
Investigation Actions Against Defamation Cases

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ABSTRACT

Acts of carrying out investigations to deal with defamation. In Indonesia, defamation is considered not by the traditions of the Indonesian people who still uphold eastern customs and culture. However, the lack of socialization of these regulations which causes ignorance of the insulting regulations that are carried out by many people today, which results in negative values from technological advances. The purpose of the research to be achieved is to find out how the role of investigators in dealing with defamation is.

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1. Introduction

The current globalization that is sweeping the world today causes changes in all aspects of human life, especially in developing countries, including Indonesia. Changes that occur naturally also occur in changes in the field of law or regulations because community needs will change quantitatively and qualitatively.

The problem that arises in the change in the law is how far the law can be by these changes and how the legal order does not lag behind changes in society.¹ In addition, the extent to which the community can bind themselves in the development of law so that there is harmony between the community and the law to give birth to the expected order and peace. The development of information technology including the internet in it also presents its challenges for legal developments in Indonesia. Law in Indonesia is required to be able to adapt to the social changes that occur. Social changes and legal changes or vice versa do not always take place together, meaning that in certain circumstances legal development may be left behind by the development of other elements of society and its culture or vice versa.²

In the current era of globalization, information has placed Indonesia as part of the world's information society, thus requiring the establishment of regulations regarding the management of information and communication transactions at the national level so that information technology development can be carried out optimally, evenly, and spread to all levels of society to educate the nation's life. and country."³

This change certainly has a significant impact on the conditions of human life from various fields, including politics such as various groups making this facility material for public discussion in discussing various existing phenomena, of course, some criticize and also suggest government actions related to these phenomena⁴, Given that the use of an electronic system and information technology often creates a problem, a regulation was born, namely Law Number 11 of 2008 concerning Electronic Transaction Information. in the economic field under Law No. 11 of 2008 concerning information and electronic transactions states in article 4 part b "developing trade and the national economy to improve people's welfare", The existence of the ITE Law provides space for entrepreneurs to gain economic benefits and their information needs and make a positive contribution to improving the

¹ Syaifullah Noor, dkk., *informasi dan transaksi elektronik dikaitkan dengan kebebasan berekspresi* (Jurnal ilmu Hukum Pascasarjana Universitas Syiah Kuala Volume 3, No. 3, Agustus 2015) p. 68

² *Ibid.*

³ Opening of Law No. 11 of 2008 tentang Informasi Dan Transaksi Elektronik, p 1.

⁴ Alwi Al Hadad. 2020. *Politik HUKUM Dalam Penerapan Undang-Undang ITE Untuk Menghadapi Dampak Revolusi Industri 4.0*. UIN Sunan Gunung Djati Bandung. Khazanah Hukum. Vol 2 (2) : 65-72. Hal 66

welfare and progress of human civilization. However, because the existing regulations are not strong enough to ensnare the perpetrators with strict sanctions, this crime is growing along with the development of technology and telecommunications.⁵ Advances in information and communication technology make human life as if it cannot be separated from it. All the visible facts, the essence of which starts from the human need to improve the quality of life and in improving the quality of life, humans need fast and accurate information. So that information technology continues to develop as a result of the demands of the times. Accompanied by the emergence of social networking sites in cyberspace that make it easier to exchange information.

The government must support the development of Information Technology through legal infrastructure and regulations so that the use of information technology is carried out safely to prevent its misuse by taking into account the religious and socio-cultural values of the Indonesian people so that all crimes committed through various electronic media can be resolved. and appropriate punishment for adjudicating cases conducted through the electronic media.

Defamation in English is often translated as defamation. Defamation is an act against the law. Usually, defamation is also often referred to as "Humiliation". In the case of defamation or humiliation, what is to be protected is the obligation of everyone to respect others from the point of view of their honor and reputation in the eyes of others even though that person has committed a serious crime. So that here there is a relationship between honor and a good name in the case of defamation.

In Indonesia, defamation is considered not following the traditions of the Indonesian people who still uphold eastern customs and culture. Therefore, defamation is a form of *rechtsdelicten* and not *wetdelicten*. That is, defamation has been considered a form of injustice before it was stated in the law because it had violated the rules of courtesy. Even more than that, defamation is considered a violation of religious norms if the substance of the pollution contains slander.

