, "Critical Review of Article 27 & Article 28 of the ITE Law on Press Freedom."

⁹ Haryanto, "Legal Implications Following Constitutional Court Decision Number 105/PUU-XXII/2024 Concerning Amendments to Several Articles in the ITE Law."

¹⁰ Dunan, "Multiple Interpretations of the ITE Law (Digitalization Education and Freedom of Expression Perspective)."

clarified, the scope of reporting has been narrowed, and this offense has been reaffirmed as a complaint offense. However, in practice, law enforcement officials still face difficulties in interpreting these provisions, both in understanding the limits of legal subjects who have the right to report, distinguishing between criticism and defamation, and in determining the medium of action (conventional or electronic). This shows that the problem of defamation is not only a matter of legal substance, but also concerns the structure and culture of law in Indonesia, particularly the readiness of law enforcement officials to internalize the Constitutional Court's ruling.

2. Research Methods

The type of research used is normative legal research with a statute approach, a conceptual approach, and a case approach.¹¹ Normative legal research was chosen because the main focus of this research is on the study of positive legal doctrines and norms that regulate the crime of defamation in the Criminal Code and the ITE Law, as well as interpretations that emerged after the Constitutional Court's decision in 2024. Normative research allows researchers to explore, examine, and harmonize applicable legal norms with relevant legal theories.¹²

3. Results and Discussion

3.1. Rules and Regulations on the Criminal Act of Defamation in the Criminal Code

The crime of defamation is a form of insult (*smaad*) which is regulated comprehensively in the Criminal Code (KUHP), specifically Chapter XVI on Insults (Articles 310–321 of the KUHP).¹³ This chapter places a person's honor and good name among the rights that must be legally protected. Philosophically, this provision reflects the criminal law view that human dignity is a fundamental value that must not be violated for any reason, as honor is an inherent part of human rights.¹⁴

The Criminal Code regulates various forms of insult, ranging from defamation (Article 310), slander (Article 311), minor insults (Article 315), slander complaints (Article 317), to insults against deceased people (Articles 320–321).¹⁵ This

¹¹ Ariawan, "Normative Legal Research Methods."

¹² Jonaedi Efendi and Prasetijo Rijadi, *Normative and Empirical Legal Research Methods: Second Edition*.

¹³ Harahap et al., "CLASSIFICATION OF DEFAMATION CRIMINAL ACTS ACCORDING TO THE KUHP AND THE ITE LAW."

¹⁴ Sofyan, SH, and Nur Azisa, *Indonesian Criminal Law*.

¹⁵ Ramadhan, Diaz, and Hosnah, "Handling of Criminal Acts of Defamation Linked to the Criminal Code."

regulation shows that Indonesian criminal law places protection on individual honor not only while a person is still alive, but also after he or she dies.

Philosophically, the basis of this regulation stems from the recognition of the human right to live with honor and dignity. In the Indonesian context, this concept is in line with Pancasila, especially the second principle, namely "Just and civilized humanity," as well as Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that "Everyone has the right to protection of themselves, their families, their honor, their dignity, and their property."¹⁶

This demonstrates that protecting a good name is not solely a matter of criminal law, but also a manifestation of respect for human values. Through its criminal law, the state is obligated to ensure that every citizen is protected from acts that demean their dignity as human beings.¹⁷

1) Systematics and Structure of the Regulations of Chapter XVI of the Criminal Code

Historically, the provisions regarding the crime of defamation in the Indonesian Criminal Code are a legacy of the *Wetboek van Strafrecht voor Nederlandsch-Indië* (WvS), namely the Dutch colonial criminal law that was implemented in the Dutch East Indies in 1918 and continued to be used after Indonesia's independence.¹⁸

Although originating from the continental European legal system, the values conveyed by these articles are still relevant today, as they touch on a universal dimension: the protection of human dignity from false accusations and baseless insults.

