

# CRIMINAL LIABILITY AGAINST PERPETRATORS OF DEFAMATION



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## ABSTRACT

Criminal responsibility is the application of law to the perpetrator of a criminal offense for an act that is contrary to the applicable rules of law. Defamation itself is a crime against a person's honor because it is related to insults that result in the defamation of another person's name. This research aims to provide an understanding related to the criminal liability of the perpetrator of defamation. This type of research uses the Normative Legal Research method, namely research conducted with a starting point from primary data obtained at the research site. The responsibility is imposed in accordance with the criminal elements that have been reviewed from the requirements of criminal responsibility. The laws and regulations in Indonesia that regulate criminal defamation through social media are based on the provisions stipulated in the Criminal Code and the ITE Law is *Lex Specialis* of the Criminal Code, namely Article 27 Paragraph (3) of Law No. 19 of 2016 on the amendment of Law No. 11 of 2008 concerning Information and Electronic Transactions.

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## 1. INTRODUCTION

Recently, crimes related to a person's honor and good name have become increasingly visible in society. Defamation is the utterance of words (or a summary of words/sentences) by way of accusations of certain acts, directed at the honor and good name of a person which may result in that

person's sense of self-worth or dignity being defamed, humiliated or degraded.<sup>1</sup>

Technology continues to be developed in order to make it easier for humans to carry out their daily activities. One of the products of information and communication technology whose sophistication is growing rapidly and controls almost all aspects of human life is the Internet. Business people, officials, governments and many people around the world use the internet as part of national and international business and personal life. The existence of some businesses would not be possible without the internet.<sup>2</sup>

The current globalization is moving very fast, big, and strong, which ultimately penetrates the boundaries of national sovereignty of each country experienced by developed countries and developing countries. The impact of globalization is that it increasingly makes nations and countries bound to each other in the fields of economics, technology, and politics. Globalization that occurs in the field of technology and information has narrowed the world's territory and shortened communication distances by accelerating the mobilization of people and goods.<sup>3</sup>

Along with the development of technology in the field of information that is increasingly modern, it often causes criminal acts of defamation committed by several irresponsible people or individuals. Defamation is the conveyance of speech (words or series of words/sentences) by way of accusations of committing certain acts, and which is aimed at the honor and good name of a person who can result in a sense of self-esteem or dignity of that person being defamed, humiliated or degraded.<sup>4</sup>

Defamation, committed by an individual against another individual or group, is one of the more popular types of criminal offense committed over the internet in Indonesia. Defamation, also known as the criminal act of insult, is any attack on the dignity of honor and good name of a person personally or collectively that causes embarrassment, irritation, defamation, or humiliation,

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<sup>1</sup> Chazawi, Adami, *Hukum Pidana Positif Penghinaan*, Surabaya: ITS Press. 2009, p.2.

<sup>2</sup> Sutan Remy Syahdeini, *Kejahatan & Tindak Pidana Komputer*. Jakarta: PT Pustaka Utama Grafiti. 2009, p.2.

<sup>3</sup> Wahid, Abdul and Labib, Mohammad, "*Kejahatan Mayantara (Cyber Crime)*", Bandung: Refika Aditama, Cetakan Kesatu. 2005, pp.3.

<sup>4</sup> Chazawi, Adami, *Op.Cit.*, p.89.

and causes displeasure, hatred, dissatisfaction, hurt, anger, and suffering that torments the mind of another person.<sup>5</sup>

Law Number 19 Year 2016 on the Amendment to Law Number 11 Year 2008 on Electronic Information and Transactions, Article 45 Paragraph (3) regulates defamation, as follows: “Any person who intentionally and without right distributes and/or transmits and/or makes accessible Electronic information and/or Electronic Documents that contain insults and/or defamation as referred to in Article 27 paragraph (3) shall be punished with a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp.750,000,000.00 (seven hundred fifty million rupiah)”.<sup>6</sup>

With Law No. 19/2016 on the Amendment to Law No. 11/2008 on Electronic Information and Transactions, legislation governing electronic information is now stronger. In addition, cybercrime can be more easily prosecuted because electronic information, electronic documents, and their printouts are valid legal evidence, which facilitates proof in cases.<sup>7</sup>

It is known that the perpetrators of defamation are still unable to use social media properly so that the government needs to take action against it by providing criminal efforts as a form of responsibility for defamation. Thus, this paper will examine how the liability of perpetrators of defamation crimes.

