LEGAL ANALYSIS OF THE EVIDENCE ASPECTS IN DEFAMATION CASES

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Abstract
This study aims to determine the efforts of the Prosecutor's Office in proving criminal charges of defamation based on Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE), from the perspective of the Prosecutor's Office. Perspective of the Criminal Procedure Code (KUHAP). This research is a normative legal research that is prescriptive and applied, and in terms of its objectives it is included in normative or doctrinal legal research. The types of data used include primary data and secondary data. The data collection technique used is library research in the form of books, legal regulations, documents, and others. Data analysis uses a syllogistic method through deductive thinking. Based on the results of the research and discussion, it is concluded that the prosecutor's office in its statement uses evidence in accordance with the provisions of Article 184 of the Criminal Procedure Code concerning valuable evidence in the form of witness statements, expert opinions, letters, instructions, statements from the defendant but does not provide electronic evidence as referred to in Article 5 paragraph (1) and paragraph (2) and Article 44 of the ITE Law concerning electronic evidence. In this case, the prosecution presented evidence, but not proof, in the form of a screenshot of the Facebook page used as the site for the electronic defamation. However, because Indonesia adheres to the Wettelijk negative evidence system, the judge considered the testimony of witnesses, experts, and the defendant sufficient to make a decision.

I. INTRODUCTION

Apart from the benefits obtained from technological advances in the computer field, recently problems have arisen when computer networks used by various parties are misused by certain parties for opposing interests, or what is known as computer crime.(Handoyo, Husamuddin, and Rahma 2024)In other terms, this crime is better known as cyber crime or cyberspace crime. Cyber Crime is divided into two categories, namely cyber crime in the narrow sense and in the broad sense. Cyber crime in the narrow sense is a crime against a computer system, while cyber crime in the broad sense includes crimes against a computer system or network and crimes that use computer facilities.(Aspan et al. 2023)

Therefore, even though users are given an agreement when accessing and using information technology such as YouTube, Facebook, Instagram, WhatsApp and even other applications. But until now there has been no application that can detect rude or insulting statements written by a user and take preventive action before sharing their statements, so that someone can easily spread and provoke someone, defame or other despicable actions.(Extract 2021)

The crime of defamation is a violation of the law that must be considered. Defamation itself is regulated in the Criminal Code (KUHP), but becomes a cybercrime if it is done via the internet or distributed on social media. 6 cases of defamation via social media in Indonesia have been handled. Law Number 11 of 2008 concerning Information and Electronic Transactions is regulated in Article 27 paragraph (3) which reads as follows: "Anyone who intentionally and without the right distributes/or transmits and/or makes information and/or electronic information accessible". material containing offensive and/or defamatory content".

The development of technology is also accompanied by the development of criminal acts committed by the community or what we usually call cybercrime. Cybercrime is a criminal activity in which a computer or computer network becomes an instrument, target, or location for a crime. Seeing this reality, the government issued Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE). The ITE

Law is the first legal framework that specifically regulates cyber law in Indonesia. However, in its development, the existence of the ITE Law has changed with the enactment of Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions.(Setiawan 2021)

The ITE Law was enacted to anticipate the negative impacts of the use of technological advances. Actions that attack legitimate interests, especially individual interests, are the bad side of technological advances. The ITE Law has determined what actions constitute criminal acts in the field of ITE (cybercrime), its evil nature and harm to various legitimate interests are determined in the form of certain criminal formulations. Lately, the issue of defamation has emerged which has been questioned by many parties. In the development of the ITE Law, especially Article 27, the law has been tested several times in the Constitutional Court.

Several lawsuits have stated that Article 27 paragraph (3) is considered unconstitutional because its interpretation is too broad. Article 27 paragraph (3) states: "Any person who intentionally and without the right distributes and/or transmits and/or creates electronic information and/or electronic documents that can be accessed by people and contains insulting and/or defamatory content. » This means that there is no freedom here. freedom as free as possible, but freedom according to the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) is the freedom not to interfere with or violate the rights of others. One of the causes of the increasing cases of defamation in cyberspace is because most people still do not realize that cyberspace today is the same as cyberspace.

