

## SETTLEMENT OF THE CRIMINAL ACTION DAMNING OF GOOD NAME THROUGH ELECTRONIC MEDIA IN THE POLRES OF TERNATE CITY

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**Abstract.** This study aims to determine the settlement of criminal defamation cases through the electronic media of the Ternate City Police and to find out the considerations of the District Court Judges of Ternate in examining and deciding criminal defamation cases. The research method used is empirical normative with a descriptive research type. Sources of data consist of primary data, namely the results of interviews, and secondary data, namely primary, secondary, and tertiary legal data. Methods of data collection with literature study and interviews and then analyzed qualitatively. The results showed that the settlement of criminal defamation cases through electronic media at the District Police of Ternate in two ways, namely through penal means (repressive activities after the occurrence of a crime) and non-penal means, in the form of counseling for preventive action. The basis for consideration of the district court judges of Ternate in examining and deciding criminal defamation cases is based on formal considerations and material considerations. Based on the facts revealed at the trial, namely the fact that the defendant was found guilty of violating Article 27 paragraph 3 concerning the Law on Information and Electronic Transactions (UU ITE), and the act of defamation fulfilled the elements of Article 310 of the criminal code.

**Keywords:** Criminal Case, Defamation, Electronic Media

**Abstrak.** Penelitian ini bertujuan untuk mengetahui penyelesaian perkara pidana pencemaran nama baik melalui media elektronik pada Polres Kota Ternate dan untuk mengetahui pertimbangan hakim pengadilan negeri Kota Ternate dalam memeriksa dan memutus perkara pidana pencemaran nama baik. Metode penelitian yang digunakan adalah normatif empiris dengan jenis penelitian deskriptif. Sumber data terdiri dari data primer yaitu hasil wawancara dan data sekunder yaitu data hukum primer, sekunder, dan tersier. Metode pengumpulan data dilakukan melalui studi kepustakaan dan wawancara kemudian dianalisis secara kualitatif. Hasil penelitian menunjukkan bahwa penyelesaian perkara pidana pencemaran nama baik melalui media elektronik di Polres Kota Ternate dengan dua cara, yaitu melalui sarana Penal (kegiatan represif sesudah terjadinya tindak pidana), dan sarana non-penal, berupa penyuluhan untuk tindakan preventif. Dasar pertimbangan hakim pengadilan negeri Kota Ternate dalam memeriksa dan memutus perkara pidana pencemaran nama baik yaitu berdasarkan pertimbangan formil dan pertimbangan materiil. Berdasarkan fakta-fakta yang terungkap di persidangan yaitu adanya fakta terdakwa terbukti bersalah melanggar pasal 27 ayat 3 tentang undang-undang informasi dan transaksi elektronik (UU ITE), dan tindakan pencemaran nama baik, telah memenuhi unsur-unsur pasal 310 kitab Undang-undang Hukum Pidana.

**Kata kunci:** Perkara Pidana, Pencemaran Nama Baik, Media Elektronik

### INTRODUCTION

In a democratic country, the public demand for information is increasing. Nowadays advances in information technology, electronic media, and globalization occur in almost all areas of life. Technological progress is marked by the emergence of various electronic devices capable of connecting communication between humans and so on (Ali, 2016).

Through electronic media, information exchange can be done quickly, precisely, and at a low cost. Therefore, electronic media, in this case, mobile phones (HP), can be a medium that makes it easier for someone to commit various types of criminal acts based on information technology (*cybercrime*) such as criminal defamation, pornography, gambling, account burglary, and so on (Nawawi, 2008).

Recently, there have been reports of accusations of defamation by various parties. The causes are various, starting from writing on a mailing list (mailing), forwarding emails, reporting on corruption, reporting on events in the media, disclosing research results, or SMS and telephone as well as a number of other actions.

Criminal acts that the Criminal Code qualifies as defamation or defamation (small) are formulated in Article 310, namely:

Paragraph (1): Anyone who deliberately attacks the honor of someone's good name by accusing something, which means that it is clearly known, is threatened because For defamation, with a maximum imprisonment of nine months or a maximum fine of four thousand and five hundred rupiahs.

