



## The principle of proportionality in the formulative policy of the crime of damage in social media

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### Abstract

Proportionality in a criminal defamation policy on social media is very important so that there are no individual conflicts from the community and the creation of fair policies. The main discussion of this research is whether the formulative policy of criminal defamation in social media is in accordance with the principle of proportionality. The research method used by the author is included in the type of normative juridical research, namely an approach by examining legislation and legal theory in Indonesia. Source the data used includes primary and secondary, primary data is a source of data that is directly related to the object of research, namely the law in particular Law Number 19 of 2016 amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, secondary data is a source data describing primary legal materials which are the result of legal expert thought, namely books, scientific works, literature to electronic data sources. The data collection method in this study uses library research techniques. The data analysis used was descriptive qualitative. The results of this study are first, there is a contradiction between the criminal law policy of defamation on social media and the regulation on freedom of opinion and expression as regulated in Article 28 E and F of the 1945 Constitution, secondly, the policy of criminal sanctions for defamation on social media is too high. based on comparisons that refer to defamation sanctions in the Criminal Code and several court decisions on defamation cases on social media.

**Keywords:** social media, defamation, the principle of proportionality

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### Introduction

We cannot deny that the role of information and communication technology in this era of globalization has placed it in a very strategic position because it presents a world without boundaries, distance, space, and time, which has an impact on increasing productivity and efficiency. Information and communication technology has been used in various ways, such as in people's lives itself and has also entered various sectors such as the government sector, business sector, banking, education, health, and personal life. Globalization has become the driving force behind the birth of the era of information technology development. The phenomenon of the speed of information development has spread all over the world. Not only developed countries, but developing countries have also spurred development. Information technology has an important position for the progress of a nation. Along with the development of the needs of today's society, information technology plays an important role both in the present and in the future. As a result of such developments, gradually, information technology by itself has also changed the behavior of society and human civilization globally.

Technological progress is the result of human culture, besides bringing positive impacts it also has negative impacts on human development and civilization. alone. The negative impacts in question are those related to crime. JE Sehatapy stated in his writing that crime is closely related to the development of society. The more advanced society's life, the more advanced crime is. Information and communication technology has changed the behavior of society and human civilization globally. In addition, the development of information technology has caused the world to become borderless and caused significant social changes to take place so quickly. Information technology is currently a double-edged sword, because in addition to contributing to the improvement of human welfare, progress and civilization, it is also an arena effective unlawful act. The high number of users of social media content makes it easier for people to communicate. Communication is the process of conveying thoughts or feelings by one person to another. Whether it is in the form of certain symbols or others that can change the behavior of a number of people, causing certain effects. The State of Indonesia criminalizes defamation in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions in the form of efforts to eradicate defamation through social media. In criminalizing an act, one must look at two central points, the first is the criminalization of an act into a crime and the formulation of the crime itself, and the second is the determination of criminal sanctions, especially regarding *strafsoort* (*determination of the type of crime*) and *strafmaat* (*the severity of the crime*).

Criminalizing the crime of defamation of course there are considerations, one of which is the rise of insults circulating on social media, but it should also be noted that criminalizing an act must also pay attention to good principles such as the principle of proportionality so that overcriminalization does not occur.

The importance of the principle of proportionality in criminal law policy certainly cannot be separated from the legal objectives, namely *lex certa*, *lex stricta*, *lex scripta* and the purpose of punishment itself. In addition, as a mechanism to prevent violations of individual rights, and limiting the power of legislators to threaten crimes against offense makers, it also affects the effectiveness of these regulations, a good criminalization process in a criminal policy will give birth to a proportional legal policy so that there are no rights that are disturbed in it or conflicts that arise from such a policy. The issue of the rise of protests against the criminalization of defamation, one of which is about the existence of articles on defamation on social media that can ensnare anyone or better known as the rubber article, in addition to the policy of criminal sanctions against perpetrators of defamation on social media which is high considering defamation is included in the category of criminal offense of minor insults, meaning that the formulation of a policy of criminal sanctions against perpetrators of defamation on social media does not see the seriousness or size of the act committed, thus making the process of forming a defamation policy on social media questionable at this stage. formulation. Based on the description of the background above, the authors formulate the problem in this study as follows: Is the Formulative Policy for the Crime of Defamation on Social Media In Accordance with the Principle of Proportionality?, this study aims to determine the proportionality of a criminal defamation law policy on social media.

