



## JURIDICAL STUDY OF THE CRIMINAL ACTS OF DEFENSE IN VIEW FROM THE ITE LAW NUMBER 19 OF 2016

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### ABSTRACT

This research was conducted with the aim of finding out how the application of legal sanctions for perpetrators of criminal acts of defamation according to the ITE Law Number 19 of 2016 and how the impact of ITE Law Number 19 of 2016 has on legal changes in society. By using normative juridical research methods. In submitting criticism or opinion, it is protected by human rights and applicable laws and regulations. The criminal act of Defamation is strictly regulated in Law Number 19 of 2016 namely in Articles 27, 28 and Article 29 which prohibits distributing and/or transmitting and/or making electronic information accessible, which contains insults and/or defamation. Good name. Article 27 paragraph 3 of the ITE Law, In order to be categorized as a criminal act of defamation, the following elements must be proven: Intentional existence, without rights (without permission), with the aim of attacking reputation or honor, attacking accusations to make it known to the public. The Electronic Information and Transaction Law (UU ITE), which has been passed by the government along with the rapid development of information technology, aims to maintain and maintain polite behavior in cyberspace. However, the Indonesian people feel that the existence of the ITE Law actually hinders freedom of expression and issuing opinions. Moreover, there is misuse of the benefits of the ITE Law, namely the state apparatus to silence people who have criticized the state. In this journal, the author explains the various influences of the ITE Law on people's lives and the impacts it has. In conclusion, the principles of the ITE Law actually have good intentions to protect Indonesian people from misuse of social media. The community also wants the government to immediately remove articles that are prone to being misused for freedom of expression and to be able to create a democratic state from both the people and the government.

***Keywords: Defamation, Society, ITE Law Number 19 of 2016.***

### A. Background of The Problem

Defamation is an unlawful act, a criminal act and a legal crime that currently needs special attention. Many events in society take the form of defamation cases, attacking someone's good name and being conveyed to a large audience and these events are frequent and growing in society, accompanied by the rapid development of electronic information. It is this technological development that encourages people to commit several acts against the law in society, especially cases of criminal acts of defamation through this modern technology. It is this rapidly advancing technological dynamics that is a factor in the exceedance of the law so that legal changes are very developing. Defamation must be carried out by accusing someone of having committed an act whose truth has not been proven with the intention that the accusation will become public knowledge. According to R. Soesilo, explaining what is meant by insulting, namely attacking the honor and good name of someone who is attacked usually feels ashamed. Honor or good name are things that are owned by humans who are still alive. That's why crimes against honor and good

name are generally directed against someone who is still alive. Likewise with legal entities, in essence they do not have honor, still adhere to that certain legal entities, including: President or Vice President, Head of State, State Representative, Group, Religion, Tribe, or general body, have honor and good name. The offense of defamation is subjective, that is, the assessment of defamation depends on the party whose reputation is attacked. Defamation can only be processed by the police if there are complaints from parties who feel their reputation has been defamed. Defamation through electronic media is regulated in the ITE Law number 19 of 2016, there are forms of criminal acts in Articles 27 to 37, one of which is a criminal act of special contempt, contained in Article 27 paragraph 3, which states that: "any person intentionally and without right distributes and/or transmits and/or makes accessible electronic information and/or documents containing insults and/or defamation". Thus the technology created by humans does not always produce positive things but can also produce various negative impacts. This is one of the important meanings of the need for legislation in the field of information technology. For this reason, the author is interested in discussing in this scientific paper about "Juridical Study of the Criminal Act of Defamation in View of the ITE Law Number 19 of 2016".

#### **B. Formulation of The Problem**

1. How is the application of legal sanctions for perpetrators of criminal acts of defamation according to the ITE Law Number 19 of 20216?
2. What is the Impact of the ITE Law Number 19 of 20216 on Legal Changes Developing in Society?

