

## LEGAL ANALYSIS REGARDING LEGAL ARRANGEMENTS FOR HANDLING THE CRIME OF DEFAMATION THROUGH ELECTRONIC MEDIA BASED ON RESTORATIVE JUSTICE

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### Abstract

The restorative justice approach is an alternative resolution action outside of court that prioritizes peace and restitution of losses and aims to empower victims, perpetrators, families and the community to repair an unlawful act by using awareness and conscience as a basis for improving social life. This research was conducted using normative legal research. After carrying out a legal analysis of the Circular Letter of the Chief of Police of the Republic of Indonesia Number SE/2/11/2021 concerning Awareness of Ethical Culture to Create a Clean, Healthy and Productive Indonesian Digital Space and the Republic of Indonesia State Police Regulation Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice, peace can be made for criminal acts of defamation through electronic media with a restorative justice approach, but it must comply with applicable requirements and procedures.

Keywords: *Legal Analysis, Handling The Crime Of Defamation, Electronic Media, Restorative Justice*

### 1. INTRODUCTION

As a rule of law, Indonesia adheres to a system of legal sovereignty or supremacy of law, where the law has the highest authority in a country, and the distinctive characteristics of a rule of law can be seen in the practice of administering government, namely the existence of free and impartial judicial power and the recognition of Human rights. Although in practice its implementation is still not perfect and there are many misuses of the distinctive characteristics of the rule of law. The existence of the internet makes all kinds of information obstacles that were previously difficult to obtain become very easy to obtain. Apart from that, with the internet, it is easier for everyone to communicate with other people, even if they are limited by long distances, not only that, now everyone can carry out buying and selling activities or other business activities via the internet. The existence of the internet as a "network of networks" in all parts of the world, as a means of global communication based on freedom of information and also freedom of communication.

This century is indeed a century that is always associated with the media. Information that is now very necessary and easy to find in various corners of the world has made it a necessity. To fulfill this need, social media is widely used by the general public. The services available on social media are varied and always increase from year to year, for example blogger, friendster, facebook, twitter, youtube and many others. Criminal law can be used to emphasize a number of primary and important social values to shape a person's behavior in life in society. Wherever possible, criminal law is only used as another way to exercise social control when it cannot be effectively overcome. When using criminal law, efforts must be made to minimize human rights and individual freedoms, of course without reducing the protection of broader common interests in the life of a democratic society. The point is that criminal law and human rights continue to work together in law enforcement.

In criminal law politics in Indonesia, the threat of a criminal act means certain restrictions by law. Things that should be understood as personal human rights can be interpreted differently by irresponsible parties who commit defamation on social media. There are still many who are not aware, in fact all comments, writings, images, sounds or other forms of uploads that are considered defamatory can be categorized as criminal offenses. This is in line with the spirit of responsible legal democracy. Based on the political principles of criminal law, the regulation of criminal acts of defamation is actually a protection of human rights which should be guaranteed by the state. Conditions like this show that society's legal awareness is still low. In this era of democracy that is full of openness, freedom of expression tends to be misused to attack other parties who are deemed to disagree. Therefore, human rights in Indonesia cannot be fully protected.

The rapid development of the world of crime which cannot yet be followed by the Indonesian criminal laws and regulations (KUHP), resulted in the formation of laws and regulations regarding ITE (Electronic Information and Transactions), passed in 2008, with Law no. 11 of 2008, then changes were made to fill the legal gap so that law number 19 of 2016 was born. Defamation through electronic media is regulated in article 310 of the Criminal Code (KUHP) Jo 27 paragraph (3) of the Information Law and Electronic Transactions Jo Article 45 paragraph (3) Republic of Indonesia Law Number. 19 of 2016 concerning Amendments to Law Number. 11 of 2008 concerning Electronic Transaction Information.

Defamation is a complaint offense, that is, a case of defamation occurs if a party makes a complaint. This means that people who feel that their good name has been harmed or feel insulted can complain to legal authorities so that the case can be followed up immediately, meaning that legal officials do not take the initiative to carry out investigations and investigations if no party feels aggrieved. Regulations regarding defamation through social media do not provide explanations and limitations or classifications regarding the types of content and context that are categorized as defamatory acts, because the criteria for defamatory acts are assessed based on subjective perception.

