

DEFAMATION CRIMES UNDER INDONESIA'S ITE LAW: ARTICLE 27 OF LAW NO.11 OF 2008 AND ARTICLE 45 OF LAW NO.19 OF 2016

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ABSTRACT

In its development, the criminal act of defamation has become more modern along with the increasingly advanced development of information and communication technology. The growing social media also provides great opportunities for crime to occur. Considering the danger that will be caused, Islamic law is threatened with severe punishment for the crime of defamation. The more rapid the development of science, including the emergence of various types of social media which are used as a means for social interaction, the possibility of changing the mode of criminal defamation will also develop. For this reason, an in-depth study of various cases of defamation is needed in the hope of deepening insight into the ITE Law. The problem in this research is wanting to know how criminal acts of defamation are in the ITE Law Article 27 No.11 of 2008 in conjunction with Article 45 of the Law. Law No. 19 of 2016. This research aims to describe the contribution of law, in order to provide an explanation regarding criminal acts of defamation. This research uses qualitative methods where data collection is carried out by literature study and documentation. The results of the research show that the legal perspective of defamation contained in the Criminal Code Chapter XVI articles 310 to article 321 insults in this chapter includes six types of insults, namely; Article 310 paragraph (1) regarding defamation, Article 310 paragraph (2) regarding insulting with a letter, Article 311 regarding slander, Article 315 regarding light insults, Article 317 regarding slanderous complaints, and Article 318 regarding slanderous accusations, as well as outside the Criminal Code Article 27 Paragraph 3 of Law Number 11 of 2008 concerning Information and Electronic Transactions. Meanwhile, the legal impact of criminal acts of defamation in the ITE Law Article 27 No.11 of 2008 in conjunction with Article 45 of Law no. 19 of 2016, the public will be more selective in distributing and/or transmitting and/or making accessible electronic information and/or electronic documents so as not to cause insults and/or defamation. Model of offense formulation in Article 27 paragraph (3) jo. Article 45 paragraph (1) of the ITE Law has its own consequences because in practice the Courts decide differently regarding the formulation of the offense.

Keywords: Crime, Good Name, ITE Law.

INTRODUCTION

In the legal aspect, accusations and defamation have a huge impact on creating order and protecting human dignity. With this accusation, a person's good name will be at stake in society. It is not impossible that someone who has been defamed will be ostracized in social life. Society will also look down on the person and can even lead to isolation of the person from social life. Defamation can be carried out by irresponsible individuals through various media and methods (Ashshofa, 2007). A person can be categorized as committing defamation if they carry out the action directly and actively, in the sense that the accuser and the accused

are face to face and the defamation occurs then and there. There are also people who commit defamation by expressing bad and offensive words about someone to other people and that person hears this information through rumors, or through mass media and social media. In its development, the mode of criminal defamation will become more sophisticated as information and communication technology becomes more sophisticated (Makarim, 2010). A person who is on an island or in a country can defame people who are on another island or country (Sugiyono, 2013). Recently, the crime of defamation through social media (social media) has become increasingly popular. Mostly loved by the majority of Indonesian people. Social media or social media which is increasingly developing also provides great opportunities for crime to occur.

Considering the danger that will be caused, Islamic law is threatened with severe punishment for the crime of defamation. With the increasingly rapid development of science, including the emergence of various types of social media which are used as a means for social interaction, the possibility of changing the mode of criminal defamation will also develop. Therefore, it is very important to conduct a more in-depth study regarding various cases of defamation through social media with the hope that the results of this study can deepen insight into the ITE Law in relation to the use of social media. This is driven by freedom of opinion in this technological era which tends to express opinions as freely as possible without limits. So that it has an unfavorable impact, it can also be detrimental to the victim's reputation or cause material loss due to the act of defamation. For this reason, it is necessary to be firm regarding these criminal acts and they must be handled properly so that there are no misunderstandings that are detrimental to society. Islamic law, as *rahmatan lil'alamin*, in principle protects and guarantees the honor of every human being and requires the honor of his brothers and sisters to be protected. For example, how Islam regulates the issue of insults, which Islam clearly prohibits (Patimah, 2014). In the Criminal Code, a person is deemed to have defamed another person when that person intentionally and with the aim of causing something related to the honor, position, dignity of a person's good name that he or she knows becomes known to another person.

