

CORRELATION BETWEEN GENERAL CRIMINAL PROVISIONS AND SPECIAL CRIMINAL PROVISIONS CONCERNING THE CRIMINAL ACTION OF DEFENSE

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Abstract: The purpose of this study is to find out how the general criminal and special criminal arrangements regarding the criminal act of defamation. This research uses an empirical juridical approach. The juridical approach is used to analyze various laws and regulations related to the implementation of the criminal defamation settlement process. Meanwhile, the empirical approach is used to analyze law which is seen as patterned social behavior in people's lives that always interact and relate to social aspects. The provisions for criminal acts of defamation in the Information and Electronic Transactions Law in its implementation refer to the legal provisions in the Criminal Code Articles 310 and 311 of the Criminal Code and the Electronic Information and Transactions Act Article 27 paragraph (3), Article 45 paragraph (1). This was emphasized because it was the result of an amendment to the provisions of Article 27 paragraph (3) which was considered by some people to be a rubber article because it was not accompanied by an explanation of the article regarding the measure of being said to be defamation.

Keywords: Correlation, Crime, Defamation

I. INTRODUCTION

The use of information technology, media and communication has changed both the behavior of society and human civilization globally. The development of information and communication technology has also made world relations borderless and caused significant social, economic and cultural changes to take place so quickly. Information technology is currently a double-edged sword because in addition to contributing to the improvement of human welfare, progress and civilization, it is also an effective means of acting against the law.¹

One of the products of science and technology is telecommunication technology, including the internet. Telecommunication technology has helped humans to interact with humans in other communities very easily. In this case it can be done without leaving the place where it is and this activity can be done anywhere and anytime.

Telecommunications technology has brought humans into a new civilization with a social structure and values. In its development, with the discovery of the computer, there was a situation towards a meeting point between telecommunications technology, media and computers which resulted in a new facility, namely the internet.²

The development of the internet world at this time has reached a stage that is so fast, that it is not surprising that in every corner of the city there are many internet places that provide various internet services. The internet has spread widely throughout the world, starting from governments, schools, universities, the economic sector, the health sector and so on. So that the existence of the internet at the present time has provided many significant benefits because it provides convenience in accessing it.

Accessing information, exchanging data, processing online transactions can almost all be done via the internet. However, technological progress seems to always be followed by various things that cross the line in a negative direction, one of which is internet-based computer technology which is equipped with various social networking sites, including Friendster, Facebook, Twitter, Instagram, Badoo, Multiply and MySpace.³

One of the crimes that arise due to the development and advancement of information technology is a crime related to internet applications which is often referred to as cybercrime. Many cases have occurred since Facebook and Twitter have become a trend among the public, ranging from cases of defamation, kidnapping, fraud, the spread of forbidden beliefs, to social networks being used as a medium for prostitution.

The use of social networking sites such as Facebook, Twitter, Instagram and so on is already familiar to society. Like 2 sides of a coin, the use of social networking sites besides having positive effects also has negative effects, namely as a means of committing acts against the law. Ironically, the social networking sites available in the community are not only in demand by adults but also among children who, judging by the age requirements, do not meet the criteria to have an account (account) on the social network.

Initially, the criminal act of insult and defamation was only regulated in the Criminal Code (KUHP), namely in Article 310 in conjunction with 311 of the Criminal Code. The two articles regulate criminal sanctions for anyone who commits defamation of someone in public both orally and in writing. The sanctions in the two articles vary depending on whether they are carried out orally or in writing, for example in Article 310 paragraph (1) of the Criminal Code, a criminal sanction is regulated for a maximum of 9 months in prison if it is carried out not in writing, on the contrary, in paragraph (2) it stipulates aggravation of criminal

¹Explanation of Law Number. 19 of 2016 concerning Information and Electronic Transactions

²Abdul Wahid and Mohammad Labib, *Mayantara Crime (Cyber Crime)*, Bandung: PT Refika Aditama, 2005), page 23.

³Pardede Edwin, et al. 2016, *Criminal Law Policy in Efforts to Enforce Criminal Acts of Defamation Through Twitter*, *Dipenogoro Law Journal*, Vol. 5 (No. 3), p. 4.

sanctions. no later than 1 year and 4 months if done in writing. The two articles of the Criminal Code are still valid today.

However, the two articles in the Criminal Code have exceptions as reasons for abolishing punishment to avoid criminal charges, that is, if it is carried out in the public interest and for self-defense, the criminal sanctions for acts of insult and defamation can be removed or absent.