The restorative justice approach is an alternative resolution action outside of court that prioritizes peace and restitution of losses and aims to empower victims, perpetrators, families and the community to repair an unlawful act by using awareness and conscience as a basis for improving social life. Handling criminal acts through restorative justice is then regulated in the Republic of Indonesia State Police Regulation Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice.

## 2. RESEARCH METHODS

This research was conducted using normative legal research. Normative legal research is research that places law as a building system of norms, consisting of principles, norms, rules from statutory regulations, court decisions, agreements and doctrines (teachings). This normative legal research is carried out by reviewing and analyzing statutory regulations or other related legal materials. This research focuses on the main characteristics of studying the enforcement of a case accompanied by legal arguments/considerations made by law enforcers, as well as the interpretation behind the enforcement.

### 3. DISCUSSION AND ANALYSIS

#### 3.1 General Overview of Criminal Offenses

A criminal act is an act or deed which, if violated, creates legal provisions for the perpetrator with demands for clear and firm sanctions in accordance with the Criminal Code. In the Criminal Code (KUHP) criminal acts are known as *Strafbaarfeit*. This criminal act is a term that contains a basic understanding in legal science, as a term that was formed with awareness in giving certain characteristics to criminal law incidents. Criminal acts have an abstract meaning from concrete events in the field of criminal law, so that criminal acts must be given a scientific meaning and clearly defined to be able to separate them from terms used every day in people's lives.

The offense in Dutch is called *Strafbaarfeit*, which consists of 3 words, namely *straf*, *baar*, and *feit*. Where all three have meanings, namely: *Straf* is interpreted as criminal and legal, *Baar* is interpreted as can and may, *Feit* is interpreted as action, event, violation and deed. So the term *Strafbaarfeit* is an event that can be punished or an act that can be punished, while an offense in foreign languages is called a *delict*, which means an act for which the perpetrator can be punished.

The types of offenses according to the doctrine consist of:

- a. Formal Offenses and Material Offenses
  - 1) Formal offense, namely an offense that occurs by committing an act that is prohibited and punishable by law.
  - 2) Material offenses, namely offenses that are only deemed to have occurred after the consequences have arisen are prohibited and punishable by law.
- b. Commission Offenses and Commission Offenses
  - 1) Commission offenses are offenses in the form of violations of prohibitions in law.
  - 2) Omission offenses are offenses in the form of violations of statutory requirements.
- c. Complaint Offenses and Ordinary Offenses
  - 1) A complaint offense is an offense that can only be prosecuted if it is complained about by a person who feels aggrieved.
  - 2) Ordinary offenses are offenses for which prosecution does not require waiting for a complaint.

#### 1. Elements of the Crime of Defamation Through Electronic Media

According to Adam Chazawi, he explained that there were considerations used as a basis for the legislators in the Criminal Code (KUHP) to determine complaints as a condition for criminal prosecution against the perpetrator of the crime. This consideration is that in the case of criminal complaints, the importance for those who have the right to complain or the interests of their punishment are violated if the case is prosecuted criminally is greater than the importance for the state, if the case is prosecuted criminally. In this case, the crime of complaints is not to be prosecuted, for example if they are related by family and this is more important than the interests of the state.

Defamation can be done by irresponsible individuals through various media and methods. Individuals are categorized as committing defamation if they take action directly and actively, in the sense that the accuser and the accused meet directly and defame by saying unkind words. and mentioning someone to other people and this information becomes known to that person through rumors or through mass media and electronic media. The increasingly developed social media also provides greater opportunities for these crimes to occur. In current developments, it is very important to conduct more specific research regarding various problems of defamation through

social media. The use or misuse of technology is not only a major form of human activity but also is a way of working in various fields, statements regarding the activities of living things in their various forms have begun to be recognized, which has led to the emergence and application of law or the establishment of standards for regulating these activities. It is clear that technology must also be opened so that it can be regulated by law. It is not uncommon for people to use social media. as a tool for conveying ideas or expressions, but you need to be careful in using it because the opinions or information conveyed may clash with other people's sense of honor or result in defamation of other people. The era of globalization that we are going through is a sign of technological development itself. Globalization has driven the birth of the era of information technology development.

