

The Role of Restorative Justice Concept in Cybercrime Crime in Indonesia

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Abstract. *This study aims to determine the criminological study of Cyber Crime for the criminal act of defamation through the recovery approach of the parties, especially the victim, namely through. This study used a normative approach to secondary data which was then analyzed descriptively - analytically. Based on the research, it was concluded that in a restorative justice theory approach to cybercrime perpetrators of defamation that focuses on recovering parties, especially victims in committing criminal acts of defamation because good law enforcement is by prioritizing the agreement of the parties, especially especially the victim.*

Keywords: Cybercrime; Defamation; Justice; Restorative.

1. Introduction

Advances in information technology have changed almost all elements of life. On the one hand, technology provides many advantages in the form of opportunities to obtain information, work, participate in politics and democratic life and several other benefits. For those who utilize this information technology as a business activity, public service, as well as a means of entertainment by building several sites that can be visited by the public.¹ However, on the other hand, technology also has many disadvantages, including hacking of personal data, theft through online sites, online gambling, and defamation through cyberspace. In essence, defamation is an act of attacking a person's honor or good name, so that the person's good name is tarnished or damaged. In determining the

¹Akbar Galih Hariyono, Frans Simangunsong, "Legal Protection of Victims of Personal Data Theft (Phishing Cybercrime) in a Criminological Perspective", *Bureaucracy Journal : Indonesia Journal of Law and Social-Political Governance*, Vol. 3 No. 1 (January-April 2023), p. 434

existence of insults or defamation, content and context are very important parts to understand.

Defamation in the aspect of the Criminal Code (KUHP) is regulated through Article 310. In simple terms, the formulation of a crime or element of a crime contains: "intentionally attacking a person's honor or reputation by accusing something of something, the intention of which is clear so that it is known." general". There is a close relationship with the existence of Article 27 paragraph (3) of the ITE Law. As stated in Article 63 paragraph (2) of the Criminal Code which regulates the principle of 'lex specialis derogate legi generalis', the special aspect is contained in Article 27 paragraph (3) of the ITE Law due to the specialization of actions carried out using this technology.²Legal arrangements for criminal acts of cybercrime defamation through this technology have their own specificity due to the different distribution media so they do not use articles in the Criminal Code. The arrangements made were apparently not optimal because criminal acts of defamation should be resolved through a restorative justice theory approach, namely by involving all parties in the peace process so that a human approach to law can work well in the world of law enforcement in Indonesia. Therefore, through a restorative justice theory approach based on the perspective of victim recovery, researchers can realize humanist and just law enforcement.

2. Research Methods

This research uses a type of juridical-normative research, this research approach uses a statutory approach, this research is carried out in a descriptive analysis, with data collection techniques by means of library research (Library Research) and field research (Field Research). Analysis of the data in this study qualitatively using deductive research methods.

3. Results and Discussion

3.1 Legal Arrangements Concerning Defamation

Defamation through technology occurs so that the use of the Criminal Code (KUHP) as one of the resolutions of problems is considered necessary to be supported or supported in its implementation, namely by the Electronic Information and Transaction Law (UU ITE). According to the Criminal Code

²Erwin Asmadi, Formulation of Delict and Punishment for the Crime of Defamation Both on Social Media, Delegalata Journal of Law, Vol. 6 No. 1 (January-June 2021), p. 18

(KUHP) is known as "humiliation" (Article 310 of the Criminal Code) which is generally defined: "an act that harms a person's good name and honor."³

According to the Criminal Code, there are 2 kinds of defamation, viz

1. Verbally is defamation that is said or done by someone.
2. In writing is defamation done through writing (print).

In his book, Oemar Seno Adji stated that defamation is known as insult, this insult is divided into material insult and formal insult, while the meaning is as follows:

- a) Material humiliation: Humiliation which consists of a fact which includes objective statements in words orally or in writing, so the determining factor is the content of the statement whether used orally or in writing. There is still a possibility to prove that the accusation was made in the public interest.
- b) Formal insult: In this case, the contents of the insult are not stated, but how the statement in question was issued. The form and method are the determining factors. In general, the way to express is in ways that are rude and not objective. The possibility of proving the truth of the accusations does not exist and it can be said that such possibility is closed.⁴