During the colonial period, insult laws were used primarily to maintain social order and the authority of the colonial government. However, after Indonesian independence, the orientation of these laws shifted from being merely a means of controlling power to an instrument for protecting individual rights in a democratic society.¹⁹

However, some provisions in the Criminal Code still reflect conservative views that emphasize personal honor over the broader public interest. Therefore, there is a need to reinterpret these provisions to keep them relevant to modern social, cultural, and communication technology dynamics.

¹⁶ Karwur, "Fulfillment of the Right to Obtain Health Reviewed from Article 28 h Paragraph 1 of the 1945 Constitution of the Republic of Indonesia."

¹⁷ Anggraini, "Human Rights and Obligations."

¹⁸ Saraya et al., *Indonesian Criminal Law: Comprehensive Literacy & Insight into Criminal Law in Indonesia*.

¹⁹ Saraya et al.

2) Analysis of the Elements of Article 310 of the Criminal Code and its Basic Principles

a. Article 310 of the Criminal Code

Article 310 of the Criminal Code is the primary basis for regulating defamation. Textually, this article states that²⁰:

"Anyone who intentionally attacks the honor or good name of someone by making accusations about something, with the clear intention of making it public knowledge, is threatened with defamation with a maximum prison sentence of nine months or a maximum fine of four thousand five hundred rupiah."

From this formulation, several main elements can be drawn which form the basis for criminal law analysis:

1) The act of attacking someone's honor or good name.

This element describes an active action taken by the perpetrator with the intent of degrading the victim's personal worth. Honor here is defined as self-respect related to a person's moral integrity, while good name is the social assessment of a person. In practice, these two aspects are interconnected: an attack on a person's good name automatically damages a person's honor in the public eye.

2) Accusation of something.

The offense of defamation requires a factual "accusation". These accusations must be about specific actions that can be verified, not just opinions, ridicule or emotional insults. Thus, the law emphasizes that not all negative statements constitute defamation, unless they contain concrete accusations of disgraceful or unlawful acts.

3) Intended to be made public.

This element indicates that the crime of defamation is public. This means that the perpetrator intended for their accusation to be spread and known by others, rather than simply conveyed to the victim privately. This element is crucial because it demonstrates an intention to humiliate the victim in public.

4) The element of intent (dolus).

This offense is a delict of dolus, not culpa (negligence). This means the perpetrator must have a conscious intention to damage the victim's reputation. If the act is committed without such intent (for example, due to a misunderstanding or without the intent to attack), the element of intent is not met.

²⁰ Moeljatno.

5) The nature of the complaint offense is absolute.

Under Article 319 of the Criminal Code, defamation can only be prosecuted upon a complaint from the victim. This demonstrates that the law recognizes the personal and subjective nature of honor, meaning the state may not intervene unless the victim feels harmed.

An analysis of these elements shows that the Criminal Code positions honor as an individual, rather than a public, moral value. However, the law maintains balance by limiting criminal penalties to acts with clear malicious intent and resulting social consequences.

Furthermore, Article (2) regulates the form of written defamation (libel).²¹:

"If this is done in writing or images that are broadcast, shown or posted in public, then the threat of written defamation is a maximum prison sentence of one year and four months."

The element of "writing or depiction" broadens the scope of this crime, including modern contexts such as print media, newspapers, or even social media content. Legally, written defamation is considered more serious because its impact is broader and more permanent, given the nature of writings that can be disseminated and stored.

Meanwhile, Article (3) provides an exception:

"It does not constitute defamation or written defamation if the act is clearly done in the public interest or because of necessity to defend oneself."

This provision is of significant legal importance because it affirms the principle that not all accusations or criticisms that harm a person's reputation are criminalized. If a statement is made in the public interest (for example, a journalist's report on corruption or criticism of a public official), then it is not a criminal offense.

