



Legal reconstruction of humiliation and defamation criminal acts through social media based on justice value

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Abstract

The purposes of this study are to analyze and find reasons for law enforcement against criminal acts of humiliation and/or defamation through social media and how to reconstruct it based on justice value in the research that uses a normative-juridical approach where the data collection method used is sourced from secondary data and primary data which was carried out using qualitative analysis methods.

The results of the study show that the regulation on humiliation and defamation is basically a limitation on the right to freedom of expression which is realized by accusing someone of having committed a certain act. However, the definition of defamation and its derivative actions cannot be found in a definitive setting in Indonesia. and in order to understand this, then it must refer to the formulation of criminal offenses in the Humiliation and defamation Chapter in the Criminal Code. Although the criminal acts of humiliation and or defamation through social media in the Central Java Police Legal Area are quite low due to public awareness of the emergence of the ITE Law. They are still people that are wrongly accused. therefore the Efforts to formulate policies in the future related to criminal acts of defamation must still be carried out where the reconstruction as intended is in Article 27 paragraph (3) of the ITE Law which prohibits the distribution of electronic information and/or electronic documents containing humiliations and/or defamation where the importance of setting affirmation of boundaries, juridical qualifications as well as regarding what is meant by a criminal act of defamation and what acts are the justification for a criminal act of defamation must be added in the explanation of the article.

Keywords: legal reconstruction, defamation, social media, justice value

Introduction

Article 27 paragraph (3) of the ITE Law can imprison social media users for stating their opinion on the internet that have offended someone. Such provisions are considered inconsistent with the spirit of reform, contrary to Article 28 E (3) and Article 28F of the 1945 Constitution of the Republic of Indonesia. Article 27 paragraph (3) of the ITE Law also overlaps or is not in line with the 1945 Constitution of the Republic of Indonesia, Law Number 14 of 2008 concerning Public Information Disclosure, Law Number 40 of 1999 concerning the Press, Law Number 8 of 1999 concerning Consumer Protection, and Article 310 and Article 311 of the Criminal Code. The excess that occurs is that legal uncertainty arises in tackling content containing humiliations and/or defamation on social media.

This is different from the application of the law regarding cases of violations related to the distribution of content containing humiliations and/or defamation on social media in several countries in the world. In Germany, for example, the government issued a regulation that could fine social media companies related to hoax news (Monsees, 2021) ^[3]. The German parliament also requires social media companies to remove hate speech content, hoax news, etc. within 24 hours of the complaint. In Germany, social media companies are also required to make a report every 6 (six) months regarding the complaints they get.

In the report entitled Digital 2021: The Latest Insights Into The State of Digital, it is stated that out of a total of 274.9 million people in Indonesia, 170 million of them have used social media (Widodo, 2019) ^[10]. Thus, the penetration rate

is around 61.8 percent. The number of active social media users in Indonesia grew by 10 million or around 6.3 percent compared to January 2020. In the same period, internet users in Indonesia grew by 27 million or 15.5 percent to 202.6 million. The first order of social media applications that are most widely used in Indonesia is actually occupied by YouTube, followed by WhatsApp, Instagram, Facebook, then Twitter in a row.

With the existence of social media or applications, it is ironic that some people's appreciation of the ethics of using social media is still very low. This results in some people not understanding the legal implications of using social media as a place to write things that harm other parties, such as spreading slander, distorting facts, spreading false news, and so on.

In the 1945 Constitution Article 28E paragraph (3) regulates the right to freedom of expression and opinion. The problem is what is the essence of the article in question? Freedom of expression includes the right to seek, receive and impart ideas and information. This freedom is a right that has many sides that show the breadth and scope of human rights law. Expression of opinion is protected in both verbal and written forms in various mediums such as art, paper, and the internet. The meaning of freedom of expression, of course, is not unlimited. There must be steps that need to be taken to ensure that freedom of expression does not prejudice the rights and freedoms of others.

This means that although freedom of expression is a constitutional right of every citizen that is explicitly guaranteed by the 1945 Constitution, the meaning of

freedom should not be interpreted as freely as possible without heeding legal norms and other norms. This is because the meaning of human rights, including the right to freedom of expression, must be placed in the context of the national legal system with Pancasila as its basic guideline. The freedom to express one's opinion, and is a human right must not harm or violate the same freedoms and rights that other people have (Widodo, 2018)^[9].

By taking a look at the general description of the use of defamation offenses in Indonesia, in the prosecution of criminal offenses, ordinary people occupy the highest portion as perpetrators of humiliations with 160 (one hundred and sixty) cases out of 171 (one hundred and seventy-one) decisions. Meanwhile, the largest victims of humiliation were occupied by public officials or people working in the public sector, namely 63 (sixty-three) cases. The data shows that the criminal law of humiliation is effectively used to protect the interests of public officials and/or people who work in the public sector. This fact shows that the law of humiliation in Indonesia is still shrouded in colonial nuances that provide great protection for individuals who have power over the rights of ordinary people.