According to the theory of law as a tool of social engineering put forward by Roscoe Pound, law as an engineering tool in society is expected to play a role in controlling social values. This theory also reveals that law and social change are interrelated things. Changes in society can affect the law, and conversely, the law can also affect people's behavior.⁵

The law should also accelerate following the development of human life, so that it is still able to maintain the use of people's freedom rights always accompanied by maturity and does not violate the human rights of others. So it is natural that legal arrangements in accordance with changes in society are needed as a form of legal response in accordance with the theory above.

³HenryStumpNature, Defamation in Real Life and the World of the Internet, Wartapena, Jakarta, 2012, p. 7

⁴Anna Rahmania Ramadhan, 2015, Defamation in Perspective Constitution Number 11 of 2008 concerning Information and Electronic Transactions, Master of Law in the Postgraduate Program at the University of Mataram, p. 6

⁵Munir Fuady (2013), Grand Theories (Grand Theory) in Law, Jakarta: Prenada MediaGroup, Pg. 251

The Electronic Information and Transaction Law (UU ITE) as a Response to Societal Changes One of the reasons for the issuance of the ITE Law, as contained in its preambles, is because the rapid development and progress of Information Technology has led to changes in human life activities in various fields which have directly affected birth of new forms of legal action. Article 27 paragraph (3) of the ITE Law, like many other provisions of laws and regulations, restricts a person's freedom so as not to violate the freedom of other parties in accordance with the Harm Principle.

Article 27 of the ITE Law paragraph (3) states the prohibitions relating to the dissemination of information as follows:

Everyone intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain insults and/or defamation. The provisions above provide the norm that a person is prohibited from intentionally and without rights distributing and/or transmitting and/or making accessible "information" to the public (including those containing expressive content, art, personal documentation, limited/secret documents) that violate decency, content gambling, content insulting and/or defaming, as well as content extortion and/or threats.

Therefore, the defamation referred to in Article 27 Paragraph (3) of the ITE Law includes the legal norms in Article 310 of the Criminal Code regarding objects of insult and/or defamation, namely individuals. Furthermore, the Constitutional Court Decision also requires a complaint (klacht) against Article 27 Paragraph (3) of the ITE Law to be prosecuted before the Court. Article 27 Paragraph (3) of the ITE Law is included in the type of absolute complaint offense as Article 310 where the object of insult and/or defamation here is an individual person.

Regarding the application of Article 27 Paragraph (3) of the ITE Law jo. Article 45 Paragraph (3) of the ITE Law in defamation cases there are two dimensions of a statement alleging an act deemed to have attacked a person's honor and/or good name, namely subjectively and objectively. Objectively, it is based on a general measure of the assessment of an act including an act of attacking honor and/or good name or not. It also includes an assessment of whether the content is insulting and/or defamatory for someone or just critical.⁶In this case law enforcement officials in implementing Article 27 Paragraph (3) of the ITE Law jo. Article 45 Paragraph (3) of the ITE Law, in cases of defamation, it is necessary to carry out a review regarding whether the conditions for the act or circumstances mentioned in the provision, namely the elements of the offense, have been fulfilled or not.

⁶ecoJuniartoMiracle Rumani, "Juridical Review of Criminal Defamation in Cyberspace," Lex Crimen, Vol. 4, No. 2, Apr. 2015.

