



Insult and Defamation through Information Technology: Indonesia Perspective

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ABSTRACT: Technological development becomes a challenge in law especially criminal law, many criminal acts of insult and defamation are carried out through information technology. Insult and defamation is an act that attacks the good name of someone who conveys words (words or series of words/sentences) by accusing certain acts, and which is aimed at the honor and good name of the person which can result in the dignity of the person being defamed and humiliated. In Indonesia, criminal acts of insult and defamation are regulated in the criminal code (KUHP) and Law No. 19 of 2016 Concerning Amendments To Law No. 11 Of 2008 Concerning Information And Electronic Transactions (ITE Law). The existence of the ITE Law is not a limitation on freedom of expression and opinion for everyone, but a foundation to protect the good name, dignity, or honor for everyone, especially in the use of technology and information.

Keywords: Insult, Defamation, Information Technology, Indonesia.

I. INTRODUCTION

The use of Information Technology, media and communication has changed both the behavior of people and human civilization globally. The development of information and communication technology has also led to world relations becoming borderless and causing significant social, economic and cultural changes to take place so quickly. Information technology is now a double-edged sword because in addition to contributing to the improvement of human welfare, progress and civilization, it is also an effective means of acting against the law.

Today there has been a new legal regime known as cyber law or telematics law. Cyber law or cyber law, is generally used for legal terms related to the use of information and communication technology. Likewise, telematics law is an embodiment of the convergence of telecommunications law, media law and informatics law. In addition, other terms used are information technology law (law of information technology), virtual world law (virtual world law), and mayantara law [1].

These terms were born bearing in mind the activities carried out through computer network systems and communication systems both locally and globally (the Internet) by utilizing computer system-based information technology which is an electronic system that can be seen virtually. Legal problems that are often encountered are when related to the delivery of information, communication, and/or electronic transactions, especially in terms of proof and matters relating to legal actions carried out through the electronic system.

The rapid progress in the field of Information Technology (IT) has contributed greatly to the development of the world of information and Electronic Transactions. However, it cannot be denied, such tremendous progress on the one hand brings blessings

to humanity but on the other hand can also bring harm to humanity. Progress in the field of information and Electronic Transactions has placed humans in an increasingly complete position in carrying out the mission of the Caliphate on earth but can also potentially derail humanity's position at the lowest point when the use of information and Electronic Transactions are used irresponsibly by attacking people's honor and good name other [2].

Even though internet activities are fully virtual, they actually still involve people (people) who live in the real world. Therefore, as is the case in the real world, human activities and behavior in cyberspace cannot be separated from regulation and restrictions by law. Regulations and restrictions by law are determined because every person has an obligation to his community and in the exercise of his rights and powers each person can only be limited by law solely to guarantee proper recognition and respect for the rights and freedoms other people. The implementation of rights both in the real world and in the activities of utilizing information technology in cyberspace (cyberspace) risks disturbing order and justice in society if there is no harmony between law and information technology, namely the absence of regulations and restrictions by law that protect the rights the community. From the explanation above, the Court is confronted with two legal interests, namely protecting freedom of speech, expressing opinions both verbally and in writing, and freedom of communication and obtaining information as constitutional rights of citizens, dealing with the basic rights of protection of the dignity, dignity and reputation of others [3].

The emergence of objections of some people towards Article 27 paragraph (3) regarding defamation and/or insults through the internet which led to constitutional review of Article 27 paragraph (3) to the Constitutional Court by two parties, each the first petition by

Narliswandi Piliang on the 25th November 2008 and the second petition by Eddy Cahyono and friends on January 5, 2009 [1]. In a constitutional review session at the Constitutional Court it was revealed that the objections of the plaintiffs were against the criminal provisions contained in the Law on ITE, especially the threat of criminal sanctions in Article 45 paragraph (1), namely a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah). This provision is considered too heavy compared to the threat of sanctions in Article 310 paragraph (1) of the Criminal Code, namely a maximum imprisonment of 9 (nine) months or a maximum fine of four thousand five hundred rupiah. The impact of regulating the threat of imprisonment for 5 (five) years or more, has consequences in accordance with the provisions of the Criminal Procedure Code that the alleged perpetrators of the criminal offenses in question can be subject to detention [2].

