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*by* Feb Ulb

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**Submission date:** 11-Jun-2021 04:19AM (UTC-0400)

**Submission ID:** 1604593222

**File name:** -Good-Name-Pollution-Through-The-Internet-A-Juridical-Review.pdf (162.82K)

**Word count:** 3730

**Character count:** 19433

# CRIMINAL ACTION OF GOOD NAME POLLUTION THROUGH THE INTERNET: A JURIDICAL REVIEW

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**Abstract**— The type of research used is field research, with a normative-empirical approach that is a data analysis based on a general legal theory which is applied to explain another set of data. The type of data used is secondary data. This data is data obtained from library research. In writing the data used is obtained through library research. The results achieved in this study indicate that: 1) Article 27 paragraph 3 Jo Article 45 after the revision of the ITE Law, namely "Everyone who intentionally and without the right to distribute and/or transmit and/or make access to electronic information and/or electronic documents that have a charge of insult and/or defamation as referred to in article 27 paragraph (3), with the provisions of a maximum prison sentence of 4 (four) years and/or a maximum fine of Rp750,000.00.00 (Seven hundred fifty million rupiah). 2) In the Constitutional Court Decision Number 50 / PUU-VI / 2008 for Judicial Review Article 27 paragraph (3) jo Article 45 paragraph (1) of Law No. 11 of 2008, the Constitutional Court is of the opinion that "the insults provided for in Article 310 paragraph (1) and paragraph (2) of the Criminal Code. The implications of this research are: 1) With the threat of criminal penalties, let us together maintain our attitude in using our respective social media because it will be detrimental to us. 2) A very basic difference in the regulation of the Criminal Code (KUHP) with the ITE Law is how to deliver and the threat of punishment if the proverb used to say "your mouth is your tiger" now must be added namely "your finger is your tiger" because just by typing we can be jailed.

**Index Terms**— Criminal Action, Good Name Pollution; Internet; Juridical Review.

## 1 INTRODUCTION

Humans innovate by elaborating on technology with one another so that technology is currently experiencing very rapid and significant development and has changed the role of technology into a primary need for human life. This is one of the factors in the external environment in the life of an organization or an individual [1], with this, it can be said that the human need for technology continues to increase every day. Freedom of expression can mean guaranteed freedom of expression with a state free from pressure to express ideas or ideas, both orally and in writing and so forth freely and responsibly in accordance with the provisions of the legislation in force. The development of information and communication technology continues to develop in accordance with the times that are widely used in individual or business activities, whether micro, small, medium or large. Along with the emergence of the internet in human life in modern times, became the basis of an integrated information and communication system concept with social media and the web in the digital world [2] and there have also been a variety of new crimes that were never known before by the public before the advent of computers, especially before the internet finally appeared that made it possible for communication between computer users, because of these crimes can only be done with a computer or the internet as a means. In March 2008, Law Number 11 of 2008 concerning Information and Electronic Transactions was passed. The law stipulates criminalization several of criminal defamation through social media which were not previously criminal acts through several

breakthroughs and expansions in terms of their principles and criminal sanctions. In addition to substantive criminal rules, Law Number 11 of 2008 concerning Information and Electronic Transactions also regulates procedures and evidence that has been expanded, namely the inclusion of new evidence relating to electronic media. Furthermore, if someone is reported to have violated the provisions contained in Article 27 paragraph (3). Therefore, it is also necessary to state that the unlawful nature has an exceptional value if it is related to Article 310 paragraph (3) which states that it is not written pollution or pollution if the act is clearly done in the public interest or because it is forced to defend. With the enactment of Law Number 11 of 2008 concerning Information and Electronic Transactions, it can become a legal umbrella for the community. In the case of the implementation of proof of the Article, it must be careful not to make it an opportunity for arrogant parties to make this article a rubber article. In Article 27 paragraph (3) of Law Number 11 of 2008 concerning Information and Electronic Transactions must be viewed more broadly, not only in black and white through the Information and Electronic Transaction Law and the Criminal Code but only must comprehensive and not partial.

