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# LEGAL ANALYSIS OF ENFORCEMENT OF THE CRIMINAL ACTION OF DEFAMATION THROUGH SOCIAL MEDIA AS REVIEWED FROM THE ITE LAW AND THE KUHP (Case Study of Decision Number: 415/Pid.Sus/2020/PN Tar)

**Timbo Mangaranap Sirait\* & Adriansyah Halim**  
*Universitas 17 Agustus 1945, Jakarta, Indonesia*  
*Email: manganaptimotius@gmail.com\**

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## Abstract

The crime of defamation can be divided into two forms: conventional and verbal. Conventional methods are usually implemented through direct statements or written media. This study aims to answer questions related to the Legal Review of Perpetrators of Criminal Acts of Defamation Through Social Media. First, the criminal liability of perpetrators of criminal acts of defamation through social media is based on Decision Number 415/Pid.Sus/2020/PN Tar. This study uses two types of data: primary legal materials and secondary legal materials. Primary legal materials include basic norms, basic rules, laws and regulations, and official documents or records. Secondary legal materials are obtained from literature such as books, legal journals, research results, and various other scientific works. The results of the study indicate, first, that criminal liability for perpetrators of defamation through social media in Decision Number 415/Pid.Sus/2020/PN Tar results in a two-month prison sentence with a six-month probation period, based on evidence and testimony presented at trial. Second, in issuing the verdict, the judge considered the Public Prosecutor's indictment, assessing both aggravating and mitigating factors for the defendant.

**Keywords:** Criminal Act, Defamation, Verdict.

## A. INTRODUCTION

Modern developments have also driven advances in information and communication technology, including the emergence of various types of online media. The convenience and efficiency offered by online media have made it a highly influential means of disseminating information to society. The presence of online media has not only changed the way information is delivered but also influenced how people receive and respond to that information (Chritiany J, 2018).

Globalization has given rise to and accelerated the development of social media, enabling individuals to interact without having to meet in person. This progress is one indicator of the rapid development of information technology in today's global era (Budi S, 2013).

The use of communication technology has become an unavoidable necessity in this era of globalization, where people are provided with various conveniences for accessing useful information. Through the internet, the process of exchanging information can occur quickly, accurately, and at low cost.

Changes in social behavior have also been influenced by the shift from the industrial era to the information era, which has given rise to what is known as the information society. In this type of society, a large portion of the workforce is engaged in the management and dissemination of information, making information a vital component of daily life (Amar A, 2010). Advances in information and communication technology, particularly through the rapid growth of social media, have provided users with ample freedom. However, as social media develops, it is often misused. Many users no longer pay attention to ethics and norms and freely write whatever they want without restrictions.

This uncontrolled freedom actually creates a loophole for various unlawful acts, such as fraud, insults, and defamation. The way society responds to social media as a platform for expression and dissemination of opinions contributes to the emergence of crime, especially when such behavior violates the law and cannot be accounted for (Cahyono A, 2016). In the Indonesian Criminal Code (KUHP), the term "criminal act" is known as *strafbaar feit*. In criminal law studies, the term "delik" is more frequently used, while in legislation the terms "criminal event," "criminal act," or "criminal act" are usually used. Tumulili (2019) explains that the term "delik" originates from Dutch and is composed of three words: *straff*, *baar*, and *feit*, each of which has a distinct meaning:

- *Straff* is defined as criminal and legal;
- *Baar* is defined as can and permitted;
- *Feit* is defined as an act, event, violation, or deed.

Therefore, the term "*strafbaarfeit*" refers to a punishable act. Meanwhile, "delik" in foreign languages is defined as a delict, meaning an act for which the perpetrator can be punished (Ilyas A, 2012). According to experts, criminal acts have an abstract meaning separate from concrete events, so criminal acts must be given a scientific and clearly defined meaning to distinguish them from terms used in everyday life.