For example the case of Prita Mulyasari versus Omni International Hospital, which originated from sending e-mails (e-mails) regarding complaints about the service he received from Omni International Hospital. The complaint was responded by Omni International Hospital by complaining that Prita Mulyasari had committed defamation [2]. By law enforcement officials, the complaint is qualified as a violation of Article 27 paragraph (3) of the Law on ITE which reads, "Everyone intentionally and without the right to distribute and/or transmit and/or make access to electronic information and / or electronic documents that have charge of insult and/or defamation. "Therefore, Prita Mulyasari is subject to detention because of the threat of sanctions against violations of Article 27 paragraph (3) of the Law on ITE is five years or more. Prita Mulyasari's detention resulted in the emergence of public reaction which assessed the threat of criminal sanctions Article 45 paragraph (1) was too burdensome [1].

Guaranteed order and regularity in the use of social media, the government responded by passing Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (hereinafter referred to as ITE Law). From 2008 to the end of June 2018, as much as 49.72 percent of the article used as the basis for reporting was Article 27 paragraph (3) of the ITE Law which refers to the provision of defamation. The peak use of this article occurred in 2016 with 54 cases and 2017 with a total of 32 reported cases. The case is subject to Article 310 of the Criminal Code [4].

Efforts to regulate criminal defamation in the Criminal Code and ITE Law are manifestations of legal protection to citizens from defamation. An act can be said as a criminal offense if it can cause consequences for others. Honor is a thing that is protected in criminal defamation. Defamation in information technology is a type of crime caused by technological developments. Technological progress which is the result of human culture aside from having a positive impact, in this case means it can be used by humans well, it turns out that in its development it can also have a negative impact on humans and the environment [5].

In previous studies have examined the related position of the regulation of defamation and contempt both in the criminal code and the law against the Constitutional

Court Decision No. 2/PUU-VII/2009, basically the existence of Article 27 paragraph (3) does not conflict with the rights of citizens (the applicant), freedom of expression and opinion, and the principle of rule of law, because the philosophical basis of human rights in Indonesia is located on the balance between rights and basic obligations. The state through the guarantees of the 1945 Constitution has the right to limit these rights on the basis of the same right to the same freedom [6]. In addition there are also other studies that discuss the policy of criminal defamation formulation which suggests that it should be formulated in detail the subjective and objective elements in defamation crime so as not to cause multiple interpretations in the interpretation of defamation in practice and avoid social conflicts [7].

From this introduction, it is necessary to conduct a study related to the criminal justice system against perpetrators of criminal acts of defamation and defamation through information technology facilities based on the criminal code (KUHP) and Law No. 19 Of 2016 Concerning Amendments To Law No. 11 Of 2008 Concerning Information And Electronic Transactions (ITE).

II. INSULT AND DEFAMATION IN THE CRIMINAL CODE (KUHP).

Theoretically the concept of defamation in particular that is regulated in the Criminal Code is important put forward based on two reasons. First, the provisions contained in the Criminal Code are currently used as a basic guideline for the preparation of criminal legislation outside the Criminal Code. The aim is to create harmonization and unity of the substantive criminal system [8]. Understanding the criminal system can include a very broad understanding. L. H.C Hulsman as quoted by Barda Nawawi Arief stated that the criminal justice system is a statutory regulation relating to criminal sanctions and criminal sanctions [9].

Broadly speaking, punishment is a process of giving or convicting a criminal by a judge. Therefore, the penal system includes the entire statutory provisions that govern how the criminal law is enforced or operationalized [7]. Whereas if the legislation is limited to the substantive criminal law contained in the Criminal Code, it can be said that the entire provisions in the Criminal Code in the form of general rules of Book I and special rules of Books II and III are essentially a set of criminal system. These provisions become guidelines for criminal legislation outside the Criminal Code [6].