The data is effective data collected by the Indonesian Internet Network Providers Association per 2016. The significance of the development of computer technology with telematics requires the philosophy of the need for rules and/or norms to be something that cannot be ignored anymore. In fact, Indonesia also has had laws and regulations governing Information and Electronic Transactions for quite a long time, which was only updated in 2016 to become Law No. 19 of 2016 concerning Amendment to Law No.11 of 2008 concerning Information and Transactions Electronic. In Article 3 paragraph (1) of Law No. 19 of 2016 states that the principles of the use of information and communication technology must be based on the principles of legal certainty, the principle of benefits, good faith, prudence, and freedom to choose technology or technology-neutral. The high level of criminality in Indonesia results in various ways in

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committing criminal acts by the development of technology to become victims of criminal acts. [3]. Defamation of defamation is subjective, that is, the assessment of deformation depends on the party being attacked. Defamation can only be processed by the police if there are complaints from those who feel defamed. In criminal acts of defamation and insults are still deemed inappropriate because they contain many meanings in their implementation in defamation [4]. The use or misuse of technology is not only a major form of human activity but also a way of activity in any field. Since the recognition of the statement that human activities in various forms that have led to the emergence and application of law or the creation of several standards to regulate these activities, it seems clear that technology must also be opened in order to be regulated by law. Based on the description that has been stated above, it is important to do a study of a Juridical Review of the justification of the good name which the writer later poured in this study.

## 2 LITERATURE REVIEW

Crime is a translation from the Dutch language "strafbaarfeit" which is the official term in "Wetboek van Strafrecht" which has been translated into Indonesian with the Indonesian Criminal Code (KUHP) which is still valid in Indonesia today. Criminal according to R. Soesilo means "a punishment that is an uneasy feeling (miserable) which is imposed by a judge with a verdict on someone who violates the criminal law Act". Acts convey the news that seems to be made true even though a lie that is deliberately falsified to bring down someone's self-esteem is a criminal act of defamation. Defamation is different from a statement in the form of an opinion or opinion, not included in the object. Defamation of Crimes due to opinions or opinions not intended to intentionally bring down one's self-esteem [4].

The elements of the crime are as follows:

### a. The Objective Element

The element that is outside the perpetrator. The elements that have to do with circumstances, namely in circumstances where the actions of the offender must be done. Consists of : 1) The nature of breaking the law; 2) The quality of the performer; 3) Causality;

### b. Subjective Elements

The element that is present or attached to my self, or which is connected to my self, and includes everything that is contained in his heart. This element consists of: 1) Deliberate or accidental (dolus or culpa); 2) The purpose of an experiment, as determined in Article 23 paragraph (1) of the Criminal Law Code; 3) Various purposes, such as in crimes of theft, fraud, extortion, and so on; 4) Planned in advance, as stated in Article 340 of the Criminal Code, namely premeditated murder; 5) Feelings of fear as contained in Article 380 of the Criminal Code;

## 3 METHODOLOGY

This research is normative juridical research, namely writing scientific papers based on a literature study and looking for concepts, opinions or findings related to the problem. The type

of data used is secondary data. This data is data obtained from library research. In writing the data used is obtained through library research namely to primary legal materials, namely legal materials that have binding legal force for individuals or communities that can help in writing. Primary data consists of: a. The 1945 Constitution of the Republic of Indonesia; b. Law Number 1 of 1946 concerning the Imposition of Criminal Law Regulations in All of Indonesia (KUHP). c. Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP). d. Act Number 19 of 2016 concerning changes to Act Number 11 of 2008 concerning Information and Electronic Transactions. e. Secondary legal material is that which provides an explanation of the primary legal aspects, such as scientific works, journals, papers, articles, and papers from other legal circles. f. Tertiary legal material is material that provides information, instructions and explanations for primary and secondary legal materials, such as dictionaries and encyclopedias.