Defamation has two main elements: the defamatory act and the object of the defamation, namely a person's reputation. This crime can be committed in two ways: conventionally and verbally. Conventional defamation is usually expressed through direct or written statements, while verbal defamation involves uttering something intended to demean or humiliate someone in public. Defamation falls under the category of complaint-based offenses, meaning legal proceedings can only proceed if the victim, who feels their reputation has been harmed, files a complaint. If the lawsuit or report is upheld by the court, the victim can receive compensation, and the perpetrator can be punished according to applicable regulations.

It can be concluded that social media is a tool that enables interaction between two or more parties, either between individuals or between individuals and groups/organizations, where users can easily participate, share, communicate, and exchange information.

A crime is an act committed under certain conditions, in a specific place, and at a specific time, which is declared prohibited (or required) by law and is punishable by criminal

sanctions. This act is unlawful and committed by a person who can be held criminally responsible.

A formal crime (delict) is a type of crime whose elements are expressly defined in law. Therefore, an act is considered a crime if it meets the requirements set forth in the relevant legal provisions. Hamzah A (2017) In general, crimes can be classified into several categories, namely: In general, the elements of a crime are outlined in the Criminal Code (KUHP) into two types: objective elements and subjective elements. Objective elements are elements inherent in the perpetrator, including everything contained within him. Meanwhile, according to Safera (2020), subjective elements are elements related to the circumstances under which the perpetrator's actions must be carried out. The elements are as follows:

- Intention (culpa) or unintention (dolus);
- Human actions, the existence of actions is defined as what is done, what is said, or how someone acts toward something or an event. Actions can include doing something, not doing something, or neglect;
- Intent or intention, namely in an attempt or attempt as referred to in Article 53 Paragraph (1) of the Criminal Code (KUHP);
- Various intentions or intentions contained in crimes such as fraud, defamation, extortion, and forgery;
- Criminal penalties are imposed if the act committed has been formulated as a criminal offense by law;
- Unlawful, namely an act committed that is contrary to or detrimental to others, contrary to morality, contrary to customs, habits, or traditions;
- The existence of an error;
- Able to take responsibility.

## **B. LITERATURE REVIEW**

### **Criminal Acts in Criminal Law**

Criminal acts explain that an act can only be punished if it meets the elements of a crime that have been explicitly formulated in statutory regulations. In Indonesian criminal law, a crime is understood as a human act that is unlawful, committed with error, and for which the perpetrator is accountable. This theory emphasizes the importance of distinguishing between objective and subjective elements as the basis of evidence in the criminal justice process. Objective elements relate to the act, its consequences, and the circumstances surrounding the act, while subjective elements relate to the perpetrator's mental state, such as intent or negligence. In the context of defamation through social media, the theory of criminal acts serves as the primary basis for assessing whether a digital post can be classified as a criminal act under positive law (Ilyas, 2012; Hamzah, 2017). Indicators of Criminal Act Theory:

- Human action
- Unlawful action
- Objective elements of the crime are met
- Subjective elements of the crime are met
- Criminal responsibility is present

### ***Lex Specialis Dergat Legi Generalis***

Lex specialis derogat legi generalis states that a special law overrides a general law if it regulates the same object. This principle serves to maintain legal certainty when there are two or more legal provisions that normatively appear to overlap. In the Indonesian criminal law system, this theory is often used to explain the relationship between the Criminal Code as general criminal law and special laws outside the Criminal Code. In cases of defamation through social media, the ITE Law is positioned as lex specialis because it specifically regulates acts of insult committed through electronic means. However, because the ITE Law does not provide an authentic definition of defamation, the interpretation of the elements of the offense still refers to the concept of insult in the Criminal Code as lex generalis (Hamzah, 2017; Syamsu, 2016). Indicators of the Lex Specialis Theory:

- Adanya dua norma hukum yang mengatur objek serupa
- Salah satu norma bersifat khusus
- Norma khusus mengesampingkan norma umum
- Penerapan hukum didasarkan pada konteks perbuatan
- Tetap adanya rujukan konseptual pada hukum umum