Secondly, Article 27 paragraph (3) of Law no. 11 of 2008 concerning ITE does not provide a definition of defamation, so the definition and elements of defamation are taken from the relevant Articles in the Criminal Code. This is a logical consequence of making the Criminal Code as a criminal system or the basis for drafting legislation outside the Criminal Code, including the ITE Law [6, 7].

In the Criminal Code the offense of defamation is explicitly regulated starting from Article 310 to Article 321. Related to this, the main question that needs to be asked is what is the meaning of defamation? Briefly, it can be stated that what is meant by defamation is to attack someone's honor or reputation. This understanding is a general understanding (genus offense) offense defamation. While special traits or

forms (species offenses) defamation include; defamation/defamation (Article 310 paragraph 1); written pollution/defamation (Article 310 paragraph 2); defamation (Article 311); mild insults (Article 315); defamation complaints (Article 317); false allegations (Article 318); and defamation of the person who died (Article 320) [6].

First, pollution/defamation. Explicitly the provisions regarding pollution/defamation are regulated in Article 310 which reads as follows:

1. Anyone who intentionally attacks someone's honor or good name, accusing something, which means that it is clear so that it is known publicly, is threatened, because of pollution, with a maximum penalty of ten months or a maximum fine of three hundred rupiahs.

2. If this is done with writing or a picture broadcast, displayed or posted in public, then the person who is guilty of written pollution is liable to a maximum of one year and four months imprisonment or a maximum fine of three hundred rupiah.

3. Does not constitute pollution or written pollution, if an act of light is carried out in the public interest or because it is forced to defend itself.

If we consider the existence of the provisions of Article 310 of the Criminal Code regarding oral pollution regulated in Article 310 paragraph (1), and written pollution regulated in Article 310 paragraph (2). The elements of offense Article 310 paragraph (1) is (a) to attack someone's honor or reputation, (b) by accusing something, (c) intentionally, and (d) the intention to be known publicly. Based on these elements, so that a person can be convicted pursuant to Article 310 paragraph (1), the person must make a defamation by accusing someone of having done something, the accusation is intended to be made public or known.

The meaning of "attacking" in Article 310 paragraph (1) should not be interpreted as a physical attack, because the object is indeed not physical, but a feeling of respect and feelings of one's good name [6]. The meaning of honor is personal feelings or self-esteem. Honor is also interpreted as a feeling of respect for someone in the eyes of society or the public. Attacking honor, even if the person being attacked is a despicable person, it means carrying out acts according to judgment generally attacking one's honor.

The good name is a sense of self-esteem or dignity based on the views or a good assessment of the community of someone in a social relationship. In other words, a good name is an honor given by the community to someone related to its position in the community [9].

Honor and good name have different meanings, but the two cannot be separated from each other. Because attacking honor will result in honor and reputation being tainted, likewise attacking good name will result in someone's reputation and reputation being tainted. Therefore, attacking one of them, honor or good name, is sufficient reason to accuse someone of blasphemy.

There are two measures that a statement which accuses an act that is considered to attack the honor and reputation of a person, namely subjective and objective measures. According to subjective measures, there are people who feel attacked by honor and good name due to the words of others who accuse an act. When someone can be said to be attacked by honor or

good name, depends on the subjectivity of the victim, where he feels his personal integrity feels polluted. Whereas according to an objective measure is based on a general measure of time and place to assess that an action includes acts that damage the honor or good name or not. If the answer is positive, then it can be used as an excuse to determine the act as an act of tourism. Here the values that live in a society become a measure. The police, prosecutors and judges must be able to capture the values of politeness that live in the community [6].

The act of attacking someone's honor or reputation by accusing something must be done intentionally. The perpetrator does want a result that arises from his actions, namely the other person to whom the honor or reputation is attacked. In addition, intentions here must be addressed to all the elements that are behind it. Intentionality is also aimed at the element of "public knowledge, meaning that the perpetrators in carrying out acts attacking someone's honor or reputation, he realized that by doing such acts can be known by the public.