The Criminal Code describes defamation which is a complaint offense regulated in Chapter XVI of the Criminal Code, namely Article 310 of the Criminal Code to Article 321 of the Criminal Code. The existence of the Criminal Code, especially Article 310 paragraphs (1) and (2). (1) Any person who deliberately attacks someone's honor or good name by accusing them of something, with the clear intention of making it known to the public, is threatened for defamation with a maximum imprisonment of nine months or a fine of up to Rp. 4,500. (2) If this is done by means of writing or images that are broadcast, displayed or posted in public, then for written defamation he is threatened with imprisonment for a maximum of one year and four months or a fine of up to Rp. 4,500.

Other criminal provisions outside the Criminal Code are contained in statutory regulations, Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE), which basically serves as guidelines for social interaction via the internet. The ITE Law regulates defamation in article 27 paragraph (3) jo. Article 45 paragraph (3), namely: Every person who intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents which contain insulting and/or defamatory content as intended in Article 27 paragraph (3) shall be sentenced to a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 750,000,000.00 (seven hundred and fifty million rupiah). Even though there are legal regulations that prohibit defamation, acts of defamation are still often encountered in everyday life. Even though the laws and regulations clearly regulate it.

This is due to rapid technological advances that allow the emergence of new types of crimes that can be committed through social media (Sanusi, 2011). Defamation cases have attracted the attention of the wider community, so it is interesting for the author to conduct research on "Criminal Defamation in the ITE Law Article 27 No.11 of 2008 Juncto Article 45 of Law No.19 of 2016".

THEORITICAL REVIEW

Defamation

Freedom to express thoughts and opinions verbally and in writing belongs to all Indonesian people. Likewise, as a country that is sovereign by the people and based on law (rechstaat), and not based on mere power (machstaat), Indonesia recognizes that freedom to express thoughts and opinions verbally and in writing, freedom of expression and freedom of the press are basic rights that must be can be enjoyed by all levels of society and is also the basis for upholding the pillars of democracy (Bisri, 2005). Without freedom of speech, people cannot express ideas and cannot criticize the government. Thus there will be no democracy. Defamation is a special form of unlawful act. Some of the terms used regarding this form of unlawful act are defamation, but others say it is an insult. In fact, the measure by which an act can be categorized as defamation of another person is still unclear because there are many factors that must be studied (Partodihardjo, 2009). In the case of defamation or insult, what is to be protected is the obligation of every person to respect other people from the point of view of their honor and good name in their eyes. another person even if that person has committed a serious crime. There is a relationship between honor and good name in the case of defamation, so you can first look at the meaning of each.

Honor is a person's feeling of honor in the eyes of society, where everyone has the right to be treated as an honorable member of society. Attacking honor means committing an act according to the general assessment of attacking someone's honor. Respect and actions that fall into the category of attacking someone's honor are determined according to the community environment in which the action is carried out. This sense of honor must be objectified in such a way and must be reviewed with a particular action, whether someone will generally feel offended or not. It could also be said that a very young child cannot yet feel this offense, and that a very crazy person cannot feel this offense. So, there is no criminal act of insulting these two types of people. A good name is a good assessment according to general opinion about someone's behavior or personality from a moral point of view.

A person's good name is always seen from the perspective of other people, namely good morals or personality, so that its measurement is determined based on general assessments in a particular society in the place where the act was carried out and the context of the act (Bakri, 2022). Defamation is also known as humiliation, which is basically attacking someone's good name and honor in a non-sexual sense so that the person feels aggrieved. Honor and good name have different meanings, but they cannot be separated from each other, because attacking honor will result in one's honor and good name being tarnished, likewise attacking one's good name will result in someone's good name and honor being tarnished. Therefore, attacking one's honor or good name is sufficient reason to accuse someone of committing an insult.

Forms of Defamation

There are two types of defamation, namely verbal defamation and written defamation. Defamation is known as insult, which is divided into the following: (a). Material insults, insults which consist of a fact which includes an objective statement in verbal or written words, so the determining factor is the content of the statement whether used in writing or orally (Machmuddin, 2013).