If a crime occurs including ITE to determine whether or not someone is guilty, criminal procedure law is needed as a guideline for law enforcement. Law enforcement according to criminal procedure law is a process of implementing the law to determine what is according to the law and what is against the law, determining which acts can be punished according to the provisions of material criminal law and instructions on how to act and the efforts required for the smooth implementation of the law both before and after the act occurs in accordance with the provisions of formal criminal law. Law enforcement in Indonesia can be seen in Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP).(Ibrahim 2021)

The authority of the Public Prosecutor as a law enforcer in proving that a crime has been committed by the defendant must determine the evidence as complete evidence related to the alleged crime. The purpose of the evidence must be presented completely is to strengthen the proof that the defendant has actually committed the crime. Valid evidence in criminal law is regulated in Article 184 of the Criminal Procedure Code. However, the legal system of evidence still uses old legal provisions and is conventional in nature so that it has not been able to reach criminal acts that use technology as evidence.

To prove the occurrence of a crime using technology requires evidence other than that listed in Article 184 of the Criminal Procedure Code. Therefore, the government gave a positive response with Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 to accommodate electronic evidence.(Dhadha et al. 2021)

In the end, what Ahmad M. Ramli et al. put forward is right, that cyber activities, although virtual in nature, are categorized as real legal actions and deeds. Legally, it is no longer appropriate for cyberspace to categorize something with conventional measurements and qualifications to be used as an object and deed. Because, if this method is taken, there will be too many difficulties and things that escape the law. Cyber activities are virtual activities but have a very real impact even though the evidence is electronic. Therefore, the perpetrator must also be qualified as having committed a real legal act. The latest developments in criminal law (especially criminal procedure law) have actually attempted to accommodate the development of this information technology. For example, in Law No. 20 of 2001 in conjunction with Law. No. 31 of 1999 concerning the Eradication of Corruption, electronic evidence has been included as valid evidence, in the form of "instructions".(Rianto, Zarzani, and Saragih 2024)This is regulated in Article 26 A which states as follows:

Valid evidence in the form of instructions as referred to in Article 188 paragraph (2) of Law No. 8 of 1981 concerning Criminal Procedure, especially for corruption crimes, is also obtained from:

1. Evidence in the form of information that is spoken, sent, received or stored electronically using optical or similar devices; and
2. Documents, namely any recording of data or information that can be seen, read,

and/or heard that can be produced with or without the aid of a medium, whether written on paper, any physical object other than paper, or recorded electronically, in the form of writing, sound, images, maps, designs, photos, letters, signs, numbers or perforations that have meaning.

Then in the explanation of each article it is stated that what is meant by "electronically stored" for example data stored in microfilm, compact disk read only memory (CD-ROM) or write once read many (WORM). However, problems will arise when the law refers to the Criminal Procedure Code as a reference in investigations, prosecutions or examinations in court. This is because the Criminal Procedure Code regulates that valid evidence only includes:

1. Witness Statement
2. Expert Statement
3. Letter
4. Instructions; and
5. Defendant's Statement

In this regard, many groups have proposed that the Criminal Procedure Code also needs to be revised. Adjust the regulation of evidence with the development of information technology, as regulated in the Law on Corruption Crimes, and other laws, which have included electronic data as evidence. In an effort to avoid injustice for victims, the ability and courage of law enforcement officers are needed to make legal discoveries. This can be done by implementing the legal interpretation method before there is an adequate legal umbrella. Thus, it is hoped that there will be no legal vacuum in prosecuting and trying cyber crime perpetrators in Indonesia.

The focus of my discussion is What are the things or elements that can be used as a categorization in the crime of defamation? And what things can be used or evidence to reveal the crime of defamation in the legal system in Indonesia?