Article 310 paragraph (2) regulates written defamation, in which the elements consist; (a) all elements in paragraph (1); (b) accusing an act of being written or broadcast, displayed or posted; and (c) openly.

The meaning of "broadcast" is writing or drawing made in sufficient quantities, can be printed or photographed copy, and then distributed in any way. While the meaning of "shown" is to show writing or pictures whose content or meaning is contemptuous to the public, so that many people know it. The meaning of "affixed" is the writing or drawing affixed to other objects that are plastered, such as boards, building walls, and so on.

Defamation both verbally and in writing, the culprit is not convicted if the act is carried out in the public interest or in self-defense. What is the meaning of the two words is not explained by juridical normative, so to judge it submitted to the judge's judgment based on the case examined.

Second, Defamation. Defamation is generally defined as incorrect words that are usually used to accuse someone. In Indonesian grammar, defamation is interpreted as words intended to discredit people [6]. Provisions regarding defamation are regulated in Article 311 which states that:

(1) If committing a crime of verbal pollution or written pollution, in the case that it is permissible to prove that what is alleged is true, does not prove it and the accusation is done contrary to what is known, then he is threatened because of defamation, with a maximum imprisonment of 4 years.

(2) Revocation of these rights in Article 35 No-13 can be dropped.

Based on the above provisions, the elements of Article 311 are (a) committing an oral or written pollution crime; (b) there is permission to prove the allegations; (c) can prove that truth; (d) accusations were made; and (e) accusations are made contrary to what is known.

From these elements, it means that a person who commits criminal acts of pollution both verbally and in writing, where on his accusation he is permitted to prove it and he cannot prove it, while the accusation is contrary to what he knows, then that person is said to have committed slander. However, it should be noted

that not every person who commits a crime of pollution can be allowed to prove the truth of his allegations. Only criminal acts of pollution for certain reasons can be permitted, whereas for criminal acts of pollution carried out for reasons other than that are not permitted to prove the truth of the allegations.

Permission to prove the allegations in the crime of pollution can be given by the judge, if (a) the allegation was made in the public interest; (b) done in self-defense; and (c) in the case of slander the civil servants who are carrying out their duties (Article 312). Proof in Article 312 is not permitted, if the alleged case can only be prosecuted for a complaint and the complaint referred was not submitted (Article 313).

Another thing to note is Article 314 of the Criminal Code, which relates to criminal acts of defamation, if a person who is alleged to have been blamed by a judge for an act alleged by him, in this case cannot be dropped for defamation. Article 314 reads:

(1) If a person who is insulted by a judge's decision becomes permanent, is found guilty of the thing alleged, then conviction for defamation is not possible.

(2) If the decision of a judge who remains acquitted of what is alleged, then the decision is seen as perfect proof that the matter alleged is not true.

(3) If a criminal prosecution has been commenced for being insulted because of the alleged matter, the prosecution for defamation is terminated until a verdict becomes fixed, concerning the alleged matter.

Third, mild insults. The form of mild humiliation is contained in Article 315 of the Criminal Code which reads as follows:

Any intentional insult that does not constitute pollution or written pollution committed against a person, either publicly orally or in writing, or in front of the person himself orally or in deeds, or with letters sent or received to him, is threatened because of insults light with a maximum imprisonment of four months and two weeks or a maximum fine of four thousand five hundred rupiah. Based on the provisions of the article above, it is known that the elements of mild humiliation are (a) deliberately; (b) attack; (c) the honor or good name of the person; (d) by word of mouth or in public, by word of mouth or in person, or by letters sent or received to him; and (e) is not written pollution or pollution.

