

CONTROVERSY OF LEGAL ARRANGEMENTS FOR SOCIAL MEDIA DEFENSE IN INDONESIA'S POSITIVE LAW

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ABSTRACT

Along with the times, human activities are increasingly varied. One reason is the result of the development of information technology. In the past, human activities were dominated by activities using physical facilities, but in the information technology era, human activities are now dominated by technology-based equipment. This certainly has an impact on criminal law enforcement, such as crimes in cyberspace, namely defamation. This study aims to determine the legal arrangements for defamation on social media in Indonesian positive law. This research is classified as a type of literature research with a normative juridical approach. The analysis technique used is a systematic analysis technique of the applicable laws and regulations. The results of the study show that before social media existed, regulations regarding defamation were regulated in the provisions of the Criminal Code Chapters, namely Chapter 310 of the Criminal Code and Chapter 315 of the Criminal Code. But since the existence of social media or the internet, the crime of defamation is regulated in Chapter 27 paragraph 3 of the ITE Law and Chapter 45 of the ITE Law. Defamation whether carried out directly or through social media is equally a complaint offense. This means that the offense can only be processed by the police if there is a complaint from the victim. However, the defamation provisions in the ITE Law are still being questioned in society because they are seen as threatening democracy and freedom of expression. Therefore, in order not to continue to cause controversy in the implementation of the ITE Law, it is necessary to formulate a criminal law policy on defamation, in the new Draft Criminal Code.

Keywords: legal arrangements, social media defense, positive law

1. INTRODUCTION

In the current era of globalization, there is growth and development in various sectors. One sector that has developed significantly is the information technology sector. Then how about independence in a sophisticated era like today? Humans are social creatures who definitely need interaction with other people in their daily lives. In interacting, of course there will be the delivery of opinions between one human being and another human being. Every human being has a different way of looking at and judging things in life. The freedom to express thoughts and opinions orally and in writing belongs to all Indonesian people. Likewise, as a nation that is sovereign by the people and based on law (*rechstaat*), and not based on mere power (*machstaat*). Indonesia recognizes that the freedom to express thoughts and opinions orally and in writing, freedom of expression, and freedom of the press are basic rights that must be enjoyed by all levels of society and at the same time serve as the basis for upholding the pillars of democracy (M. Halim, 2009: 2).

Without freedom of expression, people cannot express their ideas and cannot criticize the government. Thus there will be no democracy. Defamation is a special form of tort. Some of the terms used regarding this form of unlawful act say defamation, but some say it is an insult. Actually, what measures an act can be categorized as defamation of another person is still unclear because there are many factors that need to be reviewed. In terms of defamation or humiliation, what is to be protected is the obligation of every person to respect another person from the point

of view of his honor and good name in the eyes of other people, even though that person has committed a serious crime. Honor is a person's feeling of respect in the eyes of society, where everyone has the right to be treated as an honorable member of society. Attacking honor means doing an act according to the general assessment of attacking someone's honor. Respect and actions that fall into the category of attacking a person's honor are determined according to the community environment in which the action was committed (Mudzakir, 2004: 17)

A good name is a good judgment according to the general opinion about 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 or personality, so that the size is determined based on the general assessment in a particular society in which the action was committed and the context of the action (Mudzakir, 2004: 17).

The current development of globalization has an impact on the development of science and technology, making the media for communicating with the community experiencing development as well. Initially, people communicated with traditional media only through letters, but now people like to use social media. With the increasing use of social media, traditional media and communication methods have been demoted as the medium of choice to exercise one's freedom of expression (Lewis, 2015). To guarantee order and regularity in the use of social media, the government responded by issuing Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (hereinafter referred to as the ITE Law). Until now the Chapter that is often used as a basis for reporting is Chapter 27 paragraph (3) of the ITE Law which refers to the provisions on defamation. In addition, the Chapter can also be used easily to ensnare people to silence criticism. Because of that, it is very necessary to have a crime prevention policy using the means of criminal law (penal) by going through the stages of formulation (policy).

Be wise in using social media, in its development in today's digital era it is not only "your mouth is your tiger" but also "your finger is your tiger". Legal cases that have been rife lately are related to technology, namely the internet and social media, including cases of defamation through internet social media. It can even be said that almost every day similar cases actually occur, which is due to the increasing freedom of the public in expressing their opinions via the internet, especially on social media. Based on the description above, the formulation of the research problem is: How is the legal regulation regarding defamation on social media in Indonesian positive law

2. RESEARCH METODOLOGY

This research is classified as a type of *library research*, with a normative juridical approach, namely by researching, referring to sources including: the Criminal Code (KUHP), ITE Law, books, journals related to criminal acts crime of defamation. This research is descriptive in nature, that is, it provides a complete, concrete, clear picture of the main issues in this study. Furthermore, the data collection technique used is documentary data collection techniques. Data analysis was carried out by systematically analyzing the applicable laws and regulations

3. LITERATURE REVIEW

Criminal Defamation

Defamation / insult / slander that is spread in writing is known as *libel*, while that which is spoken is called *slander*. The KHUP states that insult/defamation can be done verbally or in writing (printed). According to the science of criminal law, this crime against honor consists of 4 (four) forms (Leden Marpaung, 2010: 8), namely: (1) Defamation, (2) Defamation in writing (3) Defamation, and (4) Mild insult.