There is still the possibility of proving that the accusation was carried out in the public interest. (b) Formal insult. In this case, it is not found what the content of the insult is, but rather how the statement in question was made. The form and method are the determining factors. In general, the way to express this is in rough and non-objective ways. The possibility of proving the truth of the allegations does not exist and it can be said that such possibility is closed. The Criminal Code defines insult in articles 310 paragraphs (1) and (2), which contain: Article 310 paragraph (1): Whoever intentionally damages someone's honor or good name by accusing him of committing an act with the real intention that the accusation will be published, shall be punished with defamation, with a prison sentence of up to nine months or a fine of up to Rp. 4500, Article 310 paragraph (2): If this is done with writing or pictures that are broadcast, displayed in public or posted, then the person who does so is punished for defaming the writing with a maximum prison sentence of one year and four months or a fine of up to Rp. . 4500,- The criminal law regulates insults in the Criminal Code in CHAPTER accusing him of committing an act with the real intention of making the accusation known, shall be punished by defamation, with a maximum prison sentence of nine months or a fine of up to Rp. 4500,-. Article 310 paragraph (2) concerns blasphemy by writing, which states: If this is done by means of writing or a picture which is broadcast, shown in public or posted, then the person who does so shall be punished for blasphemy by writing with a maximum prison sentence of one year and four months or a maximum fine of Rp. 4500,- Article 311 concerning slander; If the person who commits a crime of libel or written defamation, in cases where it is permissible to prove that what is alleged is true, does not prove it and the accusation is made contrary to what is known, then he or she is threatened for committing slander, with a maximum prison sentence of four years (Sahibul, 2020). Article 315 concerning insult light; Every intentional insult that is not in the nature of defamation or written defamation, which is committed against a person, either in public orally or in writing, or in front of the person himself orally or in action, or in a letter sent or received to him or her, is threatened with..... ."Article 317 concerning slanderous complaints; Whoever deliberately submits a false complaint or notification to the authorities, either in writing or in writing, about someone so that his honor or good name is attacked, is threatened for slanderous complaints with...." Article 318 concerning slanderous accusations. Any person who by any act intentionally creates a false suspicion against someone that he has committed a criminal act is threatened with giving rise to a false suspicion by... Meanwhile, those outside the Criminal Code include: Article 27 Paragraph 3 of Law Number 11 of 2008 concerning Information and Electronic Transactions, which reads: "Every person intentionally and without right distributes and/or transmits and/or makes information accessible Electronics and/or Electronic Documents that contain insulting and/or defamatory content."

All these insults can only be prosecuted if there is a complaint from the person or victim, which is known as a complaint offense, unless this insult is committed against a civil servant while he is carrying out his duties legally (Ramulyo, 1995). In the Criminal Code there are formal offenses and material offenses, while in the ITE Law it is only material offenses. The object of the insults above must be individual humans, meaning not government agencies, administrators of an organization, a segment of the population, and so on. In order to be punished with insulting or defamation, the insult must be committed by

accusing someone of having committed a certain act with the intention that the accusation will be known by many people, both verbally and in writing, or the crime of defamation does not need to be carried out in public. It is sufficient if it can be proven that the defendant intended to broadcast the accusation. According to Article 310 paragraph (3) of the Criminal Code, acts of defamation or defamation in writing are not punished if they are done to defend the public interest or are forced to do so in self-defense (Moeljatn, 1993).

Whether or not the reason for self-defense or the public interest is appropriate lies in the judge's consideration, so that if the judge states that the insult was truly to defend the public interest or self-defense, then the perpetrator will not be punished. However, if the judge determines that the insult is not in the public interest or in self-defense, the perpetrator is subject to punishment under Article 310 paragraphs (1) and (2) of the Criminal Code, and if what is alleged by the perpetrator is not true, then the perpetrator is punished under Article 311 of the Criminal Code, namely slanderous.

