

**LEGAL REVIEW OF DEFAMATION CASE**  
**(Analysis of Decision of Surabaya High Court Number 528/Pid/2013/Pt.Sby)**

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**ABSTRAK**

*Pencemaran nama baik adalah salah satu dari sekian banyak permasalahan hukum yang muncul dari ranah dunia siber. Ada banyak alasan yang melatarbelakangi munculnya permasalahan pencemaran nama baik. Tidak jarang pencemaran nama baik ini mendapatkan penafsiran yang berbeda oleh hukum yang berlaku. Penelitian ini merupakan penelitian yuridis normatif yang melihat penerapan norma-norma hukum pada suatu peristiwa yang terjadi. Pendekatan perundang-undangan dan pendekatan studi kepustakaan dikombinasikan secara bersama-sama melalui pemanfaatan data yang sudah tersedia. Sumber data sekunder yang terdiri dari bahan hukum primer, sekunder, dan tersier dikelola dengan baik melalui metode analisis deskriptif supaya dapat menjawab permasalahan yang dikaji. Tujuan dari penelitian ini antara lain untuk: 1) Mengetahui dasar hukum terkait tindak pidana pencemaran nama baik; dan 2) Mengetahui pertimbangan hakim dalam putusan pidana terkait pencemaran nama baik, pada studi kasus putusan PT Surabaya Nomor 528/PID/2013/PT.Sby. Hasil penelitian menunjukkan bahwa Majelis Hakim dalam memutus perkara tindak pidana yang dilakukan oleh lima Terdakwa harus terlebih dahulu memperhatikan ketentuan hukum yang tercantum dalam Pasal 311 KUHPidna. Setidaknya terdapat 3 (tiga) unsur yang menyusun pasal tersebut. Ketika unsur meliputi, Unsur Barang Siapa / Setiap Orang, unsur dengan sengaja, dan unsur menyerang kehormatan / nama baik. Majelis Hakim merasa bahwa perbuatan para Terdakwa telah sepenuhnya memenuhi unsur pada pasal ini, sehingga putusan hakim berupa pidana 6 (enam) bulan penjara telah sesuai dengan ketentuan hukum yang berlaku. Selain mempertimbangkan pasal pidananya, Majelis juga mempertimbangkan aspek lain seperti memori banding, ketepatan waktu, dan penerapan hukum. Seluruh pertimbangan lalu ditelaah dan menghasilkan putusan sebagaimana mestinya. Penerapan hukum yang sejalan dengan norma yang adalah adalah bentuk kewajiban yang harus ditunaikan oleh Majelis Hakim supaya tercipta keadilan sosial yang menyejahterakan masyarakat.*

**Kata Kunci:** Hukum: Pidana: Pencemaran Nama Baik

**ABSTRACT**

Defamation is one of the many legal issues arising from the realm of cyberspace. There are various reasons behind the emergence of defamation issues. Often, defamation receives different interpretations under the prevailing law. This research is a normative juridical study examining the application of legal norms to a specific event. The legislative approach and literature study approach

are combined through the utilization of available data. Secondary data sources consisting of primary, secondary, and tertiary legal materials are well-managed through descriptive analysis methods to address the issues under review. The objectives of this research include: 1) Understanding the legal basis related to defamation offenses; and 2) Understanding the judges' considerations in criminal decisions related to defamation, with a case study of the decision of the Surabaya High Court Number 528/PID/2013/PT.Sby. The research findings indicate that the Panel of Judges, in deciding criminal cases committed by five Defendants, must first consider the legal provisions stipulated in Article 311 of the Criminal Code. At least there are 3 (three) elements comprising the article. When the elements include, Any Person / Every Person, intentional element, and attacking the honor / good name element. The Panel of Judges felt that the actions of the Defendants had fully met the elements of this article, thus the judge's decision of 6 (six) months imprisonment was in accordance with the applicable law. In addition to considering the criminal articles, the Panel also considers other aspects such as the appeal memory, timeliness, and law enforcement. All considerations are then examined and result in a decision as it should be. The application of the law in line with norms is an obligation that must be fulfilled by the Panel of Judges in order to create social justice that benefits the community.