However, proof of whether or not there is a reason for the abolition of the crime must still go through the courts. In Indonesia, the ethics of communicating in cyberspace is contained in the Information and Electronic Transaction Law (UU ITE), especially Chapter VII Article 27 to Article 32 of Law Number. 19 of 2016 concerning Information and Electronic Transactions (Indonesia, Electronic Information and Transaction Law, Law No. 19 of 2016 (hereinafter referred to as the ITE Law). The ITE Law explains the legal sanctions that will be received by parties who violate ethics communicate in cyberspace Several cases related to the ethics of communicating in cyberspace have occurred in Indonesia and were resolved using the ITE Law.

Maybe some people think that the existence of Article 27 paragraph (3) of the ITE Law has a very frightening figure because in this article the reason for abolishing a crime does not apply, unlike Article 310 and Article 311 of the Criminal Code. On the other hand, the context of using social networking media can be said not just to carry out an action that is formal or serious in nature, but only for fun or entertainment, but it is certain that if someone does a "status update", writes on the wall other people, "creating groups", "writing notes", even the act of providing links (hyperlinks) to sites that contain insulting and/or defamatory content can be charged with criminal sanctions if their actions meet the elements of Article 27 paragraph (3) the ITE Law.

In order to be categorized as insult or defamation, the elements that must be fulfilled are the existence of things or circumstances that are not true that are communicated via the internet, these things or conditions about a person or an entity, these things or conditions are published to other parties, the publication causes harm to someone who is the object.⁴

The large number of legal issues from cybercrime should be uncovered by law enforcement officials, especially if the crime involves foreign elements such as the perpetrators are foreigners, the victims are foreigners or the place of incident is overseas but has a very influential impact on Indonesia.

Basically the crime of defamation is an ordinary conventional crime. However, the case is different if the criminal act of defamation uses sophisticated technology such as software on a computer that creates the criminal act of defamation itself. Technological advances like this give rise to new crimes that are very different from conventional crimes so that they create different characteristics from one another and create new problems that are rather complicated to solve, with regard to handling them.

The development of information technology like this must be anticipated with the law that regulates it, because without the law that regulates and institutions that enforce it, there will be chaos in its development.

II. RESEARCH METHODS

This research uses an empirical juridical approach. The juridical approach is used to analyze various laws and regulations related to the implementation of the criminal defamation

⁴Sitompul, Asril, *Internet Law (Introduction to Legal Issues in Cyberspace)*, (Bandung, PT Citra Aditya Bakti, 2004), page 75

settlement process. Meanwhile, the empirical approach is used to analyze law which is seen as patterned social behavior in people's lives that always interact and relate to social aspects.⁵

1. Data collection technique

a. Library Research Methods

The research used by the author is a method of library research (library research). Library research is research conducted by collecting data using materials or writings in the form of legal regulations, which are related to this thesis, books, magazines, newspapers, articles and newspapers, which are collected from various places ranging from library to internet site.

b. Field research methods

In connection with the collection of data or materials needed to complete this writing, field studies are also carried out, namely collecting data regarding the object under study, in this case carried out through interviews

2. Data analysis

In analyzing the data the author uses a descriptive method which is analyzed qualitatively, which is an analytical method by describing the facts about the problem under study as it is and focusing on existing provisions with actual problems.

III. RESULTS AND DISCUSSION

Defamation in terms of General Provisions (KUHP)

For Indonesia, these insulting articles are still being maintained. The reason is that defamation is considered inconsistent with the traditions of the Indonesian people who still uphold eastern customs and culture. Therefore, defamation is a form of *rechtsdelicten* and not *wetsdelicten*. That is, defamation was considered a form of injustice before it was stated in the law because it violated the rules of good manners. Even more than that, defamation is considered a violation of religious norms if the substance of the defamation contains slander.

Any action that is against the law or not in accordance with the law, attacks the interests of the public or individuals who are protected by law, either directly or indirectly because of the said action, in general to resolve any action that has been deemed detrimental to the public interest in addition to individual interests. As for actions that are seen as detrimental to individual interests, such as carrying out acts of defamation.

There are three important notes related to the offense of defamation. First, the offense is very subjective. That is, the assessment of defamation really depends on the person or party whose reputation was attacked. Therefore, defamation is a complaint offense that can only be processed by the police if there is a complaint from a person or party who feels his or her reputation has been defamed. Second, defamation is an offense for dissemination. That is, substances containing pollution are disseminated to the public or carried out in public by the perpetrator. Third, a person who commits defamation by accusing something that is considered to attack the good name of a person or other party must be given the opportunity to prove the accusation.

