

Legal Protection of Victims Defamation Through Electronic Media

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ABSTRACT

Technological developments bring both positive and negative consequences, one of which is defamation through electronic media. The purpose of writing is: To find out the legal protection for victims of defamation; and efforts that can be made to overcome the criminal act of defamation through electronic media. Legal protection for victims of criminal acts of defamation in Indonesia has been endeavored to the fullest extent possible, but its implementation can be affected by various kinds of problems, including: Problems in Making Legislation; Victory Seeking Society is not Justice; Money that colors Law Enforcement; Law Enforcement as a Political Commodity; Discriminatory Law Enforcement and Ewuh Pakewuh; Weak Quality and Integrity of Human Resources; Advocate Knows Law versus Advocate Knows Connection; Budget Limitations; Law Enforcement Triggered by Mass Media; and Law enforcement is controlled by the press. Efforts that can be made to overcome defamation through Electronic Information and Transaction tools can be carried out by: Penal and non-penal efforts, as well as preventive efforts, persuasive efforts and repressive efforts. All these efforts must be supported by cooperation between law enforcement officials and the community. Law enforcement efforts depend on the operation of the law in society and are not only the responsibility of law enforcement officials, but also our responsibility as a law-abiding society.

Keywords : Victim protection, defamation, electronic media

I. INTRODUCTION

Along with the development of technology, crime also develops following the development of this technology. If in the past people could only commit insults or defamation by writing letters or verbally speaking, now with the existence of the internet one can commit insults or defamation through social media¹.

Defamation is an act that attacks a person's honor by stating something, either orally or in writing. Even according to Law no. 11/2008 concerning Information and Electronic Transactions as amended by Law no. 19/2016 (UU ITE), people who distribute or create content containing insults and/or defamation are included in acts of defamation whose perpetrators are threatened with imprisonment and fines.

Before going into the explanation of defamation cases, you must understand the elements of defamation in general, namely: First, the criminal act of defamation is a complaint criminal offense. Defamation is included in the category of complaint offenses because the assessment of acts of defamation is very dependent on the party whose reputation is attacked. Criminal acts of defamation can only be processed by the authorities if there are complaints from victims of defamation. Second, defamation is done through the dissemination of information. That is, in a content there is a substance that contains pollution which is disseminated to the public or carried out in public by the perpetrator².

Honor can be based on two views, among others: Views that limit themselves to the recognition of human moral values. And the view that wants to broaden, that is, does not limit itself to the

¹ Budi Suhariyanto, *Tindak Pidana Teknologi Informasi (Cybercrime), Urgensi Pengaturan dan Celah Hukumnya*, (PT Raja Grafindo Perkasa, Jakarta, 2013), 116.

² Libera, *Pencemaran Nama Baik: Catatan Penting Hingga Contoh Kasus dan Dasar Hukumnya* Libera.id/blogs/hukum (accessed Nopember 19, 2019)

recognition of human moral values but expands it with all the factors that can be used as a guide by humans.

Indonesian society is a society that has a character that upholds eastern customs and culture, where defamation is often seen as violating politeness and religious norms. And as you already know, defamation is closely related to an insulting word that attacks a person's good name and honor. Some of the targets in defamation are: individuals or individuals, groups or groups, a religion, people who have died, officials including civil servants, heads of state or their representatives, and foreign representative officials³.

