

LEGAL PROTECTION FOR DEFAMATION SUSPECTS WHO SPREAD FACTS ON SOCIAL MEDIA REVIEWED FROM THE ITE LAW

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Abstract

This research wants to discuss the problem of defamation that is suspected of spreading facts on social media. This research is intended to understand the interpretation of Article 27 of the ITE Law as well as the Joint Decree of the Minister of Communication and Information Technology, the Attorney General, and the Chief of the National Police of the Republic of Indonesia on Implementation Guidelines for Certain Articles in the ITE Law. The research approach used is the Gap and Socio-Legal Analysis Study, which is an approach to study the implementation of the law on criminal procedure law and its relation to social impacts on law enforcement in Indonesia. The results of the study show that law enforcement officials always use Article 27 of the ITE Law to ensnare defamers on social media and override the Joint Decree of the Minister of Communication and Information, the Attorney General, and the Chief of the National Police of the Republic of Indonesia, so that the judge's decision is considered contradictory to the existing provisions.

Keywords: Criminal Code, Defamation, ITE Law, Law Enforcement Officials

I. INTRODUCTION

Defamation on social media has increasingly garnered attention within the realm of criminal law in Indonesia (I Putu Pande Juli Artana et al., 2022). With the rapid advancement of information technology, social media has become a primary platform for individuals to share both private and public information. However, the ease of disseminating information also brings significant risks, particularly the spread of content that can damage a person's reputation and honor. Cases of defamation on social media often involve the distribution of information that is perceived as harmful to others, whether in the form of facts or opinions, which directly impacts the reputation of the affected individuals (Harradine, 2022). In this context, it is crucial to understand how criminal law addresses such cases.

The Electronic Information and Transactions Law (UU ITE), specifically Article 27, has been designed to regulate defamation offenses in the electronic context. This article encompasses various forms of defamation committed through electronic media and imposes criminal penalties on violators (Kurniati, 2022). Although this law aims to protect individuals' reputations in the digital world, the application of Article 27 of UU ITE in legal practice often encounters various challenges and uncertainties. The complexity of defamation cases, involving factors such as the context of information dissemination and the intent of the

perpetrator, makes the application of this law not always straightforward, often leading to confusion among law enforcement officers and the parties involved.

The Joint Decree of the Minister of Communication and Information, the Attorney General (SARI, 2023), and the Chief of the Indonesian National Police on the Guidelines for Implementing Specific Provisions of UU ITE provides law enforcement officers with guidelines for handling defamation cases. These guidelines aim to ensure that law enforcement is conducted in accordance with principles of justice and consistency. Despite the detailed guidelines intended to guide officers in dealing with defamation cases, in practice, there is often a discrepancy between the implementation guidelines and the actual law enforcement (Muldani, 2022). This can result in inconsistencies and uncertainties in legal decisions, adding to the complexity of handling defamation cases on social media.

The phenomenon of defamation on social media also involves various complex legal elements, including freedom of expression and the right to reputation protection. In this context (Satria & Agung, 2023), Article 27 of UU ITE is crucial to be comprehensively outlined in order to accommodate new challenges arising alongside technological advancements. The application of Article 27 not only focuses on the forms of defamation but also on how the content is disseminated and its impact on the victims. As information technology continues to evolve rapidly and broadly, law enforcement must consider new aspects, such as the distinction between facts and opinions and the impact of the rapid spread of information through social media.

The Implementation Guidelines issued by the Joint Decree of three government agencies play a crucial role in providing direction and standardization for law enforcement officers. However, challenges arise when these guidelines are not fully applied in practice, leading to inconsistencies and uncertainties in legal decisions (Octarina et al., 2022). This research aims to analyze the extent to which these guidelines are implemented and how law enforcement officers handle defamation cases involving the dissemination of facts. Through a socio-legal approach, this research will examine how existing regulations interact with the social and legal realities on the ground and identify gaps between legal provisions and law enforcement practices.

Ultimately, this research is expected to make a significant contribution to the understanding and implementation of defamation law in Indonesia. By evaluating the gaps between legal provisions and law enforcement practices, and considering relevant social aspects, this research aims to provide useful recommendations for policymakers, law enforcement officers, and the general public (Reski Badillah et al., 2023). The primary goal is to enhance justice and consistency in the

enforcement of defamation laws and reduce the legal uncertainties that often accompany such cases in the digital era.

II. PROBLEM FORMULATION

Based on the issues mentioned above, the following research questions are proposed:

1. How do law enforcement agencies apply Article 27 of the ITE Law regarding defamation on social media, and what challenges do they encounter?
2. To what extent are the implementation guidelines from the three government institutions followed in handling defamation cases on social media, and how does the inconsistency of these guidelines affect legal decisions?

III. RESEARCH METHODS

Through a socio-legal approach (Ali et al., 2023), this research will examine how legal regulations related to defamation interact with social realities and their implementation in practice. This approach will assess the effectiveness of Article 27 of the ITE Law and the implementation guidelines in addressing defamation cases on social media, as well as identify gaps between legal provisions and current law enforcement practices. The primary focus of this research is to evaluate whether existing regulations align with social needs and how law enforcement can be improved to achieve better justice in the digital era.

