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Law Enforcement against Defamation under the Electronic Information Technology Law

A Case Study of Decision No. 658/Pid.Sus/2021/PN.Sby

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ABSTRACT

The ITE Law is considered as a strong legal basis to control social media and regulate information technology, as stipulated in Law No. 11/2008 and its amendment in Law No. 19/2016. This law applies to anyone, both at home and abroad, if their actions harm the interests of Indonesia. Consumer protection is an important aspect of the modern economy to ensure equitable and ethical practices in the marketplace. This research discusses the concept of consumer protection in the context of consumer rights in Indonesia and how such protection is applied in an ever-evolving market. The main focus of this research is how the ITE Law handles defamation from a legal perspective. Using a normative juridical approach, this research examines relevant legislation, legal literature, and court decisions. This research examines legislation, legal literature, and relevant court decisions. In practice, ITE Law often faces challenges, such as differences in interpretation of articles that have the potential to limit freedom of speech as well as debates over the line between criticism and defamation. The results indicate that even though the ITE Law provides a clear legal basis, its implementation is still a cause for controversy. A balance is needed between the protection of individual reputation and freedom of expression. Regulatory reform and increasing legal awareness in the community are important steps to ensure a fairer and more effective application of the ITE Law.

Keywords: *Consumer Protection, ITE Law, Social Media*

INTRODUCTION

In the current era of technological advancement, rapid progress in computer and internet technology has had a significant impact on human daily activities across various fields of life, both at the local, national, and global levels. This is due to the fact that technological advancements directly drive development in various aspects, including the economy, politics, society, and culture.

Modernity has led to extremely rapid technological development. However, technology cannot control the speed at which humans develop it. On the contrary, technology may control humans if it is used excessively or if there is a lack of oversight during its development. The ongoing technological revolution, like previous revolutions, often brings rapid changes and can even disrupt long-established structures and paradigms (Gill et al., 2024).

The technological advancements that are transforming human life patterns must be swiftly adapted to. Developing countries have the opportunity to prepare themselves for the era of globalization, which demands mastery of advanced technology. It is not only necessary to pursue progress in technology and science, economic development, and the establishment of a democratic society, but also to improve legal regulations at national, regional, and global levels (Bacchetta et al., 2009). In the life of a nation and state, the government and society must work together. Public participation is crucial in realizing development goals. The objective of development, which is to create a just and prosperous society, can only be achieved through strong synergy between the government and the people. To regulate social order, the government implements various policies that support public welfare.

However, in achieving these goals, Indonesia still faces several obstacles that could hinder national progress. Although development in Indonesia has improved public welfare and prosperity, negative impacts such as an increasing crime rate in various forms have also become a concern. These negative effects are significant and have the potential to obstruct national progress (Rahman & Prasetyo, 2018).

One aspect that requires government attention is the freedom of social media usage, which is highly favored by the public. This freedom can lead to a loss of self-control, as well as behaviors and actions that disturb others. The misuse of social media as a free space for expression does not only harm individuals but also society as a whole. If someone excessively uses social media without limits, they may develop antisocial behavior that could harm the interests of others. Additionally, social media addiction can lead to dependency, which affects individuals' behaviors, causing them to deviate from societal norms. Essentially, social media is a platform for self-expression and sharing opinions, but if used for spreading hatred, fraud, blackmailing, cyberbullying, and hate

speech, it can create discomfort for other users who engage with social media for positive purposes (Sahana V, 2023).

Currently, excessive social media misuse is increasingly common in Indonesia, partly due to the country's large number of social media users. The abundance of social media applications available in Indonesia has led to a surge in users. Various policies have been implemented to prevent or control social media misuse that could lead to criminal activities. These policies aim to regulate the rising number of defamation reports, whether filed by companies suffering material losses due to reputational damage or by individuals. In such cases, product owners hold responsibility for negligence in handling defamation reports. Therefore, a proper mechanism is needed to determine who is right or wrong in the reporting process so that consumers do not suffer losses. Consumer protection rights, as regulated in Article 4 of Law No. 8/1999, include the right to voice opinions and complaints regarding goods and/or services used.