Normatively, this demonstrates that Indonesian criminal law strives to balance protecting individual reputations with freedom of expression for the benefit of society. In other words, the law should not be used to silence informed and constructive criticism.

b. Analysis of Article 311 of the Criminal Code

Article 311 of the Indonesian Criminal Code (KUHP) plays a crucial role in the Indonesian criminal law system, particularly in regulating the crime of defamation committed with elements of slander. This article essentially aggravates the previous provision, Article 310 of the Criminal Code, by adding the additional

²¹ Moeljatno.

element of intent to falsely accuse. In other words, the perpetrator not only committed defamation but also knew that the accusation was false.

The formulation of Article 311 paragraph (1) of the Criminal Code reads:²²:

"If the person who commits the crime of defamation or written libel is allowed to prove that what is alleged is true, does not prove it, and the accusation is made contrary to what he knows, then he is threatened with defamation with a maximum prison sentence of four years."

From the formulation of the article, it can be understood that Article 311 of the Criminal Code contains several main elements, namely:

There has been an act of defamation or written defamation as referred to in Article 310 of the Criminal Code;

- 1) The perpetrator is given the opportunity to prove that his accusations are true;
- 2) The perpetrator could not prove the truth of the accusation; and
- 3) The accusation was made against the perpetrator's own knowledge (the perpetrator knew that the accusation was not true).

This final element is the core of Article 311 of the Criminal Code, as it implies malicious intent or the deliberate act of damaging another person's reputation by making false accusations. In the context of criminal law, this element demonstrates the presence of mens rea (the element of internal guilt) that distinguishes slander from ordinary defamation.

c. Analysis of Articles 312–314 of the Criminal Code

1) Article 312 of the Criminal Code

Article 312 states:

Proof of the truth of the accusation is only permitted in the following cases:

a) if the judge deems it necessary to examine the truth in order to consider the defendant's statement, that the act was committed in the public interest, or because he was forced to defend himself;

b) if an official is accused of something in carrying out his duties."

Article 312 of the Criminal Code establishes legal limits on proving the truth of accusations in defamation cases. This article strikes a balance between protecting individual honor and the public's right to know the truth, particularly when the

²² Moeljatno.

accusations relate to the public interest.²³In legal practice, this type of evidence is not automatically justified; the judge has the authority to determine whether the truth of the accusation needs to be examined. Public interest factors, such as exposing alleged corruption or official maladministration, allow the accused to prove the truth of their accusation. Meanwhile, the element of self-defense asserts that a person attacked verbally or in writing has the right to defend their personal honor through valid evidence.

Furthermore, the provisions regarding public officials indicate that officials acting in their official capacity have a responsibility to be publicly verifiable. This supports the principles of public accountability and transparency. Thus, Article 312 restricts evidence from being misused for purposes detrimental to individuals, while also providing legal recourse for truthful information relevant to the public interest.

2) Article 313 of the Criminal Code

Article 313 states:

"The evidence referred to in Article 312 is not permitted if the alleged matter can only be prosecuted based on a complaint and the complaint is not submitted."

Article 313 functions as a refinement and control of Article 312. This provision emphasizes that proving the truth of the accusation does not apply if the alleged crime is a complaint offense, but the complaint from the victim has not been filed.²⁴In other words, if the victim does not file a complaint, the defendant has no right to prove their allegations. This demonstrates that criminal law respects the victim's good faith and initiative as a party with a direct interest in their honor. This principle also prevents the potential misuse of evidence to unlawfully attack the victim's reputation.

This provision has significant relevance in judicial practice because it emphasizes that self-defense through proving the truth cannot be used as a pretext to freely attack another person's reputation. Article 313 also emphasizes the balance between protecting individual honor and the public's right to know the facts, particularly in the context of complaint-based offenses.

3) Article 314 of the Criminal Code

Article 314 states:

a) If the person who was insulted is found guilty of the thing accused by a final judge's decision, then criminal prosecution for slander is impossible.

²³ NINGRUM, "System of Evidence for Criminal Acts of Defamation Through Social Media (Study at the North Sumatra Regional Police)."

