



## The Urgency of Law Enforcement Offenses of Defamation in Indonesia based on the Insignificance Principle

Wiranto Tri Setiawan; Umi Rozah

Master of Law Study Program; Faculty of Law, Diponegoro University, Indonesia

E-mail: [Wirantotrisetiawan@gmail.com](mailto:Wirantotrisetiawan@gmail.com)

<http://dx.doi.org/10.47814/ijssrr.v6i3.983>

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### **Abstract**

Defamation in Indonesian law has been regulated by several regulations, one of which is Law Number 19 of 2016 concerning Information and Electronic Transactions (UU ITE). The very subjective nature of this article is prone to causing violations of freedom of expression. The existing offense provides space for someone to criminalize another person for an act that is not significant with the characteristics/essential nature of criminal law. Therefore, the state needs to pay more attention to the operationalization of the offense so as not to cause excessive criminalization. It is necessary to renew the defamation offense that adopts the principle of insignificance in order to reduce excessive criminalization and guarantee human rights. Based on these thoughts, the authors conducted this research. The method used is juridical-normative. The approach used is a statutory approach and a conceptual approach.

**Keywords:** *Defamation; Insignificant Principle; Human Rights*

### **Introduction**

The social life of society has undergone drastic changes due to a massive revolution in the field of technology and an era like this is often referred to as the era of disruption. Therefore there is a statement that information technology is known to provide enormous benefits for every human being in the world (Suhariyanto, 2013). Data from the Association of Indonesian Internet Service Providers (APJII) with the title "Internet User Penetration and Behavior in 2017" in collaboration with Teknpreneurs said that the number of internet users in Indonesia has increased to 143.26 million people or if it is prorated it can be said equal to 54.7% of the total population of the country of Indonesia. The data illustrates that 87.13% of internet usage is used for social media as content that is very popular or frequently accessed to access information needs (APJII, 2018).

The use of the internet is often used to access convenience in carrying out daily life or just to channel expressions, interact socially through social media. This illustrates that humans as social beings are required to communicate or interact with their surroundings. In interacting or channeling expressions, it is not uncommon to cause problems, such as saying or expressing opinions that can be considered offensive or defamatory of someone.

Bareskrim Polri, through its records, has noted that police reports that came in in 2018 totaled around 4,360, of which the number of reports that came in later in 2020 has increased to 4,790. The entire incoming report relates to the ITE Law. From the data recorded by Bareskrim Polri, it was said that cases of defamation touched a figure of 1,500 reports. Then this figure in 2019 amounted to 1,333 reports. However, the decline that occurred in the 2018-2019 vulnerability did not decrease again in 2020, instead it increased drastically to 1,894. Not only that, cases of hate speech are known to be at 200 cases every year (Mudassir, 2020). If we look at the data, we can conclude that there are so many cases of defamation that have arisen.

Acts of defamation or humiliation in Indonesia are qualified in various ways including defamation, slander, reporting slander, and slanderous accusations (Samudra, 2020). In enforcing the law on defamation cases, Articles 310-320 of the Criminal Code (KUHP) are often used in addition to using the legal instruments of the ITE Law. The use of Article 310 of the Criminal Code is used if the defamation is carried out not using social media or the internet. However, from the reality that occurs, the use of articles in the ITE Law and Article 310 of the Criminal Code experience many problems in their operations.

The use of defamation offenses in the ITE Law and in the Criminal Code is considered very subjective or is often said to be a rubber article. The consequence that arises from the existence of a rule which is very subjective is that the operationalization of the rule will potentially cause problems such as criminalization which is far from the principle of justice. The criminalization of using the offense of defamation that has been used so far is based on an act that is not significant with the essential characteristics/nature of criminal law. So if there is a criminalization of a rule like this, it has the potential to violate human rights. The principle of insignificance or the principle that looks at the significance of the consequences of an act is needed in formulating and enforcing the law on defamation offenses in order to reduce criminalization and safeguard human rights.