Laws in Indonesia, especially those contained in the Criminal Code contain at least 8 levels of contempt. The classification of contempt in the Criminal Code is as follows:

1. Oral defamation {Article 310 paragraph (1)};
2. Written defamation {Article 310 paragraph (2)};
3. Defamation (Articles 311-314);
4. Mild humiliation (Article 315);

⁵Soekanto, Soerjono and Sri Mamudji, *Normative Legal Research A Brief Overview*, (Jakarta: PT Raja Grafindo Persada, 2004), p. 15

5. Defamation complaint (Article 317);
6. Causing false suspicions (Article 318);
7. Contempt for the verbally dead (Article 320); And
8. Contempt for the dead is written (Article 321).

Acts of defamation are regulated in Article 310 paragraph (1) of the Criminal Code which reads:

"Anyone who intentionally attacks the honor or reputation of a person, by accusing him of something, with clear intentions so that it becomes public knowledge, is threatened with defamation, with a maximum imprisonment of nine months, or a maximum fine of three hundred rupiahs."⁶

Based on Article 310 paragraph (1) of the Criminal Code, in order to be categorized as a crime of defamation, the following elements must be proven:

1. There is intention;
2. Without rights (without permission);
3. Aims to attack reputation or honor;
4. To be known by the public.

An explanation of these elements is as follows:

a) Deliberately

According to the doctrine (science), intentional includes a subjective element, which is aimed at actions meaning that the perpetrator knows his actions, the perpetrator is aware of uttering his words which contain a violation of the honor or good name of others. In this case, the perpetrator realizes or knows that the words were said and knows that these words are "blasphemous" words, that the perpetrator does not have the intention to insult or insult, is not part of the *dolus* and *opzet*. It's a different matter if the perpetrator utters these words in a drunken state or in a dream state, because the perpetrator in both cases acts without proper awareness.

b) Attacking the honor or good name of others

The word attack in question does not mean to attack but in the sense of violating. The word "good name" is meant as an honor given by the general public to someone either because of his actions or position.

c) Accused of doing a certain act

The word "certain acts" in the sense that the alleged acts are stated clearly, both in place and time. If the time and place of the act are not clearly stated, then the perpetrator's act is an ordinary (minor) insult.

d) With the real intention to be known by the public

This element in its application requires precision because it must be proven "real intention to broadcast". Especially with regard to proof, caution is needed because if the accusation of the act is in the form of word of mouth gossip and no one hears about it, then it is difficult to prove it.⁷

Even if a person's actions have met the elements of defamation, however, according to Article 310 paragraph (3) of the Criminal Code those actions in paragraphs (1) and (2) cannot be punished, if the accusation was made in order to defend the "public interest". or because they are forced to "defend themselves". So, if it can be proven that what he did in an insult or insult in writing was for the public interest or for self-defense, then that person can be released.⁸

⁶Article 310 paragraph (1) of the Criminal Code.

⁷Leden Marpaung, *Crime Against Honor*, (Jakarta: Sinar Graphic, 2010), pp. 10-12

⁸Wawan Tunggal Alam, *Defamation in Real Life & the World of the Internet (With Various Cases of Press, Corruption, Email, Letters from Readers)*, (Jakarta: Wartapena, 2012), p. 21

However, in Article 312 of the Criminal Code it is determined that whether or not the defense of the public interest and self-defense submitted by the suspect lies with the judge's considerations.

Article 312 reads:

“Proof of the truth of the accusation is permitted only in the following cases:

- a) If the judge deems it necessary to examine the truth so that he can weigh the words of the defendant that he committed the act to defend the public interest or because he was forced to defend himself.
- b) If a civil servant is accused of committing an act while carrying out his position.”

The requirement that a judge determine whether an act of defamation can be punished or not is an opportunity that can be used by law enforcement officials at the police and prosecutorial levels to prosecute a person accused of committing defamation. Because, by submitting this determination entirely to the judge, the police and prosecutors have no burden to process someone who has committed defamation even though his actions have fulfilled the elements of Article 310 paragraph (3) of the Criminal Code, namely elements that cannot punish someone's actions under the pretext of commit defamation. As a result, more and more people will be charged with defamation by the police and prosecutors. Because,⁹

The things that make a person cannot be punished under the article of defamation or insult are:

- a) Submission of information is intended for public interest
- b) To defend yourself
- c) To reveal the truth

Thus, people who convey information, verbally or in writing are given the opportunity to prove the truth, that is called blasphemy or slander. Judging from the method of committing defamation according to the Criminal Code, there are several divisions, namely:

- a) Orally, namely defamation that is spoken or done orally.
- b) In writing, namely defamation done through writing. Conflict between individuals is the basis for carrying out actions to slander and defame each other which can be detrimental.