In Indonesian law, humiliation or defamation is generally regulated in Article 310 paragraph (1) of the Criminal Code which reads as follows :

"Whoever deliberately attacks honor or reputation by accusing something, the intent of which is clear so that it is known to the public shall be threatened for libel with a maximum imprisonment of nine months or a maximum fine of four

⁵ Suyanto Sidiq. 2013. *Dampak Undang-Undang Informasi Dan Transaksi Elektronik (UU ITE) Terhadap Perubahan Hukum Dan Sosial Dalam Masyarakat*. FH Universitas Bhayangkara Jakarta Raya. ISSN 2338 – 3321 Vol 1 (1) Hal 4

thousand and five hundred rupiahs.”

Furthermore, insults committed in writing have been regulated in Article 311 paragraph (1) of the Criminal Code which explains that:

“If the person who commits the crime of defamation or written defamation is allowed to prove what is alleged is true, does not prove it, and the accusation is made contrary to what is known, then he is threatened with slander with a maximum imprisonment of four years”.

Then defamation carried out through social media has been regulated in Law Number 11 of 2008 concerning Information and Electronic Transactions ("UU ITE") as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions.

Article 27 paragraph (3) of the ITE Law is as follows:

“Any person who knowingly and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain insults and/or defamation”.

Meanwhile, Article 28 paragraph (2) of the ITE Law reads as follows:

“Everyone intentionally and without rights disseminates information aimed at causing hatred or hostility towards certain individuals and/or community groups based on ethnicity, religion, race, and inter-groups (SARA)”.

Criminal threats for people who violate Article 27 paragraph (3) of the ITE Law are regulated in Article 45 paragraph (3) of Law 19/2016, which reads:

“Any person who knowingly and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents containing insults and/or defamation as referred to in Article 27 paragraph (3) shall be subject to imprisonment for a maximum of 4 (four) years and/or a maximum fine of Rp. 750,000,000.00 (seven hundred and fifty million rupiah)”

From the regulations above, it is clear that various forms of defamation through social media have been prohibited and have their own legal rules. However, the lack of socialization of these regulations which causes ignorance of the insulting regulations that are carried out by many people today, which results in negative values from technological advances.

Based on the foregoing, the writer feels interested in conducting deeper research and analysis on matters relating to how the conduct of the investigation of defamation cases is following the applicable rules as described above, the researcher

only discusses criminal acts of defamation through social media and using the legal basis of Law no. 19 the Year 2016. Based on this, the author gives the title, namely "**Actions for Conducting Investigations on Cases of Defamation**"

2. Research Method

The type of research used by researchers in the preparation of this scientific article is a type of empirical legal research with an object of study regarding the effectiveness of law enforcement against recidivist narcotics crimes.

In this study, primary and secondary data sources were used. Primary data for legal research can be seen from data that describes the application of law to society. Primary legal data is sourced from statutory regulations, court decisions or jurisprudence, and international agreements or treaties.⁶ Secondary legal data, which explains the explanation of primary legal materials, namely, works, research results from the general public, and others.⁷

3. Discussion

Effectiveness of Law Enforcement Against Recidivists of Narcotics Crimes by Gorontalo City Police

The conduct of the investigation, in this case, is to carry out several countermeasures including preventive efforts and preventive efforts, which are as follows:⁸

- a. Preventive efforts (prevention): namely using prevention through outreach to the community. This task is carried out by the Satbimas Unit (Community Guidance Unit) which is in charge of guiding the community.
- b. Repressive measures: Repressive measures are taken if it is proven that the alleged perpetrator is a criminal case, then legally it will be processed,⁹ by carrying out actions in the form of a search and fingerprint process. The investigation process is like receiving a complaint report from the public which will then be further handled by Unit II of Certain Crimes (Tipidter). The fingerprinting process, such as a complaint report that has been received, will be coordinated with the Opsnal 5 Unit to examine the victim's report whether further handling can be done or not, if possible, the investigator will go directly to the field to take action according to the police investigator's procedure.

Law enforcement of criminal acts of defamation carried out by investigators. The investigation agency for criminal defamation has been running since the enactment

⁶ *Ibid*, p 157.

⁷ SoerjonoSoekanto, *Pengantar Penelitian Hukum*, (Jakarta : Universitas Indonesia, 2014) p 52.

⁸ Results of Interviews with Police Investigators. Mr. Moh. Rizal Abdullah, S.H. On October 10, 2021.