#### **C. Research Methods**

The type of research used is normative research, the research used is a statutory approach and other materials from various literature. Therefore, the scope of this research is in the discipline of law, so this research is part of legal research literature by examining material literature or what is called normative research. In writing this scientific work, the authors use the method of collecting materials and methods of processing materials as follows: Material Collection Method (Primary) To collect materials, the authors use the Library Research Method, which is a method used by studying literature books, laws -invitation, and other written materials related to the discussion material used to support this discussion. Besides, it used data sources from the internet. Material Processing Method (Secondary) The collected material is then processed by a processing technique by alternating Deduction and Induction whenever necessary.

#### **D. Research Result**

##### **1. Implementation of Legal Sanctions for Criminal Defamation According to the ITE Law Number 19 of 2016**

To find out the severity of sanctions in Article 27 paragraph (3) in conjunction with Article 45 paragraph (1) of Law Number 19 of 2016 Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE), it is necessary to first review the Constitutional Court's decision No. 50/PUU-VI/2008. Regarding the criminal law regarding acts/criminal acts of insult and/or defamation, its constitutionality has been tested by the Constitutional Court (MK) and has resulted in a legal conclusion through Decision of the Constitutional Court Number 14/PUU-VI/2008 which states rejecting the Petitioner's petition. The Constitutional Court's decision is interpreted that the criminal law norms and threats of criminal sanctions contained in Articles 310 and 311 of the Criminal Code are constitutional or not contrary to the 1945 Constitution. The criminal law norms regarding "humiliation and/or defamation" contained in Article 27 paragraph (3) are not criminal law norms that stand alone, but are related to or depend on other criminal law norms in the general criminal law provisions as contained in Chapter XVI concerning Crime of



Humiliation, Articles 310-321 of the Criminal Code. Therefore, the meaning and meaning of "humiliation and/or defamation" may not be interpreted and interpreted independently, which is different from insult and defamation as contained in Articles 310 and 311 of the Criminal Code.

This method of interpretation is a logical consequence of the formulation of criminal law norms in an Indonesian national criminal law system, that one criminal law norm becomes an inseparable part of other criminal law norms both in the criminal law system or the criminal law sub-system. Criminal law norms will become meaningful if they are related to their unity with other norms in the criminal law system, namely regarding the philosophical basis of criminal law, legal values and legal interests to be protected, principles of criminal law and the aims and objectives of prohibiting and imposing criminal (political) sanctions. criminal law and sentencing philosophy). Article 27 paragraph (3) of the ITE Law Number 19 of 2016 does not regulate new criminal law norms, so that the Article a quo must also be interpreted as an offense which requires a complaint (klacht) to be prosecuted before the Court. In the Alignment of the Academic Text of the ITE Law Number 19 of 2016, which basically explains that the Provisions for defamation in the Criminal Code are a separate chapter, so that the naming of "insult" in Article 27 paragraph (3) of Law Number 19 of 2016 is equated with defamation well is not right.

The use of the word content of insult and/or defamation can be interpreted that insult is a separate act and defamation is a separate act as well. Both of these words mean placing the word unbalanced, namely insult if it is interpreted according to the Criminal Code which is a chapter while defamation is one of the special offenses of insult in chapter XVI, because insult consists of at least 6 offenses. If you want to use the word insult, the consequence is that there should be 6 criminal threats in the ITE Law Number 19 of 2016 as in the Criminal Code, so it is better if the word used is the word defamation as an offense so it does not lead to a different understanding from Chapter XVI Humiliation. Therefore, Arrangements regarding insult and/or defamation remain based on the decision of the Constitutional Court (MK) so that in the amendment to the ITE Law Number 19 of 2016, it is sufficient to emphasize in the explanation that what is meant by insult and defamation in Article 27 paragraph (3) ITE Law Number 19 of 2016 is related to articles 310 and 311 of the Criminal Code. So that the explanation regarding Article 27 paragraph 3 reads "The provisions in this paragraph refer to the provisions of Article 310 and Article 311 of the Criminal Code." legal studies contained in the Alignment of Academic Manuscripts, thus stating "The provisions of Article 27 remain with changes to the explanations of paragraphs (1), paragraphs (3),