### **Research Methods**

This research is included in the category of normative juridical research, namely research conducted by studying and reviewing legislation and legal theory in Indonesia to examine research in accordance with the problems to be studied. The data collection method used by the library research method is that this research is carried out by the author by reading, summarizing, and reviewing library materials related to research in the form of literature, court decision files and relevant laws and regulations and directly related to the object of research being studied. used as a theoretical basis. Then the data is processed qualitatively and then presented descriptively by explaining, describing, and describing according to the problems that are closely related to this research.

### **Research Results and Discussion**

#### **Proportionality in Determining Elements and Sanctions for Defamation on Social Media**

The importance of using the principle of proportionality is one of them so that there is no conflict between individual rights owned by the community and interests of a policy itself, therefore the parameters of a proportionality criminal policy must look at the clarity of the elements and policies of criminal sanctions from a policy itself. To find out the criminal policy in Article 27 paragraph (3) of the ITE regarding defamation, the author will explain the clarity of the elements and policies of criminal sanctions from these provisions. Policy formulation/legislative, namely the stage of formulation/compilation of criminal law.

This stage is the most strategic stage of crime prevention and control efforts through criminal law policies, because at this stage the formulative/legislative power is authorized in terms of determining or formulating what actions can be punished which are oriented to the main problems in criminal law including acts that are criminal in nature. against the law, guilt/criminal responsibility and what sanctions may be imposed by lawmakers. So that if there are errors/weaknesses in legislative policies, it will become an obstacle to preventing and overcoming crimes at the application and execution stages. At this stage, one of the efforts to prevent a criminal act is by criminalizing it.

Criminalization is included in the formulation stage because the formulation is the authority of the legislator or legislator himself. In criminalizing an act, of course, it must use the principle of good criminalization so that a proportionality criminal policy does not occur so that overcriminalization does not occur, one of which is to apply the principle of proportionality in it both elements and sanctions policies that are formulated when criminalizing an act. Criminalizing a certain act must be studied and considered clearly and explicitly in order to achieve the objectives of the principle of legal proportionality itself. All the problems above should be a reference in creating a criminal law policy because it is also related to the rights of citizens and also the principle of justice.

#### **1. Criminalization, Formulation of Criminal Acts of Defamation on Social Media.**

Criminalizing a criminal act of course cannot be separated from the references or guidelines contained in the Criminal Code, as well as in the formulation of a criminal act of defamation on social media must refer to article (310) paragraph (1) which reads “ Whoever intentionally damages honor or good name a person by accusing him of committing an act with a clear intention that the accusation will be published, shall be punished for blasphemy, with a maximum imprisonment of nine months or a maximum fine of Rp. 4,500 “ and also its paragraph (2) which reads “ If this is done with writing or pictures that are broadcast, shown to the public or posted, then the person who does that is punished for blasphemy in writing with a maximum imprisonment of one year and four months or a fine of up to the amount of Rp. 4.500 “

The article above is a reference to the existence of article 27 paragraph (3) of the ITE Law which reads “ Every person intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents containing insults and/or contents “ And also Article 45 paragraph (3)

which reads “ that every person intentionally 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 sentenced to a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 750,000,000.00 (seven hundred and fifty million rupiahs “

From the sound of the article above, there are several elements, namely:

- a. *The subjective element is an element of error*, In this case there is a word intentionally. Therefore, law enforcers must be able to prove that the perpetrators carried out defamation and/or insults through social media on purpose.
- b. *Elements against the law*, In this case, it is represented by the word “without rights”. In the opinion of the author himself, if you pay attention to the explanation and description of the equivalence of the meaning of the word “ without rights “ against the law.
- c. *Behavioral elements*, What is meant in this case is the act that is prohibited and becomes the object of Article 27 paragraph (3) is distributing and/or transmitting and/or making accessible electronic information and/or electronic documents that contain insults and/or defamation.