## 2. METHODS

This research method uses normative juridical research methods where looking at the problem from the study of materials as a reference used is legislation as the main material (primary legal material) and secondary legal materials are such as literature, law books, scientific works, scientific articles that discuss criminal liability against perpetrators of defamation.

## 3. DISCUSSION

### CRIMINAL OFFENSE OF DEFAMATION

Defamation in English is translated as defamation. In The Law Dictionary, defamation is the act of damaging or jeopardizing a person's reputation by false and malicious statements. The term is a comprehensive term of slander. Defamation according to Oemar Seno Adji is an act of

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<sup>5</sup> Chazawi, Adami, *Hukum Pidana Positif penghinaan (Edisi Revisi)*, Surabaya: Media Nusantara Creative. 2016, p.1.

<sup>6</sup> Undang-Undang No.19 Tahun 2016 Tentang Informasi dan Transaksi Elektronik

<sup>7</sup> Chazawi, Adami., *Hukum Pidana Positif Penghinaan*, Surabaya: PMN, 2016, p.87.

attacking someone's honor or good name (aanranding of goede naam). One form of defamation is defamation committed in writing by alleging something.<sup>8</sup>

Defamation is a complaint offense where the case of defamation will only be said to be a criminal offense if there is a complaint from the victim or a report from another person who knows of the alleged criminal act of defamation, as stated in Article 45 paragraph 5 of ITE Law No. 19 of 2016. The types of targets in the criminal act of defamation are divided into several types, including individuals, groups or groups, religions, deceased people, and officials including civil servants, heads of state or their representatives.<sup>9</sup>

Defamation is an activity that is prohibited and regulated in Law of the Republic of Indonesia Number 19 of 2016 amending Law of the Republic of Indonesia Number 11 of 2008 concerning Electronic Information and Transactions which is regulated in Article 27 paragraph (3). This activity very often occurs where the perpetrators tend to be free to carry out their actions which in this case include defamation, with someone who commits this criminal act many people feel harmed by this defamation.

The qualification of the criminal offense of insult or defamation is also regulated in Articles 310 to 321 of the Criminal Code, depending on the elements of the criminal offense as specified. It is also necessary to see the nature of criminal offenses in general, which is essentially a violation of norms which is also a violation of the law, or which is only harmful to the interests of the law itself.<sup>10</sup>

Defamation or libel is stipulated in Article 310 paragraph (1) and paragraph (2) of the Criminal Code, namely "Whoever deliberately attacks the honor or good name of a person by alleging something, with the clear intention of making it public, shall, being guilty of libel, be punished by a maximum imprisonment of nine months or a maximum fine of three hundred rupiahs".

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<sup>8</sup> Seno Adji, Oemar, *Perkembangan Delik Pers di Indonesia*, Jakarta: Erlangga. 1990, p.36.

<sup>9</sup> Pardede, Edwin, and Soponyono, Eko, and Wisaksono, Budhi, "Kebijakan Hukum Pidana dalam Upaya Penegakan Tindak Pidana Pencemaran Nama Baik Melalui Twitter," *Diponegoro Law Journal* 5, no. 3

<sup>10</sup> Mudzakir, , *Delik Penghinaan dalam Pemberitaan Pers Mengenai Pejabat Publik*, Jakarta: Erlangga. 2001, p.77.

However, if the insult is committed in a way other than “accusing an act”, for example by saying dirty words such as “jerk”, or “bastard” and so on, it can be categorized under Article 315 of the Criminal Code and is called “mild insult”, as for other insults, namely: defamatory insults (Article 317) of the Criminal Code), slanderous accusations (Article 318 of the Criminal Code), insults against people who have died (Articles 320-321 of the Criminal Code).

