

Research Article

Defamation Through Social Media as a Cyber Crime

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This writing finds a strict interpretation of the criminal act of defamation through social media, where many cases criminalize a person who does not deserve to be called the perpetrator or suspect of defamation. The questions of this writing are how defamation through social media is categorized as a cyber crime and how law enforcement officials should interpret elements of defamation through social media. The results of the study show that, first, defamation through social media is part of a cyber crime. because it is in an electronic and cyberspace environment and secondly, the interpretation of the crime of defamation should be based on the guidelines of the Joint Decree regarding guidelines for the implementation of certain articles in the ITE Law between the Attorney General's Office of the Republic of Indonesia, the Police of the Republic of Indonesia and the Minister of Communication and Information, Number 229 of 2021 dated June 23, 2021 which is more careful by paying attention to aspects of perpetrators and victims. Suggestions in this writing is outreach to law enforcement officials to comply with this interpretation.

Keywords: social media, defamation, cyber crime

1. Introduction

This century is indeed a century that has always been associated with the media. An information that is now very necessary and easy to find by various parts of the world has resulted in it becoming one of the needs. To meet that need, it is social media that is widely used by the general public[1]. The services on social media are also diverse and always increase from year to year. Some of the social media sites that are popular today include: Blog, facebook, twitter, instagram, whatsApp, Path, Line, and many others[2].

Humans who are members of various groups of society will always undergo changes, be it changes that are advancing or damaging to human civilization itself. According to Soerjono Soekanto, the changes that occur in society are caused by factors that lie in society itself and factors that are located outside of that society[3]. One of these changes is the Covid-19 outbreak, where at the end of 2019 the world was shocked

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by the detection of a virus called the corona virus, then it became an outbreak of a disease called covid-19 taken from Coronavirus Disease 2019, and was designated as a pandemic on March 9, 2020 because it had spread widely in the world including Indonesia. Community activities are restricted, giving rise to new patterns in carrying out work and communication by applying technology through social media.

The advancement of human thinking and the development of information technology that has a negative impact, must be anticipated and addressed with laws related to the use of information and communication technology. Internationally, the law related to information technology crimes is used as cyber law. Other terms that are also used are the law of information technology, the law of cyberspace (virtual world law), and the law of mayantara.

Social media is an online media, where users can easily participate, share and create content (users) through internet-based applications as a tool to expose or post information they get using several social media sites. The social media that the author emphasizes here is social media such as: facebook, twitter, instagram, whatsApp, Path, Line, and many others where this social media is widely used to share news[4].

Technological and industrial advances that are the result of human culture in addition to bringing a positive impact, in the sense that it can be utilized for the benefit of mankind also have a negative impact on the development and civilization of human beings themselves. The negative impact in question is related to the world of evil. J.E Sahetapy stated in his writings, that crime is closely related to the development of society. The more advanced people's lives are, the more advanced crimes will be. Crime is also part of the cultural outcome itself[5].

In connection with the growing crimes in cyberspace, the government has carried out policies with the issuance of Law No.11 of 2008 concerning Electronic Information and Transactions (ITE Law) which was promulgated on April 21, 2008. In the law, there are several criminal articles which are provisions for special crimes in addition to the enactment of the Criminal Code (KUHP) as a general criminal law. One of them is the offense that regulates defamation.

This writing is more about insults committed by individuals against other people through social media, not on insults to a country as Geeta Moni & Raghav Srinivas wrote which said "The United Nations General Assembly (UNGA) Resolution 31/91 on the Non-Interference in the Internal Affairs of the State, condemns "defamation aimed at disrupting the political, social or economic order of other States" and has been signed by 146 countries. Despite the fact that so many States have agreed to denounce

defamation of a State, the term itself remains shrouded in ambiguity as there is no internationally accepted definition of “defamation of a State.”[6]

Although there is a rule of law that prohibits defamation, defamation actions are still widely encountered in everyday life. Although the laws and regulations clearly regulate it. This is due to the rapidly developing technological advances that allow the emergence of new types of crimes that can be committed through social media, especially during a pandemic. Based on the above description, the author proposes the problem that will be discussed in this paper as follows: (1) How is defamation through social media a cyber crime? (2) How should law enforcement officials interpret elements of defamation crimes through social media?