So this element can be fulfilled if it contains insults and/or defamation, which is the same as Article 310 of the Criminal Code which also regulates defamation. The explanation of the elements described above is certainly a reference in criminal law enforcement in eradicating criminal acts of defamation on social media. controversial social media such as the case of a lecturer who was reported by the campus for defamation on social media so that the judge sentenced him to 3 months in prison. Because the lecturer named Saiful Mahdi sent a message to the WA group of Syah Kuala lecturers with the sentence “ Innalillahi wainna ilaihi rajiun. Received sad news of the death of common sense in the ranks of FT Unsyiah's leadership during the PNS test yesterday. Evidence of technical determinism is very easy to corrupt? “, the next example is regarding the case of Jerinx who was sentenced by the Judge for defamation on social media, because Jerinx's upload on his personal Instagram, @jrx\_sid, which reads the sentence “ because proud to be a lackey of WHO, IDI and Rumah sick people arbitrarily oblige everyone who will give birth to a Covid-19 test “. As a result of one of these phenomena, it creates a debate in the community about the existence of the article.

#### **a. Contradictory to freedom of expression**

The insult referred to in Article (27) paragraph (3) of the ITE Law is to attack someone's honor and good name, that is, what is attacked is a feeling of “ shame “ The honor that is being attacked here is only in the form of respect for “ good name “ not “ honor “in a sexual sense, not an honor that can be tarnished because of the offence of the genitals within the scope of sexual lust, because of course the actions mentioned above are not meant to be “ insults “ that exist. in Article (27) paragraph (3) but it is included in the crime of “ decency “ or the crime of “ morality “ which can be seen in Article (281-303) of the Criminal Code.

There are six kinds of insults, including insulting (smaad) article 310 paragraph (1), insulting with a letter (smaadschrift) article 310 paragraph (2), slandering (laster) article 311, minor insults (eenvoudige belediging) article 315, complaining in a slanderous manner. (lasterlijke aanklacht) article 317, and slanderous charges (lasterlijke verdachtmaking) article 318, KUHP. All of the above insults can only be prosecuted if there is a complaint from the person who suffers (complaint offense), except if the insults are committed against a civil servant while carrying out his legal work (articles 316 and 319). The object of humiliation must be an individual human being, that is, not a government agency, organization administrator, group of residents and so on. In order to be punished according to Article 310 paragraph (1) of this Criminal Code (blasphemy), then the insult must be carried out by accusing a certain act of which the accusation is intended to be broadcast to the general public (known to many people).

The Declaration in Doho recalls article 19 of the general declaration of human rights promulgated by the United Nations on 10 December 1948 that:

“ Everyone has the right to freedom of expression and this right includes the freedom to hold opinions without interference and to seek, receive and share information and ideas through any media and regardless of national borders “. Therefore this is important considering the many demands from pollution good name in social media itself, especially in Indonesia for the last few years using articles, one of which is Article 27 paragraph (3) ITE. Even the International Press Observation Organization (IJF) Brussels, Belgium at a conference in Taipei, Taiwan which was attended by Asian and Pacific journalists, 7-10 July issued a resolution i which strongly condemned criminal cases regarding defamation and insult in Indonesia which judged that the criminal policy had been abused. In Indonesia, freedom of expression has been guaranteed and regulated in Article 28 of the 1945 EUUD which states “ everyone is given the right and freedom in association, assembly, and has the right to express opinions “ This is also reinforced by Article 28 F of the 1945 Constitution which reads, “ everyone is given the right to convey information using all available channels “