IV. RESULTS AND DISCUSSIONS

1. Uncertainty in the Application of Article 27 of the ITE Law

Article 27 of the ITE Law is frequently applied by law enforcement authorities in handling defamation cases on social media (Waisnawa, 2018). However, the application of this article faces various challenges that lead to legal uncertainty. One of the main challenges is distinguishing between fact and opinion. Article 27 does not explicitly separate the two, leaving law enforcement to determine whether a statement damages someone's reputation or is merely an opinion or criticism. This often relies on subjective judgment, which can result in inconsistent decisions. For instance, criticism of public actions or policies, though potentially valid as an opinion, is often sanctioned as defamation if deemed harmful to a particular party. Additionally, courts struggle to assess the context and intent behind the dissemination of information. Evaluating the intent of the perpetrator and the context of the information requires deep evidence and is often a complex process. Was the information spread with malicious intent or as a legitimate expression of concern? This assessment can vary widely, leading to

uncertainty in verdicts. Inconsistencies in legal application can result in different outcomes for similar cases, reducing public trust in the judicial system. This uncertainty also significantly impacts freedom of expression (Patel et al., 2017). Individuals may feel pressured to avoid expressing opinions or criticism on social media due to the risk of legal sanctions, even if their statements fall within the realm of legitimate opinion. Furthermore, uncertainty in legal application affects the quality of judicial processes and may slow down the handling of defamation cases. Therefore, reform is needed to ensure fair and consistent law enforcement while protecting freedom of expression and safeguarding individual reputations.

2. Conformity with Implementation Guidelines

The Joint Decree of the Minister of Communication and Informatics, the Attorney General, and the Chief of the National Police of the Republic of Indonesia regarding Implementation Guidelines aims to provide clear guidance for law enforcement in handling defamation cases on social media (Dong et al., 2017). These guidelines are designed to ensure that the law is applied with fairness and consistency, as well as to avoid potential deviations in law enforcement. However, in practice, discrepancies are often found between these guidelines and the legal decisions made by courts and law enforcement authorities. Several cases have shown that law enforcement officers do not fully adhere to the established guidelines. This can occur for various reasons, including a lack of understanding of the guidelines, differences in legal interpretation, or external pressures that influence the law enforcement process. Such discrepancies lead to inconsistencies in court rulings and may overlook the principles of justice embedded in the guidelines. For example, law enforcement may assess a defamation case based on criteria different from those set out in the guidelines, resulting in decisions that do not align with the established standards. The consequences of these discrepancies include the emergence of legal uncertainty, where the public lacks clear guidance on what is acceptable and what is not in the context of defamation on social media. Furthermore (Hayata et al., 2019), this uncertainty also has the potential to erode public confidence in the judicial system, as legal decisions are inconsistent and do not always reflect the expected principles of justice. Therefore, it is crucial for law enforcement to better adhere to the established implementation guidelines and ensure that legal decisions are in line with the existing standards to achieve fair and consistent law enforcement.

3. Gap Between Law and Practice

This research has found a significant gap between the legal provisions in Article 27 of the ITE Law and the enforcement practices in the field. One of the main sources of legal uncertainty is the lack of clear understanding regarding the distinction between fact and opinion. Article 27 of the ITE Law does not provide sufficient detailed guidance on distinguishing between verifiable facts and

subjective opinions. As a result, law enforcement often interprets defamation cases based on subjective judgment without considering the context of information dissemination or the intent behind the statement. This leads to legal uncertainty, where statements that should be protected as part of freedom of speech can instead be subject to criminal sanctions. Moreover, this research also reveals that social pressure and media influence often affect the law enforcement process, particularly in cases that attract public attention.

Social media, as a primary platform for information dissemination, often amplifies the impact of a statement, creating pressure for law enforcement to take immediate action. This pressure can lead to hasty and not always fair law enforcement, especially when decisions are based on developing public opinion rather than a thorough legal analysis. Consequently, the handling of defamation cases becomes prone to injustice, where individuals who should have the right to express themselves instead face legal repression. The uncertainty in legal interpretation and external influences such as social pressure can exacerbate justice in law enforcement. This not only harms individuals accused of defamation but also creates a climate of fear that hampers freedom of expression in society. Therefore, this research emphasizes the need for reform in the interpretation and application of Article 27 of the ITE Law, as well as the importance of training law enforcement officers to understand the difference between fact and opinion, thereby reducing legal uncertainty and ensuring more just and consistent law enforcement.

