



Legal Analysis of the Criminal Act of Defamation Through Social Media

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Info Articles	Abstract
Article History Received: 2025-08-15 Revised: 2025-08-26 Published: 2025-09-30	The way society communicates has changed significantly as a result of advances in digital technology, particularly how ideas are expressed on social media. The rise in online defamation claims is one legal issue arising from the ease of access to information. The purpose of this essay is to examine the crime of defamation on social media from a legal perspective, using provisions from the Electronic Information and Transactions Law (UU ITE) and the Criminal Code (KUHP). Using a normative approach, it is found that the two legal instruments differ significantly in terms of the elements of the crime and their sanctions. Furthermore, it remains difficult for law enforcement to distinguish between insults and freedom of expression in defamation cases, particularly those related to criticism of public figures. To curb such violations, this essay also emphasizes the importance of restorative justice strategies and improving digital literacy. Thus, in the digital age, it is crucial to strike a balance between safeguarding freedom of speech and preserving individual dignity.
Keywords: <i>Criminal Code; ITE Law; Defamation; Law Enforcement</i>	

I. INTRODUCTION

The development of digital technology has fundamentally changed the way people connect and communicate, particularly through social media, which has emerged as a primary forum for widely shared views. Social media is a popular and efficient means of communication today because it makes information easily accessible to a wide audience. These advantages have given rise to a number of complex legal issues. The rise in online defamation lawsuits is one of the most prominent.(Kumowal 2024).

A single online post has the power to damage a person's reputation, making legal action both flexible and stringent. As more people use social media in their daily lives, this problem is worsening. The Criminal Code (KUHP) and the Electronic Information and Transactions Law (UU ITE) are two key laws in Indonesia that contain provisions related to defamation. Regarding the components of the crime and the penalties applied, these two laws differ in their characteristics and methods.(Kuspraningrum 2011).

This distinction often leads to misunderstandings when applied, particularly in the context of investigations and legal proceedings. Maintaining one's reputation and the right to freedom of expression must be balanced, which presents challenges for the application of the law to defamation cases on social media, in addition to the legal differences. When comments or criticisms are published online against public figures or government institutions, which are often considered insults, the issue becomes even more complicated.(Swing 2024)This study uses a normative approach to investigate how existing laws regulate defamation crimes on social media and how practical legal problems and issues arise. The article also discusses the importance of improving digital literacy and implementing restorative justice as a preventative measure to reduce the likelihood of similar violations. It is hoped that this study will assist in the development of a legislative framework that balances individual liberties with the right to free speech in the digital age.

II. RESEARCH METHODS

This study uses a normative legal approach, a branch of legal research that focuses on examining relevant positive legal norms. The Criminal Code (KUHP) and Law Number 11 of 2008 concerning Electronic Information and Transactions, as amended by Law Number 19 of 2016 (the ITE Law), are two specific legal provisions analyzed using this method. This study is qualitative in nature, and library research was used to collect data. Relevant laws and court decisions served as primary data sources, and articles from credible internet media, academic journals, criminal law textbooks, and legal literature served as secondary data sources.(Mahmud Marzuki 2005).

To understand the concepts of honor, individual dignity, and freedom of speech in relation to digital criminal law, the researcher also uses a conceptual approach. To characterize and compare aspects of violations, penalties, and the extent of legal protection for victims of defamation on social media under the Criminal Code and the ITE Law, a descriptive-comparative analysis is the analytical method used.

Furthermore, this study uses a sociological-legal approach to analyze how these legal standards are actually applied, including evaluating the difficulties faced by society and law enforcement officials in defining the line separating free speech from acts that fall into the category of slander or defamation. In addition to examining the legal issues, this study will offer suggestions on the need for regulatory reform or harmonization, as well as the use of restorative justice and digital literacy techniques as preventative measures to address these issues in the digital age.

III. RESULTS AND DISCUSSION

With the development of information and communication technology, which has made social media a primary channel for the rapid and widespread dissemination of information, defamation has become increasingly complex in Indonesia. There is a greater potential for conflict, including hate speech, insults, and defamation, as

a result of the shift in community communication patterns from face-to-face interactions to online platforms.(Juita 2024).