A person whose good name is tarnished will lose the right to get justice for an act which, according to common sense, acts and defamation are clearly detrimental. Many legal experts do not agree on the meaning and definition of honor and good name, but agree that honor and good name are the basic rights of every human being. Thus, only humans can have honor and a good name. The term defamation is not found in the Criminal Code.¹⁰

This criminal act of defamation (smaad) is defined by Article 310 of the Criminal Code as deliberately attacking a person's honor or good name by accusing him of certain actions (bepaald feit) with the real aim (kennelijk doel) of broadcasting the accusation to the general public (ruchtbaarheid geven).¹¹

While Kuntahadi Sunandang said there were 3 (three) things that could allow someone to be defamed through the print media, namely:¹²

1. All words that imply an unlawful act, such as extortion, arson, punishment, spying for traitors, and so on.
2. All words expressing the statement of someone who feels guilty for having done something immoral such as drunkenness, pimps, and so on.
3. All words that bring disgrace to women like whore, slut and so on.

⁹Ibid., p. 23

¹⁰Ibid., p. 7

¹¹Wirjono Prodjodikoro, *Certain Criminal Acts in Indonesia*, (Jakarta: Bandung, Eresco, 1980), page 97

¹²R. Soesilo, *Criminal Questions and Answers*, (Jakarta: Pressindo, 2007), p. 153

With a good name is generally meant a good judgment about a person from a moral point of view, while honor is the demand for treatment as an honorable member of society as a result of that judgment. Honor can be directly violated without touching the good name, but the violation of the good name will also affect honor at the same time.¹³ Only humiliating a person in front of other people will violate his good name and honor, while an act committed only between the perpetrator and the victim will cause a violation of honor.

Therefore, defamation through social networking media is something written or published that tends to insult, embarrass, laugh at, to the detriment of someone who is the object of writing. In blasphemy, both orally and in writing, the truth of the accusation is not required.

Accusation of right actions is also a crime, if it aims to violate honor or good name. Article 319 of the Criminal Code reads:

"Insult that may be punished according to this chapter is not prosecuted except for the complaint of the person against whom the crime was committed, except in the case stated in Article 316."¹⁴

Based on the formulation of Article 319 of the Criminal Code, some crimes against honor are criminal acts of complaint and some are ordinary crimes. Concerning complaints is regulated in Article 72 to Article 75 of the Criminal Code, but these articles do not contain the meaning of the word complaint.

For crimes of defamation or humiliation or all insults regulated in Article 310 to Article 321 of the Criminal Code, these are complaint offenses, with the exception of Article 316 of the Criminal Code, namely insults committed against civil servants who are carrying out their legitimate duties. Complaint offenses only consist of crimes, and do not recognize complaints against violations. Provisions regarding complaint offenses are not regulated specifically or separately in the Criminal Code, but are scattered in the articles of the Criminal Code.¹⁵

A person who has the right to complain if the person who suffers or is a victim of a crime is an adult, then it does not cause problems because it is the victim who has the right to complain. Problems arise if the victim of a criminal complaint is not yet an adult. This is regulated in Article 72 and Article 73 of the Criminal Code.¹⁶

Article 72 of the Criminal Code reads:

- a. As long as the person against whom the crime was committed, which can only be prosecuted for complaint, is not yet sixteen years of age and is still a minor or as long as he is under guardianship due to other reasons of extravagance, then his legal representative in a civil case has the right to complain.
- b. If the representative is not available or he himself has to be complained about, then the prosecution can be carried out on complaints from the supervisory guardian or guardian or the assembly that carries out the obligations of guardian or a blood relative on complaints from blood relatives in descendants who deviate to the third degree.

And if the crime victim has died, the complaint is regulated in Article 73 of the Criminal Code which reads:

"If the person against whom the crime was committed dies, within the time frame stipulated in the following article, then without any effort to increase the time limit, the prosecution may be carried out on complaints from the parents, children or

¹³Nanda Y Rohmana, 2017, Legal principles regarding the crime of insult and defamation in the perspective of protecting human rights. *Yuridika Journal*, Vol. 32, (No. 1) p. 105.

¹⁴Ibid

¹⁵Ibid., p. 43

¹⁶Ibid., p. 77

husband/wife who are still alive unless it is clear that the death does not require prosecution."¹⁷

Thus those who have the right to complain in Article 72 of the Criminal Code are their legal representatives, guardians/guardians, blood relatives up to the third degree. Whereas in Article 73 of the Criminal Code those who have the right to file complaints are regulated in a limited manner, namely parents, children, wife/husband who is still alive.