²⁴ Wawointana, "Criminal Sanctions for Those Who Accuse People of Committing Crimes Without Evidence According to the Criminal Code."

b) If he is acquitted of the charges by a final judge's decision, then that decision is seen as perfect proof that the charges are not true.

c) If criminal prosecution has been initiated against the person who was insulted because of the thing he is accused of, then the prosecution for slander will be stopped until a final decision is received regarding the thing accused.

Article 314 of the Criminal Code emphasizes the legal effect of court decisions on accusations. Paragraph (1) states that if an accusation against a person is proven true and proven through a legally binding judge's decision, then the act cannot be considered slander. This reflects the principle of substantive justice, where a person is not punished for stating true facts.

Conversely, paragraph (2) emphasizes that if the accused is acquitted, the verdict is conclusive proof that the accusation is false. Thus, it provides legal certainty and protects the victim's honor, so that false accusations or slander can be subject to criminal sanctions in accordance with Article 311 of the Criminal Code.

Article (3) stipulates technical provisions so that the defamation prosecution process must await the main decision regarding the initial accusation. This prevents legal conflicts and ensures that defamation charges are not imposed before the truth of the main accusation is clear. In practice, this provision provides procedural certainty and prevents the abuse of the legal process for the purpose of harming the accused party.

d. Analysis of Article 315 of the Criminal Code

Article 315 of the Criminal Code states:

"Every deliberate insult that is not in the nature of defamation or written defamation that is committed against a person, whether in public orally or in writing, or in front of that person himself orally or in action, 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."

Article 315 of the Criminal Code regulates minor insults, which are forms of insult that do not fulfill the elements of defamation or written libel as stipulated in Articles 310 and 311. The main differences lie in the intensity of the act and the impact on honor. This minor insult can occur verbally, in writing, directly, or by letter, either in public or in front of the victim.

In terms of legal purposes, Article 315 emphasizes that the law still imposes sanctions even if the act is not as serious as defamation or slander. This reflects the principle that any act that demeans a person's dignity is still criminally liable,

even if it is less serious.²⁵The criminal penalties are also adjusted, with a maximum sentence of four months and two weeks in prison or a specific fine, indicating that the law differentiates the level of seriousness of insulting acts.

e. Analysis of Article 316 of the Criminal Code

Article 316 of the Criminal Code states:

"The penalty stipulated in the previous articles in this chapter may be increased by one third if the person insulted is an official while or because of carrying out his legitimate duties."

Article 316 of the Criminal Code functions as a rule to increase criminal penalties for cases of insult or defamation committed against public officials in the context of carrying out their duties.²⁶ In substance, this article emphasizes that officials who are carrying out their duties have a legal position that is more vulnerable to insulting attacks, so that the perpetrator can be subject to a heavier penalty of up to one-third of the basic criminal penalty.

The primary purpose of this provision is to protect the integrity and dignity of public officials acting in the public interest. By imposing increased penalties, the law provides a deterrent effect, preventing the public or other parties from indiscriminately attacking officials in the performance of their official duties, particularly through insulting or defamatory actions.

f. Analysis of Articles 317–319 of the Criminal Code

1) Article 317 of the Criminal Code

Article 317 states:

a) *"Anyone who intentionally submits a false complaint or notification to the authorities, either in writing or to be written, about someone so that their honor or good name is attacked, is threatened with making a slanderous complaint, with a maximum prison sentence of four years."*

b) *"Revocation of rights based on Article 35 No. 1 - 3 can be imposed."*

Article 317 of the Criminal Code regulates the crime of making false reports or false statements that result in defamation. This act differs from ordinary defamation because the perpetrator not only directly attacks honor but also uses official mechanisms—for example, reporting someone to authorities or law enforcement—with information known to be false. The penalty of up to four years

²⁵ Ramadhan et al., "Implementation of Islamic Quality and Ethical Principles in Maintaining Smooth Production in Manufacturing Companies."