Meanwhile, subjectively, there are people who feel attacked by their honor and/or good name due to other people's words indicating an action to them. When can a person be said to have been attacked by his honor or reputation based on the subjectivity of the victim.⁷

Legal arrangements regarding defamation were also clarified by the issuance of a Joint Decree of the Minister of Communication and Information of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Head of the National Police of the Republic of Indonesia concerning Guidelines for the Implementation of Certain Articles in Act No. 11 of 2008 concerning Information and Electronic Transactions As amended by Act No. 19 of 2016. The issuance of the Joint Decree is an effort to maintain a clean, healthy, ethical, productive and just Indonesian digital space.⁸

In addition, law enforcement efforts in dealing with acts of defamation can also be carried out in preventive and repressive efforts which can take the form of:

1. *Non Penalty* Non-penal efforts are a crime prevention, which is carried out before the crime occurs, so this effort is better known as preventive or preventive efforts. This should be prioritized over efforts that are repressive in nature. It is held to prevent lawlessness from being committed by the public and this task is generally assigned to the executive branch and the police.
2. *Penalty* Done if preventive efforts have been made but there are still violations of the law. In this case, the efforts made are repressive by law enforcement officials who are given the task of justice. Repressive law enforcement at the operational level is supported and through various institutions that are organizationally separate from one another, but still within the framework of law enforcement.⁹

The aspect of the criminal justice system consisting of law enforcement officers is very large in its existence to determine the legal norms that live in society.¹⁰ It is

⁷Mahrus Ali, "Defamation Through Information Facilities and Electronic Transactions (Study of MK Decision No. 2/PUU-VII/2009)," *Journal of the Constitution*, Vol. 7, No. 6, Dec. 2012.

⁸Consideration of the Joint Decree of the Minister of Communication and Information of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Head of the National Police of the Republic of Indonesia Number 229 of 2021 Number 154 of 2021 Number KB/2/VI/2021

⁹Arief, Barda Nawawi. *Several Aspects of Criminal Law Enforcement and Development Policies*. Citra Aditya Bakti, 1998.

¹⁰BannerJayawisastra, Komang; Sugama, I Dewa Gede Dana. "Legal Protection of Victims of Mis-arrest From a Criminal Justice System Viewpoint." *Kertha Speech : Journal of Law Science* No.9 (2020)

the existence of these norms that law can be upheld in society by providing justice to people who feel disadvantaged. In addition, an understanding between one law enforcement apparatus and another is urgently needed to resolve the criminal act of defamation because in the prosecution of electronic media crimes caused by limited technical competence regarding information technology and equipment needed in carrying out tracking law enforcement officers do not can stand alone.¹¹

Efforts to enforce law in Indonesia, especially for acts that are prohibited in the ITE Law, often encounter obstacles. Lawrence M. Friedman argued that the effectiveness and success of the law depends on three legal components, including legal structure, legal substance and legal culture.¹² Legal substance includes statutory instruments, legal structure related to patterns that show how the law is implemented according to formal provisions including the performance of law enforcement officials, as well as legal culture concerning attitudes towards law and the legal system.¹³

In an effort to achieve the goal of certainty, law must have credibility. The credibility of the law can only be owned if the implementation of the law is carried out with consistent performance. Therefore consistency in the implementation and application of law has the potential to produce legal certainty.¹⁴

To determine whether the law is certain or uncertain can only be answered normatively by looking at the application of the law itself. This can be seen in the implementation of the law in accordance with the provisions of the law, application is certain and does not cause confusion in practice. The principle of legality as formulated in Article 1 paragraph 1 of the Criminal Code is one of the fundamental principles that must be maintained as an effort to guarantee legal certainty.

Meanwhile, criminal responsibility lies with every person who is a legal subject, as referred to in Article 1 number 21, namely that the legal subject in question is an individual, both a foreign citizen and a legal entity. So that immoral actors

¹¹Sutrisno, Bambang, and Fx Bhirawa Braja Forced. "Law Enforcement Against Criminal Defamation According to Article 27 Paragraph (3) of Law Number 11 of 2008 Concerning Information and Electronic Transactions (UU ITE)." *Mizan: Journal of Law Science* 8, No. 1 (2019): 2026.

