

Juridical Review Of Cybercrime In The Criminal Act Of Defamation According To Ite Law And Criminal Law

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ABSTRACT

The development of the internet is indeed extraordinary. The rapid development of internet technology has caused new crimes to emerge, such as data manipulation, espionage, sabotage, provocation, money laundering, hacking, software theft, and hardware destruction, defamation, cyberbullying, and various others. Based on the Laws and Regulations, it is known that the elements of the crime of defamation are found in the Criminal Code, namely in Article 310 and Article 27 paragraph 3 of Law Number 8 of 2011 concerning Electronic Information and Transactions. Regulations regarding the offense of defamation can be found in the Criminal Code article 310 and Laws outside the Criminal Code, namely Law No. 11 of 2008 concerning Electronic Information and Transactions (ITE Law) article 27 paragraph 3 before the existence of the Electronic Transaction and Information Law No. 8 of 2011 there was a legal vacuum in which the criminal act of defamation was only regulated in the Criminal Code because of this vacuum, the Electronic Transaction Information Law was formed in order to create legal certainty when defamation was carried out in electronic media.

Keywords:

Defamation, ITE Law, Criminal Code

INTRODUCTION

A. Background

With regard to technological development, today such as the progress and development of information technology through the internet (*Interconnection Network*), human civilization is faced with a new phenomenon that is capable of changing almost every aspect of human life. Development in the field of information technology (with all its supporting aspects) is expected to have a positive impact on human life, which will ultimately lead to the creation of improved human welfare. Advances and developments in technology, especially telecommunications, multimedia and information technology (telematics) can ultimately change the organizational order and social relations of society. This is inevitable, as the

flexibility and capabilities of telematics are rapidly entering various aspects of human life.¹

Advances and developments in technology, especially telecommunications, multimedia and information technology (telematics) can ultimately change the organizational order and social relations of society. The development of information technology today, whether in the form of the internet or other similar media, has various consequences. There are positive and negative consequences arising from the development of information technology. There are many conveniences that we can get from the use of information technology, especially from the internet, and it cannot be denied that information technology, especially the internet, can make crimes that were originally only conventional in nature such as theft, fraud, threatening, and so on become more sophisticated through the use of online computer media with a very small risk of being caught.²

The rapid development of technology has formed an international information society, including in Indonesia. So, each other makes this part of the world narrow and short distance. Doing business is so easy, just like turning the palm of the hand.

According to State Minister of Communication and Information Syamsul Muarif, technology has changed the pattern of human life in various fields, which has directly affected the emergence of new legal acts in society. These forms of legal actions need to be adjusted, such as harmonizing some existing laws, replacing them if they are no longer appropriate, and forming new legal provisions.

The formation of laws and regulations in the era of information technology must be seen from various aspects. For example, in terms of the development and utilization of the *rule of law and the internet*, jurisdiction and conflict of law, legal recognition of documents and electronic signatures, consumer protection and privacy, *cybercrime*, content regulation and domain dispute resolution methods.³

B. Problem Formulation

Problem formulation is very important in the preparation of a legal writing. The formulation of problems in a study is intended to emphasize the problems to be studied, so that the objectives to be achieved become clearer and more systematic. Thus the expected results are obtained.

In connection with the background that has been described previously, the researcher identifies the following problems:

1. How is an act categorized as fulfilling the elements of criminal defamation according to the applicable laws and regulations?
2. How is the criminal law regulated in relation to the crime of defamation before and after the enactment of the Electronic Information and Transaction Law?

C. Research Objectives.

A research must have clear and definite objectives so that the research has definite

directions and guidelines. The research objectives in principle reveal what the researcher wants to achieve as a solution to the problem at hand.⁴

The objectives to be achieved from this research include the following:

1. To know and analyze the criminal law regulation related to the crime of defamation after and before the birth of the Electronic Information and Transaction Law.
2. To know and analyze an act can be categorized as a criminal act of defamation according to the applicable laws and regulations.

DISCUSSION

According to the phrase (English), *defamation is* defined as *defamation, Slander, libel* which in Indonesian translates to defamation, *slander* (oral), *libel* (written). *Slander is oral defamation* while *Libel is written defamation*. In Indonesian there is no term to distinguish between *slander* and *libel*.⁵

The crime of insult by Adami Chazawi distinguishes it into: general insult (regulated in chapter XVI of book II of the Criminal Code), and special insult (spread outside chapter XVI of book II of the Criminal Code). The object of general insult is a sense of self-esteem or dignity regarding honor and regarding the good name of a private person (personal in nature). In contrast to special insults, the object of insult is a sense/feeling of self-worth or dignity regarding honor and good name that is communal or group in nature.⁶

Based on article 310 of the Criminal Code in his book R. Soesilo explains that, "insulting" is "attacking someone's honor and good name". The attacked party usually feels "embarrassed", the "honor" attacked here is only about the honor of "good name", not "honor" in the sexual field.⁷

Defamation is very different from insults, from the language phrase defamation is defaming someone's good name while insults are more about insulting someone with dirty words or curses to someone, the crime of defamation involves three different individuals, namely between one individual and another individual and the community, while insults are only two individuals, with this then defamation is definitely included in insulting someone, but insults are not necessarily defamation, because insults may not spread or distribute to other people

/ society.