**Keywords:** Law: Criminal Law: Defamation

## INTRODUCTION

Indeed, the tendency of technological advancement is becoming more and more significant every day. New inventions keep coming out all the time, altering the way we communicate, work, and go about our daily lives.(1) One prime example is the advancement in artificial intelligence that has enabled the development of various applications and services that make many aspects of human life easier. Technological developments have also had an impact on other areas such as health, transportation, and education. Overall, technological developments continue to have a significant positive impact on human life, making various aspects of life easier and opening the door to further innovation in the future.(2)

There are indeed significant risks associated with technological growth, particularly given the constantly expanding cyberspace. Because cyberspace is a huge, unbounded area with no physical borders, many kinds of crimes can happen there.(3) Cybercrime, including identity theft, online fraud, and virus attacks, is one of the primary concerns. The more advanced the technology, the more intricate the techniques employed by lawbreakers to target and compromise information networks.(4) For example, phishing attacks that trick users into revealing their personal information or ransomware attacks that encrypt the victim's data and demand a ransom to get it back.

Defamation through misuse of information technology is one real example of the negative impact of carelessness in the use of technology. In the increasingly connected digital era, anyone can be a victim

of this act. Criminals can easily use online platforms to spread false information or damage someone's reputation. This type of crime continues to grow along with technological developments, with perpetrators using various new and sophisticated strategies to achieve their goals. They can use social media, websites, or even social engineering techniques to spread slander or false information that is detrimental to someone's reputation.(5)

Because it might be challenging to locate the source of false material or to determine its widespread dissemination online, the success rate in uncovering those responsible for defamation charges remains extremely low. People throughout the world are concerned about this since anyone might become a target, even businesses. Defamation can have a very serious negative emotional and financial impact. A victim's reputation can suffer, they might not be able to get employment, or their personal lives might be upended. Furthermore, repairing a tarnished reputation can be costly and time-consuming.

A variety of actions, such as reporting a crime, revealing research findings, reporting an incident in the media, or taking other similar actions, can be considered a defamation offense by different parties. The offender may be liable to criminal sanctions as a result of this; these punishments are imposed on someone who has committed a crime where the results of their actions cause harm to others.(6)

Technology is being used by legal acts and events to spread information. Using this infinite technology allows us convenience after convenience. Naturally, despite the ease, we still need to exercise caution and find ways to avoid letting it trap its users. Technology is a perspective and a means of experiencing that molds behavior, tool use, and life experiences.(7)

The development of defamation crimes has increased until now, including the advancement of technology does not cause the crime to decrease but on the contrary. "Cyberspace as a new development in the history of human civilization makes it difficult to enforce the law following applicable procedures (criminal justice system).(8)

The deliberate use of sophisticated technology to conduct the crime of defamation can take many different forms and cause a person to suffer both tangible and intangible losses. Sophisticated technology software can be used to operate a defamation crime mode that includes aspects of defaming an individual or organization, such as charges of victims who suffer significant harm, both materially and immaterially.(9)

Defamation in terms of the Criminal Code (KUHP) is regulated through Article 310. In simple terms, the formulation of the crime or elements of the crime contain the intention: "*intentionally attacking*

*someone's honor or good name by accusing them of something, with the clear intention of making it public knowledge".(10)*

Based on the background above, it can be seen that the problem of defamation in Indonesia faces new challenges by involving the use of technology so researchers in this article will describe how the crime of defamation in Indonesia is regulated in the ITE Law and the Criminal Code while also examining one case regarding defamation with case number 528/PID/2013/PT.Sby. The purpose of this study is to find out more about how positive law regulates defamation and to review whether the decisions being studied have been implemented according to existing legal norms or otherwise. This study, apart from revealing existing problems, is expected to provide a contribution to knowledge in the future, especially regarding the crime of defamation in the digital world.

