

CRIMINAL RESPONSIBILITY OF DEFAMATION UNDER THE INDONESIAN CRIMINAL LAW

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Abstract: The Research, "Responsibility of Defamation Actors in Indonesian Positive Law Studies" aims to describe the arrangements for criminal acts of defamation in the Indonesian criminal law system as well as analyze criminal responsibility for perpetrators of defamation in the Indonesian criminal law system. This research is a normative legal research, which examines laws and regulations in a coherent legal system as well as unwritten legal values that live in society, which are related to the responsibility of perpetrators of defamation in the perspective of positive law in Indonesia. The results of the research can be presented in an outline: Arrangements for criminal acts of defamation in Indonesian criminal law are regulated in the Criminal Code (KUHP), and the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to the Law of the Republic of Indonesia No. 11 of 2008 concerning Information and Electronic Transactions. The Criminal Code regulates Article 310 paragraph (1) and paragraph (2), as well as Article 311 paragraph (1) of the Criminal Code. Whereas in the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to the Law of the Republic of Indonesia No. 11 of 2008 concerning Information and Electronic Transactions regulated in Article 27 paragraph (3); Criminal responsibility for defamation in the Indonesian criminal law system is borne by anyone who intentionally attacks the reputation or reputation of a person, by accusing something with clear intentions so that it is publicly known (Article 310 paragraph (1) of the Criminal Code), and is also borne by every a person 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 (Article 27 paragraph (3) of Law Number 19 of 2016 concerning Amendments to Law of the Republic of Indonesia No. 11 of 2008 concerning Information and Electronic Transactions.

Keywords: Defamation; Reputation; Accountability.

1. INTRODUCTION

A reputation 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 reputation is always seen from the point of view of other people, namely morals or other personalities 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. (Moh. Anwar, 1994) In English, defamation is defined as defamation, slander, libel means defamation, slander, written slander. Meanwhile, according to the general understanding, defamation is an act of attacking someone's reputation and good name. (R.Sugandhi, 1981)

Defamation is one of the "character assassinations" which can be categorized as a violation of Human Rights, because human rights violations are problems in general society, and that is why Indonesian criminal law accommodates them in the KUHP. In the legal dictionary, defamation is an act of insulting or defaming another person or attacking another person's reputation or reputation and broadcasting it so that it becomes known to the public or both orally and in writing. Meanwhile, according to the KUHP, defamation also called insulting all the reputation and name of a person by not containing an accusation of committing a certain act or not intended to broadcast it to the general public that can be punished but limited to certain ways of doing it, in the ITE Law. (Hamzah, 2012) Soesilo explained what is meant by insulting, namely attacking someone's reputation. Those who are attacked are usually ashamed, the reputation that is attacked here is not reputation in the field of sex. This sense of reputation must be objectified in such a way and must be reviewed with a certain deed, a person will generally feel offended or not. (Mudzakir, 2004)

2. METHODS

This research is normative legal, using a statutory regulation approach that focuses on primary legal materials, namely the KUHP and Law Number 11 of 2008 concerning Information and Electronic Transactions. The nature of qualitative descriptive analysis. Collection of legal materials through document studies (library), processing of legal materials is carried out by inspection, tagging, reconstruction, and

systematization. Analysis of legal materials is carried out qualitatively and systematically to obtain answers to the research problems.

3. RESULTS AND DISCUSSION

3.1. Arrangements for the Criminal Act of Defamation in Indonesian Criminal Law

Defamation according to Article 310 of the KUHP is an act of attacking a person's reputation by accusing something, which is clearly meant to make it publicly known. This includes in the form of writing and images that are broadcast, shown, and posted in public. Defamation has been regulated in the Criminal Code and Law Number 11 of 2008 concerning Information and Electronic Transactions called ITE. In the KUHP defamation it is contained in articles 310 to 321. The KUHP divides defamation into 6 types, namely:

1. Blasphemy, article 310 paragraph (1)
In order to be punished in this article according to R. Soesilo, insults must be committed by accusing someone of having committed certain actions so that many people will know about them. These actions do not have to be unlawful, just ordinary actions that are embarrassing.
2. Blasphemy in Writing, article 310 paragraph (2)
A person can be prosecuted under this article if they commit insults through writing or pictures. This is explained in article 310 paragraph (2) of the Criminal Code.
3. Slander, paragraph 311
The actions in Article 310 paragraph (1) and paragraph (2) of the KUHP cannot be punished, if the accusation is to defend the public interest or is forced to defend one's own interests. If this happens, then the judge will conduct an examination whether the defendant really has committed defamation due to defending the public interest or self-defense. If the defense cannot be considered by the judge to defend the public interest or self-defense, while at the examination what has been accused is not proven then the defendant is no longer insulting but will be subject to Article 311 of the KUHP concerning slander.
4. Mild Insults, paragraph 315
Mild insults are insults in the form of hurtful words that are done in public. These hurtful words like dog, asshole, bitch, and other hurtful words. This light humiliation can also be done by an act such as spitting in the face, holding the head and pushing the hat off for Indonesians.
5. False Report of Defamation, paragraph 317

People who can be punished in this article are those who deliberately submit false complaint letters about people to law enforcement. Apart from that, ordering to write fake complaint letters that result in tarnishing one's reputation and reputationis also included in Article 317 of the Criminal Code

6. Allegation of slander, paragraph 318

People who deliberately commit that cause other people to be involved in criminal acts, which is not true. For example, placing evidence of proceeds of crime on another person so that person is accused of committing a crime. Defamation is also regulated in the ITE Law No. 11 of 2008 (outside KUHP). In the ITE Law, the prohibition against attacking reputation which includes insulting words on social media is regulated in articles 27, 28 and 35.