In addition, the sentence given was deemed unfair to the defendants because most of the defendants were ordinary people. In order to overcome the problems that arise from the case, whether it continues until the trial process in court, it can actually be overcome with the concept that will be applied in the Draft of Indonesian Criminal Code (RKUHP) which is currently being discussed, namely the judge's pardon decision or *rechterlijk pardon*. The 2015's RKUHP has included the institution of forgiveness in the criminal system, in accordance with Article 56 paragraph (2) of the RKUHP, namely: "*The weight of the act, the personal circumstances of the maker, or the circumstances at the time the act was committed or what happened later, can be used as a basis for consideration not to impose a criminal or criminal offense by taking account the aspects of justice and humanity*". This arrangement provides the possibility not to impose a sentence on a defendant who has been proven to have committed a crime.

Based on this description, the author is interested in conducting research and examining the problem in a scientific paper titled "*Legal Reconstruction Of Humiliation And Defamation Criminal Acts Through Social Media Based On Justice Value*" where the main problem discussed in this article is as follows:

1. What are the weaknesses of the current law enforcement regulations for Humiliation and/or Defamation through social media in Indonesia?
2. How is the reconstruction of law enforcement regulations for criminal acts of humiliation and/or defamation through social media based on justice values?

Method of Research

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive

research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020)^[7].

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010)^[2]:

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

Research Result and Discussion

1. Weaknesses Of The Current Law Enforcement Regulations For Humiliation And/Or Defamation Through Social Media In Indonesia

The 1945 Constitution Article 28E paragraph (3) regulates the right to freedom of expression and opinion in Indonesia. Freedom of expression includes the right to seek, receive and impart ideas and information. This freedom is a right that has many sides which shows the breadth and scope of human rights law. Expression of opinion is protected in both verbal and written forms in various mediums such as art, paper, and the internet. The meaning of freedom of expression, of course, is not unlimited. There must be steps that need to be taken to ensure that freedom of expression does not prejudice the rights and freedoms of others.

This means that although freedom of expression is a constitutional right of every citizen which is explicitly guaranteed by the 1945 Constitution, the meaning of freedom should not be interpreted freely without regard to legal norms and other norms. This is because the meaning of human rights, including the right to freedom of expression, must be placed in the context of the national legal system with Pancasila as its basic guideline. Freedom to express one's opinion is a human right that must not harm or violate the same freedoms and rights that other people have (Baumann, 2021)^[5].

This is the essence and meaning of freedom to express opinions, which essentially emphasizes the balance between the freedom and right of every citizen to express opinions with the freedom and rights of other citizens in the same matter. This conclusion is reinforced by the opinion of the formulator of Article 28E paragraph (3), one of which states that with regard to the issue of human rights, in Article 28,

Paragraph (1), the State guarantees and upholds human rights. Paragraph (2) freedom of association and assembly, expressing thoughts verbally and in writing must not conflict with religious norms, moral norms, politeness norms, and legal norms. Therefore, the two rules adopted in daily life, personal rules and interpersonal rules, must also be included. There is a trend recently with the reformation era that people actually prioritize one freedom, while they try to put aside the issue of order, even though freedom and order contradict each other and yet cannot be separated from each other. So people may exercise freedom in carrying out the practice of life in the implementation of human rights, but they cannot violate these 4 (four) norms. Even if they gather, they must not violate four norms, namely religious norms, moral norms that are personal, polite norms when they relate to other people, and their legal norms dealing with society as a whole, while religious norms are how their relationship with God is. So these 4 (four) aspects of course also include the teachings of their religion.

This implies that the original intent of Article 28E paragraph (3) actually refers to the legal ideals, values, and views of life adopted by Pancasila which are reflected in the five precepts, in the context of the right to freedom of expression that emphasize the balance of rights and obligations. The meaning of freedom of expression is not absolute and unlimited but limited by the same rights and freedoms that other people, society, and the state have. In the language of the formulator of the article, it is stated that everyone has the right to freedom to express one's thoughts and attitudes with a conscience. Everyone has the right to freedom to express their thoughts and attitudes according to their conscience as long as they do not harm others.

Because the right to freedom of expression must respect and not harm the rights of others, this right can be limited. Human rights determine that the restriction is only justified if it concerns public order, and morality, for example, there is something very fundamental to protect the interests of the wider community through law. In other words, in exercising their rights and freedoms, everyone is obliged to comply with the limitations of the unity of the law with the sole purpose of establishing recognition, and respect for the rights and freedoms of others, and to fulfill existing demands in accordance with morals, preservation of life, security, public order, and democratic society (Toebagus, 2022)^[8].