Based on these issues, solutions are needed to provide legal protection for consumers. This issue must be further examined so that the public understands the available solutions. This study aims to analyze how existing regulations govern defamation cases related to transactions and interactions on social media. Additionally, this research seeks to identify challenges in legal implementation and its impact on consumers and business actors. By understanding the applicable legal aspects, this study is expected to provide insights into legal protection for the parties involved while also serving as a reference for the formulation of more effective policies in addressing defamation cases in the digital era.

LITERATURE REVIEW

Defamation

Insult, also known as defamation, essentially attacks a person's honor and reputation. A violation of honor can damage a person's dignity, while defamation directly affects an individual's reputation. Therefore, accusing someone can be considered an insult if the accusation attacks their honor or good name (Harahap et al., 2024).

Indonesia's Electronic Information and Transactions Law (UU ITE) regulates the use of information technology and electronic transactions. The primary purpose of this law is to oversee activities related to the internet, computers, and other electronic devices. Freedom of thought and expression, as well as the right to access information through information and communication technology, aim to improve public welfare, educate the nation, and provide a sense of security, justice, and legal certainty for users and electronic system operators, as stated in the General Explanation of ITE Law 2016 (Nurkholim, 2021).

Security in the use of information technology can take the form of legal protection from verbal, visual, and physical criminal acts. However, the widespread private areas on social media and the low standards of prevention make it difficult to control various cybercrimes (Sarkar & Shukla, 2023). In ITE Law 2008, there were eight articles related to criminal acts. However, in ITE Law 2016, Article 45 was amended, and Articles 45A and 45B were added. These articles are intended to prosecute perpetrators of cybercrimes, including defamation.

One of the provisions regulating insult and defamation is Article 45(3) of UU ITE 2016, which states:

“Anyone who deliberately and without right distributes, transmits, and/or makes accessible Electronic Information and/or Electronic Documents containing insults and/or defamation as referred to in Article 27(3) shall be subject to imprisonment for a maximum of 4 (four) years and/or a fine of up to IDR 750,000,000.00 (seven hundred fifty million rupiahs).”

In the transition from ITE Law 2008 to ITE Law 2016, Article 45(1) was changed to Article 45(3), reducing the maximum prison sentence from six years to four years, and the fine from one billion to IDR 750 million rupiahs. As a result, investigators, prosecutors, or judges cannot detain a suspect or defendant because the legal threat has been reduced.

Additionally, Article 27 of ITE Law 2008 was modified, changing the word “clearly” to:

“The provisions in this paragraph refer to the provisions of defamation and/or slander as regulated in the Criminal Code (KUHP).”

Insult, which includes various forms of defamation, is regulated in Chapter XVI of the Criminal Code (KUHP). Article 310(1) of the KUHP defines insult as a situation where someone is accused of something that is actually true but is embarrassing if made public. Conversely, if the accusation is false, it is considered slander or defamation, as outlined in Article 311(1) of the KUHP (Yanto, 2023).

According to ITE Law 2008, defamation is a general offense that can be legally processed even without a report from the victim (Herlina, 2022). However, ITE Law 2016 changed it to a complaint offense (klacht delict), meaning that the victim must report it to the authorities for the case to proceed. This change was based on considerations from the Constitutional Court Decision No. 50/PUU-VI/2008 Jo Decision No. 2/PUU-VII/2009, which states that the provisions in Article 27(3) of ITE Law must be aligned with Articles 310 and 311 of the KUHP.

Defamation Law on Social Media

As technology advances, human activities become increasingly diverse. In the past, human activities were primarily controlled by physical interactions, but now technology has become a significant part of daily life. This development impacts criminal law enforcement, as evidenced by the increasing prevalence of defamation cases on social media.

Punishment for defamation on social media is regulated in Article 27A jo. Article 45(3) of Law No. 1/2024, which states:

“Anyone who intentionally attacks the honor or good name of another person by accusing something with the intention that it be known to the public in the form of information or electronic documents conducted through an electronic system shall be subject to imprisonment for a maximum of two years and/or a fine of up to IDR 400 million.”

