

Legal Review of Evidence in The Crime of Defamation on Social Media

Agus Sugiarto

Universitas Nahdlatul Ulama Cirebon

agus-sugiarto@unucirebon.ac.id

ABSTRACT

The development of social media has become part of everyday life, making it easier for individuals to express opinions, share information, and interact more widely and quickly. However, this convenience also creates legal challenges, one of which is the increase in defamation cases in the digital realm. Defamation on social media is a criminal offense that can harm individuals and institutions, but proving it is not easy. This research aims to analyze the legal aspects related to proof in the criminal act of defamation on social media. The research method used is normative research with data collection through literature study. The collected data is then analyzed with the stages of data filtering, data presentation, and conclusion drawing. The results show that evidence in the crime of defamation on social media refers to Article 27 paragraph (3) of the ITE Law as well as Articles 310 and 311 of the Criminal Code, with evidence regulated in Article 184 of the Criminal Procedure Code, including witness testimony, experts, letters, instructions, and testimony of the defendant. Digital forensics has an important role in ensuring the validity of electronic evidence, such as recorded conversations, screenshots, or metadata, to reveal the perpetrator's digital footprint and ensure data integrity. In addition, prosecutors must prove the element of intent (*mens rea*) to ensure that the posts were intended to defame and not merely criticize or a legitimate form of freedom of speech.

Keywords: Legal review; criminal offense proof; defamation; social media

This article is licensed under [CC BY-SA 4.0](https://creativecommons.org/licenses/by-sa/4.0/) 

INTRODUCTION

Technological advances in the modern era have become an integral element in human life. The existence of technological advances that continue to run brings various differences in people's communication patterns, especially through social media. Cahyono (2016) stated that social media is an online application that allows social interaction. This media utilizes website-based technology with the aim of bringing changes to communication that occur into an interactive dialogue, allowing individuals to communicate in real-time and share information more easily.

The existence of data from We Are Social explains that WhatsApp is a dominant social media in Indonesia, which is widely used by almost 88.7% of total users. In the next position, Instagram is used by 84.8% of the public, while Facebook has a percentage of users of 81.3%. In addition, TikTok and Telegram also have a significant number of users, at 63.1% and 62.8%, respectively (Damayanti et al., 2023). The presence of various social media applications, namely Facebook, Twitter, Instagram, and TikTok, facilitates various forms of interaction, ranging from expressing opinions to sharing information more quickly and widely. The presence of social media not only facilitates communication, but also creates a ground for individuals to participate in public discussions, build social networks, and access various information instantly.

Social media provides a space for anyone interested in actively participating. This platform makes it easy for users to contribute, provide feedback openly, submit comments, and share and share the latest information quickly and without space limitations (Cahyono, 2016). However, behind this ease and speed, various complex legal challenges have emerged, one of which is the increasing cases of defamation in the digital realm.

Criminal acts in defamation cases on social media can cause losses for both individuals and institutions. This phenomenon is increasingly occurring, carried out by various parties with various motives. Various factors can cause defamation on social media, such as the news of an event, the disclosure of research results, the reporting of crimes, and other actions that have the potential to harm other parties. As a result of these actions, the perpetrator can be subject to criminal sanctions. The criminal sanctions imposed are a form of punishment for individuals who are proven to have committed criminal acts, where the act has caused harm to others (Asmadi, 2021).

In Indonesia, regulations regarding defamation are listed in Article 310 and Article 311 of the Criminal Code (KUHP), as well as in Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE), which was later revised through Law Number 19 of 2016. This regulation aims to provide legal protection for individuals and institutions who are harmed by statements or information that damage reputations in the public space, including in the digital realm.

However, even though the legal provisions have clearly regulated, the process of proving defamation cases on social media is often a complex challenge (Purnawan & Ashady, 2024). One of the main causes of this difficulty is the digital nature of the evidence which requires special expertise in collection and verification. Digital evidence such as screenshots or digital track records can be easily altered or deleted, requiring a careful authentication process to ensure authenticity.

In addition, the involvement of third parties such as social media platforms also adds challenges in the proofing process. In some cases, cooperation with the technology company that manages the platform is required to access the data or related information, which is often hampered by privacy regulations or company policies. Another aspect that complicates proof is subjectivity in interpreting a statement as defamation. The assessment of whether a statement harms a person's reputation often depends on the context, intent, and impact it causes, giving rise to differences of opinion among the parties involved.