According to Muladi, that feels like it should be used as a reference for law enforcement officials, both police, prosecutors and judges. According to him, those who can report defamation as stated in Article 310 and Article 311 of the Criminal Code are those whose honor has been attacked, their dignity has been humiliated, so that their name has become disgraceful in public. However, there is still a defense for the party accused of committing defamation when submitting information to the public.¹⁸

In this case MH Tirtaamidjaja stated:

"a complaint is a firm statement from a person entitled to complain that he wants to prosecute the person who has committed the criminal offence."¹⁹

Apart from those entitled to file complaints, the Criminal Code also regulates the time limit for filing complaints as stipulated in Article 74 of the Criminal Code. Thus the right to file a complaint is determined within 6 months from the person who has the right to know, if he resides in Indonesia and 9 months from the person who has the right to know, if he lives outside Indonesia.

This grace period is determined relative. This also opens up the possibility that the complaint can be withdrawn as stipulated in Article 75 of the Criminal Code. Complaints that have been withdrawn cannot be resubmitted. This is necessary for legal certainty for law enforcement officials so that law enforcement officials have certainty to close the case. In handling cases of honor crimes which include complaint offenses, with the right to withdraw complaints as stipulated in Article 75 of the Criminal Code, there are times when investigators wait for three months after the complaint is filed, before starting the investigation. This can be detrimental as evidence may be difficult to obtain after three months have passed.

It is better if after the complaint is filed, the investigator as soon as possible conducts an investigation even though the prosecution must wait for the deadline to be able to withdraw the complaint. As a preventive measure against all matters relating to criminal acts in the field of computers, especially cyber, as much as possible it is returned to existing laws and regulations, namely the Criminal Code (KUHP) and regulations outside the Criminal Code.

Defamation in View of Special Provisions (Act on Information and Electronic Transactions)

According to Satochid Ermansjah Djaja, the problem of aspects of legal renewal is like the two sides of a coin that cannot be separated and support each other, one side is the function of legal renewal for expired positive laws which require renewal according to the situation and conditions of development and progress. society, while the other side is the law reformer function by forming new positive laws caused by aspects of law reformers, such as the establishment of the Law of the Republic of Indonesia Number 11 of 2008 concerning Information and Electronic Transactions (State Gazette of the Republic of Indonesia Number 4843) caused by aspects of legal reform in the field of science and technology, because there has been very rapid progress in the field of Information Technology (IT = Information

¹⁷Ibid

¹⁸Ibid., p. 23

¹⁹Ibid., p. 76

Technology), as well as in Electronic Transactions (ET = Electronic Transactions), so that it must be anticipated and avoided that there will be a legal vacuum if there is a violation, especially crimes in the field of information technology and transactions electronic or popularly known as cybercrime.²⁰

Law Number 11 of 2008 concerning Information and Electronic Transactions (hereinafter referred to as the ITE Law) is a legal product that regulates problems in cyberspace or the internet. In Law Number 11 of 2008 concerning Information and Electronic transactions, there are 20 (twenty) prohibited acts as stipulated in Articles 27 to 37. However, law enforcers experience difficulties in handling cybercrime cases so that law enforcement officials must look for articles in the Criminal Code and other laws to prosecute cybercrime perpetrators. In addition, law enforcement officials are also busy dealing with cases other than cybercrime cases.

Cybercrime This is an interesting and sometimes difficult issue because:

1. Cyber world activities are not limited by the territory of the State
2. The activities of the cyber world are relatively intangible
3. It is difficult to prove because electronic data is relatively easy to modify, intercept, falsify and transmit to all parts of the world in seconds.
4. Copyright infringement is technologically possible
5. It is no longer possible to use conventional law. In general, it can be concluded that the ITE Law can be called a cyberlaw because of its broad content and scope discussing regulation in cyberspace, although on several sides it is not very clear and some things are a bit missed.

If you look closely at the contents of Article 27 paragraph (3) in conjunction with Article 45 paragraph (1) of the ITE Law, it seems simple when compared to the more detailed insult articles in the Criminal Code. Therefore, the interpretation of Article 27 paragraph (3) of the ITE Law must refer to the defamation articles in the Criminal Code. For example, in the ITE Law there is no definition of defamation. Referring to Article 310 paragraph (1) of the Criminal Code, defamation is defined as an act of attacking someone's honor or good name by accusing something with clear intentions so that it becomes public knowledge. The applicability and interpretation of Article 27 paragraph (3) of the ITE Law cannot be separated from the main legal norms in Article 310 and Article 311 of the Criminal Code.