So it can be concluded that Indonesia does not have clear boundaries regarding freedom of expression. With the policy of article 27 paragraph (3) itself being a barrier to freedom of expression, because the object of defamation on social media itself is “ offensive feelings “ so that in responding to this it is to be careful in commenting and criticizing someone, even though it is clear that insulting and criticizing is something much different, in the big Indonesian dictionary is a response which is also sometimes accompanied by descriptions and considerations of good and bad for a work, opinion, and so on. While insulting is degrading, degrading the

good name of people, offending people's feelings. One of the parameters of proportionality in a criminal policy itself is the clarity of the criminal elements contained in it so that it does not cause multiple interpretations, as the principle of "nullum crimen sine lege stricta" which means that a criminal provision must not lead to other interpretations that are too broad and potentially misused. so that in article 27 paragraph (3) ITE regarding defamation on social media so that it does not contradict individual rights and the right to freedom of expression of the community.

## **b. High criminal sanction policy**

### **1. Comparison with the Criminal Code**

With the existence of Law Number 19 of 2016 in the State of Indonesia, so that reports of defamation on social media are increasingly widespread. This was confirmed by the statement of the Chairman of the MPR RI, Bambang Soesatyo, when the news said that the ITE law itself in 2020 reached 324 cases, as many as 209 people were charged with article 27 paragraph (3) regarding defamation, 76 people were charged with article 28 paragraph (3) about hate speech, and 172 cases were reported from uploads on social media. The number of cases regarding defamation on social media seems to give the impression that criminal law is no longer a last resort (*ultimum remedium*). The determination of sanctions in a criminal legislation is not only a technical matter of legislation, but also as the substance or material of the legislation itself. Therefore, criminal sanctions must use a rational approach so as not to cause "the crisis of criminalization". Criminal sanctions must be matched or proportional to the need to protect and defend these interests. Von Hirsch and Jareborg (1991) have taken this path, in what one leading commentator has described as the foremost modern attempt to set some parameters for proportionality (Ashworth 1995:93). They start with the assumption that:

"The seriousness of a crime has two dimensions: harm and wrongdoing. Harm refers to the harm done or risked by the act: guilt in the factors of intent, motive and circumstances that determine the extent to which the perpetrator should be held responsible for the act (1991: 1)". In determining the maximum, legislators are always faced with the problem of giving weights by setting quantification maximum penalty. Determining the maximum penalty to show the level of seriousness or quality of a crime is not an easy and simple job. For this reason, sufficient knowledge is needed regarding the sequence of levels or gradations of values from the central norms of society and the legal interests to be protected.

Determining the gradation of the value of legal interests to be protected is clearly not an easy job. The pattern of punishment used so far generally refers to the Criminal Code or the opinions of criminal law experts who have grouped or classified criminal acts. Wirjono Prodjodikoro, for example, has categorized the criminal acts specified in the Criminal Code qualitatively by looking at the violations of various protected interests. According to Wirjono Prodjodikoro, the method of classifying criminal acts is seen from the protected interests, including: 1) individual/personal interests: 2) community interests: 3) state interests.

We can see the policy of criminal sanctions in defamation on social media in Article 45 paragraph (3) of the ITE Law which reads:

"Every person who intentionally without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents containing insults and/or defamation as referred to in Article 27 paragraph (3) shall be punished with imprisonment for a maximum of 4 (four) years and/or a maximum fine of Rp. 750,000,000.00 (seven hundred and fifty million rupiah)". As the author mentioned earlier that in the theory of legal proportionality it is in determining the severity of criminal sanctions must see the seriousness of the act. The offense of defamation is included in the criminal act of humiliation. Insult there are six kinds of forms in the Criminal Code, including:

#### 1. insulting (*smaad*) article 310 paragraph (1)

" Anyone who intentionally damages someone's honor or reputation by accusing him of doing something with a clear intention to make the accusation public, shall be punished for blasphemy, with a maximum imprisonment of nine months or a maximum fine of Rp. 4,500".