II. RESEARCH METHODS

Legal research is the process of discovering legal regulations, legal principles, and legal doctrines to answer the legal problems faced. This is in accordance with the nature of the legal science perspective. In essence, research is a research effort and is not limited to careful observation of an object that is easy to grasp. Search in English is "research", derived from the word "re" (back) and "search" is to search.(Indra Utama Tanjung 2024)

This research is normative, namely legal research conducted by examining library materials and secondary materials consisting of primary legal materials, secondary legal materials and non-legal materials. According to Sorjono Soekanto[1], legal research tries to find the truth of coherence, namely whether there are legal rules in accordance with legal norms and whether there are legal norms in the form of commands or prohibitions in accordance with legal principles, and whether a person's actions are in accordance with legal norms, not only in accordance with legal rules or legal principles. 4 This research is a descriptive legal research that aims to obtain an explanation of the efforts to prove the crime of defamation through electronic means reviewed from Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) in the perspective of the Criminal Procedure Code (KUHAP).

This research is a normative legal research. Normative legal means examining the systematics of law, the origin of law, and library materials which are secondary data and are also called library research. As well as regulations governing the proof of cybercrime. And sociological legal means research conducted by reviewing cases related to the issue being handled. Such as the case of cyber crime in terms of its proof.(Ersya 2017)

III. RESULTS AND DISCUSSION

A. Things That Can Be Made and Categorized in Criminal Acts of Defamation in the Legal System in Indonesia

a. Elements of the Criminal Act of Defamation (Article 310 of the Criminal Code)

The crime of defamation is more specifically regulated in Article 310 of the Criminal Code. The crime of defamation in Article 310 of the Criminal Code can be divided into two categories, namely:

1. Blasphemy

Anyone who intentionally damages the honor or good name of a person by accusing him of committing an act with the clear intention of making the accusation public, will be punished for

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slander, with a maximum prison sentence of nine months or a maximum fine of Rp. 4,500,-

2. Blasphemy with writing

If this is done through writing or images that are broadcast, shown to the public, or posted, then the person who does this will be punished for defamation by writing with a prison sentence of up to one year and four months and a fine of up to Rp. 4,500.

Blasphemy (Article 310 paragraph (1). The elements of the crime of blasphemy as regulated in Article 310 paragraph are:

a. Whoever or Elements of the Legal Subject

What is meant by the formulation of the elements is a human or anyone who can be punished according to criminal law if there are prohibited acts that are the subject of criminal law, namely every person who can be aware of each of his actions and can be held accountable for each of his actions. Thus, a legal entity cannot be punished because it is not a subject of criminal law. However, Andi Hamzah is of the opinion that the administrators of the legal entity can be punished, unless they can prove that they are not guilty. Mardjono added that a legal entity is a legal subject but its responsibility is delegated to its administrators.

b. Elements with intent or intentionally

*Memories of Reading*or explanatory memory regarding the formation of criminal law, defines intention as an act that is desired and known or known as "willens en wettens". Furthermore, in Memorie van Toelitchting, intention is defined as wanting and knowing, which is then defined that the meaning of wanting is the will to do a certain act, while knowing is defined as knowing or being able to know that the act can cause the desired effect. Moeljatno added, to determine that an act was intended by the defendant, then:

1. It must be proven that the act was in accordance with the motive for doing it and the goal that was to be achieved.
2. There must be a causal relationship in the mind of the accused between motive, action and purpose.

Sianturi defines intent as a form of error. The characteristics of errors in criminal law according to Sianturi are as follows:

a. There is a relationship between the perpetrator's soul and the actions and/or consequences that occur (and in some cases will occur); the relationship between the soul and the action can be assessed, realizing its deplorable nature if it occurs, it should have been avoided beforehand. In other words, there is a relationship between the soul of the perpetrator who is able to take responsibility for the actions and/or consequences.
b. The form of error is intentional or negligent.
c. There is no basis for the perpetrator's actions to exclude guilt as in Articles 44, 48, 49 paragraph (2), and Article 51 paragraph (2) of the Criminal Code.(Faith 2023)

In the criminal proof process, according to Sianturi, in order for someone to be convicted there must be an error in their actions. The form of error is divided into two, namely the element of intent (dolus) and the element of negligence (culpa). The element of intent or dolus is divided into three types, namely intent as a goal, intent of certainty awareness and intent of possibility.