## 4 DISCUSSION

A. Criminal Sanctions Against Crime of Defamation through the Internet Associated with Freedom.

Argued. in criminal law, defamation is denigrating or insulting with letters/writings but those who carry out the act are allowed to prove it and apparently cannot prove it [5]. This is more or less we can associate with the existence of Law No. 11 of 2008 concerning Information and Electronic Transactions. The existence of the ITE Law has not been agreed upon by all the public because it is seen as limiting freedom of expression. Some provisions of the ITE Law, particularly Article 27 paragraph (3) which regulates defamation and/or defamation, are often considered to be the cause of people choosing silence or "self-censorship" for socio-political conditions in society. Chapter XVI of the Criminal Code concerning defamation contains two 12 articles from Article 310 to Article 321. Criminal acts in Chapter XVI of the Criminal Code are classified as offences, as stated in Article 319 of the Criminal Code. According to Article 1 number 25 of the Criminal Procedure Code (KUHP), prosecution related to the offense of complaint can only be done by the injured party or the victim. The object of complaints in Chapter XVI of the Criminal Code must be an individual person (naturlijk persoon) because if it is not done against an individual then it will be included in special Articles outside Chapter XVI of the Criminal Code [4]. Even though changes have been made, the ITE Law still seems to invite criticism especially with regard to articles of defamation and / or defamation as regulated in Article 27 paragraph (3) of the ITE Law. In general, both before being revised and after being revised, Article 27 paragraph (3) of the ITE Law is still considered by many to limit freedom of opinion or expression. In other words, the article is considered to be contrary to the nature of freedom of opinion guaranteed in Article 28 of the 1945 Constitution.

B. Differences in the Application of Law No. 19 of 2016 concerning Amendment to Law No. 11 of 2008 concerning Information and Electronic Transactions with the Criminal Code

In Indonesia, this article of insult is still maintained. The

reason, besides producing character assassination, defamation is also considered to be incompatible with the traditions of Indonesian people who still uphold eastern customs and culture. Therefore, defamation is a form of *rechtsdelicten* and not *wetdelicten*. That is, defamation is considered a form of injustice before it is stated in the Act because it violates the rules of courtesy. Even more than that, defamation is considered to violate religious norms if there is defamation in the substance of the defamation. In the insulting content at issue, there must be clarity about the identity of the person being insulted. The identity must refer to an individual (natural person) identity can be in the form of a picture (photo), username, person's life history, or other information related to a particular person [6]. In addition to Articles 27 and 28 of ITE Law No. 11 of 2008 concerning defamation, in the criminal law books also regulate criminal defamation and defamation. Forms of Defamation, divided into the following material insults, Insults that consist of a fact that includes objective statements in words verbally or in writing, then the deciding factor is the content of statements both used in writing and orally. It is still possible to prove that the accusations were made in the public interest. Formal insults, in this case, do not state what the contents of the insult are, but rather how the statement in question is issued.

1). Formulation of criminal defamation in Law 19 of 2016 Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions. While the sound of article 27 paragraph 3 Jo article 45 after the revision of the ITE Law is as follows: "Everyone who intentionally and without the right to distribute and/or transmit and/or make accessible Electronic information and/or electronic documents that have content of insult and/or defamation as referred to in article 27 paragraph (3), with the provisions of a maximum jail sentence of 4 (four) years and/or a maximum fine of Rp750,000.00.00 (seven hundred and fifty million rupiah).

2) Formulation of criminal defamation in KUHP; In the Criminal Code contains articles of insult with six types of forms of insults, including: a) Defamation (Article 310 paragraph (1) of the Indonesian Criminal Code) with the article sound: "Anyone who intentionally attacks someone's honour or reputation by accusing a thing, with a clear intention that it is known publicly, is threatened because of the name pollution with a maximum imprisonment of nine years or a maximum of four thousand and three hundred rupiahs in prison". b) Defamation by letter (Article 310 paragraph (2) of the Criminal Code): "If it is done by writing or pictures that are broadcast, displayed or posted in public, then it is threatened with written writing with a maximum imprisonment of one year and four months or a maximum fine of four thousand five hundred rupiah. Pollution is done by using "writing and drawing", writing is the result of the work of writing both by hand and by any means in the form of a series of words/sentences in any language whose contents contain a certain meaning (in case attacks the honour and good name of people), on a paper or other objects that are writable for example paper, boards, cloth and as follows. c) Defamation (Article 311 paragraph (1) of the Criminal Code) reads: "If the person who commits the crime of pollution or written pollution is permitted to prove the truth of the allegation but he cannot prove it, and the charge is against what he knows, then he is threatened for committing slander