This requirement requires a thorough analysis of the laws governing defamation, particularly those relating to social media, to maintain the effectiveness and fairness of law enforcement. Normatively, the Criminal Code (KUHP) and Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions (UU ITE) include regulations related to defamation.

Article 310 of the Criminal Code states that: "Anyone who intentionally attacks a person's honor or reputation by accusing them of committing a certain act with the intention of making it widely known, shall be punished for defamation with a maximum imprisonment of nine months or a fine of up to four thousand five hundred rupiah."

However, according to Article 311 of the Criminal Code, an act is categorized as defamation and carries a heavier penalty if the accusation is inaccurate and the offender is aware that it is false. Regulations regarding defamation have been extended to the digital realm with the enactment of the ITE Law. "Any person who intentionally and without authority disseminates and/or transmits and/or creates electronic information and/or electronic documents containing insults and/or defamation," according to Article 27 paragraph (3) of the ITE Law.(Sirait, Silaen, and Sitohang 2020).

Violators face a maximum penalty of four years in prison and/or a fine of up to IDR 750,000,000. Because this offense is categorized as a complaint offense, legal action can only be taken in response to a victim's report. The media and locations of illegal activities are where the Criminal Code (KUHP) and the Electronic Information and Transactions Law (UU ITE) most contradict each other.(Pramana and SH 2013).

While the ITE Law specifically regulates insults expressed through electronic media, including Facebook, Instagram, Twitter, WhatsApp, and other digital platforms, the Criminal Code regulates insults in a more general and traditional manner. Furthermore, the ITE Law has harsher penalties than the Criminal Code, which has raised

concerns that it could over-criminalize the right to free speech online.(Agastya 2024).

Law enforcement officials often struggle in practice to distinguish between acts of defamation or slander and legally protected speech. Even when supported by facts and good intentions, certain criticisms of individuals or public organizations are still classified as crimes. The protection of freedom of expression as stipulated in Article 28E of the 1945 Constitution and Article 19 of the International Covenant on Civil and Political Rights, to which Indonesia has signed Law No. 12 of 2005, contradicts existing criminal provisions. The strict application of rules prohibiting expression on social media is exemplified by cases such as Makassar District Court Decision No. 1481/Pid.Sus/2020/PN Mks, in which a Facebook user was imprisoned for posting comments against public authorities. Because the statement was widely shared and deemed an attack on a public figure's reputation, a panel of judges determined that the requirements for defamation were met.(Shine La Juwi 2023).

However, despite her desire for justice, Baiq Nuril Maknun's story attracted national attention because she was convicted of distributing video footage of the abuse she experienced. She was found guilty of defamation after the Supreme Court ruled that her actions violated Article 27 paragraph (3) of the ITE Law. Judges must apply the ITE Law with a progressive and contextual interpretation that takes into account substantive justice due to ambiguity and various interpretations.

To prevent the ITE Law from being used as a tool to silence public criticism, several scholars and human rights organizations have called for revisions, particularly to Article 27 paragraph (3). It is crucial to understand that not all hurtful or offensive statements should be punished, especially when it comes to social control against abuse of power. Legal change is the first and most important step from a resolution perspective.(Saputri 2021).

To more clearly distinguish between freedom of expression and defamation, the ITE Law must be revised. While ensuring human rights

protection without compromising the effectiveness of law enforcement against harmful criminal activities, the new law must prioritize the criteria of proportionality, legality, and legal clarity. A legal instrument that is inclusive and responsive to social and technical advances will be produced by involving various stakeholders in the revision process, including the government, civil society, legal professionals, and academics.

Additionally, using restorative justice as an alternative method to address defamation issues on social media may reduce the need for formal criminal proceedings. Through mediation, communication, and mutual agreement, this method focuses more on repairing the relationship between the victim and the perpetrator.(Prasetyo and Sambas 2023).

As a result, resolving lawsuits doesn't always have to involve prison sentences or large fines; it can also involve social reconciliation, restitution, or an apology. This approach has successfully reduced pressure on the legal system and created a more welcoming environment that benefits all parties. Preventing defamation offenses also relies heavily on improving public legal education and digital literacy.