II. RESEARCH METHODS

In this case, the legal principles of criminal defamation will be disclosed and explained based on:

1. The Legality Principle and the Siracusa Principle determine that regulation of freedom of expression or opinion must be regulated on a legal basis in the form of a law. This regulatory legal action is the most effective step so that there is no other way to limit it, as well as compensation for the impact and application of restrictions that are illegal and tend to be abused.
2. The principle of truth statement (Truth Statement). There are several conditions that must be proven with the principle of truth, namely:
 - a. The principle of truth must be able to be disclosed to be true, must be proven by a court decision that has permanent legal force;
 - b. This truth must be supported or supported with conditions of public interest;
 - c. There is a limit to the principle of truth, namely the limitation that is carried out with an expression that has been declared true by the a quo court is used as a means to hurt or injure other parties. Thus in expressing a truth it must also be done for the public interest. This means that the principle of truth eliminates the unlawful nature of a criminal act of defamation if the conditions for expression or opinion are fulfilled based on a court decision that has permanent legal force, and the correct expression is intended for the public interest.
3. Principle of Remedial (compensation); instruments of unlawful acts under Article 1365 BW and also Articles 1372-1380 BW can also be combined with criminal and civil cases based on the procedures specified in Articles 98-101 of the Criminal Procedure Code. The three compensations are in the form of financial and non-financial losses but non-financial compensation must be prioritized. If the non-financial compensation is insufficient, then a new financial compensation can be given⁴.
4. The principle of reporting to law enforcement as the reason for the elimination of a specific crime is that the act of reporting a person to the police on the basis of having committed an unlawful act cannot be used as a basis for counter-complaint with the criminal act of insult, slander or defamation. Second, even if the report on the alleged unlawful act is not proven or terminated due to insufficient evidence, a complaint based on defamation cannot be justified. Third, reporting unlawful acts is the right of every citizen which is justified by the applicable law. Fourth, that reporting on the occurrence of a crime is intended for the benefit of law enforcement, not intentionally aimed at defaming a person's reputation. On this basis, automatically, the element of intent in the criminal act of defamation is not proven.
In general, sentencing theories can be divided into 3 (three) theory groups, namely:
 - 1) The absolute theory, according to this theory, punishment is imposed solely because a person has committed a crime or criminal act. Criminal is an absolute consequence that must exist as a retaliation for those who commit crimes.
 - 2) Relative theory, according to this theory imposing a sentence is not to satisfy the absolute demands of justice. Retaliation itself has no value, but only as a means to protect the interests of society. Therefore this theory can be called the theory of community protection. Criminals

³ *Ibid.*

⁴ Josua Sitompul, *Cyberspace, Cyberlaw: Tinjauan Aspek Hukum Pidana*, (Tatanusa, Jakarta), 2012, 30-49.

are imposed not because people commit crimes, but so people don't commit those crimes. So crime prevention (crime) is what you want to achieve, by influencing people's behavior not to commit crimes (crimes).

- 3) Theory, according to this theory, imposing a criminal in addition to functioning for retaliation is also for preventing the occurrence of a crime⁵.

Legal certainty is a legal instrument of a country capable of guaranteeing the rights and obligations of every citizen⁶. According to Sudikno Mertokusumo, legal certainty is one of the conditions that must be fulfilled in law enforcement. Legal certainty is "justifiable protection against arbitrary actions, which means that someone will be able to obtain something that is expected in certain circumstances"⁷.

III. DISCUSSION

Based on the description above, the problems to be studied in this paper are: First: how is the legal protection for victims of defamation through electronic media? Second: how are the efforts being made to tackle the criminal act of defamation through electronic media?

Legal protection for victims of defamation

First, there is a problem in making laws and regulations. The difficulty of law enforcement in Indonesia started when laws and regulations were made. There are at least two reasons to support this statement. First; makers of laws and regulations do not pay enough attention to whether the rules made later can be implemented or not. The making of laws and regulations, consciously or not, has taken the assumption that the rules made will automatically work. Second; laws and regulations are often made unrealistically. This happened to the making of laws and regulations which were orders from political elites, foreign countries and international financial institutions. Here laws and regulations are considered as commodities.

Indonesian people, especially those in big cities, when they are faced with a legal process, will make various efforts so as not to be defeated or avoid punishment. This fact indicates that the people in Indonesia are a society of seekers of victory, not seekers of justice as victory. It is not surprising that all efforts will be made, both legal and illegal, solely to obtain victory. The typology of a victory-seeking society is a problem for law enforcement, especially if law enforcement officers lack integrity and are prone to being bribed, a victory-seeking society will use power and money to gain victory or avoid punishment.