#### 2. insulting by letter (*smaadschrift*) article 310 paragraph (2)

" If this is done with writing or pictures that are broadcast, shown to the public or pasted, then the person who did this is punished for blasphemy by writing with a maximum imprisonment of one year and four months or a maximum fine of Rp. 4,500".

#### 3. slander (*laster*) article 311,

" If the person who commits the crime of defamation or written defamation is allowed to prove what is alleged is true, does not prove it, and the accusation is made contrary to what is known, then he is threatened with slander with a maximum imprisonment of four years".

#### 4. light insult (*eenvoudige belediging*) article 315,

" Every deliberate insult that is not in the nature of defamation or written defamation committed against a person, either in public orally or in writing, or in front of the person himself by word of mouth or deed, or by a letter sent or received to him, is threatened because light contempt with a maximum imprisonment of four months and two weeks or a maximum fine of four thousand five hundred rupiahs".

#### 5. complain slanderously (*lasterlijke aanklacht*) article 317, and

" Whoever deliberately submits a complaint or false notification to the authorities, either in writing or in writing, about a person so that his honor or reputation is attacked, is threatened with making a slanderous complaint, with a maximum imprisonment of four years".

6. slanderous charges (*lasterlijke verdachtmaking*) article 318.

“ Anyone who by any act intentionally causes a person to falsely suspect that he has committed a criminal act, is threatened with causing a false suspicion, with a maximum imprisonment of four years “.

If we refer to the elements contained in Article 27 paragraph (3) of the ITE Law, the offense contained in the article is included in the category of minor insults contained in Articles 315 and 310 of the Criminal Code, in Article 315 of the Criminal Code the punishment is two months and four weeks or pay debt a maximum of four thousand five hundred rupiahs, as well as the criminal threats contained in Article 310 paragraph (1) are threatened with nine months or a maximum fine of four thousand five hundred rupiahs, paragraph (2) a criminal penalty of one year and four months or a maximum fine of four thousand rupiahs. five hundred rupiah. Meanwhile, in the criminal defamation policy on social media, Article 45 paragraph (3) is threatened with imprisonment of 4 (four) years and or a maximum fine of 750 million rupiah, referring to the proportionality theory that the severity of the sanctions on an act must consider the severity of the crime. the lightness of the impact or the seriousness of the act, if it is measured from the parameter that defamation is included in the category of mild insulting offenses, the threats contained in Article 45 paragraph (3) of the ITE Law are too high and not comparable considering the threats contained in the Criminal Code as already stated. the author described above.

## 2. Court Decisions

In terms of deciding criminal sanctions against perpetrators of defamation on social media, even though the principle of judicial discretionary power is fully guaranteed, as in Article I of Law No. 4 of 2004 concerning Judicial Power, where it is formulated that judicial power is the power of an independent state to To administer justice in order to enforce law and justice based on Pancasila, for the sake of the implementation of the State of Law of the Republic of Indonesia, Judges as administrators of judicial power have the authority to examine and decide on criminal cases which they handle freely from the intervention of any party. Although in terms of imposing criminal sanctions, the freedom of judges is not without limits. The principle of *Nulla Poena Sine Lege*, where judges can only decide criminal sanctions for defamation on social media based on the type and severity of sanctions in accordance with the dose determined by law, namely in this case Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, especially in Article 45 Paragraph (3).