Previous research by Indriani et al. (2016) examined the juridical aspects related to defamation through social media based on legal provisions in Indonesia. This study confirms that defamation on social media is regulated in Article 27 paragraph (3) of Law No. 11 of 2008 concerning ITE. Although freedom of opinion is recognized as a human right in the Press Law No. 40 of 1999, this right must be exercised responsibly. This provision is in line with the principles set out in Article 19 of the DUHAM and Article 29 of the United Nations, which affirm that freedom to express opinions must not violate the rights of others or threaten public order.

The research conducted by Luntungan (2021) examines the legal provisions regarding the crime of defamation on social media and the application of the law in decision No. 168/Pid.Sus/2019/PN. MND. This study criticizes the defamation article in the ITE Law which is considered to lack a strong foundation from juridical, philosophical, and sociological

perspectives. The article is considered to be able to present various interpretations regarding whether the purpose is to prevent, punish, or even limit freedom of opinion.

Simamora et al. (2020) discuss the criminal law aspects of defamation on social media. The results of the study were obtained if the existence of defamation was regulated in Articles 310 to 321 of the Criminal Code and Article 27 paragraph (3) of Law No. 11 of 2008 concerning ITE. This action is defined as the dissemination of false information that harms a person's reputation. Individuals who feel aggrieved can file a complaint, and the perpetrator can be subject to imprisonment or fines according to the provisions of the ITE Law.

Previous research has focused more on juridical reviews on defamation on social media. However, this study presents a novelty by focusing on the analysis of the evidentiary process in the case. The main purpose of this research is to examine the legal aspects related to the evidentiary mechanism in the crime of defamation on social media. This study covers the evidentiary procedures based on criminal law and criminal procedural law in Indonesia, various obstacles that arise in the evidentiary process, and their legal implications for the enforcement of justice. The hope of this research is to be able to provide new knowledge that is useful for law enforcement officials, academics, and the public in handling similar cases in the digital era.

METHOD

This research uses a normative research method, which according to Benuf and Azhar (2020) is a normative juridical law research or normative legal research. This method focuses on the study of positive internal aspects of law to solve problems in the legal system itself. This approach is based on the view that law is an autonomous institution that develops independently without any connection to other social institutions. This method uses a normative juridical approach, which emphasizes the analysis of the regulations that have been established in understanding how legal norms are formed and applied in the legal system.

This research collected data by studying literature examining various sources, such as books, literature, notes, and related reports. Literature studies, also known as library research, aim to collect secondary data that support legal analysis in this study. After the data is collected, the analysis is carried out through several stages, namely data filtering to sort out relevant information, presenting data in a systematic form, and drawing conclusions to provide a deeper understanding of the legal issues being studied.

RESULTS AND DISCUSSION

The advancement of social media in the digital era has undergone significant changes, driven by the development of internet technology as well as mobile devices (Khairi et al., 2025). At first, social media was only used for communication and exchange of information simply. However, over time, social media has evolved into a complex digital ecosystem with diverse platforms, such as Facebook, Instagram, Twitter, TikTok, and LinkedIn (Asari et al., 2023). Social media is now not only a place to interact socially, but is also used in the marketing, education, politics, and digital trade sectors. Powered by artificial intelligence-based algorithms, social media is capable of presenting personalized content, while interactive features such as live streaming and augmented reality further enrich the user experience (Pratiwi et al., 2025).

With the development of social media that can reach anyone widely and quickly, the risk of defamation is increasing. The information disseminated, whether in the form of text, images, or videos, can easily go viral without going through adequate verification. This makes the spread of slander, hate speech, and information that is detrimental to a certain person or group increasingly difficult to control (Hukom & Setiadi, 2025).

Defamation on social media is behavior that is able to damage or tarnish an individual's reputation by sharing data that is not in accordance with the facts, misleading, or harmful publicly through digital platforms (Juita, 2024). This case is often with the high number of social media users who are used as a means of communication for expression. From a legal perspective, defamation can be considered a criminal offense if it meets the elements of insult or slander that already exist in laws and regulations (Lim & Firmansyah, 2025).