### **Problem Statement**

From the elaboration that has been described above, several points can be drawn which are the problems and will be discussed in this study, namely:

1. How is the current regulation of the crime of Defamation in Indonesia?
2. The Urgency of Applying the Insignificance Principle in Enforcing the Criminal Act of Defamation?

### **Research methods**

In this study the authors used a normative juridical approach. juridical-normative approach is a type of approach that uses applicable statutory provisions (Soemitro, 1998). Normative juridical is carried out to analyze the application of criminal sanctions in the ITE law. This study uses a literature study technique with due regard to primary, secondary and tertiary legal sources and is supported by qualitative data types which will be presented in a narrative manner.

### **Discussion**

#### **I. Regulations for Defamation Offenses in Indonesia at present**

Defamation is one of the crimes which is quite common in Indonesia. According to Oemar Seno Adji, defamation is an insult, which according to him is divided into 2 (two) types. The two types referred to by Oemar Seno Adji are material insults and formal insults. Furthermore, it has also been explained

what is meant by formal and material humiliation. As for what is meant by material and formal insults are as follows (Ramadan, 2015):

- a. Material humiliation is defined as an insult in which the insult contains a fact in the form of an objective statement in words both orally and in writing. Therefore, in this material insult, what needs to be emphasized or the determining factor is the content contained in the statement. Because what was said is a fact, in this material insult there is still a possibility to prove that what was said was in the public interest.
- b. A formal insult is a statement that is emphasized on how the statement was issued, so that in this aspect it is not stated what the contents of the insult are. In formal contempt the possibility or opportunity to prove a truth is not possible, this is due to the fact that the focus is on the form and method used in a statement.

In Indonesia, defamation can be found in the Criminal Code as well as in the ITE Law. In the Criminal Code, the criminal act of defamation can be found in CHAPTER XVI in Articles 310 to Article 321. There are several types of insults but the articles that specifically discuss defamation are Articles 310, 311 and 315 of the Criminal Code. As for the definition of defamation, as stated in Article 310 paragraph (1) of the Criminal Code which reads "Whoever deliberately damages a person's honor or reputation by accusing him of committing an act with the real intention of spreading the accusation, is punished for blasphemy, with a prison sentence of up to - for a maximum of nine months or a maximum fine of IDR 4,500". Based on the sound of the article by Adam Chazawi it is stated that there are elements in it, namely (Chazawi, 2013):

#### *1) Objective Elements*

*The objective elements in the article are:*

- a. Deeds done;*
- b. Attack;*
- c. The object: while the object is a person's honor, a person's good name;*
- d. How: by accusing certain actions.*

#### *2) Subjective elements*

*In the subjective element consists of errors, namely:*

- a. On purpose;*
- b. It is clear that it is known to the public.*

Apart from Article 310 of the Criminal Code, the offense of defamation is also regulated in the ITE Law. The difference between the regulation on defamation in the ITE Law and the Criminal Code is that the ITE Law is more specifically devoted to acts of defamation committed using the internet. Whereas if in the Criminal Code it is often interpreted as an insult that is carried out manually or without using internet media. It can be said that the provisions in the ITE Law are made according to the times. Where in this case the era has developed with the emergence of the internet and technology that is advancing rapidly.

The definition of defamation in the ITE Law is contained in article 27. In more detail, as Article 27 paragraph (3) reads that "Every person intentionally and without rights distributes and/or transmits

and/or makes accessible Electronic Information and / or Electronic Documents that contain insults and / or defamation ". Furthermore, as Article 45 of the ITE Law, acts that violate Article 27 paragraph (3) can be sentenced to a long prison term, namely a maximum of 6 years and can also be subject to a maximum fine of one billion rupiah. As for the elements of the content of the defamation offense article in the ITE Law, it includes:

- 1) Everyone;
- 2) Intentionally;
- 3) No Rights;
- 4) distribute and/or transmit and/or make Electronic Information and/or Electronic Documents accessible;
- 5) 5) there is a charge of Defamation and/or Defamation.