Against several cases of criminal defamation on social media, The author gives some examples of judges' decisions which the authors describe in the table below:

**Table 1**

| No | Decision Number              | Claim Article                        | Punishment                            |
|----|------------------------------|--------------------------------------|---------------------------------------|
| 1  | 203/Pid.Sus/2017/PN.SMN      | 45 Paragraph (3) jo 27 Paragraph (3) | 4 months                              |
| 2  | 125/Pid.Sus/2018/PN Btl      | 45 Paragraph (1) jo 27 Paragraph (3) | Acquittal                             |
| 3  | 126/Pid.Sus/2019/PN.Pbr      | 27 Paragraph (3) jo 45 Paragraph (3) | Acquittal                             |
| 4  | 246/Pid.Sus/2020/PN Pso      | 45 Paragraph (3)                     | 10 months                             |
| 5  | 528/Pid.Sus/2020/PN Bdg      | 27 Paragraph (3) jo 45 Paragraph (3) | Acquittal                             |
| 6  | 623/Pid.Sus/2020/PN Dps      | 27 Paragraph (3) jo 45 Paragraph (3) | 9 months                              |
| 7  | 128/Pid.Sus/2016 /PN. SBW    | 27 Paragraph (3) jo 45 Paragraph (1) | 6 months                              |
| 8  | 222/Pid.Sus/2019/PN Tbn      | 45 Paragraph (3) jo 27 Paragraph (3) | 5 months                              |
| 9  | 240/Pid.Sus/2019/PN Psp      | 27 Paragraph (3) jo 45 Paragraph (3) | 6 months                              |
| 10 | 453/Pid.Sus/2020/PN Sgm      | 45 Paragraph (3) jo 27 Paragraph (3) | 2 months                              |
| 11 | 471 /Pid. Sus /2013/PN.Slmm  | 27 Paragraph (3) jo Article 45       | 4 months                              |
| 12 | 2393 K/Pid.Sus/2020          | 45 Paragraph (3) jo 27 Paragraph (3) | 2 months                              |
| 13 | 755/Pid.Sus/2020/PN.Jkt.Pst. | 45 Paragraph (3) jo 27 Paragraph (3) | 6 months                              |
| 14 | 154/Pid Sus/2017/PN Bir      | 45 Paragraph (1) jo 27 Paragraph (3) | 8 months                              |
| 15 | 512/Pid.Sus/2016/PN Jmb      | 45 Paragraph (1) jo 27 Paragraph (3) | 4 months                              |
| 16 | 21/Pid.B/2015/PN.Psb         | 45 Paragraph (1) jo 27 Paragraph (3) | 6 months                              |
| 17 | 43/Pid.Sus/2017/PN Lsm       | 27 Paragraph (3) jo 45 Paragraph (3) | Acquittal                             |
| 18 | 404 K/PID.SUS/2019           | 27 Paragraph (3) jo 45 Paragraph (3) | Reject the appeal from the prosecutor |
| 19 | 1981 K/Pid.Sus/2018          | 45 Paragraph (3) jo 27 Paragraph (3) | Reject the appeal from the prosecutor |
| 20 | 183/Pid.Sus/2020/PN Smg      | 45 Paragraph (3) jo 27 Paragraph (3) | 8 months                              |

Of the twenty decisions above, none of the judges' decisions that impose a criminal sentence in a matter of years only impose a sentence in a matter of months, meaning that less than half of the maximum punishment threatened under the criminal provisions for defamation on social media article 45 paragraph (3) of the ITE Law. The above phenomenon is basically a simple description of the punishment for defamation on social media, in deciding cases of defamation on social media, of course, the judge considers certain indicators such as seeing

and paying attention to proportionality in determining the amount of punishment according to the principle of individualization (*paying attention to the personality of the perpetrator when determining the sentence*). Punishment must take on a personal dimension in order to be more entitled and to fulfill the purpose of punishment itself. Namely, observing the principle of proportionality of punishment with the perpetrator and paying attention to the personality of the perpetrator.