Historically, the provisions of Article 27 paragraph (3) of the ITE Law refer to the provisions for insult or defamation regulated in the Criminal Code, especially Article 310 of the Criminal Code and Article 311 of the Criminal Code. The Criminal Code clearly stipulates that insulting is a complaint offense. Before the amendment to the ITE Law, there was no clear provision that Article 27 paragraph (3) of the ITE Law constituted a complaint offense. However, after the amendment, the provisions for insult or defamation in Republic of Indonesia Law Number. 19 of 2016 concerning Amendments to Law Number. 11 of 2008 concerning Electronic Transaction Information is a complaint offense.

Defamation through electronic media is regulated in Article 27 paragraph (3) of the Information and Electronic Transactions Law in conjunction with Article 45 paragraph (3) of Republic of Indonesia Law Number. 19 of 2016 concerning Amendments to Law Number. 11 of 2008 concerning Electronic Transaction Information Jo 310 of the Criminal Code (KUHP). Based on the formulation of Article 45 paragraph (3) of Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE), which reads: "Every person who intentionally and without right distributes and/or transmitting and/or making accessible Electronic Information and/or Electronic Documents containing insulting and/or defamatory content as intended in Article 27 paragraph (3) shall be punished with imprisonment for a maximum of 4 (four) years and/or a fine of a maximum Rp. 750,000,000.00 (seven hundred and fifty million rupiah)."

- a. each person
- b. deliberately
- c. without the right to distribute and/or transmit and/or make accessible Electronic Information and/or Electronic Documents which contain insulting and/or defamatory content

Based on the formulation of Article 310 paragraph (1) of the Criminal Code regarding insults, namely: "Anyone who deliberately damages someone's honor or good name by accusing him of committing an act with the real intention that the accusation will be published, shall be punished with punishment, with a maximum prison sentence of nine month or a fine of up to four thousand five hundred rupiah." So there are the following elements:

- a. whoever
- b. deliberately;
- c. attacking another person's honor or good name;
- d. accused of committing a certain act
- e. with the real intention of making it known to the public.

## 2. Legal Analysis Regarding Legal Arrangements for Handling Crimes of Defamation Through Electronic Media Based on Restorative Justice

The term "criminal law policy" can also be referred to as "criminal law politics". In foreign literature the term "criminal law politics" is often known by various terms, including "penal policy", "criminal law policy" or "strafrechtspolitik". In this regard, the Big Indonesian Dictionary provides meanings in 3 (three) terms, namely:

- a. Knowledge of state administration (such as: government systems, basics of government);
- b. All affairs and actions (policies, strategies and so on);
- c. How to act (in facing or dealing with a policy problem).

According to Soedarto, criminal policy has three meanings, namely:

- a. In a narrow sense, it is the whole principle or method that is the basis of reactions to law violators in the form of punishment;
- b. In a broad sense, it is the entire function of the law enforcement apparatus, including the workings of the courts and police;
- c. In the broadest sense, it is the entire policy carried out through legislation and official bodies, which aims to enforce the central norms of society.

These restorative justice provisions are contained in the National Police Chief's circular no. 08 of 2018 concerning the application of restorative justice in criminal cases, dated 27 July 2018, in number 2 points (a), (b), (c) and (d) states the following:

- a. that the process of investigating and investigating criminal acts is the entry point for criminal law enforcement through the criminal justice system in Indonesia. Therefore, the process of investigating and investigating a criminal act is the main key to determining whether or not a criminal case can proceed to the prosecution and criminal justice process in order to realize legal objectives, namely justice, legal certainty and expediency while still prioritizing the principles of simple, fast and cost-effective justice. light".
- b. that the development of law enforcement systems and methods in Indonesia shows a tendency to follow the development of social justice, especially the development of the principles of restorative justice which reflects justice as a form of balance in human life, so that deviant behavior from criminals is seen as behavior that throws off balance. Thus, the case resolution model used is an effort to restore this balance, by imposing obligations on the perpetrator of the crime by consciously admitting his mistake, apologizing, and returning the victim's damage and losses to their original state or at least to their original condition, which can fulfill the victim's sense of justice.
- c. that the development of the concept of law enforcement in criminal law enforcement systems in various countries which adopt the principles of restorative justice is also in line with the emergence of various problems in the criminal law enforcement process in Indonesia such as correctional institutions that are over capacity, case arrears that are increasing, case costs which is not able to support the increase in cases and so on, has an impact on changes in the legal culture of society, especially the way Indonesian society views the criminal law enforcement process.
- d. that in order to respond to the development of the legal needs of society and fulfill the sense of justice of all parties, the Republic of Indonesia's National Police has always been an institution that is given the authority to act as investigators and investigators as well as coordinators and supervisors of criminal investigations, feels the need to formulate new concepts in the criminal law enforcement system, especially the investigation process and