### **Judges' Considerations in Sentencing**

Judges' considerations in sentencing explain that criminal decisions are not solely based on the fulfillment of the elements of the offense, but also on a comprehensive assessment of the trial facts and the defendant's condition. In this theory, judges are viewed as active subjects with discretion to balance legal and non-legal aspects in issuing decisions. Legal considerations include proving the elements of the offense, the evidence, and the legal basis used, while non-legal considerations include the defendant's background, the impact of the act, and the values of justice and humanity. This theory positions sentencing as a means of achieving substantive justice, not merely the application of normative sanctions. In cases of defamation through social media, this theory explains why judges may impose lighter sentences or probation even though the elements of the offense have been fulfilled (Syamsu, 2016; Hiariej, 2016). Indicators of the Judges' Considerations Theory

- Legal considerations based on trial facts
- Non-legal considerations related to the defendant's condition
- Assessment of the consequences of the act
- Consideration of aggravating circumstances
- Consideration of mitigating circumstances

## **C. RESEARCH METHODOLOGY**

The present study employs normative (doctrinal) legal research, a methodological approach that focuses on examining law as a set of norms and authoritative texts. In practical terms, normative research analyzes codified legal rules and systematically interprets legal materials to clarify what the law prescribes, how legal concepts are structured, and how legal norms should be applied to particular issues. Accordingly, the inquiry is grounded in a careful reading of primary legal materials such as statutes, codifications, and official legal documents alongside secondary legal materials, including scholarly books, journal articles, and doctrinal commentaries that explain, critique, or refine the meaning of those norms. Through this

text-centered analysis, normative research offers a rigorous framework for identifying the scope, elements, and interpretive boundaries of legal provisions relevant to the research problem (Suteki & Taufani, 2018).

More importantly, normative legal research is not limited to describing legal rules; it also evaluates the coherence and consistency of legal reasoning by aligning statutory provisions with established legal principles and expert doctrines. This alignment matters because legal norms often require interpretation to resolve ambiguity, reconcile overlapping provisions, or determine which rule should prevail in a specific context. Within that logic, the study assesses how doctrinal principles such as the construction of legal elements, the role of intent, and the operation of general versus special provisions interact with the positive law that governs real disputes in society. By linking doctrinal arguments with the practical realities reflected in legal practice, normative research helps generate conclusions that are both conceptually defensible and normatively grounded, thereby supporting a more systematic and accountable legal analysis (Suteki & Taufani, 2018).

## **D. RESULT AND DISCUSSION**

### **Case Review Number 415/Pid.Sus/2020/Pn. Tar**

- The Tarakan District Court, in a criminal case hearing using ordinary first-instance procedures, handed down a verdict against Defendant Harmiati binti Baharuddin S. Pata, who appeared in person. The trial proceeded after the Panel of Judges was appointed by the Chief Justice of the Tarakan District Court on November 27, 2020, and the trial date was set for the same date.
- After hearing the testimony of witnesses, experts, and the defendant, and considering the documentary evidence and evidence presented, the court also examined the criminal charges from the Public Prosecutor, which essentially contained the following:
- Declaring the defendant, alias Mia Binti Baharuddin S. Pata, legally and convincingly proven guilty of committing the crime of defamation as referred to in Article 27 Paragraph (3) as regulated and subject to criminal penalties in Article 45 Paragraph (3) in conjunction with Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions;
- Sentencing the defendant, alias Mia Binti Baharuddin S. Pata, to imprisonment and ordering that the defendant be detained and fined Rp. 2,000,000.00, subsidiary to 1 month's imprisonment with an order that she remain detained;

#### **Declaring the evidence in the form of:**

- One red Oppo A1K cellphone with IMEI 1: 865488043876177 and IMEI 2: 865488043876169;
- One Telkomsel SIM card with MSSISDN number 082353100125 and ICCID number 621008538210012501; returned to defendant Harmiati alias Mia Binti Baharuddin S. Pata;
- One Facebook account with the name Mia Mia with the URL <https://www.facebook.com/profile.php?id=100037729771473>, exported on CD, along with one bundle printout;

3 JPG screenshots of posts from the Facebook account named Mia Mia, which are suspected of containing defamatory content;

- Remain attached to the case file;
- Determining that the defendant be charged with court costs of Rp2,000.00.