Defamation on social media can have a significant impact on individuals and institutions. Reputational damage due to the spread of incorrect information can result in a loss of public trust, which in the long run can be detrimental to the social and professional life of the victim. In addition, victims can also experience psychological distress, such as stress, anxiety, and depression, due to online blasphemy or bullying (Suryokencono & Isyraq, 2025). From an economic perspective, defamation can cause material losses, such as loss of business opportunities, termination of employment contracts, or even lawsuits that require the payment of compensation (Jayanda et al., 2021).

To avoid these negative impacts, social media users must always be careful when sharing information and understand legal restrictions related to freedom of opinion in the digital world. One of the preventive measures is to verify the truth of information before sharing it so as not to spread misleading or slanderous news (Bahana, 2025). In addition, maintaining ethics in communicating is very important so that discussions remain healthy and do not offend other parties. If they find defamatory content, users can take advantage of the reporting mechanism provided by social media platforms so that adverse actions can be followed up immediately (Andriani et al., 2024).

Defamation on social media is a criminal offense in Indonesian criminal law, especially in Article 27 paragraph (3) of the ITE and Articles 310 and 311 of the Criminal Code (KUHP) (Ramadhan et al., 2024). In the criminal law system, proof is a crucial aspect to ensure that an act meets the elements of the alleged crime. Proof in cases of defamation on social media must prove the existence of an element of insult or slander that is spread through digital platforms and accessible to the public (Handayani et al., 2024).

In the evidentiary process, the evidence used is based on Article 184 of the Criminal Code, namely witness statements, expert statements, letters, instructions, and defendant statements (Setiawan et al., 2022). Expert testimony in the field of digital forensics is often used to ensure the validity of electronic evidence as well as track the digital footprint of the perpetrator. In addition, a track record of uploads on social media that is still accessible or has been deleted but can also be restored can also be strong evidence in the trial (Anam, 2022).

Digital forensics plays a crucial role in analyzing electronic evidence that can be a valid evidence in defamation cases on social media. Through digital investigative techniques, digital forensics can ensure the validity of electronic evidence, such as conversation recordings, screenshots, or metadata, as well as track the digital footprint of the perpetrator. The validity of this digital evidence is supported by the legal provisions contained in the Criminal Procedure

Code and Law No. 19 of 2016, which states that electronic evidence is a valid evidence in court (Maharani et al., 2024). One of the main methods in digital forensics is the use of hash values, which serve to ensure the integrity of the data and guarantee that the evidence obtained is not altered or manipulated during the investigation process. Thus, digital forensics plays a role as an effective legal instrument in upholding justice and exposing defamation perpetrators in the digital world (Wintolo et al., 2025)

Another legal aspect that needs to be considered in proving is the applicability of the principle of "no crime without fault" (*geen straf zonder schuld*). This means that even though there is evidence of defamatory uploads, if it cannot be proven that there is an element of intentionality or bad intentions (*mens rea*), then the defendant can be free from criminal liability (Rifai & Meliala, 2022). Therefore, in practice, the public prosecutor must be able to prove that the perpetrator has the intention to harm the victim and that the upload is indeed intended to defame, not just criticism or a legitimate form of freedom of opinion.

The development of digital law also plays a role in clarifying the evidentiary aspect in defamation cases on social media. In addition, the role of investigators in digging up digital evidence with forensic methods is very important to strengthen the indictment. Therefore, although defamation on social media is often subjective, the legal system seeks to balance the protection of an individual's reputation with the principle of freedom of expression guaranteed by law (Bisri et al., 2024).

CONCLUSION

Proof in the crime of defamation on social media is a crucial aspect in the Indonesian criminal law system, which is regulated in Article 27 paragraph (3) of the ITE Law and Articles 310 and 311 of the Criminal Code. The evidentiary process must meet the elements of insult or defamation that are disseminated digitally and accessible to the public, with reference to Article 184 of the Criminal Code regarding evidence such as witness statements, expert statements, letters, instructions, and statements of the defendant. Digital forensics plays an important role in ensuring the validity of electronic evidence, such as conversation recordings, screenshots, and metadata, and ensuring the integrity of data through hash values to avoid manipulation. In addition, the application of the principle of "no crime without fault" emphasizes that the element of intentionality or bad intention must be proven so that the defendant can be held criminally responsible. With the development of digital laws and increasingly sophisticated forensic investigation methods, evidence in defamation cases on social media is expected to balance the protection of individual reputation with the freedom of expression guaranteed by law.