That was one of the considerations of the Constitutional Court in the decision on case No. 50/PUU-VI/2008 on the judicial review of Article 27 paragraph (3) of the ITE Law against the 1945 Constitution. (Constitutional Court Decision No. 50/PUU-VI/2008 dated 28 December 2008 on the judicial review of Article 27 paragraph (3) of the ITE Law against the 1945 Constitution). The Constitutional Court concluded that a person's good name and honor should be protected by applicable law, so that Article 27 paragraph (3) of the ITE Law does not violate democratic values, human rights, and the principles of a rule of law. Article 27 paragraph (3) of the ITE Law is Constitutional.

In Article 27 paragraph (3) of the ITE Law it reads:

"Every person intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain insults and/or defamation."²¹

The elements contained in Article 27 paragraph (3) of the ITE Law are:

²⁰Ermansjah Djaja Satochid, *Legal Dispute Resolution of Information Technology and Electronic Transactions*, (Yogyakarta: Pustaka Timur, 2010), page 2

²¹Law Number 11 of 2008 concerning Information and Electronic Transactions.

1. Each person; People are individuals, both Indonesian citizens and foreign nationals, as well as legal entities.
2. Deliberately; Deliberately and without rights are actions carried out by the perpetrators of crimes that have been planned or intended beforehand and without the knowledge of the person who is entitled and the perpetrator wishes to carry out the action.
3. No rights; The perpetrator realized that he had no right to take legal actions, disgraceful actions, and actions that were not justified and prohibited.
4. Distribute and/or transmit and/or make accessible; Distributing and/or transmitting and/or making it accessible are actions taken by criminals to disseminate their crimes so that they can be known by many people.
5. Electronic information and/or electronic documents containing insults and/or defamation.

Electronic information that contains insults and/or defamation is one or a set of electronic data, including but not limited to text, sound, images, maps, photo designs, electronic data interchange (EDI), electronic mail, telegrams, telex, telecopy or the like, letters, signs, numbers, access codes, symbols or perforations that have been processed so that they contain elements of insult or defamation of a person's reputation.

Meanwhile, the legal sanctions for defamation according to the ITE Law are: Article 45 paragraph (1):

“Anyone who fulfills the elements referred to in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be punished with imprisonment for a maximum of 6 (six) years and/or a fine of up to Rp. 1,000,000,000.00 (one billion rupiah)”. However, it cannot be categorized as defamation according to Article 27 paragraph (3) of the ITE Law if the following elements are not fulfilled. Therefore, it must also be seen the element of "without the right to distribute".²²

Thus, there must be an element of intent and an element without distribution rights, where these two elements are cumulative. Indeed, the rule of law on defamation is not only accommodated by the Criminal Code but also legal products outside the Criminal Code which also apply criminal sanctions, where the legal product is the ITE Law. Therefore, referring to the Constitutional Court's decision above, in the case of defamation via the internet, the law used to resolve it is the ITE Law, not the Criminal Code.

The development of information technology has changed the behavior of society and human civilization globally. This paradigm shift is a change from the presence of cyberspace, which is the impact of global computer networks. Cyberspace as a space for social interaction, which forms a new community (virtual society), needs a rule as a measure of proper behavior, as rules in the real world. These rules are necessary to maintain an orderly interaction in cyberspace.

Cyber activities even though they are virtual can be categorized as real legal actions and actions. Juridically, in terms of cyber space, it is no longer appropriate to categorize something with conventional legal standards and qualifications to be used as objects and actions, because if this method is followed, there will be too many difficulties and things will escape the law. Cyber activity is a virtual activity that has a very real impact even though the evidence is electronic.

There are 3 (three) approaches that can be taken as an effort to prevent and overcome crime through cyberspace, namely:

1. Technological approach;
2. Socio-cultural approach; And

²²Ibid

3. Legal approach.

According to Mardjono Reksodiputro, regarding whether or not a law was needed to be made which contains rules on crimes using the internet media, he said there was no need to use a new law to convict someone, because clearly the Criminal Code is still relevant, so the formulation of the Criminal Code is interpreted with a broad interpretation of crimes using the internet.²³ Some examples are as follows:

1. Violation of decency : 282, 283, 311, 506 KUHP
2. Gambling : 303 Criminal Code
3. Defamation : 310-311 KUHP
4. Extortion or threats: 335 and 369 of the Criminal Code
5. Fraud : 372, 378, 379, 386, and 392 of the Criminal Code
6. Spreading misleading information : 160-161 KUHP
7. Threats of violence: 368 Criminal Code
8. Access to other people's areas without permission: 167 and 551 of the Criminal Code
9. Eavesdropping/tapping: 112-114, 322-323, and 431 of the Criminal Code
10. Making public facilities unusable : 408 KUHPk. Forgery of documents: 263-264, 266 and 271 of the Criminal Code

According to Sudama Sastroandjojo, making legal rules regarding cyber law is necessary, bearing in mind that legal certainty in the realm of mayantara needs to protect its rights. Crimes involving computers must be handled specifically, because the methods, environment, time and location of committing computer crimes are different from ordinary crimes.²⁴

The essence of the article which criminalizes defamation and humiliation through social media is very hotly discussed. For those who are pro Article 27 paragraph (3) of the ITE Law, this article functions to protect the rights of people who are defamed or insulted through internet media, especially social networking media. For those who are against, this article is formulated as a soft net to silence criticism or even freedom of expression on the internet, especially social networking media.