investigation of criminal acts that is able to accommodate the values of justice in society while providing legal certainty, especially process certainty.

To realize justice for victims and in essence also for perpetrators, law enforcers should think and act progressively, namely following textual regulations, but making legal breakthroughs (rule breaking), because the goal of law is ultimately not just a textual matter but also contextual in essence; because the legal problems that often occur are actually problems of legal enforcement, which require the professionalism and capability of law enforcers. Progressive law starts from the basic assumption that law exists for humans; Law is not an absolute and final institution, but as an institution that has a moral philosophy and conscience, so its ability to meet human needs is very important. Restorative justice has a perspective related to fulfilling the losses experienced by the victim, and restoring religious magic in the perpetrator's community, so that peace becomes the goal in the concept of restorative justice. Apart from that, restorative justice is carried out in order to accelerate the acceleration of the criminal justice system process by simplifying procedures in the criminal justice system. This can take the form of restitution, which must be done while still paying attention to the principles of the rule of law and basic standards of a fair and just criminal process.

To avoid allegations of criminalization of people who are reported and to ensure that Indonesia's digital space remains clean, healthy, ethical and productive, a Circular Letter from the Chief of Police of the Republic of Indonesia has been issued Number SE/2/11/2021 concerning Ethical Cultural Awareness to Realize Indonesia's Digital Space who is Clean, Healthy and Productive ("SE Kapolri 2/2021"). In this SE, National Police investigators who receive reports related to the ITE Law are asked to guide, among others:

- a. When receiving reports from the public, investigators must be able to clearly distinguish between criticism, input, hoaxes and defamation which can be punished and then determine the steps to be taken.
- b. Since receiving the report, investigators communicate with the parties, especially victims (not represented) and facilitate and provide the widest possible space for the parties in the dispute to carry out mediation.
- c. carry out a comprehensive study and title of cases handled by involving Bareskrim/Dittipidsiber (can be done via zoom meeting) and make collective, collegial decisions based on existing facts and data.
- d. Investigators adhere to the principle that criminal law is the last resort in law enforcement (ultimatum remidium) and prioritizes restorative justice in resolving cases.

Based on the Republic of Indonesia State Police Regulation Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice, it explains as follows:

Section 2

- a. Paragraph (1) Handling of criminal acts based on Restorative Justice is carried out in the following activities: a. carrying out the Criminal Investigation function; b. investigation; or c. investigation.
- b. Paragraph (2) The implementation of the Criminal Investigation function as intended in paragraph (1) letter a, is carried out by the person carrying the Community Development and Samapta Polri functions in accordance with their duties and authority.
- c. Paragraph (3) Investigations or inquiries as referred to in paragraph (1) letters b and c, are carried out by National Police investigators.

- d. Paragraph (4) Handling of criminal acts as referred to in paragraph (1) letter a, minor criminal acts can be resolved.
- e. Paragraph (5) In handling criminal acts as referred to in paragraph (1) letters b and c, the investigation or inquiry may be terminated.

Article 3

- a. Paragraph (1) Handling of criminal acts based on Restorative Justice as intended in Article 2 must meet the following requirements: a. general; and/or b. special.
- b. Paragraph (2) The general requirements as referred to in paragraph (1) letter a, apply to the handling of criminal acts based on Restorative Justice in the activities of carrying out criminal investigation, investigation or inquiry functions.
- c. Paragraph (3) The special requirements as referred to in paragraph (1) letter b, only apply to the handling of criminal acts based on restorative justice in investigation or investigative activities.