Paragraph (2): If this is done in writing or an image that is broadcast, displayed or posted in public, then being punished for defamation in writing is punishable by imprisonment at the maximum One year and four months or a maximum fine of four thousand and five hundred rupiahs.

Paragraph (3): Does not constitute defamation or written defamation, if the act is clearly committed in the public interest or because it is compelled to defend oneself.

Judging from the Criminal Code, defamation is termed as an insult or defamation against someone. The humiliation must be done by accusing someone of having committed a certain act with the intention that the accusation will spread (known to the public) (Fuady, 2009).

According to Susilo, (2019), attacking the honor and good name of someone who is generally attacked will feel ashamed. The honor attacked here is only about honor in a good name, not honor in a sexual sense. Honor or good name is something that is owned by humans outwardly. Therefore, crimes against honor and good name are generally directed against someone who still has the right to life. Likewise with legal entities, essentially do not have honor, but the Criminal Code adheres that certain legal entities, among others: President or vice president, Head of State, Representatives of Friendly Countries, Group / Religion / Ethnicity, or public bodies, have the honor and good name (Harahap, 2012; Jurdi, 2019).

The offense 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 is a complaint from a party who feels defamed (Ruslan, 2017).

Defamation through electronic media is regulated by Law no. 11 of 2008 concerning information and electronic transactions of article 27 paragraph (3) which states: every person knowingly and without right distributes and / or transmits and / or makes accessible electronic information and / or electronic documents that contain defamatory and / or defamatory contents. A good name (Halim, 2009; Ruslan, 2017).

As referred to in this article, it is trying to provide protection for the rights of individuals and institutions, where the use of any information through the media regarding the personal data of a person or institution must be done with the consent of the person/institution concerned. Criminal liability can only be carried out against someone who has committed a criminal act. In fact, the critic's criticism originates from the reproach that exists in the criminal acts committed by the maker. Therefore, the



scope of criminal responsibility has an important correlation with the structure of criminal acts (Kansil & Kansil, 2004; Martos, 2006).

Related to the explanation above, it would be misunderstood if you classify article 27 paragraph (3) of the ITE Law into a common offense because: First, in essence, insult, defamation is an act of attacking someone's honor or good name, so that the person's good name is tainted or damaged (Ali, 2016; Riki, 2013).

Determining the existence of an insult or defamation, content and context are very important parts to understand. An intrinsically defiled or damaged person's reputation can only be assessed by that person. In other words, it is the victim who can judge subjectively about the content or which part of the information or electronic document that he feels has offended his honor or reputation. The constitution provides protection for the dignity of a person as one of the human rights. Therefore, legal protection is given to victims, and not to other people. Other people cannot judge the same as the victim's assessment (Marpaung, 2010; Martos, 2006).

Second, historically the provisions of Article 27 paragraph (3) of the ITE Law refer to the provisions of defamation or defamation as regulated in the Criminal Code, particularly Article 310 and Article 311 of the Criminal Code. In the Criminal Code, it is strictly regulated that insult is an offense for complaint. The absence of a clear provision that Article 27 paragraph (3) is an offense for complaints is often disputed. However, from the decision of the constitutional court number 50 / puu-vi / 2008 regarding the constitutionality of Article 27 paragraph (3) of the ITE Law, there is an affirmation that this Article constitutes an offense on the complaint. In the consideration of the Constitutional Court Point (3.17.1) it is explained:

That apart from the considerations of the court as described in the previous paragraph, the enforceability 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 *genus delicti* 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 *quo* Article must also be interpreted as an offense requiring a complaint (*klacht*) to be prosecuted before the Court (Anwar, 1994).

As for cases of defamation through electronic media, the rise of defamation through electronic media is increasing day by day, because of this, the author is interested in examining this issue further, about how to resolve the criminal act of defamation through electronic media at the Police. Ternate City.

## RESEARCH METHOD

This empirical normative legal research method is basically a combination of the normative legal approach with the addition of various empirical elements. The normative-empirical research method on the implementation of normative legal provisions (laws) in action in any particular legal event that occurs in society.