After considering the defendant's request, which essentially requested that the panel of judges not impose a prison sentence or, if the panel of judges deems otherwise, to impose the lightest sentence, the defendant stated that he has admitted and regretted his actions and is committed to not repeating them in the future. Furthermore, the defendant also stated that he has a one-month-old baby who still needs breast milk and the care and affection of a mother.

After hearing the public prosecutor's response to the defendant's sentencing, which essentially stated that he stands by his demands; After hearing the defendant's response to the public prosecutor's response, which essentially stated that the defendant stands by his requests; Considering, that the defendant was brought to trial by the public prosecutor and charged based on the following indictment:

Considering that in order to impose a sentence on the defendant, it is necessary to first consider the aggravating and mitigating circumstances of the defendant:

The defendant failed to utilize technology properly and correctly;

Mitigating circumstances;

- The defendant admitted and regretted his actions;
- The defendant has never been convicted;
- There was reconciliation between the defendant and witness Hasmita (the victim);

The defendant still has a 2-month-old baby who still needs breast milk. Considering, that because the defendant was sentenced, he must also be burdened with paying court costs and paying attention to Article 45 Paragraph 3 in conjunction with Article 27 Paragraph 3 of the Republic of Indonesia Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations.

### **Discussion Analysis**

The Judge's Considerations in imposing the sentence in Decision Number 415/Pid.Sus/2020/PN Tar, based on the elements of Article 27 Paragraph (3) of the Criminal Code, the Panel of Judges considered the following:

#### **Element of Every Person**

Every person, as designated as a legal subject, is any person with rights and obligations who can be held legally responsible. In this case, the defendant presented at trial is Harmiati alias MIA Binti Baharuddin S. Pata. Throughout the trial, the defendant's identity was acknowledged, and the defendant was able to answer every question put to her as a person of sound mind and reason. Therefore, the element of every person in this Decision is fulfilled.

#### **Element of Intentionally and Without Rights Distributing, a**

and/or Transmitting, and/or Making Accessible Electronic Information and/or Electronic Documents

"Intentionally" refers to an act committed with intent, and the consequences of the crime are desired by the perpetrator. An "unlawful" act can be defined as a form of unlawful act because the rights/authority to do or not do something are regulated by objective law.

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Therefore, the element of "without rights" and the element of unlawful act are not different. In this case, the defendant made or created a post with the intention of attacking Hasmita's personality and honor. Thus, the element of "intentionally and without rights distributing, and/or transmitting, and/or making accessible electronic information and/or electronic documents" has been legally fulfilled.

### **Elements of Intentionally and Without Rights Distributing, and/or Transmitting, and/or Making Accessible Electronic Information and/or Electronic Documents**

"Intentionally" refers to an act committed with intent, and the consequences of the crime are desired by the perpetrator. An "unlawful" act can be defined as a form of unlawful act because the right/authority to do or not do something is regulated by objective law. Therefore, the element of "without rights" and the element of unlawful act are not different. In this case, the defendant made or created a post with the intention of attacking Hasmita's personality and honor. Thus, the element of "intentionally and without rights distributing, and/or transmitting, and/or making accessible electronic information and/or electronic documents" has been legally fulfilled.

Elements Containing Insults and/or Defamation as referred to in Article 27 Paragraph (3) - considering these considerations, the elements referred to in Article 27 Paragraph (3) have been legally fulfilled.