Article 27,

Paragraph (1)

Everyone intentionally and without rights distributes and/or transmits and/or makes Electronic Information and/or Electronic Documents accessible that have content that violates decency.

Paragraph (3)

Everyone intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain insults and/or defamation.

Article 28

Paragraph (1)

Everyone intentionally and without right spreads false and misleading news that results in consumer losses in Electronic Transactions.

Paragraph (2)

Everyone intentionally and without rights disseminates information aimed at creating feelings of hatred or hostility towards certain individuals and/or groups of people based on ethnicity, religion, race and inter-group (SARA).

Article 35

Everyone intentionally and without rights or unlawfully manipulates, creates, changes, deletes, destroys Electronic Information and/or Electronic Documents with the aim that the Electronic Information and/or Electronic Documents are considered as if they were authentic data.

Based on article 27 paragraph (3) of the ITE Law and also Article 310 of the KUHP which can be categorized as criminal acts of defamation, including in social

media. This act was carried out intentionally, without permission, so that it would be known by the public and also aimed at attacking someone's good name.

In fact, criminal responsibility leads to the punishment of an offender if he has committed an offense and fulfills the elements specified in the law. One element of criminal responsibility is the ability to be responsible. From the point of view of being responsible, a person can be held accountable for his actions if the state of his soul and mental abilities are not disturbed. (Kanter, dkk,)

The understanding of the ability to be responsible according to several views is as described below: According to Simons, (Muladi, 2015) the ability to be responsible can be interpreted as a psychological state in such a way that justifies the application of a criminal measure, both seen from the general point of view of the ability of the person. Furthermore it is said that a person is capable of being responsible if his soul is healthy, namely if:

1. He is able to know or realize that his actions are against the law.
2. He can determine his will according to the circumstances. According to Pompe, the ability to be criminally responsible must fulfill the elements described below:
 - a. The thinking ability (psychisch) of the maker (dader) which allows him to master his thoughts, which allows him to determine his actions
 - b. Therefore, he can determine the consequences of his actions.
 - c. So that he can determine his will according to his opinion.

Criminal liability cannot be separated from the elements of accountability, namely the ability to be responsible, the existence of mistakes made, and the absence of excuses. A person who can be held accountable for his actions must indeed be someone who has the ability to be responsible and has clearly committed a mistake where criminal responsibility is based on the principle of error and there are no specific reasons that can be excuses that can eliminate the mistakes that exist in the perpetrator. So that after fulfilling these elements, a person can be responsible for the actions he has done.

Regarding the element of criminal responsibility, namely the ability to be responsible is not explained explicitly in the KUHP, and we can only find it in Memorie

Toelichting (Memory Explanation) mentioning the meaning of the ability to be responsible, there is no ability to be responsible for the maker, namely: (Muladi, 2015)

- 1) In the event that the maker is not given the freedom to choose between doing or not doing what is prohibited or ordered by law, in other words in the case of forced acts.
- 2) In the event that the creator is in a certain situation so that he cannot realize that his actions are against the law and do not understand the consequences of his actions are against the law and do not understand the consequences of his actions, it is pathological lust, madness, and so on.

Regarding the treatment of criminal acts of defamation according to Indonesian positive law (KUHP and UU ITE) must fulfill the elements of the law from mistakes held accountable to the perpetrators. This also shows that the perpetrators of criminal acts of defamation are proven to have violated the provisions in Article 310 of the KUHP and Law no. 11 of 2008 in this case Article 27 Paragraph (3).

Compared to the threat of criminal sanctions in the provisions of Article 310 of the KUHP, the criminal threat of defamation through electronic information and/or electronic documents is much heavier than Article 310.