The research location determined by the author is the Ternate City Police. This location was determined because the city police of Ternate at first had conducted pre-research, where there were cases involving

defamation that correspond to what the author is currently researching, and the research time that is planned by the researcher is from December 2, 2018, to the end of January 2019.

In this study, researchers can find subjects using the purposive sampling technique, in which researchers try to get information or data through people who are considered to have the ability to provide information, which is accurate and relevant to the problem under study (Iskandar, 2003). Thus the subjects in this study include Ternate Police investigators.

Data collection techniques are the rarest and most strategic in research because the main objective in research is to get data without knowing the data collection technique, so the researcher will not get data that meets the established data standards (Hasyim & Yusup, 2017).

The data collection techniques in this study are (a). Observation. Nasution (1998) in Sugiyono (2016) says that observation is the basis of all knowledge that scientists can only work based on data, namely facts regarding the world of reality obtained through observation. Marshall (1995) in Sugiyono, (2012) says that through observation researchers learn about behavior and the meaning of these behaviors. (b). Interview. Esterberg (2002) in Sugiyono, (2013) interview is the discovery of two people or the exchange of information and ideas through question and answer, so that meaning can be constructed in a certain topic, so by interviewing, the researcher will find out more complicated things about solving the law of criminal defamation through electronic media at the Ternate Police. In this case, it is not usually found through observation. (c). Documentation. It is a way to obtain data by studying, defecting, or making copies of documents or archives related to the object or research problem (Hasim & Hayun, 2019; Rajalola & Hasim, 2018).

The data obtained by the author will be poured using a normative juridical approach, namely by examining library materials, then all the data obtained is presented descriptively. By using this method it is intended that the author can describe all the data that has been obtained and describe the overall results of the literature study. From the literature study, it is linked to the formulation of existing laws and regulations and analyzed in order to answer the problems studied by the author.

## **RESULTS AND DISCUSSION**

### **1. How to Settle the Crime of Defamation through Electronic Media at the Ternate City Police**

Based on the results of observations and interviews related to the case of defamation on social media / Facebook (FB) which was allegedly made by the accused Sanly, in August 2017 regarding the victim Wulan. The victim was related to the defamation case committed by the defendant Mr. Sanly and allegedly wrote on his Facebook (FB) status on his cellphone which could be seen and read by other people whose contents were threats, insults, and defamation against Wulan. With this incident, the reporter then reported the incident to the Ternate Police so that the perpetrator could be processed in accordance with the applicable law.

The defamation that often occurs on social media does not only touch ordinary people, it is undeniable that the current media are also glancing hard at things that are done by the government, especially the head of state or president. The President often becomes an easy scourge for the public to be assessed and commented on his performance. However, this often gets out of the way, resulting in public

comments via social media, in general, being prohibited, such as defamation. Because sometimes freedom of opinion in this era, it no longer pays attention to the ethics and morals contained in it, which makes people who are commented on feel insulted or harassed through writing or other things described on social media (Ruslan, 2017).

Like what happened to a student at Khairun Ternate University, namely Adun Fiqri who had spread false information on social media or Facebook, then the Ternate City Police Chief checked Aldun Fiqri for 24 hours and was named a suspect, because he spread false information, and charged with articles that have been stipulated in the ITE Law (information and electronic transactions) article 28, and also the case experienced by the Head of the Ternate City Police, Mr. Azhari Juanda, whose good name was tainted on social media / Facebook by Mr. Suleman, then the police chief (the investigator) conducted the investigation on Mr. Suleman.

## **2. How Judges Consider In Examining Defamation Cases at Ternate City Police**

Based on the results of interviews with investigators (Bripka). In observing judges' considerations in examining defamation cases. states that, in a conditional criminal case it is an alternative to the non-institutional deprivation of liberty which can be imposed by the judge on the convicted person, if the judge is of the belief and through careful observation that sufficient supervision is carried out on the fulfillment of the conditions set by the judge to the convicted person, it is intended to prevent crime and respect human rights. A criminal sanction has two important aspects, namely for the benefit of the convicted person and for the benefit of society. If the judge believes that by serving the prison sentence, the convict will be better off, of course, the defendant will be sentenced to imprisonment. But if the judge believes that imprisonment will make the convict worse, another alternative is that the defendant can be sentenced to a conditional sentence (Interview result 1 January 2019).

