

Enforcement of the Law Against Defamation Crimes and Improvements through Social Media Based on Law on Information and Transactions Electronics and Criminal Code

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Abstract. The swift advancement of technology has made it simpler for individuals to access information via social media platforms. Nonetheless, this can also lead to offenses, including abusive language or expressions of animosity towards others online. Such actions fall under Articles 310 and 311 of the Criminal Code, which govern insults and defamation, along with the Information and Electronic Transactions Law Number 11 of 2008. This law was revised to include Article 27 Paragraph (3) in the 2024 Information and Electronic Transactions Law, which tackles the issue of defamation. The methodology applied in this study is normative juridical research, emphasizing a legal approach that incorporates library sources, statutes, regulations, and relevant legal theories and concepts. The obstacles in applying the law against defamation crimes on social media encompass legal issues, technical barriers, and cultural as well as social factors. To tackle these obstacles, it is essential to enhance the skills of law enforcement personnel and boost public awareness about digital literacy. The process of law enforcement concerning defamation crimes on social media adheres to the procedures outlined in the Criminal Procedure Code, focusing on electronic evidence. Articles 310 and 311 of the Criminal Code, together with Article 27 Paragraph (3) of the Information and Electronic Transactions Law as amended in Law Number 1 of 2024, provide the legal foundation for addressing crimes on social media, in line with the procedures set forth in the Criminal Procedure Code.

Keywords: Criminal Code, Criminal Law Enforcement, Defamation Through Social Media, Electronic Information; Transactions Law.

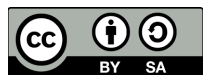
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1. Introduction

At this time, the advancement of information technology and media in Indonesia is developing very quickly. In the modern era, there are many major changes that make it easier for people to access information through various online platforms. Also, one of the digital channels that is widely used to disseminate information to the public today is social media. Some social media that are often used include Instagram, Facebook, TikTok, YouTube, and other platforms. The presence of social media at this time makes communication, interaction, and the search for information from other people or different countries easier. However, along with the advancement of this technology, a number of individuals also misuse it to disseminate inaccurate information (Chairuni Nasution, 157).

The occurrence of hoax news based on social media reflects the behavior of individuals that cannot be left without legal action. If the action is ignored and the perpetrator is not punished, there is no real effect felt by the person concerned. Therefore, it is necessary to have clear law enforcement to overcome actions that harm oneself or others. Actions that often appear on social media are usually related to the honor and reputation of individuals. This is caused by feelings of hatred toward others, so that social media provides tools for individuals to easily spread slander, insults, and demeaning statements. In this context, it can

be said that a problem often encountered in Indonesia is the criminal act of defamation (Adji, 1993).

In the Criminal Code (KUHP), especially in Articles 310 and 311, acts of insult and defamation are regulated (R. Soesilo, 1990). However, with the advancement of technology, there is a need for more detailed regulations to address crimes occurring in cyberspace. For this reason, Law No. 11 of 2008 on Information and Electronic Transactions was enacted and has undergone several revisions, including Law No. 1 of 2024 to adapt to current developments. The provision regarding defamation is regulated in Article 27 paragraph (3) of the Law on Information and Electronic Transactions, which states: "Every person who intentionally and without right distributes, transmits, and/or makes accessible electronic information and/or electronic documents containing elements of insult or defamation."

This article provides a framework for law enforcement authorities to take action against individuals who commit defamation. However, in its implementation, there are various challenges and debates, such as determining the boundary between criticism and defamation, as well as issues of legal interpretation between the Criminal Code and the Law on Information and Electronic Transactions. Therefore, law enforcement related to defamation often faces obstacles in terms of proof, as digital evidence requires technical expertise and specific procedures to be accepted in court (Hastri, 2024). In addition, there are concerns that defamation provisions in the Law on Information and Electronic Transactions may be misused and potentially threaten freedom of expression in the digital public space.

There was a case regarding defamation discussed in Decision Number 127/Pid.Sus/2017/PN NGO. In this case, the defendant Sabri Ismail Bini Ismail was proven to have violated the law by committing defamation through social media on October 23, 2017. His actions involved the dissemination of false information that influenced public opinion and disrupted the investigation process. He was charged under Article 27 paragraph (3) in conjunction with Article 45 paragraph (3) of Law No. 11 of 2008, as amended by Law No. 19 of 2016 concerning Information and Electronic Transactions (Muhammadi Arif Sahlepi, 2023:1402–1412). Criminal responsibility is a key aspect of punishment, requiring proof of the elements of a criminal act. In today's digital era, it is important for individuals to be aware in exercising freedom of expression, as misuse can have negative consequences for others and society (Kausar & March 2023).

By considering the explanation above, this research aims to identify the various obstacles faced by law enforcement in handling criminal acts of defamation on social media. In addition, this research also explains the procedures followed by law enforcement officials in dealing with defamation cases through social media in Indonesia.

2. Research Methods

The type of research applied is normative legal research. This method involves analyzing the problem by exploring various sources such as literature, regulations, theories, and legal concepts related to the issue being studied. Some laws indicate that research can be conducted using normative legal methods.

This method focuses on legal norms, applicable policies, and the principles contained in regulations. Its application is relevant to individuals as it determines what should be done and what is prohibited. In normative legal research, the primary source used is the analysis of regulations. Meanwhile, secondary sources include books, expert opinions, media, and journals.