Legislative policies that contain provisions for criminal sanctions and/or actions are often excessive and disproportionate and not even based on the purpose of punishment. If a set of criminal sanctions that have been set is the result of an inappropriate or disproportionate choice, then it can cause “*disruption*” in overcoming the development of crime. Responding to the high sanctions policy for criminal defamation on social media itself seems to give the impression that existing regulations are used to frighten not as an *ultimum remedium*, so that in defamation on social media it seems not there are other efforts to improve or restore the conditions that have occurred between the perpetrator and the victim. When viewed from the many cases that have occurred, the occurrence of defamation conflicts themselves are based on someone's dislike for others, what should be emphasized more is an emotional approach so that between victims and perpetrators can make peace instead of making imprisonment the main way to prevent acts of defamation. good name on social media. As a result, the article on social media pollution is a double-edged sword for the community to report to each other with emotional feelings and hope that the perpetrators are sentenced to the maximum prison sentence. All of these phenomena will not occur if the existing policy is proportional to the criminal policy in that policy.

### Conclusion

Looking at the explanation described above, it can be concluded that with the criminal law policy regarding defamation on social media, it is currently a barrier to freedom of expression, because the object of defamation on social media itself is an “*offensive feeling*” so that in responding to this, be careful in commenting and criticizing someone. So that there is a contradiction with the freedom of opinion and expression contained in Article 28 E and F of the 1945 Constitution. Referring to the proportionality theory that the severity of sanctions for an act must look at the severity of the impact or seriousness of the act, because defamation is included in the offense class. light insults, the threat of criminal sanctions for defamation on social media is currently too high, this is also based on a comparison of criminal sanctions for defamation in the Criminal Code and also several decisions court of defamation case itself. Therefore, if you look from the point of view of criminal proportionality in the criminal law policy of defamation on social media in Article 27 paragraph (3) and Article 45 paragraph (3) of the ITE Law, it has not been said to be a proportional policy in eradicating criminal acts of defamation. good on social media. Therefore, if you look from the point of view of criminal proportionality in the criminal law policy of defamation on social media in article 27 paragraph (3) and article 45 paragraph (3) of the ITE law, it has not been said to be a proportional policy in eradicating criminal acts of defamation. good on social media. It is recommended that there is a need for reformulation related to criminal acts of defamation with the principle of proportionality so that there is no conflict between the rights of the citizens themselves.

### References

1. Abdul Wahid, *Kejahatan Mayantara (Cyber Crime)*, PT Refika Aditama, Bandung, 2010.
2. Barda Nawawi Arief, Muladi, *Teori- Teori Dan Kebijakan Pidana*, Alumni, Bandung, 2010.
3. Budi Suhariyanto, *Tindak Pidana Teknologi Informasi (Cyber Crime)*, Rajawali Pers, Jakarta, 2013.
4. Danrivanto Budhijanto, *Revolusi Cyberlaw Indonesia*, PT Refika Aditama, Bandung, 2017.
5. Dwi Handoko, “*Kriminalisasi dan Dekriminalisasi*”, HAWA DAN AHWA, Pekanbaru, 2015.
6. Sakban, *Pencegahan Cyber Bullying DiIndonesia*, Deepublish, Yogyakarta, 2019.
7. Siswanto Sunarso, *Hukum Informasi dan Transaksi Elektronik*, PT Rineka Putra, Jakarta, 2020.
8. Dian Junita Ningrum, Suryadi, Dian Eka Chandra Wardhana, *Kajian Ujaran Kebencian Di Media Sosial*, Jurnal Ilmiah KORPUS, 2019, 2(3).
9. Mahrus Ali, *Proporsionalitas Dalam Kebijakan Formulasi Sanksi Pidana*, Jurnal Hukum IUS QUIA IUSTUM, 2018. 25(1).
10. Mirco Bagaric, *Proportionality In Sentencing: Its Justification, Meaning And Role*, Current Issues In Criminal Justice, 2000, 12(02).
11. Suhariyono AR, *Penentuan Sanksi Pidana Dalam Suatu Undang-Undang*, Jurnal Legislasi Indonesia, 2009, 6(4).
12. Wildan Muchladun, *Tinjauan Yuridis Terhadap Tindak Pidana Pencemaran Nama Baik*, Jurnal Hukum Legal Opinion, 2015, 3(6).