Based on the author's analysis, there is a very strong link between Article 27 Paragraph (3) of the ITE Law and several provisions in the Criminal Code governing insults and defamation. This link is clarified through Article 63 Paragraph (2) of the Criminal Code, which contains the principle of *lex specialis derogat legi generalis*, where special provisions override general provisions. In this context, Article 27 Paragraph (3) of the ITE Law serves as a special rule governing acts of defamation committed through information technology. However, the formulation of the elements of the offense still refers to the provisions in the Criminal Code, considering that the ITE Law does not provide an authentic explanation of the terms insult or defamation. Thus, Article 27 Paragraph (3) of the ITE Law can be viewed as a "species" of the "genus" of criminal defamation offenses regulated in the Criminal Code.

Given the development of law enforcement practices, many defamation cases result in detention, raising concerns. This situation then prompted significant changes to the ITE Law, including a reduction in the criminal penalty from 6 (six) years to 4 (four) years. This adjustment aligns with the provisions of Article 21 Paragraph (4) letter b of the Criminal Procedure Code, which states that detention may only be imposed on suspects or defendants who face a prison sentence of 5 (five) years or more.

Judges have the authority to issue a verdict based on the facts of the trial and their convictions, including imposing a heavier sentence than the prosecutor's demand, as long as the decision is still considered rational and fair. The demands submitted by the public prosecutor do not always fall within the maximum criminal penalty stipulated in statutory regulations. Therefore, judges can impose a higher sentence than the demand, as long as it does not exceed the maximum criminal penalty stipulated by law (Syamsu M, 2016).

In issuing a verdict, the court is required to consider various factors that could aggravate or mitigate the sentence. These considerations form the basis for the judge in determining the

sentence for the defendant. The elements considered as aggravating and mitigating circumstances in Decision Number 415/Pid.Sus/2020/PN Tar are as follows:

- Aggravating circumstances
- The defendant failed to utilize technology properly.
- Mitigating circumstances
- The defendant admitted and regretted his actions;
- The defendant has no prior convictions;
- There is a reconciliation between the defendant and the victim;
- The defendant has a 2-month-old baby who still needs breast milk.

Based on the author's analysis, a judge's considerations in a case are essentially divided into two types: legal and non-legal. In Decision Number 415/Pid.Sus/2020/PN Tar, the judge rendered the decision based on legal considerations, namely the facts revealed during the trial and the charges filed by the Public Prosecutor. These considerations were made by referring to statutory provisions governing the elements of a crime that must be proven in court.

In this case, the Public Prosecutor charged the defendant using Article 45 Paragraph (3) in conjunction with Article 27 Paragraph (3) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. The charges were brought because the defendant, Harmiati alias Mia binti Baharuddin S. Pata, was deemed to have committed defamation via social media Facebook by uploading photos of witness Hasmita accompanied by insulting and harassing remarks, thus causing embarrassment and tainting the witness. The judge then assessed the charges by assessing whether the elements of the crime were fulfilled, namely: "any person," the element "intentionally and without authority distributes and/or transmits and/or makes accessible electronic information and/or electronic documents," and the element of "insults and/or defamatory content" as stipulated in Article 27 Paragraph (3) of the ITE Law. The judge assessed whether all of these elements were in accordance with the actions committed by the defendant.

The judge imposed a lighter sentence by considering mitigating circumstances, including: the defendant admitted and regretted his actions; had no previous convictions; there had been reconciliation between the defendant and the victim/witness; and the defendant had a two-month-old baby who still needed breast milk. In Decision Number 415/Pid.Sus/2020/PN Tar, the panel found Harmiati, also known as Mia binti Baharuddin S. Pata, guilty of defamation via social media and sentenced her to two months in prison with a six-month probationary period. The ruling explains the judge's reasoning in ruling on this case.

## **E. CONCLUSION**

Criminal liability for the perpetrator of the crime of defamation through social media in Decision Number 415 / Pid.Sus / 2020 / PN Tar is imposed in the form of imprisonment for 2 (two) months with a probation period of 6 (six) months and a fine of Rp2,000,000.00 (two million rupiah). This form of liability is influenced by the nature of the criminal act committed, the impact caused by the act of defamation, and the existence of circumstances that are considered aggravating in the judge's decision. The judge's consideration in passing a

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decision against the perpetrator of the crime of defamation on social media in Decision Number 415 / Pid.Sus / 2020 / PN Tar, the panel of judges in passing a decision based on the demands given by the public prosecutor and also the facts in the trial, the severity of a punishment is based on the consequences caused and the circumstances that allow the defendant to be given leniency.