In addition, the explanation in Article 27 paragraph (3) states "The provisions in this paragraph refer to the provisions for defamation and/or slander which are regulated in the Criminal Code (KUHP)." As a result, there are things that are counter-productive in this article. The norms in the article want to have a broad scope, while the elucidation of the article actually narrows it down. Because Humiliation in the norms of Article 27 paragraph (3) mentions 'humiliation' which is Chapter XVI in the Criminal Code, but in the explanation section it mentions 'slander' which is a type of crime from the qualification of CHAPTER XVI Humiliation. If indeed the legislator wants the scope of the norm to only cover defamation and/or slander, it is better that the phrase is used in the norm. Regarding the threat of criminal sanctions in Article 45 paragraph (1) in conjunction with Article 27 paragraph (3), That the restrictions imposed by the state are not in the framework of reducing the basic rights to seek, obtain, possess, store, process and convey information, but to provide guarantees to other people to enjoy their freedom from the threat of attacks on the honor of themselves and their families , as well as demeaning human dignity and worth which can cause him to be unable to live properly as a human being glorified by the Creator. The concept of punishment in the ITE Law Number 19 of 2016, is an offense that is

qualified as insult or defamation so that the concept refers to the Criminal Code but the punishment is more severe.

## **2. The Impact of the ITE Law Number 19 of 2016 on Legal Changes Developing in Society**

Abdul Manan (2009: 68) states that the expected legal functions after being created or changed through laws and regulations using instruments include: 1) Standard of Conduct; is a reference or measure of behavior that must be obeyed by everyone in acting in relation to one another; 2) As a Tool of Social Engineering; as a means or tool to change society in a better direction, both personally and in people's lives; 3) As a Tool of Social Control; as a tool to control human behavior and actions so that they do not commit acts that are against legal, religious and moral norms; 4) As a Facility on Human Interaction; that law functions not only to create order, but also creating changes in society by facilitating the process of social interaction and is expected to be a driving force to bring about changes in social life in society; and 5) Rechtzeken Heid; namely that in every problem and problem that occurs in society there is legal certainty to be used as a guide by the whole community. In connection with the dimension of legal change, there is an opinion which states that society changes first and then law comes later. The factors that drive these changes are actually not laws, but other factors such as the development and use of sophisticated technology. It can be seen that if one day there is a change in society, then the law is still not a causal factor, so law is only seen as a result of change. If new laws arise, they are actually only the result of the condition of society which has changed before, so that the law merely confirms what has actually changed. Before law emerges as a tool for creating change, in fact other forces of change have already worked, such as the invention and use of new information technology. After progressing to a certain level of change, then law is called upon to resolve the problems arising from that change. According to Soemarno Partodihardjo (2009: 147): Law in the concept of law as a social engineering tool, as Roscoe Pound has stated, that law must be a driving factor towards social change that is better than before in accordance with the legal functions that have been mentioned.

As for the impact of the ITE Law Number 19 of 2016 on legal changes that develop in society, it is very influential, because with the existence of rules governing electronic transaction information, the public will be more careful and more aware of technology-based crimes. With the existence of this law, it is also easier for people to take legal action on cases or events they are facing, especially in problems or events related to Law Number 19 of 2016. And access is easier to resolve these cases to get proper legal protection. In addition, there are also positive impacts of the ITE Law, namely: 1) There are new business opportunities in Indonesia because the implementation of the information technology system must be bound by law and be in Indonesia; 2) Encouraging economic growth and being able to increase State income; 3) Expanding employment opportunities to increase the income of the population; 4) Anticipate actions that are carried out on the internet and harm between parties; 5) Provide legal protection for transaction activities in electronic systems and for economic activities; 6) There is an opportunity for the government to conduct counseling regarding the importance of the internet to make it more efficient.