However, the Criminal Code also contains other crimes against honor, which are closely related to honor and good name, namely: (1) Acts of slander; (2) False presumption; (3) Blasphemy against the deceased. The essence of humiliation is to attack the honor and good name of a person, group, institution, religion, position, including those who have died. Insult is usually a complaint offense case.

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 or personality, so that the measure is determined based on the general assessment in a particular society in which the action was committed and the context of the action. Defamation is also known as humiliation, which is basically attacking the good name and honor of someone who is not in a sexual sense so that person feels harmed. Honor and good name have different meanings, but the two cannot be separated from one another, because attacking honor will result in tarnishing one's honor and reputation, as well as attacking one's good name will result in one's good name and honor being tarnished. Therefore, attacking one of the honours or good names is sufficient reason to accuse someone of having committed an insult.

Oemar Seno Adji defines defamation as attacking honor or good name (*anranding of geode naam*). One form of defamation is written defamation and is carried out by accusing something. In general, defamation is the act of *defaming* a person by stating something either orally or in writing. Defamation is divided into several parts, namely: (1) Orally, namely verbal defamation (2) In writing, namely defamation carried out through writing

Social media

Social media is an online medium where users can easily interact. Social media invites anyone who is interested to participate by contributing in a fast and unlimited time. The term social media is composed of two words, namely media and social. Media means a communication tool, while the word social is defined as a social reality that every individual takes action that contributes to society. So social media is a communication tool used by users in social processes (Meilinda, 2018). Social media as "internet-based applications, created on the basis of Web 2.0 ideology and technology, and which enable the creation and exchange of *User Generated Content* (UGC) by contributing to its advantages, because the content is wholly owned and based on the contributions of users or owners." account.

The development of information technology brings a change in society. The birth of social media makes people's behavior patterns experience a shift in culture, ethics and existing norms. Indonesia with a large population with various ethnic, racial and religious cultures has a lot of potential for social change. From various backgrounds and ages, almost all Indonesian people own and use social media as a means of obtaining and conveying information to the public. Social media is an online media, with its users can easily participate, share and create content including blogs, social networks, wikis, forums and virtual worlds. Blogs, social networks and wikis are the most common forms of social media used by people around the world.

The positive impact of social media is that it makes it easier for us to interact with many people, expand our association, distance and time are no longer a problem, it is easier to express ourselves, information dissemination can take place quickly, costs are lower. Meanwhile, the negative impact of social media is to distance people who are close and vice versa, face-to-face interaction tends to decrease, makes people addicted to the internet, creates conflict, privacy issues, and is vulnerable to the bad influence of others.

The existence of social media has influenced social life in society. Changes in social relations or as changes to the balance of social relations and all forms of changes in social institutions within a society, which affect the social system, including values, attitudes and patterns of behavior among groups in society. Positive social changes

such as the ease of obtaining and conveying information, gain social and economic benefits. Meanwhile, social changes tend to be negative, such as the emergence of social groups in the name of religion, ethnicity and certain patterns of behavior that sometimes deviate from existing norms.

4. RESULTS AND DISCUSSION

Prior to the existence of social media, the regulation regarding defamation was regulated in the provisions of the Criminal Code Chapters as follows:

1. Chapter 310 of the Criminal Code, which reads: (1) "Whoever deliberately damages a person's honor or reputation by accusing him of committing an act with the real intention of spreading the accusation, is punished for blasphemy, with a maximum imprisonment of nine months or a fine." as much as Rp. 4,500,-." (2) If this is done with writing or pictures that are broadcast, shown in public or posted, then those who do so are punished for insulting with writing with a maximum prison sentence of one year and four months or a maximum fine of Rp. 4,500,-.
2. Chapter 315 of the Criminal Code, which reads "Every intentional insult that is not libelous or written defamatory which is committed against a person, either in public orally or in writing, or in front of the person himself orally or by deed, or by letter sent or received by him, shall be punished for light insult by a maximum imprisonment of four months and two weeks or a maximum fine of four thousand five hundred rupiahs."

After the existence of the internet, it is regulated in the provisions of the ITE Law, namely: Chapter 27 paragraph (3) of the ITE Law, which reads: "Every person intentionally and without rights distributes and/or transmits and/or makes electronic information accessible and/or electronic documents containing insults and/or defamation". Chapter 45 of the ITE Law, which reads: (1) Everyone who fulfills the elements referred to in Chapter 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be punished with imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

That defamation, directly or through social media / the internet, is the same as a complaint offense, namely an offense that can only be processed by the police if there is a complaint from the victim. Without a complaint, the police cannot investigate the case. As for self-complaint offenses based on the provisions of Chapter 74 of the Criminal Code, it can only be reported to investigators within a period of 6 (six) months after the incident occurred. This means that after the 6 (six) month period has passed, cases of defamation either directly or through social media / the internet can no longer be investigated. Therefore, for people who feel their reputation has been defamed, either directly or via social media, the internet must report it within that time period.