²⁶ Moeljatno, KUHP (Criminal Code).

in prison demonstrates the seriousness of the law regarding the misuse of official mechanisms to harm others.

The provisions of paragraph (2) regarding the revocation of rights emphasize additional consequences for the perpetrator, indicating that this action not only impacts the victim, but also disrupts the functioning of the legal system. In practice, this article is important to prevent abuse of the legal process, such as false reports that can ensnare someone legally without a valid basis.

2) Article 318 of the Criminal Code

Article 318 states:

a) "Any person who by any act intentionally creates a false suspicion against someone that he has committed a criminal act, is threatened, for giving rise to a false suspicion, with a maximum imprisonment of four years."

b) "Revocation of rights based on Article 35 No. 1 - 3 can be imposed."

Article 318 regulates acts that create false suspicions against someone. The main element here is the perpetrator's intention to create suspicions that another person has committed a crime, even if this is untrue. Such acts can damage the reputation, social life, and even the security of the targeted individual. The same criminal penalties as Article 317 emphasize that the law views this act as serious as the crime of filing a defamation complaint, as both use specific media or mechanisms to inflict harm on the victim.

Like Article 317, the revocation of the perpetrator's rights emphasizes the preventive and corrective dimensions of the law, so that the perpetrator is not only punished criminally, but can also have his rights restricted to prevent the repetition of similar acts.

3) Article 319 of the Criminal Code

Article 319 states:

"Insults that are punishable by law according to this chapter shall not be prosecuted if there is no complaint from the person affected by the crime, except under Article 316."

Article 319 establishes the principle of a complaint-based offense. This means that criminal defamation cannot be prosecuted without a complaint from the victim, except when it involves a public official, as stipulated in Article 316. This principle emphasizes that the law respects an individual's right to personal honor, so criminal prosecution is not automatic.

g. Analysis of Articles 320–321 of the Criminal Code

1) Article 320 of the Criminal Code

Article 320 states:

a) "Whoever commits an act against a deceased person which, if the person were still alive, would constitute defamation or libel, shall be punished by imprisonment for a maximum of four months and two weeks or a fine of up to four thousand five hundred rupiah."

b) "This crime is not prosecuted unless there is a complaint from a blood relative or in-law in the direct or divergent line up to the second degree from the deceased, or upon complaint from the husband (wife)."

c) "If due to the matriarchal institution the power of the father is exercised by someone other than the father, then the crime can also be prosecuted on the complaint of that person."

Article 320 of the Criminal Code regulates the protection of the reputation of the deceased. Even though the victim is deceased, the law still places the value of individual honor as something that must be protected, as insulting the deceased can have psychological and social impacts on their family and friends. The criminal penalties provided indicate that acts committed against the deceased are still punishable, although the penalties are less severe than defamation against the living.

The provisions of paragraph (2) emphasize that this article is a complaint-based offense, so that criminal prosecution can only be carried out upon a complaint from a specific family member or the deceased's spouse. This emphasizes that the law respects the rights of the family as the honorary representative of the deceased, and prevents the misuse of criminal law for other illegitimate purposes. Paragraph (3) adds a special mechanism related to matriarchal institutions, which demonstrates the flexibility of the law in considering family structures and complaint rights in certain contexts.

2) Article 321 of the Criminal Code

Article 321 states:

a) "Anyone who broadcasts, displays or displays in public a writing or picture that contains insults or defames a deceased person, with the intention that the contents of the letter or picture become known or become more widely known to the public, shall be punished by a maximum imprisonment of one month and two weeks or a maximum fine of four thousand five hundred rupiah."

b) "If the person guilty of committing the crime in carrying out his profession, and at that time less than two years have passed since the conviction became final for the same crime, then his right to carry out the profession may be revoked."

c) *“This crime will not be prosecuted unless there is a complaint from the person designated in Article 319 and Article 320, paragraphs two and three.”*

Article 321 of the Criminal Code emphasizes the prevention of the dissemination of insults against the deceased through public media. Broadcasting or posting writing or images that insult or defame a deceased person, with the intent of making it public, is considered a minor offense. The relatively light penalty compared to previous articles demonstrates a proportional approach to punishing acts that have moral and social impacts but no longer directly affect living individuals.