2. Method

In this study, the author uses a normative juridical approach, where this approach emphasizes legal science and examines the legal rules that apply in society. This study examines the material laws contained in the relevant laws and regulations, namely the ITE Law, as well as several expert opinions in freedom of expression. The research specifications used are descriptive analysis, where the author will try to describe a picture of something related to defamation through social media during a pandemic, which will be related to legal theories and the practice of implementing applicable law, through the literature study stage.

3. Results and Discussion

3.1. Defamation through social media as a cyber crime

Defamation through social media is part of a cyber crime. Based on conventional objective requirements, cyber crime liability must certainly be based on the sources of current legislation, both within the Criminal Code and in special laws outside the Criminal Code. However, in reality, in the existing and current laws and regulations in Indonesia, not all cyber crime cases can be reached. In addition, in the current laws and regulations (both the Criminal Code and special laws outside the Criminal Code) have various weaknesses and very limited abilities in dealing with various cyber crime problems. The various problems or weaknesses include[7]:

1. In Law No.32 of 2002 concerning broadcasting, there is no determination of the qualification of the offense (as a crime or violation) so that it can cause juridical problems;
2. In various laws, there are legal subjects in the form of corporations but do not make rules on criminal liability for corporations, for example in Law No.36 of 1999 concerning Telecommunications;
3. In the law governing the criminal liability of corporations (as in the law on corruption and money laundering), there is no provision regarding the criminal rules for replacing fines for corporations if the fine is not paid;
4. In laws containing special minimal criminal threats, there are no provisions regarding rules or guidelines for the application of special minimal crimes;
5. Juridical recognition of electronic records as evidence only exists in the Corruption Law (Law No. 31 of 1999 jo. Law No. 20 of 2001, Law No. 30 of 2002 concerning the Eradication of Corruption Crimes); and the Money Laundering Law (Law No. 15 of 2002), so that it becomes a problem if it is to be applied to other criminal acts, especially those related to cyber crime.

The limited existing laws, especially those governing cyber crime, mean that conventional legality principles currently face serious challenges from the development of cyber crime. This is understandable because^[7]:

1. Cyber crime is in an electronic and cyber environment that is difficult to identify with certainty, while the principle of conventional legality departs from real acts and legal certainty ; 2.
2. Cyber crime is closely related to the rapidly changing development of advanced technology, while the principle of conventional legality departs from static formal legal sources (laws);
3. Cyber crime transcends national boundaries, whereas a country's legislation basically or generally applies only in its own territorial territory.

The deliberations in Law No.11 of 2008 concerning Electronic Information and Transactions (UU-ITE), in Chapter VII concerning prohibited Acts, contain criminal provisions for any person who intentionally and without rights or against the law distributes and/or transmits and/or makes accessible electronic information and/or electronic documents that have the content of:

1. Violating decency; have a gambling charge; have a charge of contempt and/or defamation; have a charge of extortion and/or stoning (Article 27).
2. Spreading false and misleading news that results in consumer losses in electronic transactions; disseminate information intended to cause hatred or hostility of certain individuals and / or community groups based on ethnicity, religion, race, and inter-group (SARA) (Article 28).
3. Transmit information that contains threats of violence or frightening personally directed (Article 29).
4. Accessing other people's computers and/or electronic systems; access computers and/or electronic systems for the purpose of obtaining electronic information and/or electronic documents; accessing computers and/or electronic systems by breaching, breaking through, exceeding, or breaking into security systems (Article 30).
5. Intercept or intercept electronic information and/or electronic documents; conduct electronic interception of electronic information transmission and/or electronic documents that are not public (Article 31)
6. Change, add, reduce, transmit, damage, eliminate, transfer, hide, electronic information and/or electronic documents belonging to others or public property; transfer or transfer electronic information and/or electronic documents to the electronic systems of unauthorized others; resulting in the disclosure of electronic information and/or electronic documents that are confidential to be accessible to the public with improper data integrity (Article 32). Disruption of the electronic system and/or causing the electronic system to not work properly (Article 33).
7. Manufacture, sell, hold for use, import, distribute, provide or possess (a) hardware or software designed or specifically developed to facilitate the conduct referred to in Articles 27-33; (b) a password via a computer, access code, or other similar matter intended for the electronic system to be accessible for the purpose of facilitating the actions in Articles 27-33 (Article 34).
8. Manipulate, create, change, eliminate, destroy electronic information and/or electronic documents with the aim that electronic information and/or electronic documents are considered as if they were authentic data (Article 35). From the details regulated above, it can be seen that defamation through social media is part of the ITE Law which is included in the category of cyber crime.

