

DEFAMATION AND INSULT THROUGH INFORMATION AND COMMUNICATION TECHNOLOGY MEDIA ACCORDING TO LAW NO. 19 OF 2016 CONCERNING AMENDMENTS TO LAW NO. 11 OF 2008 CONCERNING ELECTRONIC TRANSACTION INFORMATION

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ABSTRACT

This study examines Defamation and Insult through Information and Communication Technology Media According to Law No. 19 of 2016 Amendments to Law No. 11 of 2008 concerning Electronic Transaction Information which is the Indonesian Formil Law regarding the dissemination of information in the ITE Law, Criminal Code, Press Law, Human Rights Law, KIP Law and Constitutional Court Decision Number: 50 / PUU-VI / 2018, by using Normative Law research methods supported by the Concept approach (conceptual approach), Legislation approach (statue approach) and Case approach (case approach). The results of the author's research show that to be categorized as defamation, it must meet the elements contained in Articles 310 and 311 of the Criminal Code, namely "to be known to the public," meaning that defamation can be criminalized if what is intended is found by the public, according to the Constitutional Court Decision Number: 50 / PUUVI / 2008 which explains Article 27 paragraph (3) of the ITE Law is not a new norm because it must absolutely refer to the basic norms of Articles 310 and 311 of the Criminal Code, But on the contrary, if the element "to be known to the public" is carried out for public interest and self-defense, it cannot be subject to Article 27 paragraph (3) of the ITE Law jo Articles 310 and 311 of the Criminal Code, because journalists carrying out their profession as Journalists for the public interest is a statutory order as stipulated in the Basic Press Law Number 40 of 1999 including as a vehicle for social control that functions to cover, searching, collecting data and broadcasting and disseminating news so that the purpose is known to the public in line with the constitutional mandate contained in TAP MPR Number: XVII / MPR / 1998 concerning Human Rights.

Keywords: *internet, electronics, ite*

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INTRODUCTION

Democracy as a political system in state government is a system that shows that general policies are determined on the basis of the majority of the people (Millah & Dewi, 2021), this contains the understanding that it is the people who determine the problems of state life, including in assessing the policies of state administrators because the policy will determine the quality of people's lives The nature of democracy as a system of social and state life emphasizes power in hand People, meaning: first, the government of the people; second, government by the people; Third, government for the people. The essence of a democratic government if the three things above are upheld and carried out in the administration of the state consequently. Normatively, the law that underlies power should be reflected as the concept of the rule of law, that is, everything must be done according to the law (all state actions must be in line with the will of the law), but the practice of state life is found that the applicable law often contradicts the law (Law) and even contradicts the state constitution (UUD-RI Year 1945), for example in matters relating to human rights (HAM) and the right to freedom in Public opinion is also regulated in it (Lev, 1990; Winardi, 2021).

The formation of the law is reflected in the formulation of several laws and regulations that the author presents are laws and regulations that are in line with the object of this study, namely matters related to defamation, including:

- The Criminal Code (KUHPidana) along with the formulation of Article 310 paragraphs (1, 2 and 3).
- Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Electronic Transaction Information. Article 27 paragraphs (1 and 3) (ITE Law Number 19 of 2016 on Amendments to ITE Law Number 11 of 2008 concerning Electronic Transactions and Information, n.d.).
- Law Number 40 of 1999 concerning the Press. Article 4 paragraphs (1 and 3), Article 6, Article 18 paragraphs (1, 2 and 3).
- Law of KIP (Public Information Openness) Number 14 of 2008 Article 2 paragraph (1) and Article 3.

Constitutional Court Decision Number 50 / PUU-VI / 2008 concerning the Decision regarding the affirmation that Article 27 paragraph (3) of the ITE Law is a complaint offense. In the judgment of the Constitutional Court Item (3.17.1) is explained.

METHOD

This study is used to understand the construction of the meaning of defamation in differences in formal legal terminology regarding the dissemination of information in the ITE Law, the Indonesian Civil Code, and the Press Law (Muhammad & Prabandani, 2023). Therefore, in this research method, the author conducts normative legal research supported by a conceptual approach, a statute approach, and a case approach (Ibrahim, 2006). The point of the approach is that in this study the author tries to understand the problem through several approaches. The statutory approach is used to assist with legal regulations, and problem problems through related articles, and the case approach is used to assist in understanding the regulation of information dissemination in its application to legal decisions through case studies.

