

JURIDICAL REVIEW ARTICLE 27 Paragraph (3) of Law No. 19 of 2016 CONCERNING INFORMATION AND ELECTRONIC TRANSACTIONS AGAINST DEFAMATORS IN SOCIAL MEDIA

Agus Surya Manika

Faculty of Law, Dwijendra University
surya.maneeka@gmail.com

ABSTRACT

Defamation in social media is regulated in Article 27 Paragraph (3) of Law No. 19 of 2016 concerning Information and Electronic Transactions. Article 27 Paragraph (3) has a vague meaning because of its multi-interpretational nature so that it does not provide legal certainty for perpetrators of defamation in social media. against the accusers of defamation.

This legal research uses a juridical normative method. The approach used is a statutory approach, a case approach, a conceptual and comparative approach. The sources of legal material are obtained from laws and regulations, books, articles and journals. For the method of collecting legal materials using literature study. Analysis of legal materials using construction, evaluation, argumentation and systematization methods.

The results of this research are Article 27 Paragraph (3) giving rise to multiple interpretations because there are no clear boundaries regarding defamation, unclear subject matter protected in Article 27 Paragraph (3) and different verdicts. conspicuous judges which indicate Article 27 Paragraph (3) has multiple interpretations. The forms of legal uncertainty in Article 27 Paragraph (3) include: The nature of the article which is multi-interpreted and does not seem ineffective because it is a duplication of Article 310 of the Criminal Code, frequent bureaucratic services that are not good by law enforcers, there are differences in judges' verdicts which indicate different interpretations of judges, as well as causing political commotion and polemics in society.

Keywords: perpetrator, defamation, social media

1. INTRODUCTION

The phenomenon of the speed of development of information technology has spread throughout the world. In the past 2 decades, almost all parts of the world have interacted with each other using sophisticated technological facilities. Technology continues to be developed in order to facilitate daily activities, information and communication technology products and their sophistication are growing rapidly and almost dominate every aspect of life. The internet and its supporting facilities are so widely used. Various many digital platforms were created. Social Media (Social Media) is one of the most favorite.

The results of a survey by the Association of Indonesian Internet Service Providers (APJII), found that the number *netters* (internet users) in Indonesia in 2018 reached 171.17 million people.¹ With the internet we can have conversations (chat), upload videos (video blogging), find data (searching), sell, play (games) and much more. In

¹ Association of Indonesian Internet Service Providers (APJII), 2018, Number of internet users throughout 2018, available at <https://dailysocial.id/post/pengguna-internet-indonesia-2018>, accessed 12 November 2020.

Indonesia, social media users are busy expressing themselves, showing each other's abilities and strengths.

The activities of social media users are becoming increasingly complex over time. The bad effects of using social media due to the lack of policies from the users are starting to emerge. Starting from cases of fraud through social media, fake news (*Hoax*), sharing inappropriate photos, bullying, gambling on social media, to hate speech and defamation.

Acts of defamation on social media are now becoming increasingly widespread in Indonesia. There have been many cases of defamation committed by various groups ranging from children, students, artists, to high-ranking state officials. Because in principle according to law, every human being has become a legal subject in principle natural,² so it is not uncommon for cases of hate speech to end up in court and even being punished. Article 27 paragraph (3) of the Electronic Information and Transaction Law in their sentencing. The sound of the article is:

"Anyone who intentionally and without rights 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 criminal maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 750,000,000.00 (seven hundred fifty million rupiahs)".

Article 27 (3) in this case defamation, according to the author, has multiple interpretations, because there is no clear basis for such defamation. In addition, the subject protected in this article is also unclear. The formulation of the problem that can be raised in this research is Why does Article 27 Paragraph (3) of Law No. 19 of 2016 Concerning Information and Electronic Transactions cause multiple interpretations of defamation actors in social media? And what are the forms of legal uncertainty Article 27 Paragraph (3) Law No. 19 of 2016 Concerning Information and Electronic Transactions Against Defamation Actors in social media?