Various Offenses

The crime of defamation is specifically regulated in CHAPTER The honor that is attacked is about the honor of one's good name, not in the physical realm. Actions that physically offend someone's honor do not fall into the category of insult, but are crimes of decency or politeness as regulated in Articles 281 to 303 of the Criminal Code. Defamation in criminal law is known as insult. The definition of insult can be deduced systematically from the provisions of Article 310 paragraph (1) of the Criminal Code, which is connected to Article 310 paragraph (2), and Article 315 of the Criminal Code. From these three provisions, we can find the basic definition of the offense of insult and additional elements that provide special qualifications to become a form of insult The Criminal Code also regulates various types of offenses, namely: (a) Offenses of Insults (Defamation). The problem of insults is generally found in CHAPTER XVI of the second book of the Criminal Code regarding the definition of insults which can be found in the formulation of Article 310 of the Criminal Code, which In essence, it states that insult is an act of attacking someone's good name by accusing them of something with the aim of making it widely known. Insults can be carried out verbally or in writing, directed at just one person, or at several people or groups, and also at certain institutional institutions (Marpaung, 2005). The insult in question is an insult carried out in writing. The intended targets of an insult are varied, insults can be committed against certain individuals, groups or institutions. The regulations in the Criminal Code regarding insult offenses can then be divided into several categories of insults based on the object. The categories of insulting offenses are: Insults directed at the President and Vice President, Article 137; Insults directed at the King, head of a friendly State or representative of a foreign State in Indonesia, Article 144 of the Criminal Code; Insults against public authorities, Articles 207 and 208 of the Criminal Code; Insults directed at individuals, articles 310 and 315 of the Criminal Code; Defilement of the dead, Article 321 of the Criminal Code. (b) The offense of spreading false news. The definition of the offense of spreading false news is giving or presenting news or reports without clarity of correct facts, which is only based on rumours, rumours, or one-sided information which results in harming other people and is sensational in nature (Andrisman, 2011). The general element of the offense of insult is intentionally attacking another person's honor or good name. An act of insult is always carried out intentionally and the intent of the act is to attack the honor or good name of another person. Defamation as a form of insult is a complaint offense, that is, it can only be prosecuted if there is a complaint from the person who suffers it. Criminal Code Article 74 also regulates the time limit for filing a complaint (Pujiono, 2012). The right to file a

complaint is determined: Six (6) months, from the time a person has the right to know, if they reside in Indonesia. Nine (9) months, from the time the person has the right to know, if they reside outside Indonesia. On the other hand, freedom to express one's thoughts and freedom of opinion as well as the right to obtain information through the use and utilization of information and communication technology is aimed at advancing general welfare, and making the life of the nation intelligent and providing a sense of security, justice and legal certainty for users and Electronic System Operators (General Explanation UUIE 2016).

A sense of security for the use of technology and information can be in the form of legal protection from all criminal acts, whether verbal, visual or causing physical contact. However, the vast private area of social network users with minimal prevention standards means that it is not easy to prevent the occurrence of various criminal acts. The 2008 ITE Law has stipulated 8 articles of criminal provisions, but the 2016 UUIE has made changes to Article 45 and added Articles 45A and 45 B, all of which function to ensnare perpetrators of criminal acts related to Information Technology crimes (Cyber Crime). One of them is Article 45 paragraph (3) UUIE 2016: "Every person who intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents which contain insulting and/or defamatory content. as intended in Article 27 paragraph (3) shall be punished with imprisonment for a maximum of 4 (four) years and/or a fine of a maximum of Rp. 750,000,000.00 (seven hundred and fifty million rupiah)."

Changes in the basic elements of the provisions of Article 45 paragraph (1) of the 2008 UUIE to Article 45 paragraph (3) of the 2016 UUIE regarding insult/defamation are the length of punishment which is reduced from a maximum imprisonment of 6 (six) years to 4 (four) years while the fine from the original 1 billion to 750 million (Atmasasmita, 1995). The impact of reducing the criminal threat is that suspects or defendants cannot be detained by investigators, public prosecutors or judges. Apart from that, there is a change in the explanation of the provisions of Article 27 UUIE 2008 which was previously written "clear" then in the explanation of Article 27 UUIE 2016 it becomes "The provisions in this paragraph refer to the provisions for defamation and/or slander regulated in the Criminal Code (Criminal Code)". This further clarifies that: The meaning of defamation and/or slander as regulated in the Criminal Code. Changing the nature of the offense (Putra, 1995).