⁹ Lisnawaty W. Badu., *Lemahnya Kepolisian Dalam Penanganan Tindak Pidana Perjudian Togel Online*, (Jurnal Legalitas Vol 13, No 01 2020) p. 37

of Law No. 11 of 2008 jo. Law number 16 of 2016 concerning Information and Electronic Transactions.

An investigation is a term that is meant by the meaning of *opsporing* (Dutch) and Investigation (English) or *tactics* (Malaysia), therefore in Indonesia itself the National Police as an institution that is given the authority to investigate a crime by Article 1 point 2 of the Law Law Number 8 of 1981 concerning the Criminal Procedure Code.¹⁰

Investigations into criminal acts of defamation through electronic social media in this case are carried out by the police because the police are an institution that in the Criminal Procedure Code is authorized to carry out investigations and investigations. Investigation and investigation is an initial understanding of the legal process in criminal cases, starting from the process handled by the police as investigators and investigators as well as other officers, in this case, is PPNS as referred to in the provisions of Article 4 of the Criminal Procedure Code stipulating that investigators are every state police official of the Republic of Indonesia.¹¹ In addition, what is meant by investigators is regulated in Article 6 paragraph (1) of the Criminal Procedure Code?¹²

In the context of investigating criminal acts of defamation through social media, the steps for investigating criminal acts of defamation through electronic social media are carried out after complaints from the public that there has been a criminal act of defamation through electronic social media. In general, the process of investigating criminal acts of defamation through social media is the same as the process of investigating other conventional crimes. The difference is only in terms of the process of catching criminals and coordinating with certain parties as stated in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions Article 43 paragraph (5) letter (j) which explains that investigators request expert assistance needed in investigations of criminal acts in the field of Information Technology and Electronic Transactions. The experts in question are Linguists, Criminal Experts, and ITE Law Experts. Meanwhile, in conventional criminal acts, the process does not have to go through the stages referred to above. It can be seen that the handling of criminal acts of defamation through social media is more difficult than conventional crimes because they must first coordinate with certain parties to get certainty that it is a criminal offense or not.¹³ This is what causes in some cases it is difficult to obtain certainty so that the ongoing investigation process becomes less than optimal.

¹⁰ *Ibid.*

¹¹ Article 4 Kitab Undang- Undang Hukum Acara Pidana.

¹² Article 6 clause (1) Kitab Undang- Undang Hukum Acara Pidana.

¹³ Results of Interviews with Police Investigators. Mr. Moh. Rizal Abdullah, S.H. On September 8, 2021.

Meanwhile, in determining the suspect of a criminal act of defamation through social media, it is by looking at the evidence in the form of a cellphone number or social media address owned by the perpetrator and of course with the evidence it will be directed directly to the party who committed the crime.¹⁴

Defamation can be seen in 2 kinds, namely verbal defamation, and written defamation. According to Oemar Seno Adji, defamation is known as an insult, which is divided into the following:

1. Material insults Insults which consist of a fact that includes an objective statement in words orally or in writing, then the determining factor is the content of the statement, whether used in writing or orally. There is still the possibility to prove that the allegations were made in the public interest.

2. Formal Humiliation, In this case, it is not found what the contents of the insult were, but how the statement in question was issued. The form and method are the determining factors. In general, the way of stating it in a rude and non-objective way. The possibility of proving the truth of the allegations does not exist and it can be said that the possibility is closed.¹⁵

The Criminal Code defines insult in Article 310 paragraphs (1) and (2), which contains::

- Article 310 paragraph (1): Whoever intentionally damages someone's honor or good name by accusing him of committing an act with a real intention will have that accusation spread, shall be punished with blasphemy, with a maximum imprisonment of nine months or a maximum fine of Rp. . 4500,-.¹⁶
- Article 310 paragraph (2): If this is done utilizing writings or pictures that are broadcast, shown to the public, or posted, then the person who did this is punished for blasphemy by writing with a maximum imprisonment of one year and four months or a maximum fine of Rp. 4500.¹⁷

Criminal law regulates insults in the Criminal Code in CHAPTER XVI, articles 310 to Article 321, insults in this chapter include 6 kinds of insults, namely:¹⁸

1. Article 310 paragraph (1) concerning defamation, which reads "Anyone who

¹⁴ Results of Interviews with Police Investigators. Mr. Moh. Rizal Abdullah, S.H. On September 8, 2021.