The defamation article in the ITE Law has indeed caused controversy. This article is considered more cruel than the defamation article in the Criminal Code, because there is a fairly large disparity in terms of penalties. The criminal penalty regulated by the ITE Law, which incidentally was made by the nation itself, is not half-hearted, that is, it carries a maximum penalty of 6 years in prison, and this maximum number is one of the conditions for a person to be detained in the investigation process, one of which is if the sentence is above 5 year.

Compared with the provisions on defamation in the Criminal Code which incidentally is a product of the Dutch colonialism, the maximum penalty is 4 years in prison, even Article 310 of the Criminal Code only provides for a penalty of 9 months in prison. So, with the substance of the accusations being the same, but in the ITE Law the sanctions given are heavier than the Criminal Code.

However, in the provisions of Article 27 paragraph (3) and Article 45 paragraph (1) of the ITE Law there is no clear definition of what is meant by defamation or insult. Therefore, to determine whether the elements of defamation in the ITE Law have been fulfilled, Article 310 of the Criminal Code is also required as regulated in Article 103 of the Criminal Code which reads:

²³Arsyad Sanusi, *Cybercrime*, (Jakarta: Milestone, 2011), p. 405

²⁴*Ibid.*, p. 406

"The provisions in Chapters I to Chapter VIII of this book also apply to acts which are punishable by other laws and regulations, unless otherwise determined by law."

In addition, Article 27 paragraph (3) of the ITE Law is considered to overlap with Articles 310 and 311 of the Criminal Code because there are fears that this article will create legal uncertainty. In fact, to understand the article on defamation as regulated in Article 27 paragraph (3) of the ITE Law, it cannot be separated from the provisions of Articles 310 and 311 of the Criminal Code. So it is fitting for law enforcement officials, both the police as the spearhead of implementing the Criminal Code and the prosecutor who filed the prosecution, need to be careful and not easily follow up on reports regarding defamation or insults, bearing in mind that this is very subjective in nature.

In the implementation of regulation on criminal acts of defamation in the Electronic Information and Transaction Law, it can be said that its implementation refers to the legal provisions contained in the Electronic Information and Transaction Law.

Article 27 paragraph (3) of the ITE Law does not regulate new criminal law norms, but only reinforces the enactment of criminal defamation law norms in the Criminal Code into a new law because there are additional elements that are special due to legal developments in the electronic field. The interpretation of the norms contained in Article 27 paragraph (3) of the Information and Electronic Transaction Law regarding insult and/or defamation cannot be separated from the norms of criminal law as contained in Chapter XVI concerning insult contained in Articles 310 and Article 311 of the Criminal Code. So, the main/basic legal norms (*genus delicti*) originate from the Criminal Code, while the legal norms in Article 27 paragraph (3) of the Electronic Information and Transaction Law are provisions for specific application of this law.

The above actions are closely related to the use of information technology and related to information and the information system itself, as well as the communication system which is a means for conveying or exchanging that information to other parties (transmitter/organizer to recipient).

Broadly speaking, information technology crimes consist of two types, namely:

1. Crimes that use information technology (IT) as a facility.
2. Crimes that target information technology (IT) systems and facilities.

The criminal system includes all statutory provisions that regulate how the criminal law is enforced or operationalized.²⁵

Meanwhile, if the laws and regulations are limited to the substantive criminal law contained in the Criminal Code, it can be said that all provisions in the Criminal Code, both in the form of general rules for Book I and special rules for Books II and III, are essentially a unified criminal system. These provisions serve as guidelines for criminal laws and regulations outside the Criminal Code.

Article 27 paragraph (3) of the Information and Electronic Transaction Law Number 19 of 2016 does not provide a definition of defamation, so that the meaning and elements of defamation are taken from the relevant articles in the Criminal Code. This is a logical consequence of using the Criminal Code as a punishment system or basis for drafting legislation outside the Criminal Code, including the Electronic Information and Transaction Law.