Insults in the Criminal Code are regulated in Chapter XVI, which includes defamation. The content of the explanatory norms of Article 27 UUIE 2016 indirectly adopts the considerations of the Constitutional Court Decision Number 50/PUU-VI/2008 in conjunction with the Constitutional Court Decision Number 2/PUU-VII/2009. In the considerations of the Constitutional Court Decision 50/PUU-VI/2008 it is stated that the validity and The interpretation of Article 27 paragraph (3) of the ITE Law cannot be separated from the basic legal norms in Article 310 and Article 311 of the Criminal Code as a genus delict which requires a complaint (klacht) to be prosecuted, must also be treated for acts prohibited in Article 27 paragraph (3) The ITE Law, so that the a quo article must also be interpreted as an offense that requires a complaint (klacht) to be prosecuted before the Court.

DATA ANALYSIS METHOD

This research prioritizes library research (library research). The method used in discussing this research is the qualitative method (Masriani, 2017). This method is used to be able to understand and provide a clear picture of the problems related to the contents of this thesis. Analysis is used so that the author can organize this thesis in a systematic form so that it gets to the heart of the problem and obtains correct research results. To obtain the necessary

data and materials, library research was carried out. The intended library research is to obtain data and reading material of a theoretical nature, namely by studying books, complications and appropriate scientific works.

RESEARCH RESULTS

Electronic Information and Technology Law (UU ITE)

The Draft Law on Amendments to the Electronic Information and Technology Law has been ratified as Law Number 19 of 2016 concerning Amendments to the Electronic Information and Technology Law. The text of the Law is recorded in the State Gazette of the Republic of Indonesia of 2016 Number 251 and Supplement to the State Gazette Number 5952 and has officially come into effect after passing 30 days since it was passed into law on October 27 2016 and came into effect Monday November 28 2016. The law contains seven important points that revise the Electronic Information and Technology Law, especially through this new law. The government also has the authority to cut off access and/or order electronic system operators to cut off access to electronic information that contains unlawful content. This new law is expected to provide legal certainty for the public, so that they can be smarter and more ethical in using the Internet. In this way, content containing elements of SARA, radicalism and pornography can be minimized. Initially the Information and Electronic Technology Law was drafted to support economic growth in Indonesia through the digital economy and cyberspace trade (e-commerce) in Indonesia. Then, along the way, there were many polemics and cases that gave rise to pros and cons which led to the extraordinary impact experienced by the public on the articles in the Information and Electronic Technology Law, especially those related to the use of social media. Responding to developments in the modus operandi of criminal acts committed via electronic media, since 2008 it has been regulated through Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the ITE Law) as amended by Law No. 19 of 2016 concerning Information and Electronic.

Transactions aim to ensure that technology is used more in accordance with statutory provisions. The ITE Law regulates various types of criminal acts that are carried out using modern modes, namely by using electronic media as a means to commit criminal acts. In the modern world or in the current era of globalization, the role of information and communication technology has been placed in a very strategic position because it presents a world without borders, distance, space and time, which has an impact on increasing productivity and efficiency. The influence of globalization with the use of information and communication technology has changed people's lifestyles, developed a new order of life and encouraged social, economic, cultural, defense, security and law enforcement changes. The globalization process creates a phenomenon that changes conventional communication models by giving birth to reality in the virtual world known today as the internet. The internet is experiencing rapid development as a culture of modern society, because through the internet various activities of cyber society such as thinking, creating and acting can be expressed in it, anytime and anywhere. Its presence has formed its own world known as cyberspace or pseudo world, namely a world of computer-based communication that offers a new reality in the form of virtual (indirect or unreal).

The Draft Law on Amendments to the Electronic Information and Technology Law has been ratified as Law Number 19 of 2016 concerning Amendments to the Electronic Information and Technology Law (Amiruddin, 2004). The text of the Law is recorded in the State Gazette of the Republic of Indonesia of 2016 Number 251 and Supplement to the State

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The influence of globalization with the use of information and communication technology has changed people's lifestyles, developed a new order of life and encouraged social, economic, cultural, defense, security and law enforcement changes. The globalization process creates a phenomenon that changes conventional communication models by giving birth to reality in the virtual world known today as the internet. The internet is experiencing rapid development as a culture of modern society, because through the internet various activities of cyber society such as thinking, creating and acting can be expressed in it, anytime and anywhere. Its presence has formed its own world known as cyberspace or pseudo world, namely a world of computer-based communication that offers a new reality in the form of virtual (indirect or unreal).