Conceptual Approach;

The conceptual approach is a type of approach in legal research that provides an analytical point of view on problem-solving in legal research seen from the aspects of the legal concepts behind it, or even can be seen from the values contained in the norming of regulation in relation to the concepts used (Mansur, 2021). Most of this type of approach is used to understand the concepts related to norms in law whether it is in accordance with the spirit contained in the underlying legal concepts. This approach departs from the views and doctrines developed in legal science. This approach is important because understanding the views/doctrines that develop in legal science can be a basis for building legal arguments when solving legal issues faced. Views/doctrines will clarify ideas by providing legal understandings, legal concepts, and legal principles relevant to the problem.

Statute Approach;

Conducted to review all laws and regulations related directly or indirectly to the subject of study in this study. The laws and regulations in question are:

- Article 28F of the Constitution of the Republic of Indonesia of 1945.

- Penal Code Article 310 paragraphs (1), (2), (3) and Article 319.
- Law Number 19 of 2016 concerning ITE on amendments to Law Number 11 of 2008 concerning ITE. Law Number 19 of 2016 concerning ITE on amendments to Law Number 11 of 2008 concerning ITE.

Law Number 40 of 1999 concerning the Press on amendments to Law Number 11 of 1966 concerning Basic Provisions of the Press (State Gazette of the Republic of Indonesia of 1966 Number 40, Supplement to the State Gazette of the Republic of Indonesia Number 2815) which has been last amended by Law Number 21 of 1982 concerning amendments to Law of the Republic of Indonesia Number 11 of 1966 concerning the main provisions of the Press as amended by Law.

- Number 4 of 1967 (Gazette of the Republic of Indonesia of 1982 Number 52, Supplement to the State Gazette of the Republic of Indonesia).
- KIP Law Number 14 of 2008 Article 2 paragraph (1). (3). (6) Constitutional Court Decision Number 50 / PUU-VI / 2008 concerning the Decision regarding the affirmation that Article 27 paragraph (3) of the ITE Law is a complaint offense. In consideration of the Constitutional Court Item (3.17.1)

Case Approach (Case Approach);

The author raises a criminal case that hits: The case of Toro Ziduhu Laia, Editor-in-Chief of the Berantas.co.id Daily media reported on "*Bengkalis Regent Amril Mukminin in Suspected of corruption of Grant/Social Aid Fund for fiscal year 2012*". Buni Case Buni Yani's case was registered with registration number 1712 K/PID. SUS/2018 and First Instance Court Case number 674/Pid.Sus/2017/PN.Bdg. Proven to have committed criminal acts of electronic information and transactions intentionally and without rights or against the law changing, adding, subtracting, transmitting, and eliminating electronic information and/or electronic document belonging to another person or public property. Baig Nuril's case is accused of violating Article 27 paragraph (1) junction Article 45 paragraph (1) of Law Number 11 of 2008 concerning Electronic Information and Transactions.

RESULTS AND DISCUSSION

The conflict of interest occurs due to the spirit of freedom in the concept of democracy must also be balanced with the spirit of regulating the implementation of nation and state (Muhajir, 2017), solely aiming to put a balance or boundary between the freedom that is the right of the people reasonably and anarchist actions in the form of actions in the name of people's freedom which actually threaten the freedom of other people, So the spirit of Nomokarsi (State of Law) was born intended to limit people's freedom in order to give Protection of the freedoms of other people because the rule was born so that people live peacefully.

ITE Law Number 19 of 2016 on amendments to ITE Law Number 11 of 2008 is a law that regulates information and electronic transactions or information technology in general. This Law has jurisdiction that applies to any person who commits legal acts as stipulated in this

Law, whether located in the territory of Indonesia or outside the jurisdiction of Indonesia, which has legal consequences in the jurisdiction of Indonesia and/or outside the jurisdiction of Indonesia and harms the interests of Indonesia.

The formation of the law is reflected in the formulation of several laws and regulations that the author presents are laws and regulations that are in line with the object of this study, namely matters related to defamation, including:

1. Criminal Code (KUHPidana).

Article 310:

Paragraph (1):

"Whoever intentionally damages the honor or good name of a person by accusing him of committing an act with the express intention of spreading the accusation, shall be punished with menista, with imprisonment for not more than nine months or a fine of not more than Rs 4,500."

Paragraph (2):

"If it is done with writing or images broadcast, displayed or pasted in public, it is threatened with written defamation with a maximum imprisonment of one year and four months or a maximum fine of four thousand five hundred rupiah".

Paragraph (3):

"It shall not constitute defamation or libel, if the act is clearly done in the public interest or because it is compelled to defend itself".