Many social media users remain unaware that anything they post can have negative legal consequences and harm others. Continuing education programs aimed at various age groups and segments of society will promote social media understanding and accountability. Through public campaigns, training, and the provision of freely accessible educational resources relevant to contemporary socioeconomic realities, the government, and particularly the Ministry of Communication and Informatics, must take an active role.

To address the dynamics of defamation cases in the digital age, the capacity of law enforcement personnel must be strengthened. In addition to human rights concepts, officials must possess specialized knowledge and skills in information and communication technology. This will enable them to distinguish between protected criticism and illegal defamation and evaluate cases impartially and proportionately.(Pramana and SH 2013).

Furthermore, developing technological guidelines for resolving digital defamation cases will establish clear procedural norms and reduce the potential for abuse of power within the legal system. Furthermore, non-governmental groups and civil society play a crucial role in monitoring the preservation of the right to free speech and the administration of justice.

In addition to acting as monitors and mediators in the case resolution process, they can also promote productive communication between law enforcement, victims, and offenders. It is hoped that conflict resolution can develop in a more open, responsible, and fair manner with the participation of various community groups. An equally important preventive measure is improving digital legal literacy.

Many social media users don't understand that the content they upload or share is public and has legal consequences. This lack of awareness makes them vulnerable to legal action, even if they have no malicious intent. The government, particularly the Ministry of Communication and Informatics (Kominfo), needs to intensify digital law education for the public through various platforms, including schools, communities, and the mass media. Early legal education can foster a generation that is legally aware and wise in using social media.

Defamation in the digital context must be addressed with a balanced approach between protecting individual reputations and freedom of expression. Improving legal digital literacy is a crucial preventative measure. Many social media users are unaware that anything they upload or share is publicly visible and may violate the law. Even if they have no malicious intent, this ignorance exposes them to legal trouble. Through various channels, including the media, communities, and schools, the government, and particularly the Ministry of Communication and Informatics (Kominfo), must actively educate the public about digital regulations.

A legally aware generation that uses social media responsibly can be developed through early legal education. Protecting one's reputation and the right to free speech must be balanced when addressing defamation in the digital realm.

Rather than being the primary strategy for resolving social disputes in the digital realm, criminal law enforcement should be the last resort (*ultimum remedium*). (Kusworo and Fathonah 2022).

A healthy, fair, and democratic digital environment can be achieved through the creation of alternative conflict resolution procedures and increased digital literacy. A comprehensive strategy is needed to address defamation on social media, encompassing regulatory reform, proportionate law enforcement, restorative justice, digital literacy education, and enhanced authority and community engagement. Together, these initiatives must provide fair legal protection for victims without compromising individuals' fundamental right to free speech.

Social media can thus serve as a vibrant and healthy public forum that fosters the growth of Indonesian democracy and respect for human rights. Given their role as primary venues for digital public engagement, social media platforms like Meta (Facebook, Instagram), X (Twitter), and TikTok play a crucial role in combating defamation. However, the effectiveness of their content moderation systems is often questioned.

Despite the implementation of community standards and automated moderation technology on each platform, research shows that much problematic information, particularly ambiguous content such as insinuations or disguised narratives that harm people's reputations, manages to evade the system. Furthermore, platforms' handling of takedown requests from Indonesian authorities appears uneven, often resulting in delayed or non-transparent procedures.

The Electronic Information and Transactions Law (UU ITE) and Government Regulation No. 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (PP PSTE) are two examples of Indonesian regulatory tools. However, neither regulation clearly defines the legal obligations of digital platforms regarding illegal information uploaded by users.

The Ministry of Communication and Informatics (Kominfo) intends to amend the ITE

Law to close this loophole. This will require digital platforms to regulate content and impose administrative consequences on violators, potentially including access bans. The Content Moderation Compliance System (SAMAN), introduced by the Ministry of Communication and Informatics (Kominfo) in February 2025, requires platforms to respond to content removal requests within a specified timeframe. Administrative sanctions in the form of fines or suspension of platform access can be imposed for failure to comply with this rule.

However, platforms must also be transparent about the moderation techniques they use and include an appeals process for users aggrieved by the removal of material to ensure that these systems function efficiently and fairly. Therefore, collaboration between digital platforms and the government is crucial to creating a more responsible and healthy online environment. Beyond being a burden for consumers and law enforcement, content filtering is also a moral and legal necessity for digital platform providers in Indonesia.