¹⁵ Oemar Seno Adji, *Mass Media Masa dan Hukum*, (Jakarta: Erlangga, 1993), p. 37-38

¹⁶ Article 310 clause (1) Kitab Undang- Undang Hukum Pidana..

¹⁷ Article 310 clause (2) Kitab Undang- Undang Hukum Pidana..

¹⁸ *Op.cit.*, p. 39.

intentionally attacks someone's honor or good name by accusing something, the intention is clear so that it is known to the public, is threatened with libel with a maximum imprisonment of nine months or a maximum fine of 9 months. four thousand five hundred rupiah”.

2. Article 310 paragraph (2) regarding blasphemy with a letter, which reads "Referring to R. Soesilo's explanation in Article 310 of the Criminal Code, as we summarized, the actions in Article 310 paragraph (1) and paragraph (2) of the Criminal Code do not include blasphemy or blasphemy in writing. (cannot be punished), if the accusation is made to defend the public interest or is forced to defend oneself.¹⁹

3. Article 311 concerning slander; "if the person who commits the crime of libel or written defamation, if it is permissible to prove that what is alleged is true, does not prove it and the accusation is made contrary to what is known, then he is threatened for committing slander, with a maximum imprisonment of four years.²⁰

4. Article 315 concerning minor insults; "Every deliberate insult that is not like defamation or libel in writing, which is committed against a person, either in public orally or in writing, or front of the person himself, verbally or by deed, or by a letter sent or received to him, is threatened with....."²¹

5. Article 317 concerning complaining in a slanderous manner; "Whoever intentionally submits a false complaint or notification to the authorities, whether in writing or writing, about a person so that his honor or reputation is attacked, is threatened with a slanderous complaint.²²

Several articles outside the Criminal Code include Article 27 Paragraph 3 of Law Number 11 of 2008 concerning Information and Electronic Transactions, which reads: "Everyone intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have insulting and/or defamatory content."²³

All of these insults can only be prosecuted if there is a complaint from a person or victim, which is known as a complaint offense, except when this insult is committed against a civil servant while carrying out his duties legally. In the Criminal Code, it is a formal offense and a material offense, while the ITE Law is a material offense only. The object of the insults above must be individual humans, meaning not

¹⁹ R. Soesilo, *Kitab Undang-Undang Hukum Pidana*, (Bogor: Politea, 2008), p.224

²⁰ Article 311 *Kitab Undang- Undang Hukum Pidana*..

²¹ Article 315 *Kitab Undang- Undang Hukum Pidana*..

²² Article 17 *Kitab Undang- Undang Hukum Pidana*..

²³ Article 27 clause (3) *Undang-Undang Nomor 11 tahun 2008 Tentang Informasi dan Transaksi Elektronik*,

government agencies, administrators of an organization, a group of residents, and so on.

According to R. Susilo, to be punished with blasphemy or defamation, humiliation must be carried out by accusing someone of having committed a certain act with the intention that the accusation will be known by many people, both verbally and in writing, or the crime of blasphemy does not need to be committed. In public, it is sufficient if it can be proven that the defendant intended to broadcast the accusation.²⁴

According to Article 310 paragraph (3) of the Criminal Code, acts of insulting or insulting writing are not punished if they are carried out to defend the public interest or are forced to be carried out in self-defense. Whether or not the reason for self-defense or public interest lies in the judge's consideration so that if by the judge it is stated that the insult is really in defense of the public interest or self-defense, the perpetrator will not be punished. But if by the judge the insult is not in the public interest or for self-defense, the perpetrator is subject to punishment in Article 310 paragraphs (1) and (2) of the Criminal Code, and if what the accused is accused of is not true, then the perpetrator is punished by Article 311 of the Criminal Code, namely slander.

The elements of the criminal act of defamation can be observed in the contents of Article 27 paragraph (3) in conjunction with Article 45 paragraph (1) of the ITE Law which looks simple when compared to the more detailed articles of insult in the Criminal Code. Therefore, the interpretation of Article 27 paragraph (3) of the ITE Law must refer to the articles of insult in the Criminal Code. For example, in the ITE Law, there is no definition of defamation. By referring to Article 310 paragraph (1) of the Criminal Code, defamation is defined as an act of attacking someone's honor or good name by accusing something that means clearly so that it is known to the public.²⁵

Article 310 paragraph (1) of the Criminal Code: "Whoever intentionally attacks someone's honor or reputation by accusing someone of something, the intention of which is clear so that it is known to the public, is threatened with libel with a maximum imprisonment of nine months or a maximum fine of four thousand five hundred rupiah."²⁶

Based on the formulation of Article 310 paragraph (1) of the Criminal Code, it is divided into two elements, namely objective elements and subjective elements:

²⁴ R. Soesilo, *Kitab Undang-Undang Hukum Pidana*, (Bogor: Politea, 2008), p.224

²⁵ <http://kotaku.pu.go.id:8081/pengaduandetil.asp?mid=740&catid=6&>, accessed on December 11, 2021, at 12:46 WIB.