Money can have an effect when the police are investigating a case. With money, the article as the basis for the allegation can be changed according to the amount of money offered. At the prosecution level, money can influence whether or not the prosecution is continued by the public prosecutor. If the prosecution goes ahead, money can influence how severe the charges will be.

Law enforcement in Indonesia has become a political commodity although recently it has been less intense. During the Soeharto era, law enforcement as a political commodity was very rampant. Law enforcement can be regulated because power wants it. Law enforcement officials are dictated by power, even intervened in enforcing the law. Law enforcement will be carried out strictly because those in power need valid reasons to oppose pro-democracy forces or those who defend the interests of the people. However, law enforcement will be weakened by power if the government or political elites become prisoners. Law enforcement as a political commodity is a source of distrust of law enforcement in Indonesia.

The form of discriminatory law enforcement is that suspected corruptors and suspected sandal thieves will receive different treatment and sanctions. Suspects who have high social status in society will be treated in a special way. Law enforcement seems to only side with the rich but not the poor. Even the law sided with those with positions and connections and legal officials or access to justice. This is all because of the mentality of law enforcement officers who look more at a person's position in society or social status than what is done by people facing the legal process.

⁵ Marwan Effendy, *Teori Hukum dari Perspektif Kebijakan, Perbandingan dan Harmonisasi Hukum Pidana*, (Gaung Persada Press Group), Jakarta, 2014, 205

⁶ Anton M. Moeliono at al., *Kamus Besar Bahasa Indonesia*, (Balai Pustaka, Jakarta), 652.

⁷ Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar*, (Liberty, Yogyakarta), 2008, 145.

At the beginning of the independence of legal institutions, especially the judiciary and prosecutorial bodies were filled with the best human resources at that time. Not a few judges or prosecutors have become professors at various well-known university law faculties. The profession of judge and prosecutor is highly respected. At that time, the income of the profession of judges and prosecutors was very good compared to that of advocates. Judges or prosecutors in their active period will not cross over to become advocates unless they have retired.

Advocates know that law means an ideal advocate. Advocates know connections are meant advocates who know judges, prosecutors, police, or advocates who have connections. Based on the typology of society that allows victory rather than justice, usually when they are faced with the law they prefer advocates who know connections rather than lawyers who know the law. This is because they want to win and do not want justice. Under these conditions, the winning of a case can be determined by who is known in the ranks of law enforcement officials.

The deplorable condition of courtrooms and limited library facilities can also affect the quality of judges' decisions. Budgetary constraints have made law enforcement weak, ineffective and lacking in teeth.

Law enforcement is controlled by the press. When the mass media intensively reports on and highlights a case, law enforcement officers are serious about enforcing the law. And conversely when it is no longer highlighted by the mass media, law enforcement will gradually disappear⁸.

To implement law enforcement in Indonesia is heavily influenced by five factors, namely law, the mentality of law enforcement officers, people's behavior, facilities and culture, as follows:

1. Laws: The existence of legal norms that are formulated in laws as law in books is very much determined by its prospects in society in terms of its law actions. The law is the basic basis or guideline for regulating human life. The law is also a legal product and must be responsive to the real developments of society.
2. Mentality of Law Enforcement Officials: The law will not be able to stand up by itself without law enforcement officials who can optimally bridge it. The law will only become a formulation of norms that are not useful for justice seekers when the law is not empowered as the main foothold in social, national and state life. Law enforcement will always involve humans in it and will involve human behavior as well. So that the mentality of law enforcement officers is very decisive and influences law enforcement.
3. Community behavior: Community behavior is also the same, that what is done by the community will have a big impact on the portrait of law enforcement. When a member of the community is involved in an act of violating the law, the behavior of this community is tantamount to challenging law enforcement officials to implement law in books to become law in action.
4. Facilities and culture: Facilities are also an important element in law enforcement. Meanwhile, culture will be well formed if the culture in it is also good. So that all elements of law enforcement must synergize and support each other⁹.