In recent years, there has been a significant shift in the way defamation cases are handled in Indonesia, particularly those involving the Electronic Information and Transactions Law (UU ITE). A review of the number of cases, settlement percentages, and trends in the use of related articles is provided by currently available empirical data. The number of defamation cases handled by law enforcement has increased significantly since the ITE Law was passed. Of the 4,360 cases related to the ITE Law processed by the Indonesian National Police in 2018, 1,258 involved defamation. With 1,337 defamation cases, this figure increased to 4,586 in 2019. In 2020, there were a total of 4,790 cases, including 1,794 cases involving defamation.

According to data from the Southeast Asia Freedom of Expression Network (SAFEnet), 126 people were reported in 2023 as part of 114 police reports related to violations of the Electronic Information and Transactions Law (UU ITE). Article 27 paragraph (3) of the ITE Law on defamation was the main reported article in 48 cases (42.11%). Most cases under the ITE Law do

not reach the court stage, according to SAFEnet data. Due to lack of evidence, 47.35% of the 245 reports filed through 2018 were not investigated.

Overall, guilty verdicts were rendered in 16.73% of cases, but acquittals occurred in 6.12%. Cases that were dropped or withdrawn, such as the 2017 Boni Hargens case, were also recorded. Furthermore, efforts are underway to use restorative justice or mediation to resolve defamation claims. For example, in 2021, the Indonesian National Police (Polri) prioritized mediation in resolving charges under the ITE Law, following orders from National Police Chief General Listyo Sigit and President Joko Widodo.

One of the most frequently cited provisions in reporting incidents is Article 27 paragraph (3) of the ITE Law, which regulates defamation. According to SAFEnet, this article was the primary reporting article in 42.11% of incidents in 2023. In other years, such as 2018 and 2019, this article was also widely used. However, because it is considered a flexible object that can be abused to curb criticism or viewpoints, its use has also drawn criticism. The potential for abuse of this article is illustrated by a number of high-profile incidents, including the Prita Mulyasari case in 2009.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Development of information and communication technology has Social media has given rise to a new interactive space that facilitates the exchange of information. However, this progress has also given rise to serious legal issues, particularly regarding defamation. Defamation includes statements that demean a person's honor, whether through text, images, or videos. In the context of Indonesian law, this provision is regulated in Articles 310 and 311 of the Criminal Code for offline insults, and Article 27 paragraph (3) of the ITE Law for online insults.

Although it is intended to protect honor for individuals, the application of Article 27 paragraph (3) often sparks controversy. The vague terminology opens up room for broad interpretation, potentially criminalizing freedom of expression, and leading to a high number of

cases in court. 2020 Supreme Court data recorded that 33% of ITE Law cases related to defamation. The Constitutional Court rejected a judicial review of the article in 2022 but emphasized the importance of careful and proportional application of the law.

Moving forward, a revision of the ITE Law is urgently needed to establish a clear line between criticism and insult. This step needs to be accompanied by technical guidelines for law enforcement officials and increased digital and legal literacy among the public. A restorative justice approach is also an important alternative, emphasizing peaceful resolution, restoring social relations, and reducing the burden on the judiciary, making it more appropriate to the dynamic nature of a digital society.

B. Suggestion

The government and the House of Representatives need to immediately revise Article 27 paragraph (3) of the ITE Law so that the definition of insult and defamation is clearer and does not overlap with the right to freedom of expression. This revision must be accompanied by strict technical guidelines for law enforcement officials—the police, prosecutors, and courts—so that the application of the relevant articles is carried out proportionally and is not misused as a tool to silence public criticism. On the other hand, efforts to increase digital and legal literacy for the public must be expanded so that every individual understands the boundaries between freedom of expression and violations of the law, while also encouraging ethical communication in the digital space. Furthermore, the application of restorative justice should be prioritized as an approach to resolving defamation disputes, because it can restore social relations, reduce psychological impacts, and avoid protracted legal processes, thus creating a more humane law enforcement that is in line with the needs of today's digital society.

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