Therefore, the changes should be well planned and directed, so that the goals of the changes can be achieved properly. a positive contribution to increasing welfare and progress of human civilization, as well as being an effective means of committing acts against the law. Technology that has a negative impact is caused by technology users themselves, for example; credit card theft, credit card theft, ATM cards, sites or web-sites that provide thugs or assassins and so on. The increasing criminalization of cybercrime or crime in cyberspace has occurred a lot in Indonesia. However, because the existing regulatory instruments are not strong enough to ensnare perpetrators with strict sanctions, this crime is growing along with



the development of information technology and telecommunications. Activities on the internet cannot be separated from the human factor and its legal consequences also intersect with humans in society who are in the physical world, then thoughts arise about the need for legal rules to regulate activities in cyberspace. Because these characteristics are very different, opinions arise for and against whether or not conventional law can regulate activities in cyberspace. This will lead to debate in the setting. In general, issues of pros and cons regarding whether or not the conventional legal system can regulate activities in cyberspace, namely; 1) The characteristics of activities on the internet as part of information technology are cross-border or world relations become borderless so that they are no longer subject to territorial boundaries and cause significant economic, social, technological and cultural changes; and 2) The conventional legal system, which is based on territory, is considered inadequate to answer legal problems that have just arisen and are raised by human activities in cyberspace (Jurnal Hukum Bisnis: 2010: 9). 1) The characteristics of activities on the internet as part of information technology are cross-border or world relations become borderless so that they are no longer subject to territorial boundaries and cause significant economic, social, technological and cultural changes; and 2) The conventional legal system, which is based on territory, is considered inadequate to answer legal problems that have just arisen and are raised by human activities in cyberspace (Jurnal Hukum Bisnis: 2010: 9). 1) The characteristics of activities on the internet as part of information technology are cross-border or world relations become borderless so that they are no longer subject to territorial boundaries and cause significant economic, social, technological and cultural changes; and 2) The conventional legal system, which is based on territory, is considered inadequate to answer legal problems that have just arisen and are raised by human activities in cyberspace (Jurnal Hukum Bisnis: 2010: 9).

Furthermore, in the course of regulating the internet with the law, it has also raised pros and cons, which were initiated by 3 (three) groups, namely: 1) The first group; totally reject any attempt to create any legal rules for activities in cyberspace. The reason is that the internet as a haven for democracy that provides free and open traffic of ideas, should not be hampered by rules based on the conventional legal system which rests on territorial boundaries; 2) The second group; that the application of the conventional legal system to regulate activities in cyberspace is urgent to be carried out without having to wait for the end of the academic debate about which legal system is most appropriate. This is based on the consideration that the spread of negative consequences caused by activities in cyberspace has forced the establishment of a legal regulation to regulate it; and 3) third group; refers to the views of the two groups above, namely that the legal rules governing activities in cyberspace must be formed in an evolutionary manner by applying general legal principles carefully, accurately and involving the role of society and emphasizing certain aspects of cyberspace which causes the uniqueness of transactions via the internet.

Based on the main materials and forms of regulation mentioned above, it can be seen that there were at least eleven breakthroughs made by Law no. 11 of 2008 concerning Information and Electronic Transactions, namely: (1) The first law relating to the utilization of Information and Communication Technology (ICT) as well as Information and Electronic Transactions (ITE). (2) Extra territorial character; applies to everyone who is in the country (DN) and abroad (LN) which has legal consequences in the Republic of Indonesia. (3) Ensure legal certainty for people who conduct transactions electronically. (4) Electronic evidence is recognized as other evidence regulated in the Criminal Procedure Code (KUHAP). (5) Electronic Signatures (TTE) are recognized as having the same legal force as Signs. Noting the purpose of establishing the ITE Law is related to the rapid progress in the field of Information Technology which has made a major contribution to the development of the world of information and Electronic Transactions. However, it cannot be denied that this tremendous progress, on the one hand, has brought blessings to humanity, but on the other

hand, it has also brought harm to humanity. Progress in the field of information and Electronic Transactions has placed humans in an increasingly perfect position in carrying out the caliphate's mission on earth but can also potentially derail the position of humanity to its lowest point when the use of information and Electronic Transactions is used irresponsibly.