Based on the description above, it can be concluded that the right to freedom of expression in Article 28E paragraph (3) of the 1945 Constitution is based on two things. First, in addition to human rights as basic rights, there are also basic human obligations in the context of living as a nation, state, and society. Strictly speaking, it is to not violate the rights of others. Second, to fulfill the needs of life as a civilized nation and a modern state, and to fulfill moral and legal responsibilities.

Defamation by disguised words, symbols, pictures, letters, or certain sentences should be suspected as a crime. Especially if it can be proven that the purpose of the word, symbol, image, letter, or certain sentence that is disguised is directed or directed at the person who is being labeled (Alviolita, 2019)^[1].

Before someone reports a suspected defamation case, that person must believe or, if possible, be able to ensure that the word or sentence in question is properly addressed to the

person, or at least is detrimental to the interests of that person. Because if the person's accusation is not true, that person can be said to have committed slander and can be sentenced to a maximum imprisonment of four years based on Article 311 of the Criminal Code, which reads as follows:

"If the person committing the crime of defamation or written defamation, in the event that it is permissible to prove that 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".

As an illustration, if someone makes a status on social media that read *"be a man in power in the office, don't be arbitrary and often harass women"*, it could be interpreted subjectively by other people with different opinions. The phrase *"man in power in the office"* can refer to one person, it can refer to many people, or it doesn't even refer to an individual person. Textual understanding alone is sometimes not enough to interpret the meaning of a phrase or sentence, it may have a different meaning from a contextual point of view.

Contextualization is attached to the subjective assessment of the *"defamation"* offense. This means that the assessment of a *"polluted"* legal object still depends on the point of view of who said it, through what media the word, symbol, image, letter, or sentence was spread, and how big the impact was from the spread of the word or sentence. Contextualization refers to causes, situations, and conditions.

The meaning, as mentioned above, in order to be more accurate and accountable, for whether or not a person's reputation has been tainted, a linguist, legal expert, or other social science expert is needed to define words, symbols, pictures, letters or sentences that contain defamatory content. If the expert is of the opinion that the words, symbols, pictures, letters, or sentences mentioned above really defame a person, then according to the provisions of the legislation, they can be punished under Article 310 of the Criminal Code and/or Article 27 paragraph (3) of the ITE Law.

The object of the humiliation must be an individual human being, not a government agency, the administrator of an association, a group of residents, and others. So it is clear that the legal logic is not right from the police investigators if the Florence case, for example, who defamed the city of Yogyakarta on His Facebook Status is also charged with using Article 27 paragraph (3) of the ITE Law. The city of Jogjakarta is not a natural person, but a state institution or public legal entity that does not represent an individual person.

Thus, according to this view, humiliations to institutions/corporations cannot be subject to Article 310 of the Criminal Code. With this doctrinal basis, humiliations to institutions/corporations or private legal entities can use a civil law approach, for example by filing lawsuit against the perpetrator with article 1372 of the Civil Code. Article 1372 of the Civil Code is as follows:

"Civil claims regarding humiliations are aimed at obtaining compensation and restoration of honor and good name. In judging one another, the judge must pay attention to the severity of the humiliation, as well as the rank, position, and ability of both parties and the circumstances".

Legal certainty is a hope for justice seekers against arbitrary actions from law enforcement officers who are sometimes

arrogant in carrying out their duties. With the legal certainty of the community or knowing the clarity of rights and obligations according to law. Without legal certainty people will not know what to do, and do not know whether their actions are right or wrong are prohibited or not prohibited by law. Legal certainty can be realized through good and clear characterizations in law and its application will also be clear, in other words, legal certainty means that the law is correct, the subject and object, and the threat of punishment. In law enforcement, of course, a balance is needed that should be obtained by the parties in the form of gains and losses. On the other hand, law enforcement gives rights that are equal to one's capacity or applied to everyone proportionally, but it can also mean giving equal amounts to everyone what their share is based on the principle of balance. Likewise, it is also important to pay attention to this, because everyone expects benefits in the implementation of law enforcement and law enforcer must not be the cause of unrest in the community. This means that law enforcement must be aspirational with people's lives.

Article 27 paragraph (3) of the ITE Law is undeniably a mirror of articles 310 and 311 of the Criminal Code. The mirror is not required to be used for every criminal act of defamation, even if the act uses electronic media. The presence of Article 27 paragraph (3) of the ITE Law does not reduce the articles on defamation in the Criminal Code in the slightest. Article 27 paragraph (3) serves as a binder and reinforces the doctrine that humiliations and/or defamation through electronic media have more severe legal consequences considering that the impact is also increasingly widespread. Some of its applications are used by investigators and public prosecutors because of the lack of a good understanding of the construction of law about defamation

Law enforcement against humiliation and/or defamation through social media requires a synergy between a participatory community and law enforcement officers who are democratic, transparent, responsible, and oriented to human rights, in which the flow is expected to truly realize an Indonesian civil society with social justice.