REFERENCES

- Anam, M. K. (2022). Eksistensi perundang-undangan terhadap digital forensik dalam sistem pembuktian pidana. Universitas Islam Indonesia.
- Andriani, A. D., Fitri, S. A., & Muchtar, K. (2024). Model Komunikasi Literasi Digital Dalam Mengatasi Ujaran Kebencian Di Media Sosial. *Interaksi: Jurnal Ilmu Komunikasi*, 13(2), 439-464. <https://doi.org/10.14710/interaksi.13.2.439-464>

- Asari, A., Syaifuddin, E. R., Ningsi, N., Sudioanto, S., Maria, H. D., Adhicandra, I., Nuraini, R., Baijuri, A., Pamungkas, A., Kusumah, F. G., Yuhanda, G. P., & Murti, S. (2023). Komunikasi digital. Penerbit Lakeisha.
- Asmadi, E. (2021). Rumusan Delik Dan Pemidanaan Bagi Tindak Pidana Pencemaran Nama Baik Di Media Sosial. *DeLega Lata: Jurnal Ilmu Hukum*, 6(1), 16-32.
- Bahana, M. H. A. (2024). Toleransi beragama dalam paradigma tafsir maqasidi. *Ma'had Aly Journal of Islamic Studies*, 1(1).
- Benuf, K., & Azhar, M. (2020). Metodologi penelitian hukum sebagai instrumen mengurai permasalahan hukum kontemporer. *Gema Keadilan*, 7(1), 20-33.
- Bisri, A. K., Hamzani, A. I., & Rizkianto, K. (2024). Perlindungan hukum terhadap reputasi individu dari pencemaran nama baik di media digital (Legal protection of individual reputations from defamation in digital media). *TRAKTAT: Jurnal Hukum Ekonomi dan Bisnis*, 1(1), 17–36. <https://jurnal.sitasi.id/traktat/article/view/138>
- Cahyono, A. S. (2016). Pengaruh media sosial terhadap perubahan sosial masyarakat di Indonesia. *Publiciana*, 9(1), 140-157.
- Damayanti, A., Delima, I. D., & Suseno, A. (2023). Pemanfaatan Media Sosial Sebagai Media Informasi dan Publikasi (Studi Deskriptif Kualitatif pada Akun Instagram@rumahkimkotatangerang). *Jurnal PIKMA: Publikasi Ilmu Komunikasi Media Dan Cinema*, 6(1), 173-190.
- Handayani, E. P., Arifin, Z., Puspitasari, R., Baihaki, N. G., & Kharisma, D. (2024). Urgensi pengaturan pidana pencemaran nama baik dalam perspektif hak asasi manusia. *Prosiding Seminar Hukum Aktual Fakultas Hukum Universitas Islam Indonesia*, 2(4).
- Hukom, R., & Setiadi, M. H. (2025). Pengaruh Media Sosial terhadap Pola Kejahatan di Era Digital: Studi Kriminologi dengan Pendekatan Netnografi. *Perkara : Jurnal Ilmu Hukum Dan Politik*, 3(1), 750–768. <https://doi.org/10.51903/perkara.v3i1.2353>
- Indriani, F., Erdianto, E., & Erdiansyah, E. (2016). Tinjauan Yuridis Tindak Pencemaran Nama Baik Melalui Media Sosial Berdasarkan Pasal 27 Ayat (3) Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi dan Transaksi Elektronik Dikaitkan dengan Kebebasan Berpendapat (Doctoral dissertation, Riau University).
- Jayananda, I. M. V., Sugiarta, I. N. G., & Widianara, M. M. (2021). Analisis tentang pencemaran nama baik dan penyalahgunaan hak kebebasan berpendapat di media sosial. *Jurnal Analogi Hukum*, 3(2), 261-265. <https://doi.org/10.22225/ah.3.2.2021.261-265>
- Juita, S. B. (2024). Ketidak Hati-Hatian Penggunaan Media Sosial Yang Menyebabkan Tindak Pidana Pencemaran Nama Baik. *Ethics and Law Journal: Business and Notary*, 2(1), 105–113. <https://doi.org/10.61292/eljbn.103>
- Khairi, M., Rianto, B., Chrismondari, Yolnasdi, Jalil, M., Juita, H., & Sudeska, E. (2025). Pengaruh Teknologi Dalam Transformasi Ekonomi Dan Bisnis Di Era Digital. *Jurnal Perangkat Lunak*, 7(1), 71-78. <https://doi.org/10.32520/jupel.v7i1.3947>
- Lim, H. C., & Firmansyah, H. (2025). Penjatuhan sanksi pidana bagi pelaku pencemaran nama baik di era digital berdasarkan Undang-Undang No. 11 Tahun 2008 tentang ITE dan perubahannya. *Et AP: Jurnal Penelitian Hukum*, 4(1), 47-54. <https://doi.org/10.24967/jaeap.v4i01.3884>
- Luntungan, J. S. (2021). Tinjauan Yuridis Terhadap Tindak Pidana Pencemaran Nama Baik Di Media Sosial (Studi Kasus Putusan No. 168/Pid. Sus/2019/Pn. Mnd). *Lex Crimen*, 10(4).