## **RESEARCH METHOD**

The author in compiling this normative legal research is oriented towards the legal view in the application of existing legal norms to a problem. The approach used consists of a legislative approach, namely an approach through the perspective of the Law and a literature approach using previously available data without looking for new data to be analyzed.(11) (12) This study focuses on examining existing problems. Data sources in this study were obtained from secondary data sources that include primary legal materials from the Law, secondary legal materials from books, journals, articles, and literature related to the problems raised in the study, as well as tertiary legal materials that function as refinements to the final results of the writing. The existing data is then processed using a descriptive analysis method to provide optimal and maximum results and have a legal value that can be legally accounted for.(13)

## **RESULTS AND DISCUSSION**

### **Legal Review od The Defamation Offence in Legal Regulations**

Because it can harm a person's reputation and dignity without good reason or substantial evidence, defamation is a significant violation of human rights.(14) Anybody can become a victim of defamation, regardless of their background in terms of social, economic, or position. Serious repercussions from this behavior could include social isolation, diminished self-esteem, and lost career or educational chances.(15) Defamation does not only occur in real life but also through social

media and digital platforms. With the rapid spread of information in cyberspace, a rumor or false accusation can easily spread widely and cause great harm to the individual who is the target. Defamation on social media often has a greater impact because it can be accessed by millions of people in a short time without adequate control mechanisms.(16)

On social media, there are more crimes besides defamation. In reality, there are many different kinds of digital crimes, including child pornography, fraud, and identity theft.(17) The biggest loss from cybercrime is the emergence of malicious software that can hack computer systems and exploit security holes, disrupting computer operations globally along with other threats to electronic commerce.(18) The transnational nature of most computer crimes has made conventional law enforcement efforts, both at the national and international levels, less effective, even in developed countries. Meanwhile, the digital divide provides a haven for cybercriminals.(19)

Defamation has several terms in Indonesian positive law. There are at least 8 (eight) terms in the Criminal Code that are classified as criminal acts of defamation, including:(20)

1. Article 310 paragraph (1) of the Criminal Code regulates defamation, which refers to the act of insulting or defaming someone directly, either verbally or in writing, with the intention of attacking the dignity or reputation of that individual.
2. Article 310 paragraph (2) of the Criminal Code explains blasphemy by letter, which occurs when blasphemy is committed through writing that is distributed to other people.
3. Article 311 of the Criminal Code explains slander, namely the act of spreading false or untrue information about someone to damage their reputation or dignity.
4. Article 315 of the Criminal Code explains minor insults which include acts of indirectly insulting or degrading someone's dignity, without showing strong evidence.
5. Article 316 of the Criminal Code regulates insulting state officials, which is an act of insulting or degrading the dignity of state officials in carrying out their duties.
6. Article 317 of the Criminal Code regulates slanderous complaints against authorities, namely the act of reporting someone based on false accusations with the intention of damaging reputation or destroying trust in authorities.
7. Article 318 of the Criminal Code regulates false allegations, namely a situation that occurs when someone intentionally spreads false information to create a bad impression of someone.

8. Article 320 of the Criminal Code regulates defamation of the deceased, which occurs when someone insults or defames a deceased individual.

One of the cases regarding defamation is case number 528/Pid/2013/PT.Sby). In the Pasuruan Regency's Randugong Village, the case started in May 2012. Five defendants were suspected of conducting crimes that damaged someone's reputation or good name by falsely accusing them of something: Wasi'in bin Achmad, Anas bin Anwari, Malik bin Sulhari, Salam alias Abdus Salam bin Sanan, and Syamsul Arifin bin Anwari. The goal of this activity was to ensure that the information would be published in public spaces, whether written works, images, or other media, and that it would be widely shared. However the charges were unfounded and went against H. Mustain and Abdul Rozak's evidence.(21)

As a result of these false accusations, H. Mustain and Abdul Rozak felt dissatisfied and embarrassed. These false accusations even caused them to be dismissed from their positions as village officials. In response, they filed an official complaint with the authorities on June 27, 2012, requesting that the defendants be prosecuted for their actions. The defendants' actions were deemed to have violated Article 311 paragraph (1) of the Criminal Code, as well as in conjunction with Article 55 paragraph (1) ke-1 of the Criminal Code, which regulates and threatens criminal penalties for perpetrators of defamation.(21)

Article 311 paragraph (1) of the Criminal Code regulates acts of slander, namely accusing someone of committing a crime or spreading false accusations against someone to make the accusations known to the public. The purpose of this article is to protect the reputation and dignity of individuals from false accusations that can damage their good name. This article states that if someone accuses another person of committing a criminal act or spreads false accusations that are contrary to the truth, and the act is carried out to be known to the general public, either through writing, pictures, or other public media, then the person who commits the slander can be punished with a maximum prison sentence of 9 (nine) months or a fine. Article 55 paragraph (1) 1 of the Criminal Code itself adds that if the act of slander is carried out in certain circumstances that make it more serious, for example, if it is carried out with malicious intent or to cause specific harm, then the punishment given to the perpetrator can be increased by one-third of the punishment regulated in Article 311 paragraph (1) of the Criminal Code.(22) In this case, the Panel of Judges sentenced each Defendant to 6 (six) months in prison

because after conducting a thorough investigation, the actions carried out by the five Defendants were legally considered to be a criminal act of defamation.