2. RESEARCH METODOLOGY

This study uses a normative legal method, namely moving from the blurring of legal norms (Article 27 Paragraph 3 of the ITE Law). The approach used is a statutory approach, namely Law No. 19 of 2016 concerning Information and Electronic Transactions with a case approach, a conceptual approach and a comparative approach. The source of primary legal material in this study is in the form of laws and regulations, secondary legal material in the form of books, theses, journals and articles, and tertiary in the form of legal dictionaries and KBBI. The technique for collecting legal materials uses library research techniques. The legal materials that have been collected are then processed with analytical techniques linked to relevant legal theories.

3. RESULTS AND DISCUSSION

3.1 Urgency of Law No. 19 of 2019 Concerning Information and Electronic Transactions (UU ITE)

Crimes related to computers (computer crime) require special provisions in the Criminal Code or a separate law that regulates criminal acts in the field of computers. J. Sudama Sastroandjojo, as quoted by Budi Suhariyanto, wants a new provision that regulates the problem of computer crime. Computer-related crimes must be handled specifically, because the methods, environment, time and location of

²Zainal Asikin, 2012, Introduction to Law, Jakarta: Raja Grafindo Persada, Jakarta, p.34

³Budi Suhariyanto, 2012, Information Technology Crime (cybercrime) Regulatory Urgency and Legal Gaps, Rajagrafindo Persada, Depok, p.48.

committing computer crimes are different from other crimes.³Therefore the ITE Law was created in order to deal with the problem of cybercrime which is a new type of crime that uses technology in practice. The ITE Law is currently the first cyber law in Indonesia which can be used as an effort to enforce the law in solving cybercrime problems, although it is admitted that it is still far from the expectation in law enforcement.⁴

3.2 Multiple interpretations of Article 27 (3) of Law No. 19 of 2016 (UU ITE)

1. Limitation of the meaning of defamation

The size of an act that can be categorized as defamation of another person is still unclear, because there are many factors that must be studied. In the case of defamation or humiliation, what is to be protected is the obligation of everyone to respect others from the point of view of their honor and good name in the eyes of others. There is no clear definition in the elucidation of Article 27 Paragraph (3) of the ITE Law, but provisions regarding defamation exist in the Criminal Code.

The provisions regarding defamation in Article 27 Paragraph (3) of the ITE, refer to the provisions regarding defamation in Article 310 of the Criminal Code.

Which in Paragraph (1) reads:

"Whoever deliberately attacks the honor or reputation of a person by accusing him of something, with clear intentions so that it becomes public knowledge, is threatened with defamation by a maximum imprisonment of nine months or a maximum fine of four thousand five hundred rupiahs."

Honor is a person's feeling of honor in the eyes of society, where a person has the right to be treated as an honorable member of society. This sense of honor must be objectified in such a way and must be reviewed with a certain deed, a person will generally feel offended or not. It's the same with good names. A good name is a good judgment according to the general opinion of a person's behavior or personality from a moral point of view. A person's good name is always seen from the point of view of other people, namely good morals and personality, so that the size is determined based on general judgment in a particular society in the place where the act was committed. The objectivity of this public assessment is contrary to the complaint offense of Article 27 Paragraph (3) which is subjective in nature. It should also be noted,

2. Legal subject of Article 27 (3) of Law No. 19 of 2016 (UU ITE)

Legal subject (rechts subject) according to Algra is that everyone has rights and obligations, which gives rise to legal authority (rechtsbevoegheid), while the notion of legal authority itself is the authority to become the subject of rights. The legal subject can be a person/person (natuurlijke person) and also a legal entity (recht person).⁵The reading of Article 27 Paragraph (3) does not explain who is protected in the prohibited act. Therefore, in this article it is not clear whether the legal subject that is protected is a person (Natuurlijke person) or a legal entity (Recht person).