Astral Sitompul said that in order to be categorized as a criminal act of defamation in the technological aspect, there are elements that must be fulfilled including (Sitompul, 2001):

- a. there is a thing or condition that is not factually proven that is done using the internet;
- b. a thing or condition that is done is related to a person or related to an entity;
- c. this is done by way of publication or distribution to other parties;
- d. publication that is carried out then causes harm to someone who is used as an object.

The existence of the criminal act of Defamation both in Article 310 of the Criminal Code and Article 27 of the ITE Law in reality has experienced many problems. There is a problem in enforcing the law on criminal acts of defamation because the criminal acts that are regulated are criminal acts that require interpretation and subjectivity. As a result, the operation is prone to overcriminalization.

## **II. The Insignificance Principle in Enforcement of the Law on the Offense of Defamation**

The problems that occurred with the law enforcement of defamation offenses in Indonesia are still being discussed. Excessive criminalization by using the offense of defamation causes the rights of everyone, both as individuals and as citizens, who in this case have the right to express opinions, to be violated. Violation of human rights is the same as violating the Indonesian constitution. Indonesia as a rule of law strictly safeguards human rights. The core understanding of human rights can be drawn into three core understandings. First, that human rights are naturally inherent or inherent because individuals are human beings created by Him, not because humans are citizens, so they cannot be revoked; Second, the effective protection of human rights lies within the limits of democratic legitimacy; Third, the limits on the implementation of human rights can only be carried out by law while still referring to the applicable conditions (Retno Kusniati, 2011).

Some evidence that there has been criminalization using defamation offenses which at the same time disrupts human rights can be proven by the many cases that have occurred in Indonesia. As for some of the cases that occurred, one of them was the Fadli Rahim case. Fadli Rahim was reported for insulting and defaming Ichsan Yasin Limpo who served as Regent of Gowa South Sulawesi based on his tweets on social media which said that the regent was authoritarian (Safenet, 2020). These cases resulted in detention and imprisonment.

Freedom of speech or freedom of expression is a right that every Indonesian citizen has. The guarantee for the right to express opinions as a right of every Indonesian citizen can be seen from Article 28 E paragraph 3. In that article it is stated that every Indonesian citizen has the right to freedom of association, assembly and freedom of expression or speech. Apart from that, in law no. 9 of 1998 concerning Independence in public delivery also stipulates that freedom of speech cannot be separated from the right to assemble, protest and demand change (Jayananda, 2022). Freedom of expression apart from the 1945 Constitution and national legal instruments, has also been protected in international legal instruments. As Article 19 paragraph (2) of the International Covenant on Civil and Political Rights says that everyone has the right to express opinions without interference from anyone.

Apart from being used as a criminalization tool that causes human rights to be violated, the existence of defamation offenses in the Criminal Code and the ITE Law is one of the factors causing overcriminalization. Barda Nawawi Arief explained that overcriminalization is the large number of crimes and actions that are criminalized continuously without being based on a tested assessment and without an evaluation of the consequences that have arisen on a system. Furthermore, Andrew Ashworth explained that overcriminalization can occur when criminal law is operationalized or works beyond the three main functions of criminal law, namely, the declarative function, the preventive function and the regulative function.

With regard to the function of criminal law beyond the declarative function, it is defined as something that arises as a result of criminal law being passed without any fault or when a crime that is categorized as a minor crime is considered a serious crime. Meanwhile, exceeding the preventive function in this case is interpreted as the emergence of a rule that prohibits actions that are not dangerous or the possibility for the emergence of the intended danger from these rules is still far away. In terms of exceeding the regulatory function, it arises when the act being criminalized is an administrative or civil violation or the use of administrative or civil sanctions is actually more effectively implemented (Ali, 2018).