¹²Lawrence M. Friedman, *The Legal System: A Social Science Perspective*. Bandung: Nusa Media, 2011. Pg. 23

¹³Lutfil Ansori, "Law Enforcement Reform from a Progressive Law Perspective," *Juridical Journal*, Vol. 4, No. 2, Dec. 2017. Pg. 101

¹⁴Budiono Kusumohamidjojo, *Legal Philosophy of Just Order Problems*. Jakarta: PT. Grasindo, 2004. Pg. 78

who use electronic media must be accountable for their actions, because the actions were carried out deliberately and against the law. As we know, criminal responsibility is seen as non-existent, unless there is a reason for the abolition of said crime. In other words, criminal liability can be carried out as long as the maker has no intention of committing a crime.

In the field of Criminal Procedure Law, this means that a defendant is seen as responsible for the crime he has committed, if he cannot prove that he had the intention or will when he committed the crime. This concept forms a balance between the right to prosecute and demand from Public Prosecutor, and the right to deny and submit a defense from the defendant.

The Public Prosecutor has the right to indict and prosecute someone for committing a crime. For this reason, the Public Prosecutor is obliged to prove what was charged and prosecuted, namely to prove the things contained in the formulation of a criminal act. Meanwhile, the defendant can submit a defense on the basis of reasons for the abolition of the sentence. To avoid imposition of a sentence, the accused must be able to prove that he has reasons for the abolition of the sentence when he commits a crime.

If someone is held accountable in criminal law, it must be possible for the maker to explain why he did so. If the legal system does not provide such an opportunity, it can be said that there is no proper process for holding criminal offenders accountable. In turn, this will deal with the principles of justice.¹⁵

Criminal responsibility must be connected with the preventive function of criminal law. In this concept, there must be an open possibility for the maker to be fully aware of the legal consequences of his actions as early as possible. Thus, the consequence of a criminal act is a risk that is understood by the maker from the outset. For the denunciation society that was understood by the makers from the start. For the community, reproach can only be carried out after the possibility of the maker to do something else is completely closed, so that a crime occurs

Taking responsibility for someone in criminal law does not only mean imposing a sentence on that person, but also fully believing that it is indeed the right place to ask for accountability for a crime committed. Criminal liability is a condition that exists in the maker when he commits a crime. Then criminal responsibility also means linking the circumstances of the maker with the actions and sanctions that should be imposed. Thus, the study was carried out in two directions. First, criminal responsibility is placed in the context of factual terms of punishment

¹⁵BambangPoernomo, *Principles of Criminal Law*, Jakarta: Ghalia Indonesia, 2012, p. 78 16 Ibid., Pg. 80

because it carries a preventive aspect. Criminal liability is a legal consequence of the existence of these factual requirements, so that it is part of the repressive aspects of criminal law.

The concept of criminal responsibility relates to the mechanism that determines whether the maker can be punished, so that this affects the judge. The judge must consider all of these aspects, both formulated positively and negatively. The judge must consider this, even if the public prosecutor does not prove it. Conversely, when the defendant submits a defense based on reasons that eliminate guilt, the judge is obliged to enter the problem deeper.

The judge is obliged to investigate further what the defendant put forward as the special circumstances of the event he put forward as the reason for eliminating his guilt. Furthermore, even if the defendant does not submit a defense based on reasons for eliminating guilt, it is still necessary to pay attention that this was not the case with the defendant. When committing a crime. The judge is still obliged to pay attention that the defendant has no reason to erase the guilt, even if the defense is not made on that basis. This will bring fundamental changes in the process of examining cases in court.

3.2 The Urgency of a Restorative Justice Approach to Cybercrime for the Criminal Act of Defamation

The restorative justice approach in solving criminal cases is usually known for child offenders.¹⁶ The special criminal justice system for children certainly has specific goals for the future interests of children and society in which the principles of restorative justice are contained. The definition of restorative justice itself is not uniform, because many variations of models and forms have developed in its application. There are many terminologies used to describe the concept of restorative justice, such as communitarian justice, positive justice, relational justice, reparative justice, and community justice. 2

Currently, the fundamental problem that is often faced by society is full social control through efforts to protect life and property by every member of society. In addition, the community hopes for the realization of an orderly, proper and harmonious social order. It is very appropriate if the concept of a restorative justice approach as an alternative to solving crimes is immediately applied in Indonesia as an effort to renew the law. This is because restorative justice is an approach that focuses more on conditions for the creation of justice and balance between the perpetrators of crimes and victims. Mechanisms and procedures for