3.2. How should law enforcement officials interpret defamation crimes through social media?

The ITE Law regulates defamation in article 27 paragraph (3) jo. Article 45 paragraph (3) namely: 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 the content of contempt and/or defamation as referred to in Article 27 paragraph (3) shall be punished with a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 750,000,000.00 (seven hundred and fifty million rupiah).

Article 27 paragraph 3 of the ITE Law states that everyone intentionally and without the right to distribute and/or transmit and/or make accessible Electronic Information and/or Electronic Documents that have the content of contempt and/or defamation. The interpretation of the article is[8]:

1. In accordance with the basis of the constitutional court's decision number 50/PUU/IV/8/2008 and the explanation of article 27 paragraph 3 of the ITE Law, the meaning of the content of contempt or defamation refers to and cannot be separated from the provisions of articles 310 and 311 of the Criminal Code. Where article 310 of the Criminal Code is a violation of a person's honor by accusing someone of making something publicly known. Whereas article 311 deals with accusing a person whose allegations are known to be untrue by the perpetrator ;
2. Taking into account the Constitutional Court's decision, it can be concluded that it does not constitute a criminal offense that violates article 27 paragraph 3 of the ITE, if the content or content transmitted, distributed, and made accessible is in the form of insults in the category of ridicule, insults or inappropriate words. For these acts, you can use the qualification for minor contempt offenses as article 315 of the Criminal Code which in the explanation of Law 19 of 2016 concerning changes to the ITE Law does not include the qualifications of article 27 paragraph 3 of the ITE.
3. It does not include deliberations if it is only an assessment, an opinion, an evaluation result or a reality ;
4. In the event that the alleged fact is in legal proceedings it must be proved first in the said proceedings ;
5. The delict of this article is an absolute complaint and it must be the victim himself who complains about it, except for minors or in guardianship ;

6. The victim must be an individual person specifically not a corporation, institution, profession or position ;
7. The focus of this offense is not on the feelings of the victim but rather on the deeds of the perpetrator who transmits and accuses people of wanting to know (article 310 of the Criminal Code) ;
8. Elements so that they are known to the public must be fulfilled as well as the elements of the acts in 310 (Criminal Code) or 311 (Criminal Code);
9. The element of being known to the public is the same as that of being known by the public, where many do not know each other ;
10. The general criteria are uploads on open social media accounts, anyone can enter and without anyone controlling;
11. The restricted group does not fall into the category of being known to the public ;
12. Reporting on the Internet carried out by press institutions is included in Law 40 of 1999 concerning the press and a mechanism applies under the Law, if journalists upload on personal accounts, it becomes the responsibility of the journalist personally.

The joint decision between law enforcement is the antithesis of various defamation cases through social media which are considered to be criminalizing many who are not actually perpetrators as intended by the ITE law.

The aforementioned interpretation is also an elaboration of the applicable criminal law, especially related to defamation or other related criminal matters resulting from the use of social media. According to Eddy OS, the general function of criminal law is to maintain public order, while the special function of criminal law in addition to protecting legal interests also provides validity for the state in order to carry out the function of protecting legal interests[9]. When a person commits a criminal act, the person concerned must be held responsible for his actions. Criminal liability is defined as an obligation to pay the retribution that the perpetrator will receive from someone who has been harmed[10].

In this regard, the state must be present to provide protection so that everyone is given comfort and freedom to express their thoughts or opinions, but not to damage and pollute the honor and good name of others. This is where it can be realized that the law aims to regulate and protect society from all adverse things. The law is very important for the life of society because the law regulates the relationship between

members of society with one another, no exception regulates the relationship between members of society with one another, no exception regulates the relationship between members of society and members of their society[11].

The law has a duty to ensure the existence of legal certainty in society and in addition, the law maintains and prevents everyone from becoming a judge of himself, not prosecuting and imposing punishments on any violation of the law against him. However, every case must be resolved through a court process, with the intercession of a judge based on applicable regulations[12].