The formulation of Article 310 paragraph (1) contains several important elements, namely:

- A. *Intentionality is the first element of error and the second element of error is in the words "with intent". The mental attitude of "deliberately" is aimed at the act of attacking the honor or good name of the person (the deed and the object of the deed).*
- B. *Attacking the honor or good name of others The act of attacking (aanranden), is not physical, because what is attacked (the object) is not physical but a feeling about honor and a feeling about the good name of people. The objects attacked are feelings of self-worth about honor (eer), and feelings of self-worth about people's good name (goedennaam).*
- C. *Accusing of committing a certain act, By using words/sentences through speech, by alleging a certain act. So what the maker is accused of must be a certain act, and not something else such as calling someone with disrespectful words, such as stupid, lazy, curly dog and so on.*
- D. *With the real intention of being known to the public, the mental attitude of "intent" is directed at the element of "being known by the public" as to what the act is accused of, to, the person.*

If we refer to the elements of Article 310 above, then defamation can be interpreted as a material offense. Material offenses are offenses that can be punished if prohibited consequences have arisen. Pollution itself comes from the word " defiled" which according to the Big Indonesian Dictionary (KBBI) is interpreted as stained, dirty or despicable. Pollution is defined as the act of polluting or polluting. Meanwhile, honor is defined as a good name or self-esteem that must be maintained to every human being with respect for others.

From the meaning given by KBBI, it is clear that defamation acts mean a series of actions that cause damage to self-esteem, dirty self-esteem or one's good name, and that actions are carried out unlawfully or contrary to ethics. Therefore, these defamation offenses cannot necessarily be punished if the prohibited consequences cannot be proven in court, Here are some laws relating to Public Information and Defamation, including:

1. Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions.

Article 27

Paragraph (1)

"Any Person intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have content that violates decency".

Paragraph (3)

"Any Person intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have the content of insult and/or defamation, name, good".

2. Law Number 40 of 1999 concerning the Press.

Article 4

paragraph (1) *" Freedom of the press is guaranteed as a fundamental right of citizens".*

paragraph (3) *" To ensure the freedom of the press, the national press has the right to obtain and disseminate ideas and information".*

Article 6

- i) fulfil the community's right to know;*
- ii) uphold basic democratic values, promote the realization of the rule of law, and human rights, and respect diversity;*
- iii) develop a public opinion based on precise and accurate, correct information;*
- iv) supervise, criticize, correct, and advise on matters related to public interest;*
- v) fight for justice and truth;*

Article 18 paragraph (1)

Defamation and Insult Through Information and Communication Technology Media According to Law No. 19 of 2016 Concerning Amendments to Law No. 11 of 2008 Concerning Electronic Transaction Information

"Any person who unlawfully intentionally obstructs the implementation of the provisions of Article 4 paragraph (2) and paragraph (3) shall be punished with a maximum imprisonment of 2 (two) years or a maximum fine of Rp. 500,000,000.00 (Five hundred million rupiah)."

paragraph (2)

"Press companies that violate the provisions of Article 5 paragraph (1) and paragraph (2), as well as Article 13 shall be punished with a maximum fine of Rp. 500,000,000.00 (Five hundred million rupiah)."

Paragraph (3)

"Press companies that violate the provisions of Article 9 paragraph (2) and Article commit actions that result in hindering or 12 shall be punished with a maximum fine of Rp. 100,000,000.00 (One hundred million rupiah)."

1. KIP (Public Information Openness) Law.

Article 2 paragraph (1)

"Any Public Information is open and accessible to every User of Public Information."

Paragraph (3)

"Any Public Information must be able to be obtained by every Public Information Applicant quickly and in a timely, low-cost, and simple manner."

2. Constitutional Court Decision Number 50 / PUU-VI / 2008 concerning the Decision regarding the affirmation that Article 27 paragraph (3) of the ITE Law is a complaint offense. In the consideration of the Constitutional Court Item (3.17.1) it is explained "That apart from the consideration of the Court that has been described in the previous paragraph, the applicability and interpretation of Article 27 paragraph (3) of the ITE Law *cannot be separated from the main legal norms in Article 310 and Article 311 of the Criminal Code as a genus delict that requires a complaint (klacht) to be prosecuted, must also be treated against acts prohibited in Article 27 paragraph (3) of the ITE Law, so that Article a quo should also be construed as an offense requiring a complaint (klacht) to be prosecuted before the Court.*"

The use of ITE Technology is carried out based on the principles of legal certainty, benefits, prudence, good faith, and has the Utilization of Information Technology and Electronic Transactions carried out with the aim to:

- Educating the nation's life as part of the world's information society.
- Develop trade and national economy in order to improve public welfare.
- improve the effectiveness and efficiency of public services.