Additionally, Article 28(2) of Law No. 1/2024 prohibits the spread of information that incites hatred based on ethnicity, religion, race, and intergroup (SARA). Article 45A(2) of Law No. 1/2024 prohibits individuals from intentionally and unlawfully spreading, distributing, or transmitting electronic documents or information that incites, invites, or influences others in a way that fosters hatred or hostility toward individuals or specific community groups. Violations of this provision are punishable by up to six years in prison and/or a maximum fine of one billion rupiahs.

According to the ITE Law Joint Ministerial Decree (SKB UU ITE), if defamatory content consists of insults such as curses, ridicule, or inappropriate words, Article 315 of the KUHP or Article 436 of Law No. 1/2023 can be used to qualify the offense as minor defamation. This differs from Article 27(3) of ITE Law, which has now been changed to Article 27A of Law No. 1/2024. Furthermore, if the content consists of opinions, assessments, evaluations, or facts, it is not considered defamation.

With the changes in regulations and differences in legal definitions of defamation, it is crucial for the public to understand the legal boundaries when interacting in the digital world to avoid criminal consequences.

RESEARCH METHODOLOGY

This study employs a normative juridical approach, which focuses on analyzing legal norms, principles, and regulations relevant to the enforcement of defamation laws under the Electronic Information and Transactions Law (UU ITE) (Gunadi & Efendi, 2015). This approach is essential in examining the legal framework that governs online defamation cases and how courts interpret and apply these laws in judicial decisions. Additionally, a case study method is

applied to explore Decision No. 658/Pid.Sus/2021/PN.Sby as a primary reference in understanding the implementation of defamation laws in Indonesia.

This research is categorized as doctrinal legal research, as it examines statutory regulations, legal doctrines, and judicial precedents related to defamation under UU ITE. By analyzing court decisions and legal principles, this study aims to provide a critical assessment of how Indonesian courts handle defamation cases in the digital era.

The study relies on three types of legal materials. Primary legal materials consist of statutory provisions such as the 1945 Constitution of Indonesia (UUD 1945), Law No. 11/2008 on Electronic Information and Transactions (UU ITE) and its amendments (Law No. 19/2016 and Law No. 1/2024), the Indonesian Penal Code (KUHP), particularly provisions on defamation (Articles 310 and 311), and Decision No. 658/Pid.Sus/2021/PN.Sby as the main case study. Secondary legal materials include legal textbooks, journal articles, commentaries, and expert opinions related to law enforcement on cyber defamation. Tertiary legal materials comprise legal dictionaries, encyclopedias, and other supporting references that provide further clarification of legal terms and concepts.

This research utilizes library research (literature review) as the primary data collection method. The study involves an in-depth examination of legal texts, court decisions, academic papers, and relevant commentaries. The case study is analyzed based on legal reasoning, judicial interpretations, and compliance with existing laws.

The research employs qualitative legal analysis, which involves descriptive analysis by describing the legal framework of defamation under ITE Law and relevant legal provisions, interpretative analysis by examining how judges interpret legal norms in Decision No. 658/Pid.Sus/2021/PN.Sby, and comparative analysis by comparing legal interpretations in similar cases to identify patterns and inconsistencies in law enforcement.

The study is limited to analyzing the enforcement of defamation laws under ITE Law through Decision No. 658/Pid.Sus/2021/PN.Sby. It does not include empirical research such as interviews or surveys. Instead, the focus remains on legal doctrines, statutory interpretations, and case law analysis.

This study ensures academic integrity by using credible sources and proper legal references. The research maintains objectivity in analyzing judicial decisions and refrains from personal bias or subjective interpretations of the case. By following this methodology, the study aims to contribute to the discourse on the effectiveness and challenges of defamation law enforcement in Indonesia, particularly in the context of digital platforms and electronic communication.