²⁶ Article 310 clause (1) *Kitab Undang-Undang Hukum Pidana*.

Objective elements:

- a. whomever
- b. Attacking someone's honor or reputation
- c. By accusing something

Subjective elements:

- a. With a real intention (kenlijk doel) so that the accusation is made public (ruchtbaarheid te geven)
- b. On purpose (opzettelijk)

Article 310 paragraph (2) of the Criminal Code regarding written pollution. If this is done utilizing writing or pictures that are broadcast, displayed, or posted in public, the threat for written libel is a maximum imprisonment of one year and four months or a maximum fine of four thousand five hundred rupiahs.

Article 27 paragraph (3) of the ITE Law "Every person intentionally and without rights distributes and/or transmits and/or makes accessible electronic information and/or electronic documents containing insults and/or defamation"²⁷

According to the provisions of Article 310 of the Criminal Code, the act of defamation has been formulated in the form of::

- 1) Blaspheming verbally (smaad)–article 310 clause (1)'
- 2) Blaspheming with a letter (smaadschrift) – article 310 clause (2). While prohibited acts are acts that are carried out intentionally to violate the honor or attack the honor or good name of others.

Thus, the elements of defamation or insult (according to article 310 of the Criminal Code) are::

- 1) Deliberately
- 2) Attacking honor or reputation,
- 3) Accusing of doing something,
- 4) Broadcasting accusations for public knowledge.

The formulation of Article 27 paragraph (3) in conjunction with Article 45 paragraph (1) of the ITE Law which looks simple is inversely proportional to criminal sanctions and fines that are heavier than criminal sanctions and fines in articles of insulting the Criminal Code. For example, a person who is proven to have intentionally disseminated electronic information containing defamation as referred to in Article 27 paragraph (3) of the ITE Law will be charged with Article 45 Paragraph (1) of the ITE Law, maximum imprisonment of 6 years and/or a maximum fine. 1 billion rupiah.

²⁷ article 27 clause (3) UU ITE.

Article 45 of the ITE Law: (1) Anyone who fulfills the elements as referred to in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be sentenced to a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).²⁸

There are still other articles in the ITE Law that are related to defamation and have even more severe criminal sanctions and fines, pay attention to article 36 of the ITE Law. Article 36 of the ITE Law: "Every person intentionally and without rights or against the law commits an act as referred to in Article 27 to Article 34 that results in harm to other people." For example, someone who disseminates electronic information that contains insults and/or defamation and causes harm to others will be subject to a maximum imprisonment of 12 years and/or a maximum fine of 12 billion rupiah (stated in Article 51 clause 2)

Article 51 paragraph (2) of the ITE Law: "Every person who fulfills the elements as referred to in Article 36 shall be sentenced to a maximum imprisonment of 12 (twelve) years and/or a maximum fine of Rp. 12,000,000,000.00 (twelve billion rupiahs)."²⁹

4. Conclusion

The actions taken by investigators in the context of investigating this case are divided into 2, namely by carrying out several countermeasures including preventive efforts and preventive efforts, which are as follows:³⁰

a. Preventive efforts (prevention): namely utilizing prevention through outreach to the community. This task is carried out by the Satbimas Unit (Community Guidance Unit) which is in charge of providing guidance to the community).

b. Repressive efforts: namely by taking action in the form of a search and fingerprint process. The investigation process is like receiving a complaint report from the public which will then be further handled by Unit II of Certain Crimes (Tipidter). The fingerprinting process, such as a complaint report that has been received, will be coordinated with the Opsnal 5 Unit to examine the victim's report whether further handling can be done or not, if possible, the investigator will go directly to the field to take action according to the police investigator's procedure.

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²⁸ article 45 UU ITE

²⁹ article 51 clause (2) UU ITE.

³⁰Results of Interviews with Police Investigators. Mr. Moh. Rizal Abdullah, S.H. On October 10, 2021.

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