Defamation today is a familiar behavior in society, due to technological advances. This term, which in English is often translated with defamation, means an act that harms the reputation of others by making false statements[13]. Defamation is a criminal offense, which is regulated in the Criminal Code and laws outside the Criminal Code, the purpose of which is to provide legal protection regarding a sense of self-esteem, namely honor (eer) and a sense of self-respect regarding the good name of people (goeden naam). Everyone has self-esteem in the form of honor and self-esteem in the form of a good name[14].

Defamation behavior is very closely related to insulting behavior, which means that it is a behavior of attacking good name or honor. The targets of defamation can be classified into[15]: Towards the individual person;

1. Against groups or groups ;
2. Against a religion;
3. Against the deceased;
4. Against the officials of the state.

In the Criminal Code, defamation is regulated through Articles 310-320 Of the second book (Crimes) chapter XVI on contempt. According to the Article, especially in Article 310 paragraphs (1) and (2) a person is found guilty of committing a criminal act of defamation if he accuses others intentionally in public with the aim of attacking honor on his good name, including through writings or images that are broadcast, performed or affixed. This article explains that attacking a person's good name and honor which can be categorized as an insult is in the form of accusing a person of a cause to be known by the public where the element of accusation is what must be present in attacking the honor and good name of a person[15]. The elements of delik according to Leden Marpaung consist of subjective elements and objective elements[16]. Subjective elements more to intention or mens read an objective element more to the deed. In

the Criminal Code, a person is considered to have defamed another person when the person intentionally and with the aim that something related to the honor, position, dignity in the good name of a person whom he knows becomes known to others. In the ITE Law as part of cyber crime, defamation through social media is emphasized on the element of distributing where the intention of the perpetrator is to be known by the public. So that the perpetrators of defamation will be processed by the law, as Moeljatno's opinion states that criminal acts are acts prohibited by law and are threatened with criminality, whoever violates them. According to Clark, Marshall and Lazell, criminal acts include all active or passive acts that are prohibited from protecting the public and are threatened with criminal prosecution by the state through legal proceedings[17]. Meanwhile, according to Van Hamel, criminal acts are human acts formulated in unlawful laws that should be punished and committed as mistakes. As a criminal offense, a violation of the rules of law that apply in society, where the perpetrator has the fault to be held accountable so that he can be subject to punishment[18].

Defamation consists of the two words "defamation" and "good name". According to the dictionary Indonesian pollution is interpreted as filthing. While a good name is the name of a person that concerns reputation and honor. Honor or good name is something that belongs to a living human being because that is why defamation is generally directed against someone who is still alive[16]. This defamation offense is interpreted to be carried out by a specific individual, not a specific institution or institution. The interpretation is to prevent abuse of authority by law enforcement officials for the purpose of the law itself, namely justice.

4. Conclusion

Based on the description above, conclusions can be drawn, as follows:

1. Defamation through social media is part of a cyber crime because it is in an electronic environment and cyberspace that is difficult to identify with certainty, closely related to the development of advanced technology that is very fast changing and cross-border.
2. The interpretation of defamation crimes should be based on the guidelines of the Joint Decree on guidelines for the implementation of certain articles in the ITE Law between the Prosecutor's Office of the Republic of Indonesia, the Police of the Republic of Indonesia and the Minister of Communication and Information,

Number 229 of 2021 dated June 23, 2021 which is more careful by taking into account the aspects of the perpetrator and victim.

Based on the conclusions above, suggestions can be submitted as follows:

1. Substantially, the interpretation of the handling of defamation cases through social media based on the joint decision must be disseminated to law enforcement officials, namely the police, prosecutors and the supreme court.;
2. In legal culture, it is necessary for the legislature to always pay attention to the development of the handling of cyber crime cases by law enforcement so as not to get out of the interpretation based on the joint decision.

Conflict of Interest

The authors whose names are listed in this manuscript certify that they have no affiliations with or involvement in any organization or entity with any financial interest (such as honoraria; educational grants; participation in speakers' bureaus; membership, employment, consultancies, stock ownership, or other equity interest; and expert testimony or patent-licensing arrangements), or non-financial interest (such as personal or professional relationships, affiliations, knowledge or beliefs) in the subject matter or materials discussed in this manuscript.

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