Defamation is divided into 2 types, namely, oral defamation and written defamation. In the book Oemar Seno Adji (1997: 92) defamation is known as insult, which is divided into:⁸

1. Material insult

Defamation consisting of a fact that includes an objective statement in words orally or in writing, then the decisive factor is the content of the statement whether used in writing or

orally. It is possible that this is done in the public interest.

2. Formal defamation

In this case, it is not the content of the defamation, but rather the manner in which the relevant statement was made. It is the form and manner that is the determining factor. In general, the manner of expression is abusive and not objective. The possibility of proving the truth of the allegation does not exist and it can be said that the possibility is closed.

All of these insults can only be prosecuted if there is a complaint from the person or victim, known as an offense of complaint, except when the insult is committed against a public servant while carrying out his duties legally. And in the Criminal Code is a formal offense and a material offense, while in the Electronic Information and Transactions Law (UU ITE) is a material offense only.⁹

The elements of defamation according to Article 310 of the Criminal Code are:

- a) Whoever;
- b) Intentionally;
- c) Attacking the honor or good name of "a person";
- d) Publicly displayed or posted.

The elements of Article 310 paragraph (1) of the Criminal Code are divided into two, namely objective elements and subjective elements.

Objective Elements:

- a) Whoever;
- b) Attacking the honor or good name of "a person";
- c) By alleging something.

Subjective Element:

- a) With the manifest intention (kenlijk doel) that the accusation is known to the public (ruchtbaarheid te geven);
- b) Willfully (opzettelijk);

The size of an act can be categorized as defamation of another person is still unclear because many factors must be studied. In the case of defamation or insult, what is to be protected is the obligation of every person to respect others in terms of their honor and good name in the eyes of others.

There is a relationship between honor and good name in terms of defamation, so it can be

seen first the definition of each. Honor is a person's sense of honor in the eyes of society, where everyone has the right to be treated as a respectable member of society. Attacking honor means doing an act that, according to general judgment, attacks a person's honor. The respect and actions that fall into the category of attacking a person's honor are determined according to the community environment in which the act is committed.

This sense of honor has to be objectified in such a way that it has to be judged by a certain action, whether or not a person will generally feel offended. It can also be said that a very young child cannot feel this offense, and that a very insane person cannot feel this offense. Therefore, there is no crime of defamation against these two types of people.

Defamation is very different from insults, there should be a new article that regulates these two different things, someone can be categorized as committing a criminal act of defamation which is definitely included in the offense of insult, but someone can commit an insult but not necessarily defame, in this case the perpetrator can insult someone without having to distribute it to others, but only insults personally directly.

At the end of the 20th century, there have been several works in the field of information technology, including the internet. The internet is a tool that enables *virtual* life. The presence of the internet has had a tremendous impact. With the internet, humans can chat, shop, go to school and several other activities like real life. So in turn, the presence of the internet raises the assumption that divides life dichotomously into *real life* (real life) and *virtual life* (virtual life).¹⁰ In the last decade, a new dimension of crime has emerged as a result of the

misuse of the internet. Just like in the real world, as a virtual world, the internet invites criminal hands to act, either to seek material gain or just to have fun. This has given rise to a unique phenomenon that is often referred to in foreign languages as *cyber crime*.¹¹

According to Soerjono Soekanto, progress in the field of technology will go hand in hand with the emergence of changes in the field of society. Changes in society can be about social values, social rules, patterns of behavior, organization, and structure of social institutions.¹²

In some literature, *cyber crime* is often identified with computer crime. The US Department of Justice defines computer crime as "any illegal act requiring knowledge of computers for its perpetration, investigation, or prosecution" meaning "any unlawful act that requires knowledge of computers to handle, investigate and prosecute it".

Indra Safitri pointed out that cybercrime is a crime related to the utilization of an unlimited technology and has strong characteristics with a technology that relies on a high level of security and credibility of information conveyed and accessed by internet customers.¹³

The term *Cybercrime* currently refers to an act of crime related to *cyberspace* and actions that use computers. In general, what is meant by computer crime or *cybercrime* is "Attempts to enter and or use computer facilities or computer networks without permission and unlawfully or without causing changes and or damage to the computer facilities that are entered or used".

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Another definition given by the *Organization of European community Development* is any illegal, inappropriate, unauthorized behavior related to data processing and/or data transmission.

Basically, *cybercrime* includes all criminal offenses related to information, the information *system* itself, as well as the communication system which is the means for the delivery/exchange of information to other parties (*transmitter/originator to recipient*).