This is in line with the opinion (Gloria, Nugroho, & Wahyudi, 2020) in punishment, especially the relative theory which states that punishing is not to satisfy the absolute demands of justice. Retaliation itself has no value, but only as a means of protecting the interests of society. Crime is not merely for retaliating or rewarding people who have committed a criminal act but has certain useful purposes. Therefore this theory is also often referred to as the goal theory.

Furthermore according to (Brigpol) as assistant investigator 2 in observing judges' considerations in examining defamation cases. states that, the judge's consideration in imposing probationary punishment is a form of judge's decision which is not merely "giving a sentence to the perpetrator, but also a probation sentence imposed because" it is not revengeful "and wants to educate the defendant so that the defendant realizes his mistake. For that reason, the criminal law not only provides certainty to the public that the act committed by the defendant is a mistake according to criminal law but also achieves justice that is given to the defendant. Conditional punishment is a punishment the implementation of which by the judge depends on certain conditions that are stipulated in his decision. Fadli as an assistant investigator of the 2nd Ternate Police stated that "Conditional punishment is a crime in which the convicted person does not have to undergo the crime, except when during the probation period the convict has violated general or special conditions determined by the court. In this case, the court that adjudicates the case has the authority to make changes to the conditions that have been determined or to order that the criminal be served if the convict violates these conditions (Interview result 3 January 2019).

This is in line with the opinion of Susilo, (2019) The importance of a humane criminal system, there is criminal individualization, meaning that in imposing sanctions it is necessary to see who did it and under what circumstances he committed a criminal act. R. Soesilo stated: Conditional penalties which are commonly referred to as regulations concerning "law by agreement" or "conditional punishment" or "janggalan punishment" means: a person is sentenced, but the sentence does not have to be carried out unless it is found that the convicted person is convicted before he expires. the tempo of the trial commits a criminal event or violates an agreement made by the judge to him, so the decision to impose the sentence remains.

The legality principle is a judge's foothold in deciding a case, however, a judge's decision must also be guided by 3 (three) things, namely: (1) The juridical element which is the first and main element; (2) a philosophical element, which is based on truth and justice; and (3) Sociological elements, namely considering the cultural values system that live and develop in society. In a short time, philosophical and sociological elements and a large number of criminal cases were not easily achieved by judges (Ruslan, 2017).

The juridical element here is legal certainty. In the case of defamation, it is regulated in Article 310 of the Criminal Code. This rule has deep philosophical roots, namely to protect human dignity from other human beings. Meanwhile in sociology, looking at the extent to which the effectiveness of laws and regulations, especially Article 310 of the Criminal Code in society.

Based on the results of the interview above, it can be concluded that in seeing the pattern of settlement of criminal acts of defamation/defamation are criminal acts that are closely related to the act of attacking the good name and/or honor of someone which is very subjective and very difficult to measure. The provisions regarding defamation are aimed at protecting the honor and good name of the individual as a form of human rights. However, this protection also needs to be seen from the public or society's view of whether an act is deemed to have attacked someone's honor and / or good name. Therefore, the element of public interest plays an important role in determining whether an action is considered an act of humiliation or defamation. This can be seen from the provisions of Article 310 paragraph (3) of the Criminal Code which states, "It does not include insulting or insulting by writing if it turns out that the maker did it for the public interest or because he was forced to defend himself (Anwar, 1994; Jurdi, 2019; Riki, 2013).

## **THE CONCLUSION**

settlement of criminal defamation cases through electronic media at the Ternate City Police in two ways, namely through Penal (repressive activities after the occurrence of a crime) and non-penal means, in the form of counseling for preventive action. The basis for consideration of judges at the Ternate City District Court in examining and deciding criminal defamation cases is based on formal considerations and material considerations. Based on the facts revealed in court, namely the fact that the defendant was found guilty of violating Article 27 paragraph 3 concerning the Law on Information and Electronic Transactions (UU ITE) and the act of defamation and Article 310 of the Criminal Code.

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