Efforts are being made to tackle the criminal act of defamation through electronic media

a. Penal Attempt

Law enforcement by means of penal is one aspect of the community's efforts to tackle crime. In the criminal justice system, sentencing is not the ultimate goal to achieve criminal goals or the criminal justice system. According to M. Hamdan, prevention efforts are part of social policy which in essence is also an integral part of community protection efforts.

The contribution of law enforcement to criminal acts of defamation through electronic social media by the police against penal efforts cannot be said to be effective. The police in law enforcement still use Article 310 of the Criminal Code because Law Number 19 of 2016 concerning Information and Electronic Transactions does not explicitly formulate defamation through electronic social

⁸ Hikmahanto Juwana, "Penegakan Hukum dalam Kajian Law and Development: Problem dan Fundamen bagi Solusi di Indonesia", *Varia Peradilan* No. 244 (Maret 2006): 17-22.

⁹ Soerjono Soekanto dan Sri Mahmudji, *Penelitian Hukum Normatif*, (PT. Raja Grafindo Persada, Jakarta), 2003, 136-137.

media. The criminal or penal route focuses more on repressive nature or suppression/eradication/smashing after the crime has occurred¹⁰.

b. Non Penal Efforts

Non-penal efforts can be carried out by means of: Prevention without punishment, including a system of applying administrative sanctions and civil sanctions. And influence the public's view of crime and development through the mass media.

One of the non-penal efforts to overcome social problems is through social policy where G.P. Hoefganel includes the path of prevention without punishment as a social policy to achieve social welfare. Fostering and cultivating community mental health does not only mean spiritual or mental health, but also the culture and values of the community's outlook on life. It can also develop an extra legal system that exists in society. In fact, the non-penal effort factor also creates a preventive effect on law enforcement officials¹¹.

Development in the field of law must be able to direct and accommodate legal needs in accordance with the growing legal awareness of the people towards infrastructure as well as where the nation and state must be built in accordance with the noble agreement of Pancasila.

c. Preventive Efforts

The police as law enforcement officers in Indonesia have a public service duty, namely to guard, protect and protect the community, in carrying out their duties to carry out preventive efforts. By conducting outreach to the public regarding Article 27 paragraph (3) in conjunction with Article 45 of Law Number 19 of 2016 concerning Information and Electronic Transactions. The purpose of this socialization is so that people can know and increase legal awareness. Dissemination carried out through electronic social networks due to criminal acts of defamation through electronic social media is widely found in online media.

d. Persuasive Efforts

Communication is carried out with the aim of changing or influencing someone, beliefs, attitudes so that they act according to what is expected by the communicator. A person's belief or knowledge about something is believed to affect their attitude and ultimately affect their behavior and actions towards something. Many factors influence the success of a persuasive message, namely, the source of the message, the content of the message itself, environmental influences, whether the message is repeated.

Persuasive law enforcement can also be carried out by appealing to the police not to upload videos or news to social media. Every social media user whose account is defamatory or SARA news containing hoaxes will immediately be investigated for the truth of sharing (multiplying Facebook media), and their account will be blocked or closed. It seems that this method is also effective for every social media user, especially Facebook, Instagram and YouTube.