Article (2) provides for aggravating provisions in the form of revocation of the right to pursue a profession, if the act is repeated within two years. This shows that the law takes into account the seriousness of repeated acts as a factor that increases the legal consequences for the perpetrator.

3.2. Rules and Regulations for Criminal Defamation in the ITE Law Following the 2024 Constitutional Court Decision

The digitalization of communications has drastically changed the way Indonesians interact, express opinions, and access information. Social media, online news portals, and various other digital platforms have become new public spaces, enabling the spread of ideas within seconds. However, behind this progress also comes the potential for complex legal violations, particularly in the form of cyber defamation.²⁷

Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law), which was later amended by Law Number 1 of 2024, was designed to provide legal certainty for digital activities.²⁸ However, in practice, several articles in the ITE Law are often questioned because they are considered to lead to "over-criminalization" of public expression, social criticism, and freedom of opinion.

One of the most controversial articles is Article 27 paragraph (3) and its derivative articles, which regulate content containing insults and defamation. Various groups, including academics, journalists, activists, and law enforcement officials, often debate the line between legitimate criticism and unlawful defamation.

To address this tension, several parties have filed judicial reviews with the Constitutional Court (MK). One of the most significant is MK Decision No. 115/PUU-XXII/2024, which marked a milestone in reinterpreting how the

²⁷ Hermansyah, Mustamam, and Putra, "The Role of Cyber Crime of the North Sumatra Regional Police's Special Criminal Investigation Directorate in Law Enforcement Against Perpetrators of Online Gambling Crimes (A Study at the North Sumatra Regional Police)."

²⁸ Herlambang, Utama, and Putrijanti, "Harmonization of the Law on State Administrative Law and the ITE Law in the Provisions on Electronic Evidence as Additional Evidence in the State Administrative Court System."

defamation articles in the Criminal Code and the ITE Law should be applied to align with the 1945 Constitution of the Republic of Indonesia, particularly Articles 28E and 28F, which guarantee freedom of expression and information.

The Court believes that criminal law should not be used as a tool to silence freedom of expression. However, protection of individual honor and dignity must still be maintained. Therefore, following Constitutional Court Decision 115/PUU-XXII/2024, the regulation regarding criminal defamation in the ITE Law has undergone significant interpretation refinements:

The Constitutional Court emphasized the limits of the application of criminal law;

- 1) explain more specifically the meaning of “public interest” and “riot”;
- 2) and strengthen the principle of absolute complaint offenses only by individual victims.

The Court based its considerations on the principle of protecting freedom of expression and the right to legal certainty as guaranteed by Article 28D paragraph (1) and Article 28E paragraph (3) of the 1945 Constitution. Criticism of government agencies or public institutions is part of public oversight in a healthy democratic system. If such criticism is considered defamation, then there will be criminalization of public participation and social oversight which are the characteristics of a democratic state under the rule of law. The Court also considered that the phrase “other people” in Article 27A could give rise to multiple interpretations because it was not explicitly explained whether it included individuals, groups, or institutions. To avoid arbitrary interpretations, the Court emphasized that the phrase must be interpreted in a limited manner, namely only including individuals or individuals, so that the government, corporations, institutions, or professions are not included as legal subjects who can file complaints in cases of defamation.

The implications of this affirmation are profound for law enforcement practices in Indonesia. For years, law enforcement officials have frequently used Article 27A or similar articles in the previous ITE Law to prosecute individuals who criticized government policies, public officials, or state institutions. Numerous cases have seen netizens, journalists, or activists charged with defamation for expressing criticism through social media. With this Constitutional Court ruling, such repressive practices no longer have any legal basis, as the Court affirmed that the crime of defamation cannot be imposed on public entities or legal entities, but only on individuals who can prove themselves to be victims of defamation.