- Maharani, N., Lamminar, A., Christiansen, N., Rafidah, A. R., Nurrachman, A., & Nugroho, A. A. (2024). Validitas bukti digital dan legalitas penangkapan pada kasus peretasan akun media sosial Ravigo Patra. *Media Hukum Indonesia*, 2(3), 75-81. <https://ojs.daarulhuda.or.id/index.php/MHI/index>
- Pratiwi, M., Kesuma, T. M., Suprpto, A., Sabur, M., Marry, F., Huda, M., Aprila, B. N., Kamaluddin, K., & Cahyadi, C. (2025). Digital marketing. *Askara Sastra Media*.
- Purnawan, A. E., & Ashady, S. (2024). Tinjauan Yuridis terhadap Penegakan Hukum Kasus Pencemaran Nama Baik melalui Media Sosial di Kabupaten Timor Tengah Utara. *Juridische: Jurnal Penelitian Hukum*, 2(1), 40-56.
- Ramadhan, G., Diaz, Y., & Ul Hosnah, A. (2024). Penanganan Tindak Pidana Pencemaran Nama Baik Yang Dihubungkan Dengan KUHP. *Al-Zayn : Jurnal Ilmu Sosial & Hukum*, 2(1), 51–64. <https://doi.org/10.61104/alz.v2i1.208>
- Rifai, A., & Meliala, A. J. (2022). Rekonstruksi pertanggungjawaban pidana dan aspek keperdataan dalam penggunaan dokumen yang dipalsukan. *Proceeding Justicia Conference*, 1, 15-36.
- Setiawan, I., Rusydi, I., Rahmawati, A., & Hasanah, S. (2022). Jejak digital sebagai alat bukti petunjuk menurut Pasal 184 Kitab Undang-Undang Hukum Acara Pidana. *Jurnal Ilmiah Galuh Justisi*, 10(1).
- Simamora, F. P., Simarmata, L. D., & Lubis, M. A. (2020). Kajian Hukum Pidana Terhadap Perbuatan Pencemaran Nama Baik Melalui Media Sosial. *Jurnal Retentum*, 2(1).
- Suryokencono, P. ., & Isyraq , F. R. . (2025). Perlindungan Hukum Berupa Pemulihan Nama Baik Terhadap Korban Tindak Pencemaran Nama Baik Melalui Situs Deepfake. *National Multidisciplinary Sciences*, 3(4), 587–596. Retrieved from <https://proceeding.unmuhjember.ac.id/index.php/nms/article/view/719>
- Wintolo, H., Riadi, I., & Yudhana, A. (2025). Analisis Deteksi Penyusup Pada Layanan Open Journal System Menggunakan Metode Network Forensic Development Life Cycle. *SKANIKA: Sistem Komputer Dan Teknik Informatika*, 8(1), 133–144. <https://doi.org/10.36080/skanika.v8i1.3284>
- Yusuf, F., Rahman, H., Rahmi, S., & Lismayani, A. (2023). Pemanfaatan Media Sosial Sebagai Sarana Komunikasi, Informasi, Dan Dokumentasi: Pendidikan Di Majelis Taklim Annursejahtera. *Jurnal Hasil-Hasil Pengabdian Dan Pemberdayaan Masyarakat*, 2(1), 1–9.