3. Differences in Judge's Interpretation of Article 27 Paragraph (3) of Law No. 19 of 2016 (UU ITE)

Profession as a judge is a noble profession (officium nobile). Mochtar Kusumaatmadja, as quoted by Suhrawadi K. Lubis, is of the clear opinion that judges

⁴I Made Wahyu Chandra Satriana, & Luh Putu Eka Pramestiani. (2020). FORMULATION POLICY FOR PREVENTING CRIMINAL ACTS OF TERRORISM IN THE ERA OF TECHNOLOGY 4.0. Kerta Dyatmika, 17(2), 12-22. <https://doi.org/10.46650/kd.17.2.975.13-24>

⁵*Ibid*, p. 33.

have great power over the parties (justiable) with regard to problems or conflicts that are presented to the judge or judges.⁶The judge with all of his independence has the right to give a decision on a case in accordance with his judgment and interpretation.

3.3 Forms of legal uncertainty Article 27 Paragraph 3 of Law No. 19 of 2016 (UU ITE) Against Defamation Actors in Social Media

With regard to legal certainty, Bagir Manan argues: "that there are at least five components that affect legal certainty, namely laws and regulations, bureaucratic services, judicial processes, political disturbances and social disturbances".⁷

1. Legislation

In terms of laws and regulations, Defamation in social media which is regulated in Article 27 Paragraph (3) of Law No. 19 of 2016 has a multi-interpretative nature. Apart from causing multiple interpretations, Article 27 Paragraph (3) seems ineffective, because it is a duplication of the existing provisions in Article 310 of the Criminal Code.

2. Bureaucratic Services

Bureaucratic services are inseparable from the duties of law enforcement officials in upholding justice for the sake of creating public order. Law enforcement officials in carrying out their duties must prioritize professionalism and integrity. One of the efforts to deal with crimes that occur in society is to use criminal law with sanctions in the form of criminal sanctions, however, even this effort is often questioned because differences regarding the role of criminals in dealing with crime problems have an important legal dimension in the context of protecting society and law enforcement.⁸Very often there is a lack of caution by law enforcement officers to view cases of defamation. Defamation in social media is often viewed as not comprehensive in terms of the selection of sets of rules which causes intentional bias of the perpetrators of defamation.

3. Judicial Process

The judicial process in cases of defamation, which uses Article 27 Paragraph (3) of Law No. 19 of 2016 Concerning Information and Electronic Transactions, judges often have different interpretations. For example, in the case of Ahmad Dhani, who was sentenced to one year in prison, Lyra Virna who was acquitted, and the differences in the decisions of criminal and civil judges at the cassation level in the Prita case. This shows that the judges in giving their considerations during the trial process have different interpretations of Article 27 Paragraph (3).

4. Political Uproar

There are often debates between government officials and politicians in parliament regarding defamation. There are those who are pro and not a few who are against this article. After receiving input from various parties, a discourse arose to revise the Electronic Information and Transaction Law.

5. Social uproar

This commotion occurred as a result of people reporting to each other. The existence of multiple interpretations of articles in Law No. 19 of 2019, especially Article 27 Paragraph (3) has had a number of negative impacts. First, limiting freedom of

⁶Suhrawadi K. Lubis, 2015, Professional Ethics of Judges, Sinar Graphic, Jakarta, p.25.

⁷Bagir Manan, 2005, An Authoritative Judicial System A Search, Faculty of Law UII, Yogyakarta. p.33.

⁸Satriana, I. (2013). Made Wahyu Chandra. Restorative Justice Formulation Policies in the Juvenile Criminal Justice System, Bandung: Law Study Program, Postgraduate Program, Udayana University.

opinion, especially in giving opinions and giving criticism. Several people have been arrested using Article 27 Paragraph (3) of this. This condition became shock therapy for the community, some responded with caution while some chose not to have an opinion. In addition, Article 27 Paragraph (3) often becomes an instrument for a group of people to take revenge and even become a weapon to trap people who are against it.

4. CONCLUSION

1. Article 27 (3) of Law No. 19 of 2016 concerning information and electronic transactions raises multiple interpretations because of the unclear definition of defamation, the ambiguity of the subject protected in Article 27 (3), and differences in verdicts indicating different interpretations from the judge.

2. Forms of legal uncertainty Article 27 (3) of Law No. 19 of 2016 includes multiple interpretations, seems ineffective due to duplication of Article 310 of the Criminal Code, frequent inadvertence in law enforcement bureaucratic services, differences in verdicts conspicuous judges, and often cause political uproar and polemic in society.

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