Losses can occur both to the perpetrator of the transaction and to other people who have never carried out the transaction, for example theft of credit card funds through shopping on the internet. Apart from that, proof is a very important factor, considering that electronic information has not only not been accommodated in the Indonesian procedural law system in a comprehensive manner, but is also very vulnerable to being changed, intercepted, falsified and sent to various corners of the world in a matter of seconds. Thus, the resulting impacts can be very complex and complicated. Wider problems occur in the civil sector because electronic transactions for trading activities through electronic systems (electronic commerce) have become part of national and international commerce (Bakri, 2022).

This fact shows that convergence in the fields of information technology, media and informatics (telematics) continues to grow unstoppably, along with the discovery of new developments in the fields of information, media and communication technology. Activities through electronic system media, also known as (cyber space), even though they are virtual, can be categorized as real legal actions or actions. Juridically, activities in cyber space cannot be approached with conventional legal measures and qualifications alone because if this

method is taken there will be too many difficulties and things that will escape legal enforcement. Activities in cyberspace are virtual activities that have a very real impact even though the evidence is electronic. Thus, the perpetrator subject must also be qualified as a person who has actually carried out legal acts. In e-commerce activities, among other things, it is known that there are electronic documents whose position is equivalent to documents made on paper. In this regard, it is necessary to pay attention to security and legal certainty in the use of information, media and communication technology so that it can develop optimally. Therefore, there are three approaches to maintaining security in cyberspace, namely the legal aspects, technological aspects, socio-cultural aspects and ethics. To overcome security disturbances in the implementation of electronic systems, a legal approach is absolute because without legal certainty, the problem of using information technology will not be optimal (Yusup et al., 2010).

Based on the description above, the government made a law, namely Law no. 11 of 2008 concerning ITE to ensure legal certainty in implementing information technology and electronic transactions. UU no. 11 of 2008 concerning ITE is a manifestation of the responsibility that must be carried out by the state, to provide maximum protection for all activities utilizing information and communication technology in the country so that they are properly protected from potential crime and misuse of technology.⁵ 2. Mechanism for Making Law no. 11 of 2008 concerning ITE Law no. 11 of 2008 concerning ITE has been promulgated since April 21 2008. Thus, since then this law has had binding force and binds citizens to obey and comply with all the norms contained in that law. However, sociologically there is still a long way to go in implementing this law. Not just enforcing the law, but socializing and communicating the law to all citizens so that they are not trapped by the law. This is in accordance with legal ideals that the aim of the law is not to imprison as many people as possible who do not know the law, but to save citizens from the torment of the law.

Implementation of Article 27 No.11 of 2008 in Conjunction with Article 45 of the ITE Law No. 19 Of 2016

Legal impact is a community's attitude or behavior towards the law in the form of obedience or obedience and resistance or opposition to the applicable law. An important function of legal rules is to guide behavior. So every legal rule will have an impact on people's behavior. The impact of legal provisions is not just obedience but also disobedience because impact is the total effect of a legal provision. There are two types of legal impacts, namely: Positive legal impacts, namely the attitudes and behavior of people who obey and comply with the law because there is harmony between justice and the protected interests of society. The impact of negative law is resistance or opposition to the law because there is no harmony between justice and the interests being protected. The impact of law on people's behavior is what determines the effectiveness or ineffectiveness of a legal rule (Nasution et al., 1987).