### **Analysis Court Decisions**

Before making a decision, the panel of judges first considered several factors, both legal and non-legal factors. In the legal factor, the Panel of Judges first looked at the appeal filed by the Public Prosecutor. Then, the Panel of Judges also carefully considered the case files and the official derivative of the Bangil District Court decision dated July 22, 2013 No.73/Pid.B/2013/PN.Bgl which stated that the five Defendants were legally proven guilty of committing the crime of defamation.

The Panel of Judges considered 3 (three) important elements contained in Article 311 paragraph (1) of the Criminal Code, namely:

1. **Whoever/ Every Person**

The element of “Whoever / Every Person” indicates that the prohibition on defamation applies to anyone, both individuals and groups who carry out actions prohibited by the article. The principle of legality in criminal law emphasizes that anyone, without exception, must comply with applicable legal provisions, including in cases of defamation.<sup>(23)</sup> The element of Whomever can also be interpreted as anyone who can be held responsible for what he has done.<sup>(24)</sup>

As legal subjects in this instance, the Defendants can act and respond to questions raised by the legal examination process decisively and understandably. They are entitled to an explanation, defense, or justification for the accusations made against them. Justice and human rights are based in large part on the Defendants' capacity to actively engage in the legal system.

This is consistent with the opinions of other legal experts who have said that in order to guarantee that the trial process is conducted in a fair and transparent manner, the defendants must be present and actively participate in it. One measure of the Defendants' ability to navigate the legal system responsibly and fully is their ability to respond in a firm and understandable manner.<sup>(25)</sup> Since the Defendants were able to respond to the examination process with clarity and firmness thanks to this consideration, this criterion is deemed satisfied in the particular circumstances of this case. By guaranteeing that the rights of the Defendants are upheld and justice is served throughout the entire legal procedure, this also gives the court a solid foundation upon which to continue the trial process.

2. **Intentionally**

The element “Intentionally” indicates that the action was carried out intentionally or with a clear intention to spread information that is detrimental or demeans someone's dignity.(26) Because it demonstrates the existence of bad intent or the aim of defaming someone, intention is a crucial component in the prosecution of defamation crimes. One could read intention as volition. There is a desire, which gives rise to this will. When someone acts intentionally, it indicates that they have a purpose for the action and are aware of the potential outcomes.(27)

The defendants have demonstrated that they are prepared to bear the legal ramifications of their conduct. Their acceptance of the legal ramifications of their actions is not limited to their conscious recognition of their obligation. They demonstrate a clear understanding that their activities are illegal, particularly in terms of defamation, by choosing not to contest or refute the claims against them.

A statement that highlights the significance of acknowledging and accepting responsibility for one's faults as the first step toward changing one's conduct and upholding the law is used to support this viewpoint. A mature and responsible attitude toward one's activities is demonstrated when someone has freely acknowledged that their actions constitute a major legal offense.(28) Based on these considerations, it can be concluded that the element of "intentionally" in this case has been fulfilled. The Defendants consciously and of their own free will accepted that their actions constituted defamation that violates the law. This awareness is a strong basis in the law enforcement process and confirms that the Defendants are fully responsible for their actions.