RESULT AND DISCUSSION

Legal Regulation of Defamation According to the ITE Law

The legal regulation of defamation in Indonesia is governed by the Information and Electronic Transactions Law (ITE Law) and the Criminal Code (KUHP). Below is a summary of these regulations:

ITE Law

Article 27A: The latest version of the ITE Law includes Article 27A, which regulates defamation through electronic media. This article states that anyone who intentionally attacks the honor or reputation of another person by making allegations publicly in electronic information form may face criminal sanctions. Violators of Article 27A may be sentenced to a maximum of 2 years in prison and/or fined up to IDR 400,000,000 (four hundred million rupiah).

Article 27: Previously, Article 27(3) of the ITE Law also regulated defamation. However, in the latest amendment, this provision was removed and replaced by Article 27A, which provides a clearer definition and penalties.

Article 45: This article outlines the penalties for violations under Article 27, including defamation committed through electronic media.

Criminal Code (KUHP)

Article 310: The Criminal Code also regulates defamation under Article 310, which covers insults against individuals, both verbally and in writing. This article provides a legal framework for prosecuting individuals who commit defamation, whether directly or through social media.

Article 311: This article addresses aggravated defamation, where perpetrators may face harsher penalties if the act is carried out under specific circumstances or in a more serious context.

It can be concluded that legal regulations on defamation in Indonesia include provisions in both the ITE Law and the Criminal Code, which complement each other. The ITE Law provides specific protection against defamation in digital spaces, while the Criminal Code regulates defamation in general. These regulations are intended to ensure justice for defamation victims and prevent the misuse of information in electronic media.

Changes and Additions to the ITE Law on Defamation

Provisions of Article 27 Before the Amendment

The act of distributing, transmitting, and/or making accessible electronic information/documents containing insults and/or defamation, obscene content,

and extortion and/or threats was prohibited under Article 27 of the ITE Law. The provisions of Article 27 were as follows:

1. Anyone who intentionally and unlawfully distributes, transmits, and/or makes accessible electronic information and/or documents containing obscene content.
2. Anyone who intentionally and unlawfully distributes, transmits, and/or makes accessible electronic information and/or documents containing gambling content.
3. Anyone who intentionally and unlawfully distributes, transmits, and/or makes accessible electronic information and/or documents containing insults and/or defamation.
4. Anyone who intentionally and unlawfully distributes, transmits, and/or makes accessible electronic information and/or documents containing extortion and/or threats.
5. Violations of Article 27(1), (2), and (4) of the ITE Law were punishable by a maximum of 6 years in prison and/or a fine of up to IDR 1 billion. Meanwhile, violations of Article 27(3) were punishable by a maximum of 4 years in prison and/or a fine of up to IDR 750 million.

Article 27(3) of the ITE Law contained elements of “insult” and “defamation,” which referred to Article 310 of the old Criminal Code, which remains in effect, and Article 433 of Law No. 1/2023 on the new Criminal Code, which will take effect in 2026.

Reasons Article 27(3) of the ITE Law Was Considered a Rubber Article

Historically, the elements of Article 27(3) of the ITE Law were highly subjective and prone to misuse by law enforcement. The article was considered a “rubber article” because its interpretation was ambiguous. The main concerns regarding this article included:

1. Restriction of the constitutional right to free expression and human rights.
2. Lack of legal certainty.
3. Potential over-criminalization of individuals who are not guilty or do not deserve punishment due to vague legal grounds.
4. Ineffectiveness due to duplication of insult clauses in the Criminal Code.
5. Arbitrary actions in determining defendants by law enforcement.

The ambiguity of this article prevented the fulfillment of legal objectives in ensuring certainty, usefulness, and justice. However, the Joint Ministerial Decree (SKB) on the ITE Law (p. 11) clarified that expressions of opinions, assessments,

evaluations, or factual statements do not constitute defamation under Article 27(3).

Post-Amendment Changes in the Second Amendment to the ITE Law

Provisions of Article 27 in Law No. 1/2024

It is important to note that Article 27 of the ITE Law has been amended by Article 27 of Law No. 1/2024 on the Second Amendment to the ITE Law. The revised provisions are as follows:

1. Anyone who intentionally and unlawfully broadcasts, displays, distributes, transmits, and/or makes accessible electronic information and/or documents containing obscene content for public knowledge.
2. Anyone who intentionally and unlawfully distributes, transmits, and/or makes accessible electronic information and/or documents containing gambling content.