The qualifications of insult or defamation in the Law of the Republic of Indonesia Number 11 of 2008 as amended by the Law of the Republic of Indonesia Number 19 of 2016 concerning Electronic Information and Transactions (ITE Law) can be classified as follows: Article 27 paragraph (3) reads: “Every person who intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and Electronic documents that have content and defamation”. Article 45 paragraph (3) reads:

“Every person who intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain insults and/or defamation as referred to in Article 27 paragraph (3) shall be punished with a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp750,000,000.00 (seven hundred fifty million rupiah)”.

The elements of Article 27 paragraph (3) of Law Number, among others:

1. Everyone.

According to Article 1 point 21 of the ITE Law, a person is an individual, whether an Indonesian citizen, a foreign citizen, or a legal entity. So the element of every person according to Article 27 paragraph (3) is “every individual, every citizen, both Indonesian citizens and foreign citizens as well as a legal entity who intentionally and without rights distributes and/or transmits making accessible Electronic Information and/or Electronic Documents that have insulting content and/or defamation.”.

2. Willfully and Without Right.

Consciously intending and knowing that the act of “distributing” and/or “transmitting” and/or making accessible electronic information media and/or electronic documents that have insulting content and/or defamation. The element of “without right” is an element against the law.

### 3. Distributing and/or Transmitting and/or Making Accessible Electronic Information and Electronic Documents that Contain Defamation and/or Libel.

Articles 310 and 311 of the Criminal Code provide a basic understanding or essence of insult or defamation, namely the act of attacking the honor or good name of another person with the intention of being known by the public. Honor and good name have different meanings, but the two cannot be separated from one another, because attacking someone's honor will result in his honor and good name being defiled, and vice versa, attacking someone's good name is the same therefore, attacking one of the honor or good name is enough reason to accuse someone of insult.

In fact, the act of transmitting and the act of distributing have the same nature, namely that the information is channeled to the recipient. Therefore, to measure that the two actions have been fully realized is from the angle of the intended information. Whether the acts committed through computer hardware and software, according to the electronic system of information technology, have been able to channel information to the recipient of the information. Proof of such acts requires listening to experts in the field of information technology. Expert testimony can only be excluded if the electronic information has been proven in cyberspace. That is, it is easy to receive the information in its virtual form.<sup>11</sup>

## CRIMINAL LIABILITY FOR DEFAMATION

The criminal responsibility of the perpetrator of defamation will also depend on the ability to be responsible. There are three indicators of criminal responsibility in measuring a person committing the crime of defamation, namely: the ability to be responsible, the existence of guilt, and the absence of excuses.<sup>12</sup>

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<sup>11</sup> Asmadi, Erwin, “*Rumusan Delik Dan Pemidanaan Bagi Tindak Pidana Pencemaran Nama Baik Di Media Sosial*,” *De Lega Lata: Jurnal Ilmu Hukum* 6, no. 1 (2021)

<sup>12</sup> Andini, Orin Gusta, “*Tinjauan Hukum Pencemaran Nama Baik Terhadap Pejabat Negara: Kajian Atas Putusan Hakim Nomor 341/Pid.B/2014/PN.SGM*,” *Jurnal Wacana Hukum* 25, no. 2 (2019); Wahyuddin Naro et al., “*Shariah Assessment Toward the Prosecution of Cybercrime in Indonesia*,” *International Journal of Criminology and Sociology* 9 (2020): 572–586.; Jan Oster, “*Communication, Defamation and Liability of Intermediaries*,”