Just like top artists, who compete with each other, if they upload news, pictures or other similar things that corner one party, then this news spreads very quickly and makes the artist's prestige decrease, aka lower selling prices in his artistic field. Therefore, law enforcement efforts are linked persuasively to the subject of this artist, inviting diehard fans or haters not to insult each other. Because if we look at the photo comments column that is being uploaded related to an event, netizens or readers have already made bad comments and are not in accordance with the facts. That is necessary, an implementing regulation for users of social media who use it incorrectly will be subject to multiple articles, so that the sanction is no longer a suspended sentence but goes straight to imprisonment to create a deterrent effect.

e. Repressive Efforts

All efforts aimed at providing a sense of security and fulfilling the rights of victims are carried out by the family, integrated services, advocates, social institutions, police, prosecutors, courts or other parties, either temporarily or based on a court order. The form of this effort is that the Police receive complaints from the public and follow up on these complaints by conducting an investigation into criminal acts of defamation through electronic social media.

¹⁰ M. Hamdan, *Politik Hukum Pidana*, (Raja Grafindo Persada, Jakarta), 1997, 42

¹¹ Lawrence M Friedman, *Sistem Hukum*, (Nusa Media, Bandung), 2011.

Protection in the context of defamation before the enactment of Law Number 19 of 2016 concerning Information and Electronic Transactions uses the Criminal Code article 310. Meanwhile, the derogat lex specialis article applies Article 27 paragraph 3 of the ITE Law. Where the punishment in the ITE Law is still not maximal, because it is still adjusted to probation. Meanwhile, the criminal code of the Criminal Code already uses imprisonment.

The operation of law in society related to efforts to prevent criminal acts of defamation are as follows:

- a. The regulatory agency in this case has issued various types of main regulations related to defamation, with the provisions of Article 310 paragraph (1), Article 311 paragraph (1), Article 315, Article 317 paragraph (1), Article 318 paragraph (1)), Article 320 paragraph (1), Article 321 paragraph (1) of the Criminal Code; Article 45 paragraph (3) RI Law No. 19 of 2016 concerning amendments to Law no. 11 of 2008 Jo Article 27 paragraph (3) RI Law No. 11 of 2008 concerning Information and Electronic Transactions; According to Law No. 32 of 2002 concerning Broadcasting namely Article 36 paragraphs (5) and (6). Article 13 of Law Number 40 of 1999 concerning the Press.
- b. Therefore, the construction of the proposed law enforcement policy describes the demands that bring about social welfare to the Law Making Institutions (DPRD and Pemda).
- c. Then by state power it is organized by using law as a means to encourage or force the desired behavior of the role holders.
- d. How does the role holder respond to demands and pressures directed against him in the form of compliance or feedback in the form of objections, suggestions and others.
- e. The behavior of a role holder is the result of the sum (resultante) of all forces, namely those originating from the individual (personal process) and those originating from the community (societal process), for example the legal culture aimed at the role holder.
- f. The situation also applies to regulatory agencies and sanctions enforcement agencies. These two institutions also received influences from social and personal forces. So the influence of the environment on law enforcement as an institution cannot be avoided¹².

IV. CONCLUSION

Legal protection for victims of criminal acts of defamation in Indonesia has been endeavored to the fullest extent possible, but its implementation can be affected by various kinds of problems, including: Problems in Making Legislation; Victory Seeking Society is not Justice; Money that colors Law Enforcement; Law Enforcement as a Political Commodity; Discriminatory Law Enforcement; Weak Quality and Integrity of Human Resources; Advocate Knows Law versus Advocate Knows Connection; Budget Limitations; Law Enforcement Triggered by Mass Media; and Law enforcement is controlled by the press. Efforts that can be made to overcome defamation through Electronic Information and Transaction tools can be carried out by: Penal and non-penal efforts, as well as preventive efforts, persuasive efforts and repressive efforts. All these efforts must be supported by cooperation between law enforcement officials and the community. Law enforcement efforts depend on the operation of the law in society and are not only the responsibility of law enforcement officials, but also our responsibility as a law-abiding society.

V. SUGGESTION

Law as a behavior that consists of systems, substances and cultures that are interrelated, law enforcement should not only be directed at improving legal material and legal apparatus but also related to the development of a legal culture at all levels of society.

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