Furthermore, the Court also clarified the element of “without rights” in Article 28 paragraph (2) in conjunction with Article 45A paragraph (2) of the ITE Law 1/2024. According to the Court, this phrase has important constitutional significance in protecting professional freedom and human rights. The element of “without

rights” should not be interpreted as a restriction on who may speak, but should be understood as a distinction between acts committed with malicious intent (*malafide*) and acts committed in the interests of the profession or the public. In this context, journalists, researchers, or law enforcement officers who conduct publications or investigations in carrying out their duties cannot be punished because they are considered to be acting “with rights.” This view is also in line with international legal standards, where restrictions on hate speech are only valid if they are carried out to protect legitimate interests (legitimate purposes) such as national security, public order, or the protection of the rights of others, not to silence criticism of the government.

Thus, the legal implication following the issuance of Constitutional Court Decision No. 105/PUU-XXII/2024 is the establishment of a clearer boundary between legitimate criticism and criminal defamation. Every individual now has stronger legal protection against the misuse of defamation laws, while the public space for expressing opinions is safer from the threat of criminalization. Government institutions and corporations can no longer hide behind defamation laws to silence the public or suppress social criticism. Instead, the government is encouraged to be more open to public participation, as mandated by the principles of good governance and public transparency.

In practice, this ruling demands a paradigm shift among law enforcement officials. Police, prosecutors, and judges must understand that defamation reports under Article 27A of the ITE Law are only valid if filed by individuals who are direct victims. Reports from institutions or agencies no longer have legal basis. Furthermore, the law enforcement process must ensure that there is an element of intent and malicious intent in every defamation allegation, not simply a difference of opinion or criticism. The interpretation of “something” and “another person” must also be based on the Constitutional Court’s interpretation to avoid legal uncertainty.

In the socio-political context, the Constitutional Court’s ruling has had a significant positive impact. The space for freedom of expression in the digital world is better protected, while the public can once again feel safe in expressing criticism of government administration. The press, activists, and academics now have a stronger legal basis to carry out their role of social control without fear of criminalization. However, this ruling also reminds the public that freedom of expression should not be abused to attack the personal honor of others. The line between freedom of speech and the abuse of freedom must be maintained through the principles of social responsibility and public communication ethics.

In terms of legal system, the Criminal Code and the Electronic Information and Transactions (ITE) Law have fundamental differences in terms of the object, form of action, legal subject, and nature of the offense. In the Criminal Code, the crime of defamation is based on conventional media (oral, written, pictorial) and is intended to protect a person’s honor from public accusations. Meanwhile, in the

Electronic Information and Transactions (ITE) Law, similar crimes occur through electronic media and the digital space, where the reach of information dissemination is wider and the impact is more immediate. The Criminal Code regulates defamation as an absolute complaint offense, meaning it can only be prosecuted if there is a complaint directly from the victim (Article 319 of the Criminal Code). This provision is actually also applied in the Electronic Information and Transactions (ITE) Law after the 2024 revision, with the Constitutional Court confirming that defamation in the digital world is also a complaint offense, not a general offense.

From the perspectives of these informants, it is clear that both the Criminal Code (KUHP) and the Electronic Information and Transactions (ITE) Law have equally important roles, but differ in their approaches. The Criminal Code provides legal protection against direct defamation, while the ITE Law protects victims defamed through social media, digital messages, or other online platforms. This difference should not be seen as a conflict, but rather as an expansion of criminal law in line with current developments. The effectiveness of both laws also depends on the context of the case and the available evidence. The Head of Criminal Investigation Unit emphasized,

"Both are effective if used proportionally. The ITE Law is merely an addition to the digital space, not a replacement for the Criminal Code." (Interview, 2025).