Regarding the criminal liability of defamation through electronic media as stated in the ITE Law, there have been several changes where initially the criminal provisions of defamation Article 27 paragraph (3) were regulated in Article 45 paragraph (1) which was later changed to Article 45 paragraph (3) in Law Number 19 Year 2016. The changes are placed on the period of criminal threats regulated in the criminal offense of defamation through electronic media. The change was due to the constitutional review hearing at the Constitutional Court which considered that the threat of criminal sanctions in Article 45 paragraph (1), namely imprisonment for a maximum of 6 (six) years and / or a maximum fine of Rp. 1,000,000. 000.00 (one billion rupiah) is more severe than the threat of sanctions in Article 310 paragraph (1) of the Criminal Code, namely imprisonment for a maximum of 9 (nine) months or a maximum fine of Rp. 4,500.00 (four thousand five hundred rupiah) and because the criminal sanctions in Article 45 paragraph (1) of the ITE Law have been changed to under 5 (five) years, it will result in no detention during the trial process.<sup>13</sup>

Criminal liability can be imposed on the perpetrator of defamation if he intentionally commits an act with the intention of falsely accusing him of having committed a punishable act, in this crime can be prosecuted if there is a complaint from the victim who is the person accused of the perpetrator's actions.

The ability to be responsible is a factor to be held accountable for the perpetrator of the crime of defamation. For the existence of the ability to be responsible, there must be the ability to distinguish between good and bad actions in accordance with the law and those against the law and the ability to determine his will according to the good and bad of the action. A person can be imposed criminal sanctions when the person commits a criminal offense and can be held criminally responsible, after that it can only be known what type of sanction is appropriate, how severe and the length of time the punishment is imposed on the person. Liability for criminal defamation can be applied with imprisonment or fines in accordance with applicable regulations. This responsibility is imposed in accordance with the criminal elements that have been reviewed in terms of the requirements of criminal

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Legal Studies 35, no. 2 (2015); Anna Vamialis, "Online Defamation: Confronting Anonymity," *International Journal of Law and Information Technology* 21, no. 1 (2013).

<sup>13</sup> *Ibid*

responsibility. So that the perpetrator of the crime of defamation can be held accountable for his actions.<sup>14</sup>

#### 4. CONCLUSION

The laws and regulations in Indonesia that regulate criminal defamation through social media are based on the provisions stipulated in the Criminal Code, while the articles used to ensnare criminal defamation are regulated in chapter XVI on defamation contained in Article 310 to Article 321 of the Criminal Code and the Electronic Information and Transaction Law is a Lex Specialis of the Criminal Code. It can be seen that Law Number 19 of 2016 amending Number 11 of 2008 concerning Electronic Information and Transactions Article 27 paragraph (3) also regulates defamation.

The term defamation in the Criminal Code and ITE Law has not received a clear explanation, but to ensnare the perpetrators of defamation, articles in the Criminal Code and ITE Law can be used to avoid a legal vacuum. To be held criminally liable, there must be a criminal offense, guilt, ability to be held responsible and no excuse. It is necessary to create a special chapter on defamation as well as further explanation of vague sentences and their limitations.

Criminal liability against perpetrators of defamation through mass media (medsos) is the application of criminal law based on violations of Article 27 paragraph (3) jo Article 45 paragraph (1) of the Law of the Republic of Indonesia Number 11 of 2008 concerning Electronic Information and Transactions as a special rule (lex specialist) as a legal basis and legal consideration for applying sanctions against perpetrators of defamation through Facebook. Legal sanctions for perpetrators of defamation committed through Facebook are punishable by a maximum of 6 (six) years and/or a maximum fine of Rp 1000,000,000.00 (one billion rupiah).

#### 5. LIMITATION

The expected impact is that people can be more responsible in using electronic information technology, so as to maintain a balance between the interests of individuals, society and the state. With the arrangements made, behavior in the current globalized world demands better and more useful use of electronic information technology media. Maintaining existing laws and

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<sup>14</sup> Al Barozi, Syofyan, and Wahyudi, Ary, and Isnaeni, Tijani, *Pertanggungjawaban Pidana Terhadap Pelaku Pencemaran Nama Baik Melalui Media Sosial Berdasarkan Undang-Undang Republik Indonesia Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik* dalam jurnal Unizar Recht Journal Volume 2 No. 4, Desember 2023

reducing criminal threats is expected to prevent differences in law enforcement in detention for defamation offenses.

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