3. Research Results

Kendalai or Hambatani who are faced by law enforcement officials in enforcing the law is faced with criminal acts of defamation through social media

The obstacles that arise in the application of the law in dealing with acts of defamation on social media are divided into three aspects, namely:

- a. Legal obstacles. In this case, the evidence of the perpetrator's wrongdoing cannot be categorized as clear because the applied clauses have different meanings. There are differences in the interpretation of articles. In addition, there is a duality between the Criminal Code and the Law on Information and Electronic Transactions, which creates two articles with similar regulations. This has the potential to lead to excessive criminalization and unbalanced penalties. Punishment is often based on the Law on Information and Electronic Transactions, even though the essence of defamation refers to the Criminal Code as the main rule in material crimes. Finally, to prove malicious

intent, it must be shown that the perpetrator had a clear intention to damage the victim's dignity, not merely due to negligence or personal offense.

- b. Technical obstacles. In this aspect, defamation can occur even when the perpetrator and the victim are in different countries. There are issues of jurisdiction and state limitations. Law enforcement authorities in Indonesia face constraints in jurisdiction and international collaboration, which often takes a long time. The spread of information on social media happens very quickly, making investigation difficult. The use of fake identities further complicates tracking and identifying perpetrators. In addition, digital forensic resources in Indonesia are not evenly distributed. As a result, limited forensic capacity creates difficulties in obtaining accurate data.
- c. Cultural and social challenges. Low digital literacy in society leads to difficulties in understanding the boundaries between freedom of expression and defamation. Often, reports of crimes stem from feelings of offense rather than actual criminal acts.

Therefore, it can be concluded that these three aspects create challenges for law enforcement in handling defamation cases. Various underlying issues need to be addressed first. Law enforcement must determine whether cases fall under the Criminal Code or the Law on Information and Electronic Transactions. In addition, public education on cybercrime is necessary. Through such efforts, the public can improve their understanding of responsible social media use and reduce the potential for cybercrime on digital platforms.

The process carried out by law enforcement officials in handling perpetrators of criminal acts of defamation and reparation through social media in Indonesia

Enforcement of the crime of defamation and its resolution on social media platforms follows the steps set forth in the Criminal Code, namely: investigation, prosecution, and court proceedings, with a focus on electronic evidence.

After receiving the complaint (absolute complaint offense), the authorities, especially the Police, begin an investigation. In this case, the main evidence relied upon is electronic evidence that meets the requirements based on Article 5 Paragraph (1) and (2) of the Law on Information and Electronic Transactions (Sucii Ramadani, 2023).

- a. Collection of Digital Evidence: Evidence is in the form of screenshots of uploads, comments, or messages on social media platforms that function as initial proof. This evidence is then strengthened by digital forensic analysis to ensure authenticity, integrity, and accessibility of the digital information.
- b. Determination of Criminal Elements: Law enforcement officers must prove the fulfillment of the elements in Article 27 Paragraph (3) of the Law on Information and Electronic Transactions:
 - 1) Intentional and unlawful act: There must be malicious intent (*mens rea*) from the perpetrator.
 - 2) Distributing, transmitting, and/or making accessible: The act of disseminating content in the digital space.
 - 3) Defamation: The act must damage a person's reputation, referring to provisions in the Criminal Code, such as making accusations that are known to the public and harm honor.

Role of Restorative Justice (RJ): Based on Circular Letter of the Chief of Police No. SE/2/II/2021, defamation cases on social media are encouraged to be resolved through a Restorative Justice mechanism. Restorative Justice can be applied if:

- a. The losses caused are not significant.
- b. The perpetrator is not a repeat offender.
- c. There is a request for forgiveness and/or reconciliation between the victim and the perpetrator.
- d. The perpetrator is willing to restore the victim's reputation.

The application of Restorative Justice places criminal punishment as an *ultimum remedium*, so that many defamation cases are resolved at the investigation stage with the issuance of an Investigation Termination Order (SP3) after peace is achieved (Ibrahimi Pandu Sula, 2022: 151–170).

Prosecution and Court Process

If the Restorative Justice process is unsuccessful, the case will proceed to prosecution by the Prosecutor's Office and be examined in court. During the trial, the judge considers:

- a. Fulfillment of Criminal Elements: The judge must ensure that the perpetrator's actions were intended to damage a person's reputation, and not merely criticism, opinion, or facts related to the public interest.
- b. Validation of Electronic Evidence: The authenticity of electronic evidence must be tested, usually through expert testimony in digital forensics.
- c. Balance between Protection of Reputation and Freedom of Expression: Court decisions must maintain a balance between an individual's right to protect their reputation and the right to freedom of expression guaranteed by the 1945 Constitution. Decisions that fail to consider this balance often provoke controversy and criticism.

4. Conclusions

The basis of the punishment related to the act of defamation is made up of two main regulations, namely the Criminal Code and the Information and Electronic Transactions Law. This includes Articles 310 and 311 of the Criminal Code (which regulate insult and defamation), as well as Article 27 paragraph (3) of the Information and Electronic Transactions Law as amended (Law No. 1 of 2024). Meanwhile, there are challenges and obstacles faced by law enforcement officers which consist of three main types of problems, namely juridical, technical, and cultural-social issues. From a juridical perspective, there are various interpretations of the articles, overlapping regulations between the Criminal Code and the Information and Electronic Transactions Law that can lead to excessive criminalization, and challenges in proving the malicious intent (*mens rea*) of the perpetrator. From a technical perspective, there are jurisdictional problems involving multiple countries, rapid dissemination of information, the use of non-original information that complicates the tracking process, and the unequal distribution of digital forensic resources. From a cultural and social perspective, low levels of digital literacy in society result in difficulty distinguishing between criticism and defamation, as well as a tendency to report based on personal offense rather than actual criminal acts.

In dealing with crimes that occur on social media, it is important to follow the procedures stipulated in the Criminal Code. The first step is to conduct an investigation to address the crime, followed by a formal inquiry to gather valid evidence, and finally, the court process is responsible for issuing a punishment decision against the perpetrator.

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