In Article 315 of the Criminal Code does not require that the perpetrators must accuse something. Any insult that is not pollution is categorized as a mild insult. This non-polluting insult is any insult in its sociological understanding. So in this case because humiliation is generally interpreted as an attempt to vilify people, then this insult can be interpreted as any attempt to vilify others who are not polluting [10]. Sayings that can be categorized as mild insults such as cursing someone by saying dog, asu, sundel, bastard and so forth.

For the occurrence of minor insults, in addition to being done in public both verbally and in writing, the insults can also be done in front of or in front of their own people in the form of words or deeds. Someone who cursed others by saying whores, recorders, prostitutes or by acts such as spitting on people's faces, are acts that can be categorized as mild insults.

The development of technology which is increasingly fast, sometimes makes information spread widely in the middle of society without any effort to filter the

information, so that sometimes people are trapped in uncertain information [11].

In addition to the Criminal Code, the offense for offense is also contained in the Broadcasting Law and the Electronic Information and Transaction Law. The offense of defamation is contained in the Broadcasting Law contained in Article 36 Paragraph (5) of the Law of the Republic of Indonesia Number 11 of 2008 concerning Electronic Information and Transactions (ITE) is an attempt to criminalize several criminal acts in the form of cyber crime [12].

III. INSULT AND DEFAMATION OF LAW NO. 19 OF 2016 CONCERNING AMENDMENTS TO LAW NO. 11 OF 2008 CONCERNING INFORMATION AND ELECTRONIC TRANSACTIONS (ITE)

Provisions regarding defamation in Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions (ITE) listed in Article 27 paragraph (3) reads:

"Anyone who intentionally and without rights distributes and/or transmits and/or makes accessible electronic information and/or documents that have the content of defamation and/or defamation".

Furthermore, the provisions of Article 45 paragraph (3) of the ITE Law, which are

"Any person who intentionally and without the right to distribute and/or transmit and/or make accessible Electronic Information and/or Electronic Documents that have content of defamation and/or defamation as referred to in Article 27 paragraph (3) shall be convicted with imprisonment a maximum of 4 (four) years and / or a maximum fine of Rp750,000,000.00 (seven hundred fifty million rupiah)".

Which basically states "violations of the provisions of Article 27 paragraph (3) are threatened with imprisonment of 4 (four) years". The elements contained in Article 27 Paragraph 3 Are [13]:

(a) Deliberately

(b) Without rights

(c) Distribute and/or transmit and/or make information accessible.

(d) Information and/or electronic documents held in the contents of defamation and/or defamation.

The element intentionally and without rights is a unity which in the level of application of the law must be proven by law enforcement. The elements "intentionally" and "without rights" mean the perpetrators "want" and "know" consciously that their actions are carried out without rights.

In other words, the perpetrators consciously want and know that the act of "distributing" and/or "transmitting" and/ or "making accessible electronic information and / or electronic documents" has the content of defamation and/or defamation.

The element without rights is an element against the law. Inclusion of elements without rights is intended to prevent people from carrying out acts of distributing and/or transmitting and/or making accessible electronic information and / or electronic documents that have the content of defamation and/or defamation;

What is meant by "distributing" is sending and/or disseminating Electronic Information and/or Electronic Documents to many People or various parties through the Electronic System.

What is meant by "transmitting" is sending Electronic Information and/or Electronic Documents addressed to one other party through the Electronic System.

What is meant by "making accessible" is all other acts besides distributing and transmitting through the Electronic System that causes Electronic Information and / or Electronic Documents to be known to other parties or the public.

In Article 27 (3) of the ITE Law the notion of defamation and defamation is not explained, however it can be concluded logically (systematically) that the intended (1) Criminal Code is connected with Article 310 paragraph (2) and Article 315 of the Criminal Code. Explicitly the formulation of Article 27 paragraph (3) jo Article 45 paragraph (3) of the ITE Law.

Based on the formulation of Article 27 paragraph (3) Jo Article 45 paragraph (3) of the ITE Law, the definition of pollution or contempt refers to the same meaning in the Criminal Code. This is because as explained earlier that the entire provisions in the Criminal Code in the form of general rules Book I and special rules Books II and III are essentially a criminal system, so that they become guidelines for criminal legislation outside the Criminal Code.