V. CONCLUSION

The application of Article 27 of the ITE Law on defamation on social media by law enforcement authorities often encounters various challenges and obstacles. Law enforcement faces difficulties in distinguishing between fact and opinion and in assessing the context and intent behind information dissemination, which often results in inconsistent decisions and is prone to being misused to suppress freedom of expression. Moreover, despite the existence of implementation guidelines issued by three government agencies, namely the Ministry of Communication and Informatics, the Attorney General's Office, and the National Police of the Republic of Indonesia, the implementation of these guidelines in the field is often not fully followed. The discrepancy between the guidelines and law enforcement practices leads to inconsistency in legal decisions, ultimately affecting justice and legal certainty for the public. Responsive legal reform and adjustments to social and technological developments are crucial to ensure that defamation law enforcement on social media is conducted fairly and effectively.

VI. BIBLIOGRAPHY

- Ali, M., Ali, M., & Ahmad, Z. S. A. S. (2023). The Driving Factors for Recidivism of Former Terrorism Convicts in Socio-Legal Perspective. *Journal of Indonesian Legal Studies*, 8(1). <https://doi.org/10.15294/jils.v8i1.69445>
- Dong, A., Zhang, H., Zhou, X., & Yuan, D. (2017). On Analytical Achievable Rate for MIMO Linear Interference Alignment with Imperfect CSI. *Wireless Personal Communications*, 95(2). <https://doi.org/10.1007/s11277-016-3824-5>
- Harradine, M. (2022). Defamation Law and Epistemic Harm in the #MeToo Era. *Australian Feminist Law Journal*, 48(1). <https://doi.org/10.1080/13200968.2022.2146303>
- Hayata, E., Nakata, M., Takano, M., Umemura, N., Nagasaki, S., Oji, A., Maemura, T., Katagiri, Y., & Morita, M. (2019). Safety of uterine fundal pressure maneuver during second stage of labor in a tertiary perinatal medical center: A retrospective observational study. *Taiwanese Journal of Obstetrics and Gynecology*, 58(3). <https://doi.org/10.1016/j.tjog.2018.10.033>
- I Putu Pande Juli Artana, I Nyoman Gede Sugiarta, & I Made Minggu Widyantara. (2022). Sanksi Pidana terhadap Pelaku Pencemaran Nama Baik Melalui Media Sosial. *Jurnal Interpretasi Hukum*, 3(1). <https://doi.org/10.22225/juinhum.3.1.4633.25-30>
- Kurniati, K. (2022). PENEGAKAN HUKUM TERHADAP PELAKU TINDAK PIDANA PELECEHAN SEKSUAL MELALUI MEDIA SOSIAL DALAM PASAL 27 AYAT 1 UU ITE NOMOR 19 TAHUN 2016. *Disiplin : Majalah Civitas Akademika Sekolah Tinggi Ilmu Hukum Sumpah Pemuda*, 28(2). <https://doi.org/10.46839/disiplin.v28i2.75>
- Muldani, T. (2022). Implikasi Awal Penerbitan SKB UU ITE Pasal 27 Ayat (3). *MUKASI: Jurnal Ilmu Komunikasi*, 1(2). <https://doi.org/10.54259/mukasi.v1i2.857>
- Octarina, N. F., Sudiawati, S., & Mardika, M. (2022). The Application of the Conditio Sine Qua Non Principle on the Crime of Damage through Social Media. *Lambung Mangkurat Law Journal*, 7(1). <https://doi.org/10.32801/lamlaj.v7i1.303>
- Patel, N., Young, R., Hussaini, S., Jawed, A., & Steinberg, H. (2017). Accounting Information Systems and Supply Chain Management With Cross Cultural Comparisons. *Allied Academies International Conference: Proceedings of the Academy of Accounting & Financial Studies (AAFS)*, 22(1).
- Reski Badillah, Andi Yulia Muniar, Abd. Rahman, Febri Hidayat Saputra, Mansyur, & Supriadi Sahibu. (2023). Digital Forensic Evidence Analysis In Revealing Defamation On Social Media (Twitter) Using The Static Forensics Method. *Ceddi Journal of Information System and Technology (JST)*, 2(2). <https://doi.org/10.56134/jst.v2i2.45>
- SARI, N. L. A. (2023). PENERAPAN PASAL 28 AYAT (1) UNDANG-UNDANG ITE DALAM PERSPEKTIF KEPUTUSAN BERSAMA MENTERI KOMUNIKASI

DAN INFORMATIKA, JAKSA AGUNG REPUBLIK INDONESIA DAN KEPALA KEPOLISIAN NEGARA REPUBLIK INDONESIA. *GANEC SWARA*, 17(1). <https://doi.org/10.35327/gara.v17i1.378>

Satria, I., & Agung, I. G. (2023). SETTLEMENT OF DEFAMATION CRIMINAL CASES THROUGH SOCIAL MEDIA WITH A RESTORATIVE JUSTICE APPROACH. *TANJUNGPURA LAW JOURNAL*, 7(1). <https://doi.org/10.26418/tlj.v7i1.61344>

Waisnawa, G. A. (2018). KEBIJAKAN FORMULATIF PENGATURAN CYBERBULLYING SEBAGAI SALAH SATU BENTUK TINDAK PIDANA CYBERCRIME DI INDONESIA. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 6(4). <https://doi.org/10.24843/jmhu.2017.v06.i04.p03>