As Eugen Ehrlich, Father of Legal Sociology, Austrian legal expert said in his book *Fundamental Principles of The Sociology of Law*, 1912 which was quoted by Achmad Ali in the book *Revealing Legal Theory and Judicial Theory*, 2009, namely: "At the present as well as at any other time, a center of gravity of legal development lies not in legislation, not in juristic science, not in judicial decisions, but in society it itself". Which means, "both today, and at any time, the center of legal development does not lie in legislation, nor in legal science nor in court decisions, but lies within society itself." Community behavior which is the impact of a legal rule is influenced by several factors, namely legal communication and legal knowledge. We can behave legally properly if we properly know the existing legal

rules. Therefore, legal rules must be communicated clearly and well to the public so that the public can gain knowledge about the contents of these legal rules. 10 Based on the description above, the implementation of Law no. 11 of 2008 and Law no. 19 of 2016 concerning ITE, especially criminal threats for people who violate Article 27 paragraph (3) of the ITE Law, which is regulated in Article 45 paragraph (3) of Law 19/2016, which reads: "Every person who intentionally and without right distributes and/or transmitting and/or making accessible Electronic Information and/or Electronic Documents containing insulting and/or defamatory content as intended in Article 27 paragraph (3) shall be punished with imprisonment for a maximum of 4 (four) years and/or a fine of a maximum Rp. 750,000,000.00 (seven hundred and fifty million rupiah) The implementation of this article certainly has a legal impact on society (Samardi, 2020). The legal impact of this law can be divided into two parts, namely positive legal impact and negative legal impact. In general, the positive legal impact of the ITE Law is that the existence of the ITE Law can guarantee legal certainty for the public in utilizing information systems and electronic transactions.

Apart from that, the existence of the ITE Law makes it easier for the public or electronic media users to communicate through information systems and carry out electronic transactions correctly. The positive legal impact of implementing article 27 jo 45 of the ITE Law is that with the existence of this article, the public will be more selective in distributing and/or transmitting and/or making accessible electronic information and/or electronic documents so as not to cause insults and/or defamation.

Apart from that, based on the criminal provisions regarding this article, it will certainly make the public or electronic media users more careful in using electronic systems. Apart from the positive legal impact of the ITE Law article 27 paragraph 3, there is also a negative legal impact of this law on society. After its promulgation on April 21 2008, Article 27 paragraph 3 of the ITE Law generated a lot of controversy from various groups, including academics, legal practitioners and social media users. This controversy arose due to the unclear nature of several elements in the article and also the ineffectiveness of law enforcement in implementing this article in handling a case. One of the most prominent negative legal impacts of article 27 paragraph 3 of the ITE Law on society is that this article is claimed to be a law that stifles freedom of expression. Why is that? Because since its promulgation, many cases have occurred where someone criticizes a public service on social media with the aim of being in the public interest, but the information is used as a tool to criminalize/imprison the disseminator of the information.

The existence of the ITE Law is indeed necessary in human life, especially with the rapid development of the times. However, with all the functions and objectives of the enactment of the ITE Law, there are still problems in its contents. Since the ITE Law was passed, criminal insult cases involving internet users in Indonesia have begun to increase significantly. The problem is, Indonesia has geographical conditions which pose a challenge in itself to increasing access to justice for suspects/defendants. Apart from the issue of geographical conditions, there are also not enough advocates/attorneys who understand internet issues, especially lawyers who provide nuances of human rights in criminal cases. Based on a report from the Institute for Criminal Justice Reform, there are problems with Article 27 paragraph (3) jo. Article 45 paragraph (1) of the ITE Law, because a number of terms in this article, such as distribution and transmission, are technical terms which in practice are not the same in the world of information technology and the real world. Model of offense formulation in Article 27 paragraph (3) jo. Article 45 paragraph (1) of the ITE Law has its own consequences because in practice the Courts decide differently regarding the formulation of the offense.

Apart from that, regarding its implementation, there is a lack of understanding by law enforcement officers in the field. The last one is the social impact that arises, where these articles can have negative consequences such as revenge, bartering of cases, as well as being a tool for shock therapy and providing a chilling effect. For example, an Indonesian musician, Ahmad Dhani, was caught in Article 27 paragraph 3 jo. Article 45 paragraph 3 of the ITE Law is alleged to be defamation, where the defendant created video content containing the word "idiot" which was deemed to insult the good name of the demonstration participants outside the hotel where the defendant was staying. If you look at this case, the defendant can be convicted if he fulfills the elements contained in Article 27 paragraph (3) of the ITE Law, where the definition of defamation refers to the articles regarding insults regulated in the Criminal Code (Sunarso, 2009). In proving whether there is insult or defamation, the content and context of the information are considered important to examine and the assessment is subjective because it can only be assessed by the person concerned.