In order to ensnare perpetrators with Article 27 paragraph (3) above, what really needs to be considered is that the subjective and objective elements of Electronic Information and / or Electronic Documents that have contempt and/or defamation contents are commulative. That is, law enforcement officials do not necessarily declare the offender guilty of violating Article 27 paragraph (3) if the subjective element is proven, but must still prove whether the Electronic Information and/or Electronic Documents that have content of defamation and/or defamation do violate the values in society or not.

In this connection, the presence of experts in the field of ITE and Language is very important to present law enforcement officers to assess whether a written or image related to Electronic Information and/or certain Electronic Documents that are distributed, transmitted, or can be accessed has a content of insult and/or name pollution good or not. So, it is not based solely on victims' complaints let alone unilateral interpretation of law enforcement officers. During this time, not a few people who allegedly violated the article were tried for defamation based more on the evidence of subjective elements.

The weakness of Article 27 paragraph (3) of the ITE Law lies in the threat of criminal sanctions that apply to seven forms of defamation. In fact, the legal consequences of each form of defamation are not the same, so that the leveling of the threat of sanctions without considering how the act is done and the consequences are not appropriate based on the doctrine of criminal law. Article 27 (3) does not separate which elements are ballast and which are mitigating elements related to defamation through ITE facilities. As a result, the threat of criminal sanctions is not equated for all forms of defamation.

In the Criminal Code insult is a separate chapter, so the naming of "insults" in article 27 paragraph 3 which is equated with defamation is not appropriate. The use of the word content of insults and / or defamation can be interpreted that insults are an act of its own and

defamation is an act of its own as well. Both of these words mean placing an unbalanced word, that is Humiliation if interpreted in accordance with the Criminal Code is a Chapter while pollution is one of the special offenses of insults in Chapter XVI, because the insult consists of at least 6 offenses as previously described, namely Article 310 regarding "pollution" "(Insulting), Article 311 concerning "defamation" "(laster), Article 315 concerning " simple insults "(oenvoudige belediging), Article 316, Article 318, concerning false suspicion, Articles 320 and 321. So that the word insult should be removed and replaced only use defamation article 310 of the Criminal Code and if you want to be added can add Article 315 about "simple/mild insults" (oenvoudige belediging), the addition is done because in the case of deliberate insults that do not meet the elements of pollution or written pollution of article 310 of the Criminal Code will be subject to this article. Such as insults through social media such as messenger application devices on social media.

IV. CONCLUSION

The Criminal acts of Insult and defamation are regulated in the criminal code (KUHP) and Law No. 19 Of 2016 Concerning Amendments To Law No. 11 Of 2008 Concerning Information And Electronic Transactions (ITE Law). The insult to the Criminal Code and the ITE Law that is different is that the Criminal Code is only a formal offense. One formal offense is contained in Article 310 of the Criminal Code. Whereas the ITE Law regulates only material offenses. ITE Law only formulates the expansion of acts of defamation and defamation through cyberspace or electronics, while the offense qualification still refers to the genus, namely the formulation of the regulation of criminal acts contained in the articles in the Criminal Code. A person's good name, dignity, or honor is one of the legal interests protected by criminal law because it is part of every person's constitutional rights guaranteed by the 1945 Constitution and international law. although freedom of expression is a constitutional right of every citizen that is explicitly guaranteed by the 1945 Constitution, but the meaning of such freedom must not be interpreted as freely as possible without regard to legal norms and other norms, freedom of expression is not absolute and without limits, but is limited by the same rights and freedoms by other people, society, and even the State.

V. FUTURE SCOPE

This paper examines the criminal system for acts of insult and defamation in the legal system in Indonesia especially through information technology. For further research, it would be better if that can provide a study related to developments of acts of violation of the law in the field of information technology such as the Hoax or spreading false news that attacks the dignity of a person.

Conflict of Interest. No conflict of interest

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