Intention as a goal is an intention that is truly in accordance with the perpetrator's goal to realize his desire. With the formulation that if someone intentionally does something to cause a consequence or in other words the consequence is the goal to be achieved or desired from the act.

Intention with certainty awareness is an intention where if the perpetrator does an act then the perpetrator realizes that another consequence will definitely occur besides the main consequence which is the goal. But in order to achieve the main consequence which is the goal, then the other consequence is not an obstacle and is even taken as a risk to achieve the main goal.

While the intention of awareness is possible if the perpetrator does an act and/or to cause a consequence, but he realizes that if the act is continued it may cause another consequence. However, the emergence of this other consequence does not prevent him, he even takes it as a risk to achieve his goal (dolus eventualis).

c. Attacking someone's honor or good name by accusing them of something

It has been explained previously, that the substance of the nature of insult then we will find that in the act of defamation or insult there are objective and subjective nature. The measure of an objective nature of an insult used by Wijono Prodjodikoro is if what is attacked is a person's "good name", namely to what extent the person's

good name is reduced or tarnished in the eyes of the public due to the act or what is perceived as the attack.

The subjective nature of defamation or insult can be seen if what is attacked is a person's "honor". It is called subjective because although everyone has honor that is based on their value as a human being, the sense of honor in each person is different or different. This depends on the sensitivity of each individual. So that is also what causes law enforcement and justice enforcers to have difficulty determining the benchmark or reference for when defamation or insult occurs.

Due to the absence of a reference or benchmark to determine when defamation or insult occurs, it is possible for a situation to occur where someone complains that another person has committed defamation or insult to his honor for a statement issued or an act carried out by that person, even though he does not actually feel that his good name has been defamed. However, because of an interest in having the other person punished because of dislike or personal problems with that person.

However, in the formulation of this article, the act of defamation is limited by accusing something. The particular act accused of the victim does not need to be stated very clearly by stating the place and time the act was committed, but on the contrary it should not be too vague. Then the alleged act must be able to reduce the honor or good name of the victim, for example he is accused of having committed theft or fraud.

d. With the Intention That It Be Made Publicly Known

The element in public in the view of society is always in front of many people. According to R. Soesilo, the definition of in public means that an act must be deliberately carried out in a place that can be seen or visited by many people, for example on the side of the road, in a cinema, and in a market. According to Wirjono Prodjodikoro, the definition of in public does not need to be interpreted as in a public place, but can also include a residence attended by many people. On the other hand, if the insult is said in a public place, but there is only one person where the person is not the person who is insulted and the act or words are not intended to be conveyed to the person who is insulted, then there is no act of insult in this case.

Meanwhile, the element "with the intention that it be known to the public" is interpreted differently from the element in public that has been explained above. The element "with the intention that it be known to the public" does not need to be proven that the act was committed in a public place or in front of many people or in front of people other than himself, but it is sufficient to be proven that the act was intended or done with the intention of being known by many people or the general public.

B. Things That Can Be Used As Tools And/or Evidence To Reveal Criminal Acts Of Defamation In The Legal System In Indonesia

What is meant by proof is the provisions that contain outlines and guidelines on the ways that are permitted by law to prove the guilt charged to the defendant. Proof is also interpreted as whether or not the defendant committed the act charged. Meanwhile, Darwan Prints stated that what is meant by proof is about whether a criminal event has occurred and the defendant is guilty and must be held responsible for it.(Priyatna, Zarzani, and Aspan 2022)In criminal procedure law, proof is in order to find material truth and true truth. And then it is the obligation of the criminal judge to apply the law of proof and evidence in order to obtain true truth regarding:

1. Which actions can be considered proven according to the trial examination?
2. Has it been proven that the defendant is guilty of the acts of which he is accused?
3. What crimes were committed in connection with these acts?
4. What punishment should be imposed on the accused is not an easy task.