### 3. Attacking Honor/ Good Name

The element of Defamation / Good Name refers to actions that directly or indirectly defame or harm a person's reputation. This can be done by spreading false information or making accusations that could damage a person's reputation. Actions that can be considered defamation can vary, from spreading false rumors to making public statements that harm a person's reputation.(29)

In this case, the impact of the actions committed by the Defendants against the victim has caused the victim's good name to be tarnished and tainted. The actions taken by the Defendants not only raise suspicion or doubt about the victim's reputation but also significantly damage his image and integrity in the eyes of the public. Defamation not only impacts the victim individually but can also damage the victim's social and professional relationships with the community and their environment. This illustrates that defamation is not only personally detrimental but also has broad implications for the victim's social and professional life.(30) The victim's reputation has been damaged as a result of the

Defendants' activities. In this instance, it can be said that the requirement of "attacking honor/good name" has been satisfied. The victim's poor experience as a result of the defendants' activities is proof that they committed defamation, which is illegal.

Based on the explanation above, it can be seen that the actions of the Defendants have fully fulfilled the elements of criminal punishment in Article 311 paragraph (1) of the Criminal Code as previously decided, namely in the first instance decision. The elements of Article 311 paragraph (1) of the Criminal Code provide a clear legal basis in handling cases of defamation, by considering the aspects of intent, purpose, and impact of the action on the honor and good name of the victim. Through this consideration, the attitude of the Panel of Judges stating that the Defendants legally and convincingly committed defamation against the victim is following the provisions of applicable law.

Moreover, the ITE Law and the Criminal Code also have regulations on defamation. One law that serves to control legal matters that emerge in the cyberspace is known as the ITE Law. Articles 27 through 37 of this statute regulate cybercrimes. These articles provide a clearer explanation of how conventional criminal modes that were previously covered by the Criminal Code developed.(31)

Defamation is one of the crimes that occurs in cyberspace because it can occur through electronic media in addition to the physical world. Many people have to face the law as a result of the public's ignorance and carelessness, as their activities have caused others to feel as though their honor and dignity have been compromised.(32) In this Law, defamation is specifically explained in Article 27 paragraph (3) which reads:

“Any person who intentionally and without authority distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain insults and/or defamation.”(33)

Article 27 paragraph (3) of the ITE Law contains several elements that must be fulfilled to meet criminal requirements:

1. Every Person: This article applies to anyone who commits the acts described in the verse. There are no exceptions for certain individuals or groups, so everyone is considered responsible for their actions in the use of information technology.
2. Intentionally: This element demonstrates that the offender carried out the deed knowingly of the consequences or with the intent to cause harm. They intend to do an illegal act and do it intentionally.

3. Without the right to distribute, transmit, or make electronic information and/or documents accessible: The offender distributes, transmits, or makes electronic information and/or documents accessible without the necessary authorization. This describes actions pertaining to the dissemination, transmission, or provision of electronic documents or information for public access via electronic means, including the internet or electronic messaging.

4. Possessing a strong penghinaan and/or Pencemaran Nama Baik: Any product that crosses this threshold needs to have a strong penghina or nama baik attribute. This could be an opinion or information that harms a person's reputation or group's reputation, either slowly or quickly.

These elements are cumulative, meaning that all elements must be met to meet the criminal requirements. The element of "without the right to distribute" is important because it shows that the perpetrator does not have permission or the right to distribute the information, which indicates that there is intent in the act. This suggests that the distribution of defamatory information is not only limited to the circle of friends, but to various parties. Therefore, the interpretation of the element of "without the right to distribute" is very important in determining the violation and application of penalties in the context of defamation through information technology.(34)

Diverse and contentious opinions have been brought forth by the ITE Law's clause governing defamation. This article is viewed by some as a new type of "rubber article". Its clauses are vague and leave room for interpretation to be freely chosen. In terms of criminal penalties, this article is thought to be more severe than the Criminal Code's defamation article. Article 310 of the Criminal Code merely threatens a maximum jail penalty of nine months; in contrast, the consequences stipulated under the ITE Law carry a substantially higher maximum prison sentence of six years. Even though the charges are similar in nature, the ITE Law imposes harsher penalties than the Criminal Code.(35)

The prohibition on containing derogatory words, as regulated in Article 27 of the ITE Law, has a very important purpose in maintaining the integrity and dignity of individuals and institutions. The basic principle is that any information published must first obtain permission or approval from the relevant party. This is important to ensure that the individuals or institutions involved do not feel harmed or tarnished by information published without their permission.

It is required that one obtain consent from the appropriate party before posting any information. Respect for the rights of people and organizations is reflected in this mindset, which is also

accountable for the information's impact. This establishes a solid ethical framework for information transmission where the right to free speech is balanced with respect for the rights and dignity of others.