By looking at the current situation, the existence of these criminal act rules is often used to criminalize a person or certain groups based solely on feelings and interests which are very strong in subjectivity. So that if the operationalization of such defamation offenses, it can be said that the criminalization carried out is not significant or the criminal law operates beyond its main function. So simultaneously the enforcement of the law on defamation offenses will violate human rights. There needs to be a new method in enforcing the criminal defamation law in Indonesia as an effort to reform the criminal law.

Reform of criminal law is something that needs to be done amidst the conditions of overcriminalization as described above. According to Barda Nawawi Arief, efforts to reform criminal law have begun to review and reassess according to the central sociopolitical, sociophilosophical and sociocultural values of Indonesian society which form the basis of Indonesian social, criminal and law enforcement policies (Arief, 2010). Therefore, reform is urgently needed in the field of criminal law as an effort to review irrelevant regulations (Jaya, 2019).

One of the ideas that can be implemented to enforce criminal law, in this case the offense of defamation, is based on the principle of insignificance (insignificant principle). This principle or principle of insignificance implies that even though an act has fulfilled the elements of a crime, if the act committed does not reflect significantly the characteristics or fundamental nature of a crime then it cannot be said to be a crime. Settlement of cases would also be better not done through litigation. So if starting from this principle, if there is a defamation case, law enforcement officials are required to examine more deeply the consequences arising from the actions committed by someone who is considered to have committed defamation. If there is no significant consequence, then it is appropriate for the act not to be held criminally responsible.

According to Douglas Husak it is said that responsibility for a crime cannot be imposed or imposed unless a rule is formed to prohibit an evil act or from such action it can cause serious damage/loss. The state is not allowed to design criminal rules where the contents of these rules prohibit certain actions that do not cause any harm with criminal sanctions. According to Dennis J. Baker it is said that what can be used as an excuse to criminalize an act is moral disgrace. (Baker, 2008). In line with that, Herbert L. Packer also stated that only actions that society considers disgraceful need to be criminalized (Setiawan, 2021). The criterion is that the majority of people perceive these actions as behavior that threatens them. So that actions that do not result in a significant loss are better not criminalized (Stewart, 2010).

Efforts to adopt the principle of insignificance in formulating and enforcing criminal defamation law will be able to reduce excess criminalization. In its operationalization, it is necessary to look at the aspects of the consequences and the significance of the actions committed. So that it is in accordance with the characteristics and the essential nature of criminal law. In addition, the operation of the defamation offense by taking into account the principle of insignificance will result in the protection of the right of every person or Indonesian citizen to express opinions as mandated by the 1945 Constitution.

## **Conclusion**

Defamation is one of the crimes which is quite common in Indonesia. According to Oemar Seno Adji, defamation is an insult, which is divided into material insults and formal insults. In Indonesia itself, defamation can be found in the Criminal Code (KUHP) as well as in Law Number 19 of 2016 concerning Information and Electronic Transactions (UU ITE). In the Criminal Code, the offense of defamation can be found in CHAPTER XVI in Articles 310 to Article 321. Meanwhile, the offense of defamation is also regulated in the ITE Law, namely in Article 27.

However, in the current conditions, there is a problem with the defamation offense, namely the occurrence of excess criminalization. Excessive criminalization by using the offense of defamation causes the rights of every person both as an individual and as a citizen who in this case has the right to express opinions to be violated.

In order to overcome the excess of criminalization and protect the human rights of every person as an Indonesian citizen, a new idea is needed in enforcing the law on defamation offenses in Indonesia. What can be done is that in enforcing the law on defamation offenses it is necessary to be based on the principle of insignificance (insignificant principle). So it is necessary to look at the consequences arising from these actions whether they have significant consequences or not so as not to exceed the three functions of criminal law, namely the declarative function, the preventive function and the regulative function.

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