¹⁶Marlina, "Development of the Concept of Diversion and Restorative Justice in the Juvenile Criminal Justice System in Indonesia (A Study in Medan City)", Dissertation, Postgraduate School, University of North Sumatra, Medan, 2006.

criminal justice that focus on punishment are changed to a process of dialogue and mediation to create an agreement on a more just and balanced settlement of criminal cases for both the victim and the perpetrator. Restorative justice has the meaning of restoring justice. In the current criminal justice system, restitution or compensation is known for victims, while restoration has a broader meaning.

Instruments of criminal procedural law and the criminal justice system in Indonesia formally regulate the procedures for the process of settling criminal cases. However, it is known that in practice it is often used as a repressive tool only by law enforcement officials. Meanwhile, the fundamental problem faced by society is full social control through efforts to protect lives and property by every member of society and to realize the social order that is desired and described through order, decency and harmony. This can only be realized if the government can implement the law in order to create a sense of justice in society

Some of the basic principles that stand out from restorative justice are related to the relationship between crime, perpetrators, victims, society and the State, namely:

- a) Crime is placed as a symptom that becomes part of the actionsocialand not just an offencelawcriminal.
- b) *Restorative justice* is a criminal justice theory that focuses on the view that other people's or society's crimes are against the state. So more emphasis on how the relationshipresponsibilityperpetrators (individuals) in resolving their problems with victims and/or society.
- c) Crime is seen aswhich actionharm people and damage social relations.
- d) The emergence of the idea of restorative justice as a criticism of the application of the system criminal justice with imprisonment Which considered in effective in resolving social conflicts.¹⁷

The application of restorative justice in cases of criminal acts of embezzlement requires legal certainty in which there must be binding legal decisions originating from authorized institutions that truly represent God and prioritize justice as satisfaction in society.

¹⁷Strong Praise Prayitno, 2012 *Restorative justicefor justicein Indonesia (juridical perspective philosophy in law enforcement in concreto)*, Journal of Legal Dynamics Vol. 12 No. 3 p. 411

Regulations related to handling cybercrime with criminal law are included in the penal policy sector which is an element of criminal policy (crime prevention policies). Observed from a criminal policy perspective, efforts to deal with crime (including in handling cybercrime) cannot be carried out only partially with criminal law (means of penal), but must also be pursued with an integral/systemic paradigm. Cybercrime is a problem in today's virtual world that must be taken seriously. As a crime, overcoming cybercrime can be analogous to the real world, obligatory governing law. There are 2 methods of handling cybercrime, namely:

1. With non-legal efforts All efforts that are preventive and persuasive in nature to perpetrators, victims and all parties who have opportunities related to online crime.
2. With Legal Efforts All efforts that are binding in nature, provide more information about penalties and types of violations / crimes in the online world specifically.¹⁸

There are 2 things that can trigger the emergence of cybercrime, namely technical and socio-economic (social). First, on technical matters, it cannot be denied that the impact of advanced technology (information technology) can have a negative impact on progress in society. The success of this technology can also eliminate national boundaries that make the world very narrow. Correlation between networks can make it easier for criminals to launch their activities. Then, the uneven distribution of technology makes one stronger than the other¹⁹

5. Conclusion

Cybercrime is a crime that utilizes technology as an intermediary medium for crimes. One form of cybercrime is defamation via the internet. The criminal act of defamation via the internet is regulated in Article 27 Paragraph (3) of Act No. 19 of 2016 concerning Amendments to Act No. 11 of 2008 concerning Information and Electronic Transactions. In a study of restorative justice based on the perspective of recovery of the parties, this can only be done as long as there is an agreement between the perpetrator and the victim. So that the process of solving cybercrime crimes is in accordance with the principle of a quick, simple and fair trial.

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¹⁸Akbar Galih Hariyono, Op, Cit., Hal. 430

¹⁹Ibid., p. 436

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