Article 184 paragraph (1) of the Criminal Procedure Code has determined in a limited manner the valid evidence according to the Law. Outside of this evidence, it is not permitted to be used to prove the defendant's guilt. The chairman of the trial, public prosecutor, defendant or legal counsel are bound and limited to only being allowed to use this evidence. Proof with evidence outside of the types of evidence referred to in Article 184 paragraph (1) has no value and does not have binding evidentiary force.(NINGRUM, nd)

From the various descriptions above, it can be seen how evidence becomes an important part in the process of resolving criminal cases not only in court but also outside court. In fact, the evidence process has been carried out before the criminal case is referred to the court or in other words, the evidence process has begun since the investigation stage. Based on Article (1) point 5 of

the Criminal Procedure Code, the definition of an investigation is a series of investigator actions to search for and find an event suspected of being a criminal act in order to determine whether or not an investigation can be carried out. In the investigation, there have been efforts to provide evidence such as hearing witness statements at the TKP (scene of the crime) or collecting evidence.(Daulay, Zarzani, and Aspan 2022)

In terms of evidence, Indonesia is the same as the Netherlands and other Continental European countries, adhering to the fact that it is the judge who assesses the evidence presented with his/her own conviction and not the jury like the United States and Anglo Saxon countries. In these countries, the jury, which is generally made up of lay people, is the one who determines whether a defendant is guilty or not guilty. Meanwhile, the judge only leads the trial and imposes a sentence (sentencing).

The Criminal Procedure Code explicitly regulates valid evidence, which consists of:

1. Witness Statement
2. Expert Statement
3. Documentary Evidence
4. Evidence of Instructions
5. Defendant's Statement

In accordance with the provisions in Article 184 paragraph (1), the Law determines five types of valid evidence. Outside of this, it cannot be used as valid evidence. If the provisions of Article 183 are connected to the type of evidence, the defendant can only be sentenced to a criminal sentence if the guilt can be proven with at least two (2) pieces of evidence referred to in Article 184 paragraph (1) of the Criminal Procedure Code.

Meanwhile, regarding evidence in the ITE Law, it is stated that electronic evidence in the law of evidence in Indonesia is given a special place in the ITE Law. Article 5 paragraph (1) to (4) of the ITE Law states that:

1. Electronic information and/or electronic documents and/or printouts thereof constitute valid legal evidence;
2. Electronic information and/or electronic documents and/or printouts as referred to in paragraph (1) constitute an extension of valid evidence in accordance with the procedural laws applicable in Indonesia;
3. Electronic information and/or electronic documents are declared valid if they use an electronic system in accordance with the provisions stipulated in this law;
4. The provisions regarding electronic information and/or electronic documents as referred to in paragraph (1) do not apply to:

1. Letters which by law must be made in written form; and
2. The letter and its documents, according to law, must be made in the form of a notarial deed or a deed made by the deed-making official.

From the article above, there is an acknowledgement that electronic information and/or electronic documents and/or their printouts are valid evidence in court. This is reinforced by Article 44 of the ITE Law which reads: Evidence for investigation, prosecution and examination in court according to the provisions of this law is as follows:

1. Evidence as referred to in the provisions of the legislation; and
2. Other evidence in the form of electronic information and/or electronic documents as referred to in Article 1 number 1 and number 4 and Article 5 paragraph (1), paragraph (2) and paragraph (3).