Thus, Article 27 of Law No. 1/2024 no longer regulates insults and/or defamation. However, two new articles, Article 27A and Article 27B, were added between Articles 27 and 28 of Law No. 1/2024.

Under Article 27A of Law No. 1/2024, anyone who intentionally attacks the honor or reputation of another person by making allegations publicly through electronic information and/or documents in an electronic system may face a maximum of 2 years in prison and/or a fine of up to IDR 400 million.

According to the explanation of Article 27A, “attacking honor or reputation” refers to actions that demean or damage another person’s name or dignity, including slander and/or defamation. The offense under Article 27A is a complaint-based offense (*delik aduan*), meaning that it can only be prosecuted based on a complaint from the victim or the affected person, not a legal entity.

Penalties for Violations of Article 27A of the 2024 ITE Law

Article 45(4): Anyone who intentionally attacks the honor or reputation of another person through electronic means under Article 27A faces a maximum penalty of 2 years in prison and/or a fine of up to IDR 400 million.

Article 45(5): The offense is a complaint-based offense that can only be prosecuted based on a complaint from the victim or affected party, not a legal entity.

Article 45(6): If the allegation cannot be proven true and contradicts known facts despite an opportunity to prove it, the perpetrator may be convicted of slander with a maximum sentence of 4 years in prison and/or a fine of up to IDR 750 million.

Article 45(7): The offense is not punishable if:

1. It is done in the public interest.

2. It is done in self-defense.

Legal Analysis (Case Study of Decision No. 658/Pid.Sus/2021/PN.SBY)

A defendant and three friends, who were consumers/patients, uploaded a private conversation on social media expressing dissatisfaction with a medical service. Since they were consumers, they were protected by Article 27(3) of the ITE Law, which refers to the Criminal Code regarding defamation.

According to consumer protection laws, consumers have the right to express dissatisfaction regarding products and services. If a person shares a genuine personal experience and dissatisfaction, it does not constitute defamation. However, if someone makes false claims without prior experience, it may be considered defamation.

Defamation is a serious issue that can damage a company's reputation. However, filing a defamation case without strong legal grounds can harm business relationships, lead to unnecessary legal costs, and create negative public perception. Therefore, companies should proceed cautiously and follow proper legal procedures before taking legal action.

CONCLUSION

Law enforcement against defamation based on Article 27A of the ITE Law begins when the victim reports the act to the authorities. This process can only proceed if there is sufficient evidence proving that the act meets the elements of defamation. The collected evidence may include screenshots, recordings, or witness statements that support the victim's claim. The ITE Law also provides legal protection for individuals who feel harmed in the digital space, aiming to reduce harmful actions and ensure justice for victims. Additionally, the revision of the ITE Law seeks to prevent the misuse of defamation provisions, which were previously considered a "rubber article," allowing people to express their opinions freely without the fear of unjust legal consequences. Thus, Article 27A of the ITE Law establishes a clear legal framework for handling defamation cases in the digital space while imposing strict sanctions on offenders.

In criminal law, unlawful acts are a crucial concept in maintaining order and justice in society. Clear regulations in criminal law aim to protect individuals from harmful actions and ensure fairness in law enforcement. In the context of defamation, there is a distinction between an empirical experience and an act that genuinely attacks someone's honor. If a person experiences unexpected results from a treatment and shares their experience with friends, it is not considered defamation but rather an expression of personal dissatisfaction. However, if someone spreads negative information without ever experiencing the event—such as falsely accusing a doctor of lacking expertise or certification—this can be classified as defamation. Therefore, before reporting a defamation case, a strong legal basis is necessary to avoid damaging business relationships, incurring

unnecessary legal costs, or creating a negative public image. Thus, both individuals and companies must act cautiously and follow the proper legal procedures before taking legal action regarding defamation.

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