This means that the target audience of the content is the victim and only the victim can assess whether the content contains elements of an attack on their honor. Meanwhile, in context, it can be assessed objectively through the perpetrator's aims and objectives for creating and disseminating the content. Based on his statement, a group called the Defense of the Republic of Indonesia Coalition reported Dhani to the East Java Regional Police on August 30 2018. The group felt that Dhani had defamed his good name. Because of this case, Ahmad Dhani was charged under Article 27 paragraph (3) of the ITE Law which refers to Article 311 of the Criminal Code, which means spreading accusations of defamation is accusing an act that is not insulting. Another example is the case involving Buni Yani in connection with the distribution of a video of Basuki Tjahaja Purnama's speech when he was still Governor of DKI in 2016. Buni Yani was suspected of editing the video while giving a speech, where the speech used one of the verses of Surah Al Maidah.

The video was allegedly edited so that it had a different meaning, although Buni Yani denied doing this. Buni Yani's actions are considered to fulfill the elements of Article 32 paragraph (1) and Article 28 paragraph (2) of the ITE Law by carrying out hate speech and editing the content of the video of Basuki Tjahaja Purnama's speech. For his actions, Buni Yani was found guilty and sentenced to 1.5 years in prison by the Bandung District Court (Atmasasmita, 1995). Historically, the provisions of Article 27 of the ITE Law refer to the provisions for insult or defamation regulated in the Criminal Code (KUHP), specifically Article 310 of the Criminal Code and Article 311 of the Criminal Code. The Criminal Code clearly stipulates that insulting is a complaint offense. Before the amendment to the ITE Law, there was no clear provision that Article 27, especially paragraph (3) of the ITE Law, constituted a complaint offense. However, after the amendment, the provisions for insult or defamation in Law 19/2016 constitute a complaint offense. Apart from that, before there are changes to the ITE Law, you need to know that insulting or defamation has also been declared a complaint offense by Constitutional Court Decision Number 50/PUU-VI/2008.

The decision concerns the confirmation that Article 27 paragraph (3) of the ITE Law is a complaint offense. In the considerations of the Constitutional Court, Point 3.17.1 explains: "That apart from the considerations of the Court which have been described in the previous paragraph, the application and interpretation of Article 27 paragraph (3) of the ITE Law cannot be separated from the basic legal norms in Article 310 and Article 311 of the Criminal Code as The genus delict which requires a complaint (klacht) to be prosecuted, must also be treated for acts prohibited in Article 27 paragraph (3) of the ITE Law, so that the a quo Article must also be interpreted as an offense which requires a complaint (klacht) to be prosecuted in advance. Court" Kirim.

CONCLUSION

Based on the background and description in the discussion of this thesis, several conclusions can be derived as follows: From the legal perspective of defamation as stated in the Criminal Code Chapter Article 310 paragraph (1) regarding defamation, Article 310 paragraph (2) regarding insulting with a letter, Article 311 regarding slander, Article 315 regarding light insults, Article 317 regarding slanderous complaints, and Article 318 regarding slanderous accusations, as well as outside the Criminal Code Article 27 Paragraph 3 of Law Number 11 of 2008 concerning Information and Electronic Transactions. The legal impact of criminal acts of defamation in the ITE Law Article 27 No.11 of 2008 in conjunction with Article 45 of Law no. 19 of 2016, the public will be more selective in distributing and/or transmitting and/or making accessible electronic information and/or electronic documents so as not to cause insults and/or defamation. Model of offense formulation in Article 27 paragraph (3) jo. Article 45 paragraph (1) of the ITE Law has its own consequences because in practice the Courts decide differently regarding the formulation of the offense.

SUGGESTION

Based on the conclusions that have been outlined, the suggestions that can be given are as follows: There needs to be strict supervision by the government regarding the use of information technology, with the aim of preventing and dealing efficiently and effectively with criminal acts that arise. The government needs to carry out strict supervision of law enforcers, so that they are more careful and do not abuse their position in enacting laws, especially regarding criminal acts of defamation.

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