Meanwhile, Cyber Crime Investigators assess that,

"The ITE Law is really needed for cases that go viral on social media because without it, the perpetrators cannot be prosecuted." (Interview, 2025).

The General Criminal Investigator also added,

"The effectiveness of the law depends on the context and evidence. Not all digital cases should be prosecuted under the ITE Law if the conventional elements are stronger." (Interview, 2025).

However, prior to the 2024 Constitutional Court Decision, there was often overlap in the application of Article 310 of the Criminal Code and Article 27 paragraph (3) of the ITE Law. Many reports used both articles concurrently, leading to legal confusion and uncertainty. The Head of Criminal Investigation Unit acknowledged this, stating,

"There was indeed overlap, but after the Constitutional Court's decision, the direction began to align because the Constitutional Court emphasized the principle of prudence." (Interview, 2025).

This is reinforced by the statement of the Cyber Crime Investigator who said,

"Now, reports are categorized more specifically. Overlaps are starting to decrease because investigators are required to distinguish between cases that are purely digital contamination and those that are not." (Interview, 2025).

However, the General Criminal Investigator reminded that,

"Overlaps can still occur, but coordination between units is the main solution to avoid misapplication." (Interview, 2025).

Within the framework of the theory of legal certainty as proposed by Gustav Radbruch, the law must provide clarity, predictability, and consistency so that society understands what is and is not permissible. Legal certainty is one of the three basic values of law, along with justice and expediency. Law without certainty will only foster fear and distrust in the justice system. In the context of criminal law, legal certainty is a crucial element because it concerns human rights, freedom, and an individual's reputation.

Prior to the 2024 Constitutional Court Decision, Article 310 of the Criminal Code, Article 27 paragraph (3), and Article 27A of the ITE Law had created dual norms and multiple interpretations. Article 310 of the Criminal Code regulates conventional defamation, while Article 27 paragraph (3) of the ITE Law extends it to the digital realm. However, both lack clear boundaries regarding who can be victims and how the element of "attacking honor" is applied. In practice, this creates legal uncertainty because law enforcement officials often use articles of the ITE Law to ensnare members of the public who criticize public officials or state institutions.

Furthermore, the Court also clarified the previously vague meaning of the phrase "something" in Article 27A of the ITE Law. The phrase must now be interpreted as "an act that clearly demeans a person's honor or reputation," not simply a difference of opinion or criticism of public policy. This affirmation represents a concrete implementation of the *lex certa* principle, which requires that criminal law formulations be clear and free from multiple interpretations. Thus, the legal certainty envisioned by Radbruch, Halilah & Arif (2021) is truly realized in practice, as the public can now distinguish between legitimate criticism and criminal acts.

The comparative law approach also demonstrates how Indonesia adopts universal principles of international law, such as the prohibition on the misuse of criminal law to suppress freedom of expression. This principle aligns with the Universal Declaration of Human Rights (Article 19) and the International Covenant on Civil and Political Rights (ICCPR). Therefore, the Constitutional Court's ruling is not only relevant to the national legal system but also puts Indonesia in a position to align with international standards regarding freedom of expression and the protection of individual reputations.

4. Conclusion

Rules and Regulations on the Criminal Act of Defamation in the Criminal Code

Based on research results, the crime of defamation is regulated in Articles 310 and 311 of the Criminal Code, which emphasize the act of attacking a person's honor through speech or writing with the intention of making it public knowledge. This offense is an absolute complaint offense, meaning that legal proceedings can only be carried out if the victim directly reports it to law enforcement officials. In practice, the implementation of this article still faces various obstacles, especially in proving the element of intent and in distinguishing between criticism, opinion, and insult. Data from the Kupang Police Department shows that public reports of defamation cases based on the Criminal Code are still quite high, with 53 criminal cases, 21 of which are related to defamation in 2025. This indicates that public legal awareness is increasing, but understanding of legal boundaries is still limited.

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