The Effect of the ITE Law on Society The articles in the ITE Law are implemented for social media users to continue to behave according to applicable regulations. Indonesia as a constitutional state enacts the ITE Law to protect citizens from cyber media crimes and electronic transactions. However, most people consider that this law is binding so that freedom of expression and issuing opinions has also declined. Since the initial publication of the ITE Law, there have been many pros and cons that the community disagrees with. The reason for disagreeing with the contents of this law is because it is seen as hitting the concept of democracy in Indonesia. Freedom of expression is considered very limited, whereas freedom of expression is actually very diverse and not only to channel the aspirations of the people's opinion but as a medium of freedom to channel various information, conditions, even as a medium of entertainment for the community. There are so many benefits from the very rapid development of information technology today. It's not only millennial youth who use it, many parents already use social media as a communication tool and source of information that is faster and easier to reach. The ITE Law, which was passed by the government, knits many problems from utterances on social media into problems that can be criminalized. Even though this protects the community, people are starting to get restless about being able to voice their opinion. The government plans to propose a revision of the ITE Law to make it better. This certainly responds to this law to the Constitutional Court because its provisions are considered to limit the public in expressing opinions.

Even though it has been amended, the legal political policies, especially the government's Human Rights (HAM) have decreased in several aspects, while for the legislature, the latest ITE Law gives flexibility to people who have experienced defamation cases for their utterances on social media not to be detained at the level investigation. The freedom of expression proclaimed by the government is so that people can express their opinions in a polite, wise and careful manner. As well as being able to enjoy the internet properly, especially in expressing their opinions through virtual media. The influence of the ITE Law on society is highly dependent on the articles aimed at whether it can be used properly without being misused by state officials. Not only from the government side, but also from the people who must behave politely in the media/cyberspace. Freedom of expression is indeed aimed at social media users in order to be able to show and share an object being discussed, however, it must be in accordance with applicable norms in order to create an atmosphere that remains comfortable from one party to another. And because of that, democracy in Indonesia will also not be tarnished. but also from people who must behave politely in the media/cyberspace. Freedom of expression is indeed aimed at social media users in order to be able to show and share an object being discussed, however, it must be in accordance with applicable norms in order to create an atmosphere that remains comfortable from one party to another. And because of that, democracy in Indonesia will also not be tarnished. but also from people who must behave politely in the media/cyberspace. Freedom of expression is indeed aimed at social media users in order to be able to show and share an object being discussed, however, it must be in accordance with applicable norms in order to create an atmosphere that remains comfortable from one party to another. And because of that, democracy in Indonesia will also not be tarnished.



## E. Closing

1. The criminal act of Defamation is strictly regulated in Law Number 19 of 2016 namely in Articles 27, 28 and Article 29 which prohibits distributing and/or transmitting and/or making electronic information accessible, which contains content of insults and/or Defamation . Article 27 paragraph 3 of the ITE Law, in order to be categorized as a criminal act of defamation, the following elements must be proven: There was an intention, Without rights (without permission), Aiming to attack good name or honor, To be known by the public Apart from that, defamation is also regulated in Law Number 31 of 2002 Article 36 paragraph 5 concerning Broadcasting, which states that broadcast content is prohibited from being slanderous, inflammatory, misleading and/or lying.
2. The impact of the ITE Law Number 19 of 2016 on legal changes that develop in society is very influential, because with the existence of rules governing electronic transaction information, the public will be more careful and more aware of technology-based crimes. With the existence of this law, it is also easier for people to take legal action on cases or events they are facing, especially in problems or events related to Law Number 19 of 2016. And access is easier to resolve these cases to get proper legal protection.

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