One of the things that can be categorized as electronic evidence is in the form of a screenshot printout of defamation in a Facebook group. Screenshot printouts can be categorized as written evidence. Article 5 paragraph (2) of the ITE Law explains that the consequences of legally recognizing electronic information and/or electronic documents and/or their printouts as valid evidence are an expansion of the evidence regulated in Article 184 of the Criminal Procedure Code, but Article 5 paragraph (2) of the ITE Law does not clarify which evidence of the five pieces of evidence mentioned in Article 184 of the Criminal Procedure Code is. Referring to the opinion of Adam Chazawi and Ardi Ferdian in their book entitled Information and Electronic Transaction Crimes, it is stated that the expansion in the ITE Law must be interpreted as an expansion of written evidence because the definition of electronic information and electronic documents as defined in Article 1 number 1 and number 4 of the ITE Law has the same nature as written evidence.

The same nature lies in the writing and/or images that can be seen and read and contain certain meanings. However, it should be noted that electronic evidence that can be categorized as

written evidence is not electronic information or electronic documents that are still in digital form but specifically for electronic information or electronic documents that are already in printed form. This is reinforced by the opinion of the Deputy Attorney General for General Crimes of the Republic of Indonesia Attorney General's Office, namely Arif Indra Kusuma, who is of the opinion that electronic information or electronic documents can be written evidence if the electronic information or electronic documents are changed into printed form as has been recognized by the ITE Law in Article 5 paragraph (1).(Rianto, Zarzani, and Saragih 2024)

Looking at the five pieces of evidence according to Article 184 of the Criminal Procedure Code, namely witness statements, expert statements, letters, instructions and statements from the defendant, then electronic mail falls into the category of written evidence.8 According to the author, the right category to include the print-out screenshot of defamation in the Okinawa Questions-No Rules Attached Facebook group is as written evidence where the electronic evidence already has its own form, namely printed form. Posts regarding defamation in the Facebook group can actually still be displayed, but in the author's opinion, this is categorized as evidence that is still attached to the cellphone evidence submitted by the Public Prosecutor.

IV. CONCLUSIONS AND RECOMMENDATIONS

Based on the previous explanation and discussion as well as the description of the analysis carried out normatively, the conclusions that can be given are as follows:

1. That to Prove the Elements of the Criminal Act of Defamation is the existence of an element of subjectivity (the perpetrator). What is meant by this formulation is that the element is a human being or anyone who can be punished according to criminal law if there are prohibited acts that are the subject of criminal law, namely every person who can be aware of each of his actions and can be held accountable for each of his actions. Thus, a legal entity cannot be punished because it is not a subject of criminal law. However, Andi Hamzah is of the opinion that the administrators of the legal entity can be punished, unless they can prove that they are not guilty. Then there is intent or intention. Intention is interpreted as wanting and knowing, which is then defined that the meaning of wanting is the will to do a certain act, while knowing is interpreted as knowing or being able to know that the act can cause the desired consequences. Moeljatno added, to determine that an act was intended by the defendant. Then there is the element of Attacking Someone's Honor or Good Name by Accusing Something, meaning that the substance of the insulting nature will find that in the act of defamation or insult there are objective and subjective natures.

The Criminal Procedure Code has mentioned about valid evidence, which can be submitted in criminal procedure trials, namely; witness statements, expert statements, written evidence, indicative evidence, and statements from the defendant. However, the Criminal Procedure Code does not provide clear regulations regarding electronic evidence. Meanwhile, Proof of Material Elements of Criminal Defamation Through Social Media is The material element of defamation is an act to make someone humble, or lower someone's standard in society. In order to be categorized as fulfilling the material elements of defamation, the elements that must be fulfilled are: The existence of something or something that is not true that is communicated via the internet; The thing or condition concerns a person or an agency; The thing or condition is published to another party; The publication results in losses for someone who is the object. The material elements that must be proven from a defamation case are contained in Article 27 paragraph 3 of the ITE Law, there are 2 elements, namely Acts: Distributing, Transmitting, Making it accessible. The element against the law, namely what is meant by "without rights" and the objective element is electronic information and/or electronic documents that contain insults and/or defamation.

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