a maximum imprisonment of four years". d) Minor insults (Article 315 of the Criminal Code): "Any deliberate insult that is not of a pollution or written pollution, which is committed against a person, either publicly orally or in writing, or in front of the person himself orally or in deeds, or with letters sent or received to him, is threatened because mild insults, with a maximum imprisonment of four months and two weeks or a maximum fine of three hundred rupiah". e) False complaints or defamation complaints (Article 317 of the Criminal Code) (1) Anyone who intentionally submits a false complaint or notification to the authorities, both in writing and for writing, about a person so that his honour or reputation is attacked, threatened because he makes a defamation complaint, with a maximum imprisonment of four years. f) Defamation (Article 318 of the Criminal Code); "Anyone who commits an act of intentionally falsely suspects a person that he is committing a criminal act is threatened, because he creates a false allegation, with a maximum imprisonment four years." g) The humiliation of people who have died Article 320 of the Criminal Code.: "Anyone who has died committing an act that if the person is still alive will constitute pollution or written pollution, threatened with imprisonment for a maximum of 4 months 2 weeks or a maximum fine of four thousand five hundred rupiah". The difference between the articles contained in the Criminal Code and the ITE Law lies only in the layout or sequence of arrangements for the various acts. If the convention starts with acts categorized as cybercrime in the strict (pure) sense, then the regulation in the ITE Law does not follow that item. Differences of opinion regarding the substance of Article 27 paragraph (3) of the ITE Law. There is an opinion that the interpretation of Article 27 paragraph (3) of the ITE Law is related to Article 310 of the Criminal Code, which "in public" element applies also in the dissemination of electronic information containing defamation and / or defamation, for example, electronic information disseminated via e-mail is said to be does not meet the elements in public because it is closed between individuals. Meanwhile, another opinion is that elements in public cannot be used in the dissemination of electronic information due to the specificity of electronic information dissemination: fast, various channels (such as email, web, SMS), and wider reach, so that electronic information disseminated via email is not necessary questioned and linked to elements in public, and the ITE Law covers all types of electronic information dissemination either closed (for example via email) or open (for example via the website). In the Constitutional Court Decision Number 50/PUU-VI/2008 for Judicial Review Article 27 paragraph (3) jo Article 45 paragraph (1) of Law no. 11 In 2008, the Constitutional Court was of the opinion that "insults stipulated in the Criminal Code (offline insults) cannot reach offences for defamation and defamation carried out in cyberspace (online insults) because there are elements" in public ". Can the words of the elements "publicly known", "in public", and "broadcast" in Article 310 paragraph (1) and paragraph (2) of the Criminal Code include cyberspace expressions? Incorporating cyberspace into the notions of "publicly known", "in public", and "broadcast" as in the Penal Code, is literally inadequate so that special formulations that are extensive are needed namely the words "distribute" and/or "transmit" and/or "make accessible" libel charges. Based on the opinion of the

Constitutional Court it can be concluded that the element 'in public' does not become an element in the dissemination of electronic information..

Baik Melalui Media Sosial Berdasarkan Pasal 27 Ayat (3) Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik Dikaitkan Dengan Kebebasan Berpendapat". *JOM Fakultas Hukum*, vol. 3, no. 1, pp. 1-15, Feb 2016.

## 5 CONCLUSION

The existence of Law No. 11 of 2008 concerning Information and Electronic Transactions. The existence of the ITE Law has not been agreed upon by all the public because it is seen as limiting freedom of expression. Some provisions of the ITE Law, particularly Article 27 paragraph (3) which regulates defamation and/or defamation, are often considered to be the cause of people choosing silence or "self-censorship" for socio-political conditions in society. insults, as regulated in Article 27 and Article 28 of ITE Law No. 11 of 2008, was actually made to protect the rights of individuals and institutions because basically the information to be published should have received permission from the person concerned so that he did not feel aggrieved by the act and could be held responsible. In addition to Articles 27 and 28 of ITE Law No. 11 of 2008 concerning defamation, in the criminal law books also regulate criminal defamat<sup>12</sup> and defamation.

Amendments only add to the explanation of Article 27 paragraph (1), paragraph (3), and paragraph (4) to make it more harmonious with the material criminal law system regulated in Indonesia. And a significant change was in criminal sanctions which were previously imprisoned for 6 years to 4 years imprisonment, and criminal fines which were previously Rp1,000,0000,000.00 (one billion rupiah) to Rp750,000,000.00 (seven hundred and fifty rupiah).

## ACKNOWLEDGMENT

The authors wish to thank Dr. H. Amarullah Nasution, SE., MBA, as the Labuhanbatu University Foundation.

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