2. Reconstruction Of Law Enforcement Regulations For Criminal Acts Of Humiliation And/Or Defamation Through Social Media Based On Justice Values

The ideal regulation of criminal defamation must determine firmly whether an act of defamation is a crime or a violation. This is important to be regulated because it relates to the Criminal Procedure Code in the future, whether it meets the criteria for errors with acts that are intentional or the negligence of the maker, both in criminal acts and in the form of violations.

As stated by Sudarto, in Pramana (2013)^[4] in criminal acts in the form of crimes, it is necessary to have intention or negligence. In the ITE law, the elements are stated expressly or can be inferred from the verb in the formulation of the crime. In the formulation of a crime in the form of a violation, basically, there is no mention of intentional, or negligence, meaning that it is not stated whether the act was done intentionally or negligently. This is important for the Criminal Procedure Code, because if it is not stated in the formulation of the law, then it does not need to be included in the indictment and also does not need to be proven.

Based on the criteria of the juridical basis above, the freedom of opinion and expression principles in general is regulated in Article 19 of the Universal Declaration of Human Rights which states that:

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and share information and ideas through any media and regardless of its frontiers".

According to the article, the discussion will emphasize the four key elements of Article 19, namely the right to hold opinions without intervention, the right to seek information, the right to receive information, and the right to share information with other parties. In line with this statement, Indonesia has guaranteed it by including it in Pancasila as the legal basis.

By taking into account the things above that are taken into consideration in making formulation policies related to reforming the formulation of criminal acts. The function of the policy of criminal law formulation itself in a society that is undergoing a process of growth and/or modernization is closely related to the usefulness of law in the process. The utility can basically do two things, namely (Wreksosuhardjo, 2005)^[6]:

- a. Establishing New Laws;
- b. Strengthening Existing Laws; and
- c. Clarify the Scope and Function of Existing Laws.

Based on the foregoing, the reconstruction referred to in the formulation of Article 27 paragraph 3 and Article 45 paragraph 3 of the Law of the Republic of Indonesia Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning information and electronic transactions has the meaning of having content. humiliations and/or defamation is too broad/creates different interpretations in investigators. In addition, in the formulation of Article 45 paragraph 3 of the sentence given to the defendant is too high for a criminal sentence, namely with a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 750,000,000 (seven hundred and fifty million). rupiah), it is better to reduce the prison sentence by adding a fine with a maximum imprisonment of two years and six months or a maximum fine of Rp. 1,000,000,000 (one billion rupiah).

Conclusion

Based on the results of the research, the following conclusions can be drawn:

1. The weakness of law enforcement regulations for criminal acts of humiliation and or defamation through social media currently is in the ITE Law Article 45 paragraph (3) only regulates criminal acts of humiliation and or defamation which are only intended for ordinary people with excessive penalties. heavy and in Article 27 in criminal acts of humiliation and or defamation through social media it is interpreted too broadly. The ITE Law also regulates the prohibition of the distribution of electronic information and/or electronic documents containing humiliations and/or defamation through social media as a means. However, the provisions governing this matter are seen as not providing a strong foundation, both from the juridical, philosophical, and sociological aspects, because they can lead to multiple interpretations, whether for the

effect of prevention, punishment, or for the purpose of curbing freedom of expression. Even the complaint offense makes Article 27 paragraph (3) of UU ITE a "pasal karet" or a term that demeaned the law as it only punished the weak.

2. Reconstruction of law enforcement regulations for criminal acts of humiliation and/or defamation through social media based on the value of justice is necessary to evaluate criminalization policies in the form of changes and preparation of new offenses against policies on criminal information technology crimes in the future, in particular: Article 27 paragraph (3) of the ITE Law which prohibits the distribution of electronic information and/or electronic documents containing humiliations and/or defamation through social media as a means. Although the ordinary offense in the article has been changed to a complaint offense, the threat of criminal sanctions has also been reduced from 6 (six) years in prison to 4 (four) years in prison, a fine from 1 billion rupiahs to 750 million rupiahs, and the addition of provisions concerning the "right to forgotten" at the request of the person concerned based on a court order added to that, the fact that the criminal acts of humiliation and or defamation through social media in the Central Java Police Legal Area, for example, are quite low due to public awareness of the emergence of the ITE Law. They are still people that are wrongly accused. therefore the Efforts to formulate policies in the future related to criminal acts of defamation must still be carried out where the reconstruction as intended is in Article 27 paragraph (3) of the ITE Law which prohibits the distribution of electronic information and/or electronic documents containing humiliations and/or defamation where the importance of setting affirmation of boundaries, juridical qualifications as well as regarding what is meant by a criminal act of defamation and what acts are the justification for a criminal act of defamation must be added in the explanation of the article.

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