Article 4 General requirements as intended in Article 3 paragraph (1) letter a, include: a. material; and b. formal.

Article 5 Material requirements as intended in Article 4 letter a, include: a. does not cause unrest and/or rejection from the community; b. does not impact social conflict; c. does not have the potential to divide the nation; d. not radicalism and separatism; e. not a repeat perpetrator of a criminal act based on a court decision; and f. not criminal acts of terrorism, criminal acts against state security, criminal acts of corruption and criminal acts against people's lives.

Article 6

- a. Paragraph (1) Formal requirements as intended in Article 4 letter b, include: a. peace from both parties, except for Drug Crimes; and b. Fulfillment of the rights of victims and the responsibilities of perpetrators, except for drug crimes.
- b. Paragraph (2) Peace as referred to in paragraph (1) letter a, is proven by a peace agreement letter and signed by the parties.
- c. Paragraph (3) Fulfilling the rights of victims and the responsibilities of perpetrators as referred to in paragraph (1) letter b, can take the form of: a. return thing; b. compensate for losses; c. replace costs incurred as a result of criminal acts; and/or d. Compensate for damage caused as a result of criminal acts.
- d. Paragraph (4) Fulfillment of the rights as intended in paragraph (3), is proven by a statement letter in accordance with the agreement signed by the victim.
- e. Paragraph (5) The format of the peace agreement letter as intended in paragraph (2), and the statement letter as intended in paragraph (4), are listed in the Attachment which is an inseparable part of this Police Regulation.

Article 8

- a. Paragraph (1) Special requirements for criminal acts of information and electronic transactions as intended in Article 7 letter a, at least include: a. perpetrators of criminal acts of information and electronic transactions that disseminate illegal content; b. the perpetrator is willing to delete the content that has been uploaded; c. the perpetrator apologized through a video uploaded on social media accompanied by a request to delete the content that had spread; and D. The perpetrator is willing to cooperate with National Police investigators to carry out further investigations.
- b. Paragraph (2) The requirements as intended in paragraph (1) letters b and c, are submitted to the investigator in the form of soft copy and hard copy.

After carrying out legal analysis related to the Circular Letter of the Chief of Police of the Republic of Indonesia Number SE/2/11/2021 concerning Ethical Cultural Awareness to Create a Clean, Healthy and Productive Indonesian Digital Space and the Republic of Indonesia State Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, peace can be made for criminal acts of defamation through electronic media using a restorative justice approach, but it must comply with applicable requirements and procedures.

#### 4. CONCLUSION

Defamation through electronic media, when viewed from the aspect of its formulation as regulated in Article 27 paragraph (3) of the Information and Electronic Transactions Law in conjunction with Article 45 paragraph (3) of Republic of Indonesia Law Number. 19 of 2016 concerning Amendments to Law Number. 11 of 2008 concerning Electronic Transaction Information Jo 310 Criminal Code (KUHP) Article 27 paragraph (3) Jo Article 45 paragraph (3) Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions are part of a formal offense, in a formal offense a person can be punished if the criminal elements are fulfilled without the need for certain consequences, so that the formulation of a formal offense regarding defamation is prone to abuse, this could possibly happen to someone who has a position or authority with the aim of for certain motifs. However, after carrying out a legal analysis of the Circular Letter of the Chief of Police of the Republic of Indonesia Number SE/2/11/2021 concerning Awareness of Ethical Culture to Create a Clean, Healthy and Productive Indonesian Digital Space and the Republic of Indonesia State Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, peace can be made for criminal acts of defamation through electronic media using a restorative justice approach, but it must comply with applicable requirements and procedures.

#### 5. SUGGESTION

Law enforcement agencies (police, prosecutor's office and supreme court) should make joint regulations regarding handling criminal acts of defamation through electronic media based on restorative justice. Based on the findings of the research that has been done, this study concludes that leadership transformation and organizational culture have a significant effect on employee engagement. In addition, transformational leadership has no significant effect on OCB, while organizational culture and employee engagement have a significant effect on OCB. Meanwhile, employee engagement is able to mediate the effect of organizational culture on OCB but is unable to mediate the effect of transformational leadership on OCB.



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