Defamation has been regulated in Indonesian positive law as a criminal act. The criminal act comes from a term known in Dutch criminal law, namely strafbaar feit or delict, in Indonesian in addition to the term criminal offense for the translation of strafbaar feit or delict as used by R. Tresna and Utrecht in their book C.S.T Kansil and Christine S.T Kansil are also known by several other translations such as criminal acts, criminal offences, legal acts or punishable acts. (Kansil, 2007)

In English, a crime is called a criminal act or criminal offense. A criminal act is an act that is punishable as a crime or violation, both as stated in the KUHP and other laws and regulations. (Rodliyah, 2017) In terms of defamation or insult that is to be protected, it is everyone's duty to respect other people from the point of view of their reputation and reputation in the eyes of other people. There is a relationship between reputation and reputation in terms of defamation, so the definition of each can be seen

first. Reputation is a person's feeling of respect in the eyes of society, where everyone has the right to be treated as an reputationable member of society. Attacking reputation means doing an act according to the general assessment of attacking someone's reputation. Respect and actions that fall into the category of attacking a person's reputation are determined according to the community environment in which the action is committed. (Mudzakir, 2004)

The ITE Law, contains defamation in Article 27 (3) of Law Number 11 of 2008 concerning Information and Electronic Transactions in conjunction with Article 45 paragraph (3) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of the Law -Law Number 11 of 2008 concerning Information and Electronic Transactions.

Article 27 paragraph (3) of the ITE Law Number 11 of 2008 prohibits any person intentionally and without right from distributing and/or transmitting and/or making Electronic Information and/or Electronic Documents accessible that contain insults and/or defamation. Article 45 paragraph (3) of the ITE Law Number 19 of 2016 prohibits any person who intentionally and without rights distributes and/or transmits and/or makes Electronic Information and/or Electronic Documents accessible which contain insults and/or defamation as referred to in Article 27 paragraph (3) shall be subject to imprisonment for a maximum of 4 (four) years and/or a maximum fine of Rp. 750,000,000.00 (seven hundred and fifty million rupiahs)".

Changes in the basic elements of the provisions of Article 27 paragraph (3) of the 2008 UUIITE to become Article 45 paragraph (3) of the 2016 UUIITE regarding insult/defamation is the length of sentencing which was reduced from imprisonment for a maximum of 6 (six) years to 4 (four) years while fines from 1 billion to 750 million. As a result of the reduction in criminal threats, the suspect/defendant cannot be detained by investigators, public prosecutors or judges.

In addition, UU ITE No. 11 of 2008 does not explain the definition of distributing, transmitting and accessible. However, in RI Law no. 19 of 2016, changes to Law no. 11 of 2008, the words distribute, transmit and can be accessed have been given definitions for each of the words mentioned above. Based on the elucidation of Article 27 paragraph (1) RI Law No. 19 of 2016 concerning changes to Law no. 11 of 2008 concerning ITE, what is meant by "distributing" is sending and/or distributing electronic information and or electronic documents to many people or various parties through electronic systems; What is meant by "transmitting" is sending electronic information and/or electronic documents addressed to another party through an electronic system; and what is meant by "making accessible" are all actions other than distributing and transmitting through electronic systems that cause electronic information and/or electronic documents to be known to other parties or the public.

Article 1 paragraph (1) of the ITE Law states that electronic information is one or a set of electronic data, including but not limited to writing, sound, images, maps, designs, photographs, electronic data interchange (EDI), electronic mail, telegrams, , telex, telecopy or the like, letters, signs, numbers, access codes, symbols or perforations that have been obtained which have meaning or can be understood by people who are able to understand them. Then in paragraph 4 it is stated that electronic documents are any electronic information that is created, forwarded, sent, received, or stored in analog form, digital, electromagnetic, optical, or the like, which can be seen, displayed, and/or heard through a computer or electronic system, including but not limited to writing, sound, pictures, maps, plans, photographs or the like, letters, signs, numbers, codes access, symbols or perforations that have meaning or meaning or can be understood by people who are able to understand them.

The Big Indonesian Dictionary (KBBI) states, to distribute means to distribute (share, send) to several people or to several places, transmit, namely sending or forwarding messages from someone (objects) to other people (other objects), while making it accessible other than just provides a definition of access, namely the activity of interacting with an electronic system that stands alone or in a network.

The elements of article 27 paragraph 3 of the ITE Law are found in several unclear propositions. For example, what is meant by the proposition "without rights", then what is meant by "humiliation" and "defamation" in the elucidation of the article is only said to be quite clear. Therefore, the norms in this article can be said to be vague norms (vague norms) which only regulate acts of defamation and/or insults without right that are carried out using ICT media, but do not explain the actions intended to be broadcast on ICT, so that what is to forbid.

4. CONCLUSIONS

- 1) Arrangements for criminal acts of defamation in Indonesian criminal law are regulated in the KUHP, and the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law of the Republic of Indonesia No. 11 of 2008 concerning Information and Electronic Transactions. The KUHP regulates Article 310 paragraph (1) and paragraph (2), as well as Article 311 paragraph (1) of the KUHP. Whereas in the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to the Law of the Republic of Indonesia No. 11 of 2008 concerning Information and Electronic Transactions is regulated in Article 27 paragraph (3).
- 2) Criminal responsibility for defamation in the Indonesian criminal law system is imposed on anyone who deliberately attacks a person's reputation or good name, by accusing something with clear intentions so that it is publicly known (Article 310 paragraph (1) of the KUHP), and is also charged to 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 (Article 27 paragraph (3) of Law Number 19 of 2016 concerning Amendments to Law of the Republic of Indonesia No. 11 of 2008 concerning Information and Electronic Transactions).

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