### REFERENCES

- Ahmad, A. (2012). Perkembangan teknologi komunikasi dan informasi: Akar revolusi dan berbagai standarnya. *Jurnal Dakwah Tabligh*, 13(1), 137–149. (DOI tidak tersedia pada rekaman penerbit/indeks yang umum diakses.) Andi Hamzah, Hukum Pidana Indonesia, Sinar Grafika, Jakarta Timur, 2017, h. 87.
- Amir Ilyas, Asas-Asas Hukum Pidana, Rangkang Education, Yogyakarta, 2012.
- Budi Suharyanto, Tindak Pidana Teknologi Informasi (Cyber Crime) Urgensi Pengaturan dan Celah Hukumnya, Rajawali Pers, Jakarta, 2013, h. 1
- Christiany Juditha, “Interaksi Komunikasi Hoax Di Media Sosial Serta Antisipasinya” *Jurnal Pekommas*, Pusat Aplikasi Informatika dan Informasi Komunikasi Publik Kementerian Komunikasi dan Informatika RI, Vo. 3, Nomor 1 April 2018, hlm. 31
- Cahyono, A. S. (2016). *Pengaruh media sosial terhadap perubahan sosial masyarakat di Indonesia* (Karya ilmiah/skripsi). Universitas Tulungagung, Tulungagung. (DOI tidak tersedia karya akademik).
- H.A Zainal Abidin Farid, Hukum Pidana I, Sinar Grafika, Jakarta, 2010.
- Hamzah, A. (2017). *Hukum pidana Indonesia*. Jakarta Timur: Sinar Grafika. (DOI tidak tersedia buku).
- Hiariej, E. O. S. (2016). *Prinsip-prinsip hukum pidana* (Edisi revisi). Yogyakarta: Cahaya Atma Pustaka. (DOI tidak tersedia buku).
- Ilyas, A. (2012). *Asas-asas hukum pidana*. Yogyakarta: Rangkang Education. (DOI tidak tersedia buku).
- Juditha, C. (2018). Interaksi komunikasi hoax di media sosial serta antisipasinya. *Jurnal Pekommas*, 3(1), 31–44. <https://doi.org/10.30818/jpkm.2018.2030104>
- Kitab Undang-Undang Hukum Pidana (KUHP). (DOI tidak tersedia—peraturan/kodifikasi). Putusan Pengadilan Negeri Tarakan Nomor 415/Pid.Sus/2020/PN Tar. (DOI tidak tersedia putusan pengadilan).
- Putusan Nomor: 415/Pid.Sus/2020/PN Tar
- Rahmanuddin Tumulili, Hukum Pidana, Deepublish, Yogyakarta, 2019, h. 5-6
- Safera Chindi Jena, Tinjauan Yuridis Terhadap Tindak Pidana Mendistribusikan Dokumen Elektronik Yang Memiliki Muatan Pornografi dan Pemerasan, Fakultas Ilmu Hukum dan Sosial, Universitas Muhammadiyah, 2020.
- Suhariyanto, B. (2013). *Tindak pidana teknologi informasi (cybercrime): Urgensi pengaturan dan celah hukumnya*. Jakarta: Rajawali Pers. (DOI tidak tersedia—buku).
- Suteki & Taufani Galang,
- Suteki, & Taufani, G. (2018). *Metodologi penelitian hukum (Filsafat, teori, dan praktik)*. Depok: Rajawali Pers. (DOI tidak tersedia—buku). Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

Syamsu, M. A. (2016). *Penjatuhan pidana dan dua prinsip dasar hukum pidana*. Jakarta: Kencana (Prenadamedia Group). (DOI tidak tersedia—buku).

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. (*DOI tidak tersedia—konstitusi*).

Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik (ITE).