Before the birth of the ITE law there was no single article in the Criminal Code (KUHP) that regulates how crimes or criminal acts that occur in the *cyber* world. For cases of defamation we only find in mass media, not electronic media, but the development of the times, new crimes that occur in the *cyber* world have emerged which makes it difficult for law enforcers to find articles that will be charged to criminal offenders, law enforcers use article 310 of the Criminal Code which has clear legal arrangements regarding sanctions, legal norms that exist in the article.

In 2002, there was one case related to *cyber crime* in Indonesia. The case was decided in Sleman District Court with the defendant Petrus Pangkur (23) alias Bonny Diobok Obok. The case was heard by a panel of judges Cicut Sutriarso SH, with members Sarjiman SH and Jupriadi SH. The public prosecutor was Oemar Dhani SH.

In the aforementioned case the defendant was charged with committing *cybercrime*, in their verdict, the panel of judges believed that Petrus aka Boni Diobok-obok, had broken into the credit cards of US citizens, and used the proceeds of his crime to purchase goods, such as helmets and gloves from the AGV brand. The total price he bought reached Rp. 4 million Rupiah.

Meanwhile, the defendant's legal counsel, in his defense, stated that legally the 18-month sentence was unfair. The reason is that in this case there is no rule of law that covers the actions committed by his client. Even the elements contained in Article 378 of the Criminal Code were not proven legally and convincingly. Therefore, the defendant must also be acquitted of all charges.¹⁴

The law is dynamic and will change in accordance with the times, the difficulty of finding articles that can be used as the basis for claims in court results in the need for judges to explore existing laws by making legal provisions (*jurisprudence*) as the basis for court decisions.

Article 310 states:

(1) Any person who deliberately attacks someone's honor or good name by alleging something, with the obvious 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.

(2) If this is done by means of writings or portraits disseminated, exhibited or affixed in public, he shall, being guilty of libel, be punished by a maximum imprisonment of one year and four months or a maximum fine of three hundred Rupiahs.

- (3) It shall not constitute libel or slander if the act is clearly committed in the public interest or out of necessity for self-defense.

Based on Article 310 paragraph (1) of the Criminal Code, a punishable insult must be committed by 'accusing a person of having committed a certain act, with the intention that the accusation will be spread (known to the public).' The specific act in question is not limited to acts that are prohibited by law, meaning that any act can become an accusation. The implication of the use of Article 27 paragraph (3) of the ITE Law against Article 310 of the Criminal Code is that Article 27 paragraph (3) of the ITE Law must take precedence in the event of defamation via the internet considering that the ITE Law is a more specialized rule of law. However, it does not exclude Article 310 of the Criminal Code because the nature of the two is actually complementary. This is based on the opinion that the ITE Law does not provide any information regarding the terms "insult" and "defamation". This proves that the framers of the ITE Law wanted to apply the defamation law in Chapter XVI of Book II of the Criminal Code to defamation under the ITE Law. The framers of the ITE Law wanted the insult under the ITE Law to be a *lex specialist* of insult. Meanwhile, the types of insults in Chapter XVI Book II of the Criminal Code are *lex general* insults. Therefore, it is impossible to apply Article 27 paragraph (3) of the ITE Law without simultaneously applying - in the sense of adjusting to one of the types of insults in Chapter XVI Book II of the Criminal Code as the *lex generalis*.

CLOSING

Conclusion

In the context of the rapid development of information technology and the internet, cybercrime, especially in defamation, has become a very relevant issue. In this research, a juridical review of cybercrimes related to defamation based on Law No. 11/2008 on Electronic Information and Transactions (ITE) and criminal law has been conducted.

The results of the juridical review show that the ITE Law, especially Article 27 paragraph 3, has provided a strong legal basis for handling defamation crimes in the context of cyber crime. The article has accommodated changes in information technology and the internet by regulating actions involving the use of electronic media to damage the good name of others.

However, it is important to remember that technological developments and the dynamics of cyberspace are constantly changing, so law enforcement and protection of individuals who are victims of cyber crime must also be adjusted. Further efforts are needed to educate the public about the risks of cybercrime and how to protect themselves.

Advice

Effective Law Enforcement: Stronger efforts are needed in law enforcement against cyber crimes, including defamation. Law enforcement must be carried out quickly and efficiently so that such actions do not continue and harm victims.

Actual Supervision and Regulation: The government and relevant agencies need to continuously monitor developments in information technology and the internet, and amend or update existing rules and regulations as needed.

Public Education and Awareness: Public education and awareness campaigns on the risks of cybercrime and how to protect oneself from such threats are essential. The public needs to be made aware of the steps that can be taken to avoid becoming a victim of cybercrime.

International Cooperation: Due to the global nature of cyberspace, international cooperation in cyber crime law enforcement is key. The government must actively cooperate with other countries to crack down on cross-border cybercrimes.

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