- open the widest possible opportunity for everyone to advance thinking and abilities in the field of use and utilization of Information Technology as optimally as possible and responsibly; and
- provide a sense of security, fairness, and legal certainty for users and operators of Information Technology.

Efforts to be able to set defamation standards in terms of defamation or insult to be protected are the obligation of everyone to respect others from the point of their honor and a good name in the eyes of others and honor is a person's honorable feeling in the eyes of society, where everyone has the right to be treated as an honorable member of society in order to create a safe and peaceful community order for every society become harmonious. While the meaning of the word attacking honor means doing deeds according to judgment, it generally attacks one's honor. Respect and actions that fall into the category of attacking one's honor are determined according to the community environment in which the act is committed must pay attention to several important things regulated in legal regulations in accordance with the legal rules in force in the unitary state of the Republic of Indonesia based on legislation Number 12 of 2011 Article 7 paragraph (1) concerning the hierarchy or order of laws and regulations from the highest to the lowest rules.

Types of laws and regulations, including regulations stipulated by the People's Consultative Assembly, House of Representatives, Regional Representative Council, Supreme Court, Constitutional Court, Audit Board, Judicial Commission, Bank Indonesia, Ministers, agencies, institutions, or commissions at the same level established by Law or the Government by order of the Law, Provincial People's Representative Council, Governor, Regency/City People's Representative Council, Regent / Mayor, Village Head or equivalent as referred to in Article 8 paragraph (2) of Law Number 12 of 2011 concerning the Laws and Regulations of the Republic of Indonesia until now in force.

From the hierarchy and types of laws and regulations. That is, in the author's opinion, that every rule and sanction made by an official state institution must be clearly regulated in the regulations of the Laws and Regulations and cannot clash with each other, related to the content material regarding defamation as regulated in several hierarchical legal regulations that have been described by the author above, then according to the author's analysis in regarding defamation, namely:

"that, there are differences in the "meaning" of the word defamation as explained in Article 27 paragraph (3) of the ITE Law and Articles 310 and 311 of the Penal Code, in which, the meaning of the word defamation is not necessarily explained explicitly so as to cause multiple interpretations for legal observers, and is contrary to democratic values as outlined in the Press Law. The author's study and analysis in interpreting and understanding the context of Article 27 paragraph (3) of the ITE Law and Articles 310 and 311 of the Indonesian Civil Code are as follows:

"The meaning of Article 27 paragraph (3) of the ITE Law "Everyone intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have the content of insult and/or defamation."

So this will contradict the sound of the provisions of the right to communicate and obtain information to develop their personal and social environment, and the right to seek, obtain, possess, store, process, and convey information using all types of available channels, that the formulation of the phrase from Article 27 paragraph (3) of the ITE Law shows the unclear size and meaning, such as the right to distribute/transmit/make accessible a. What content material is meant by rights in the phrase for people who want to express various writings, opinions, or opinions on the internet. The activity of distributing/transmitting and/or making accessible is a main work in the main duties and functions of the Press, this is very contrary to Article 28 of the 1945 Constitution interpreted as the Press is very necessary because press freedom is one of the manifestations of people's sovereignty and is a very important element in the life of society, nation and democratic state, in democratic life it is accountable to the people Guaranteed, a transparent state administration system functions and justice and truth are realized.

CONCLUSION

After analyzing from various existing references, the author concludes that in this Dissertation proposal there is a Conflict of Norms which is to be able to set standards so that it can be categorized as defamation, namely, Must meet the elements contained in Articles 310 and 311 of the Criminal Code, namely there is an element "to be known by the public" meaning that defamation becomes criminal if it is intended to be discovered by the public, in accordance with the Constitutional Court Decision Number: 50 / PUU-VI / 2008 which explains that Article 27 paragraph (3) of the ITE Law is not a new norm because it must absolutely refer to the basic norms of Articles 310 and 311 of the Criminal Code and if it is done for public interest and self-defense, it cannot be subject to Article 27 paragraph (3) of the ITE Law jo Articles 310 and 311 of the Criminal Code. Meanwhile, to be categorized as harmonizing the needs of Public Information with the obligation of the Press in disseminating news and the prohibition of transmitting according to the ITE Law.

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