In the Criminal Code, the offense of defamation is explicitly regulated starting from Article 310 to Article 321. Related to this, the main question that needs to be asked is what is the meaning of defamation. someone's good name. This definition is a general definition

²⁵Barda Nawawi Arief, *Mayantara's Criminal Act Development of Cyber Crime Studies in Indonesia*, (Jakarta: Rajawali Pers, 2007), 115

(genus offense) offense of defamation. Meanwhile, the specific nature or forms (delict species) of defamation include; defamation/blasphemy by false presumption (Article 318); and defamation of the deceased (Article 320). First, defamation/blasphemy. Explicitly the provisions regarding defamation/blasphemy are regulated in Article 310 which reads as follows:

1. Any person who deliberately attacks a person's honor or reputation by accusing him of something, with clear intentions so that it becomes public knowledge, is threatened, due to defamation, with a maximum penalty of nine months or a maximum fine of three hundred rupiahs.
2. If this is done in writing or with an image that is broadcast, shown or posted in public, then the person guilty of defamation in writing shall be punished by a maximum imprisonment of one year and four months or a maximum fine of three hundred rupiahs.
3. It does not constitute defamation or written defamation, if a clear act is carried out in the public interest or because one is forced to defend oneself.

Thus, a criminal act (criminal event) can only be prosecuted if it fulfills the elements of the offense. Nevertheless, not all criminal events can be prosecuted unless there is a complaint. Or in other words, there are several offenses that can be prosecuted if there are complaints or requests from those affected by criminal acts. Complaints here must be distinguished from reports. Reports are notifications only. Meanwhile Complaint is an absolute requirement for prosecution. In order to facilitate the understanding of complaint offenses, it is necessary to describe the general principles of criminal law.

In the Criminal Code, public law matters have been regulated. Therefore, there is a general principle which determines that "to prosecute an offense, whether in the form of a crime, lies in public prosecution, and generally the request from the party who suffers to carry out a prosecution has no effect." . This means that whether or not there was a request from the victim or the victim's family, it has no effect on the prosecution. Even so, the Criminal Code recognizes exceptions or deviations from the general principles of criminal law, namely: in the provisions of the Criminal Code there are several types of offenses that can only be prosecuted if there is a complaint from the sufferer (victim), and this kind of offense is classified as a complaint offense.

For the crime of Defamation or insult or all insults regulated in Article 310 to Article 316 of the Criminal Code, namely insults committed against civil servants who are carrying out their legitimate duties. Prosecution for Article 316 of the Criminal Code does not require a complaint from the insulted person (not a complaint offense). However, in practice, the civil servant who was insulted was asked to make a complaint. Meanwhile, other insult articles that are not complaint offenses are insults regulated in Articles 134, 137, 142, 143, 144, 177, 183, 207 and 208).

Complaint offenses only consist of crimes and do not recognize complaints against violations. Provisions regarding complaint offenses are not regulated specifically or separately in the Criminal Code, but are scattered in the articles of the Criminal Code.

By using the articles of the Criminal Code to ensnare perpetrators of Defamation via the Internet, some legal experts have stated that the Criminal Code cannot be applied, but other legal experts consider that the Criminal Code can reach it. However, apart from the problem with the law that will be used to ensnare, the Constitutional Court (MK) when giving a decision on the application for a judicial review of Article 27 paragraph (3) of Law Number 19 of 2016 concerning Information and Electronic Transactions, in its legal considerations stated: literally that the elements in public, publicly known, or broadcast in Article 310 paragraph (2) of the Criminal Code are not applied in cyberspace, so it requires extensive elements namely distributing and/or transmitting, and/or make electronic information and/or

electronic documents accessible that contain insults or defamation. In essence, the Constitutional Court stated that certain articles in the Criminal Code were considered insufficient to address legal issues that arose as a result of the activities of the development of the electronic world and the internet.

Therefore, regulation of Article 27 paragraph (3) of the ITE Law is absolutely necessary. Thus, based on the characteristics of the internet and the mandate of Article 28 G paragraph (1) of the 1945 Constitution of the Republic of Indonesia, Article 27 paragraph (3) of the ITE Law is absolutely necessary to protect all people from abuse of other people's freedom rights carried out through the Electronic System (internet).

IV. CONCLUSION

From the description that has been put forward by the author above, it can be concluded that the regulation of criminal acts of defamation in the Information and Electronic Transactions Act in its implementation refers to the legal provisions in the Criminal Code Articles 310 and 311 of the Criminal Code and the Criminal Code. Information and Electronic Transactions Article 27 paragraph (3), Article 45 paragraph (1). This was emphasized because it was the result of an amendment to the provisions of Article 27 paragraph (3) which was considered by some people to be a rubber article because it was not accompanied by an explanation of the article regarding the measure of being said to be defamation.

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