In addition, a sentence or word that is insulting or defamatory, in order to be charged with a crime, must fulfill an element in public, meaning that if it is done in person, it must be in front of two or more people, and if through social media, it must be done in a place that can be seen by many people such as *Facebook wall*, group posting, and so on. Insulting sentences sent directly to inboxes or direct chat cannot be included in the category of insults or defamation, because the elements of public knowledge are not met.

The applicability and interpretation of Chapter 27 paragraph (3) of the ITE Law cannot be separated from the main legal norms in Chapter 310 and Chapter 311 of the Criminal Code. That was one of the considerations of the Constitutional Court in the decision on case No. 50/PUU-VI/2008 on the judicial review of Chapter 27 paragraph (3) of the ITE Law against the 1945 Constitution. The Constitutional Court concluded that a person's good name and honor should be protected by applicable

law, so that Chapter 27 paragraph (3) of the ITE Law does not violate the values - democratic values, human rights, and the principles of the rule of law. Chapter 27 paragraph (3) of the ITE Law is Constitutional.

If you look closely at the contents of Chapter 27 paragraph (3) in conjunction with Chapter 45 paragraph (1) of the ITE Law, it seems simple when compared to the more detailed insult Chapters in the Criminal Code. Therefore, the interpretation of Chapter 27 paragraph (3) of the ITE Law must refer to the defamation Chapters in the Criminal Code. For example, in the ITE Law there is no definition of defamation. Referring to Chapter 310 paragraph (1) of the Criminal Code, defamation is defined as an act of attacking someone's honor or good name by accusing something with clear intentions so that it becomes public knowledge. Chapter 27 paragraph (3) of the ITE Law "Every person intentionally and without rights distributes and/or transmits and/or makes electronic information and/or electronic documents accessible that contain insults and/or defamation" Chapter 310 paragraph (1) Criminal Code "Anyone who deliberately attacks the honor or reputation of a person by accusing something, which clearly means so that it becomes public knowledge, is threatened with defamation with a maximum imprisonment of nine months or a maximum fine of four thousand five hundred rupiahs".

The seemingly simple formulation of Chapter 27 paragraph (3) in conjunction with Chapter 45 paragraph (1) of the ITE Law is inversely proportional to the criminal sanctions and fines which are heavier than the criminal sanctions and fines in the insulting Chapters of the Criminal Code. For example, someone who is proven to have deliberately disseminated electronic information containing defamation as referred to in Chapter 27 paragraph (3) of the ITE Law will be charged with Chapter 45 Paragraph (1) of the ITE Law, a maximum imprisonment of 6 years and/or a maximum fine. 1 billion rupiahs. Chapter 45 UU ITE (1) Everyone who fulfills the elements referred to in Chapter 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be punished with imprisonment for a maximum of 6 (six) years and/ or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

There are still other Chapters in the ITE Law which are related to defamation and have even heavier criminal sanctions and fines, pay attention to Chapter 36 of the ITE Law. Chapter 36 of the ITE Law "Every person intentionally and without rights or against the law commits acts as referred to in Chapters 27 to 34 which result in losses for other people". For example, someone who disseminates electronic information that contains insults and/or defamation and causes harm to other people will be subject to a maximum prison sentence of 12 years and/or a maximum fine of 12 billion rupiah (stated in Chapter 51 paragraph 2). In addition, it is also regulated in Chapter 51 paragraph (2) of the ITE Law "Everyone who fulfills the elements referred to in "Chapter 36 shall be punished with imprisonment for a maximum of 12 (twelve) years and/or a fine of up to Rp. 12,000,000,000.00 (twelve billion rupiah)

Controversy

In reality, the provisions of Chapter 27 paragraph 3 of the ITE Law continue to cause controversy in society because they are considered to have no standard and clear benchmarks related to the phrase "defamation", and the phrase "causes hatred or hostility" when carried out on social media. This is by some active content creators who feel threatened to express thoughts and attitudes that are in accordance with conscience. They stated that regarding the element of defamation it had been regulated in Chapter 310 paragraph (1) of the Criminal Code which essentially stated that the element of insult and defamation was only uttered orally. The formulation of defamation in the ITE Law is considered to shackle democracy and freedom of expression, because it is very easy to use to silence, arrest and detain those who make criticism. Because of this, in the future there must be a policy on criminal acts of defamation in the formulation of the new Draft Criminal Code.

5. CONCLUSION

Based on the description of the results of the research and discussion above, it can be concluded that the provisions for defamation on social media are contained in the Criminal Code and outside the provisions of the Criminal Code. In the Criminal Code it is regulated in Chapter 310 of the Criminal Code and Chapter 315 of the Criminal Code. Arrangements outside the Criminal Code are contained in the ITE Law, in Chapter 29 paragraph 3 and Chapter 45. Defamation whether carried out directly or through social media is equally a complaint offense. This means that the offense can only be processed by the police if there is a complaint from the victim. However, in order not to continue to cause controversy in implementation, it is necessary to formulate a criminal law policy on defamation in the new Draft Criminal Code.

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