This ban aids in preventing the dissemination of untrue or defamatory information, which may unjustly harm someone's or an organization's reputation. It is possible to reduce the likelihood of conflict and legal ramifications stemming from individual rights violations by making sure that the information disseminated has the consent of all pertinent parties. The goal of the law's ban on using disparaging language is to guarantee that the exercise of free speech does not jeopardize the rights and respect of other people or organizations. In order to foster moral and healthy communication in society, this is a crucial first step.

Basically, Article 27 paragraph (3) of the Electronic Information and Transactions Law (UU ITE) does not provide a specific definition of what is meant by defamation. However, to understand the context more deeply, it is necessary to look at the elements contained in Article 310 of the Criminal Code (*KUHPidana*).

The correlation between these two articles forms a combination of legal elements that describe the crime of defamation. These elements include:

1. There is intent: The person who defames another person does so knowingly and with the specific purpose of harming that person's reputation. This is known as intentional defamation.
2. Without rights (without permission): The perpetrator does not have permission or the right to carry out the act. This shows that the act of defamation is carried out unlawfully or without the consent of the party concerned.
3. Intended to attack good name or honor: The act is done with the aim of damaging someone's good name or honor. This can be in the form of spreading false information, slander, or deliberately derogatory statements.
4. To be known by the public: The act of defamation is carried out to make the detrimental information known to the public at large. This creates a greater impact on a person's reputation.

These components come together to create the legal framework that defines the defamation crime. The law protects people's human rights to be free from violations of their dignity and reputation by carefully weighing both articles. Justice for all parties in a defamation action must also be ensured by correct interpretation and implementation of the law.

The Constitutional Court upheld this ambiguous ruling as a portion of the law that does not contravene the Constitution. In order to defend people's rights against the fear of insults or defamation, the Constitutional Court ruled that the state has the right to forbid the publication or dissemination of material that could be seen as defamatory. The rationale is that, although each citizen has the right to control their own information, including that of others, citizens must not compromise the rights and interests of others in the process of attaining their aims. Because of this, the state has the right to control it in order to make conditions more favorable for exercising the right to defend one's honor, dignity, and reputation as well as oneself and one's family.

The justification provided above emphasizes how the law, particularly the Criminal Code and the ITE Law, regulates defamation. The way that these two laws handle defamation claims is closely related to and influences one another. The primary legislative framework that governs the offense of defamation in Indonesian courts is found in the Criminal Code. A precise legal framework for actions that may be deemed defamatory is provided by the Criminal Code's Articles 310 on Defamation, 311 on Slander, and 315 on Minor Insults. The Criminal Code regulates criminal consequences, such as fines or imprisonment, for certain types of offenses.

However, the ITE Law offers a more precise legal foundation for defamation in cyberspace or the internet. Under the ITE Law, defaming someone's reputation online or through electronic media may be illegal, as stated in Article 27 paragraph 3, and Article 45 paragraph 1. The ITE Law does not define defamation clearly, as was previously said, so to ascertain the elements of defamation, one must additionally consult the relevant sections in the Criminal Code. When it comes to handling defamation claims, these two laws work well together, particularly when it comes to adapting to the rapidly advancing technology and growing internet usage. Cooperation between the Criminal Code and the ITE Law is important to ensure comprehensive legal protection for a person's honor and reputation, both in real life and in cyberspace.

## CONCLUSION

The ITE Law regulates defamation and links it to the Criminal Code's regulations. The ITE Law offers a more specialized legal basis for defamation in the context of cyberspace or the internet, while the Criminal Code regulates many provisions that serve as the primary legal basis for resolving defamation matters in Indonesia. The Surabaya High Court's decision number 528/PID/2013/PT.SBY regarding the crime of defamation stated that the defendant intentionally attacked someone's honor

through writing, violating Article 311 paragraph (1) of the Criminal Code. This case highlights the importance of cooperation between the Criminal Code and the ITE Law to handle defamation, both in the real world and in cyberspace. The articles in the Criminal Code provide the main legal basis, while the ITE Law is more specific in the context of electronic media. This cooperation is important to ensure optimal legal protection for someone's honor and reputation.

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