

Criminal Policy as an Effort to Overcome Defamation Crimes on Social Networks (Research in the Jurisdiction of the North Sumatra Regional Police)

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ABSTRACT

The development of information technology, especially in the realm of computers, has created a significant impact on security in cyberspace, including increasing cases of cyber crimes such as defamation. This article analyzes the laws related to defamation in social networks based on the ITE Law. This research uses normative and empirical juridical approaches to highlight weaknesses in policy implementation, such as ambiguous definitions and differences in interpretation between the ITE Law and the Criminal Code. In addition, the article proposes non-penal policy alternatives, such as religious and moral approaches, in addressing cybercrime. However, obstacles such as the lack of public understanding of the ITE Law and limited infrastructure and human resources in the police cyber unit were also identified. By understanding these challenges, it is hoped that law enforcement against cybercrime can be improved to create a safer and more ethical cyber environment.

INTRODUCTION

The development of a technology is influenced by various factors that exist in their respective fields, the science that exists within can also be one of the factors for the development of a technology. Technological developments, especially in the realm of computers, have a significant impact on security in cyberspace. Problems that often arise are related to violations of the law between internet users with one another.

There is a criminal act that often occurs in cyberspace is criminal defamation. Defamation is a criminal offense that hits the good name, in the form of speech, sentences, and media that hit the self-esteem of others and can degrade the self-esteem and also the dignity of the party being tainted. Or accusations against someone for having done something and distributed it to the public. harassment or offense that faces one's reputation that is a kind of untrue statement, slander, defamation, ridicule, or insult (Rochman et al., 2021).

The articles related to defamation are as follows: a) allegations using oral article 310 paragraph 1 of the Criminal Code, b) accusations through writing or images displayed in article 310 paragraph 2 of the Criminal Code, c) defamation article 311 of the Criminal Code and Article 27 paragraph (3) of Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law of the Republic of Indonesia Number 11 of 2008 concerning Information and Electronic Transactions Information which reads "Everyone intentionally and without the right to distribute and/or transmit and/or make accessible Electronic Information and/or Electronic Documents that have the content of insult and/or defamation" (Ranto Mahmuda Perdana Aritonang et al., 2023).

Penal policy is a set of rules and actions set by the government to enforce the law and sanction violations of the law (Rachwi Ritonga et al., 2022). It covers law enforcement processes, criminal justice, and the prison system. Its purpose is to maintain public order, prevent lawlessness, and uphold justice. On the other hand, non-penal policies are a set of actions that emphasize more preventive and rehabilitative efforts, as well as targeting the root causes of social problems. These include crime prevention programs, social support, education, and rehabilitation programs (Nainggolan et al., 2010). The non-penal policy aims to reduce the likelihood of violations of the law and provide long-term solutions for individuals involved in criminal activities.

Previous research was conducted by Candra Said Nur who examined the effectiveness of the application of criminal defamation/defamation through the Internet at the Wajo Resort Police with the title "The Effectiveness of the Application of Criminal Defamation / Defamation Through the Internet (Study at the Police at Wajo Resort)". In his research, Candra raised two main problems. First, he examined how effective the application of criminal defamation through the Internet is. Second, it also investigates what factors influence the use of the internet in committing defamation. By identifying and analyzing these two aspects, Candra seeks to provide a deeper understanding of law enforcement related to defamation cases in the internet space and the factors that influence the behavior of internet users in carrying out these actions (Raja Lubis et al., 2022).

Defamation in cyberspace is a complex issue that requires multidimensional solutions. Mitigation efforts require a combination of penal and non-penal policies, such as law enforcement, education, rehabilitation programs, and cooperation between various parties. Therefore, this study will focus on understanding and reviewing penal policies and non-penal policies as well as the obstacles faced in efforts to overcome defamation crimes in social networks.

THEORETICAL REVIEW

Problems that occur in cyberspace can be in the form of unlawful acts between internet users with one another. In addition, in cyberspace, there can also be crimes that are often referred to as cybercrime. Cybercrime is a crime carried out using the internet based on the power of computer and telecommunications technology (Yurizal, 2018). Cybercrime utilizes information and communication technology in the form of tools to carry out unlawful acts and criminal acts when the user is in cyberspace (Bilondatu & Susanti, 2022; Kurnia Putra, n.d.).

Cybercrime is a crime that occurs in cyberspace and uses devices as a system that supports the realization of an activity. Crimes occur both at home and abroad that occupy the attention of the wider community, especially the State of Indonesia. *Cybercrime* is a variety of illegal access to data transmission. That is, a crime where it occurs in cyberspace is an unofficial activity against a computer device that can be classified as a crime on social networks (Junaidi et al., 2020; Onyepuemu et al., 2022).

The target of cybercrime is a computer connected via the internet network. Crimes committed in cyberspace usually aim to generate financial benefits for the perpetrators. Security systems in cyberspace to earn money. Some perpetrators use the Internet in the form of media to make money, such as the use of the internet in the illicit trade in weapons as well as human organs, prostitution, and pornography (Salam & others, 2022).

Information technology holds a vital task in the flow of information, and communication in cyberspace (*cyberspace*) which has positive to negative effects. Changes in the order of people's lives in the social and economic fields has changed very quickly from the last few years, especially from the last few years, (Suhendar, 2021). When viewed from the application users can provide an overview of a significant increase in social communication that occurs in social networks that can show interaction between several circles of society.

METHODOLOGY

This type of research is normative and empirical juridical research Normative juridical research is literature law research (Rochman et al., 2021). Normative juridical research is also a method of legal research carried out by researching sources from literature by using materials from legal literature, court decisions, applicable laws and regulations, documents, and other media to obtain data or theories related to research problem products.

This research is descriptive and analytical which expresses laws and regulations related to legal theory that is the object of research (Soekanto &

Mamudi, 2015). Descriptive analytical is a method used to describe a condition or situation that is happening or ongoing which aims to provide as thorough data as possible about the object of research to be able to explore ideal things, and then analyze based on legal theory or applicable laws and regulations (Soemitro, 1994).

This research combines two types of approaches, namely normative and empirical legal research, using data sources consisting of primary and secondary data. Primary data were obtained through interviews with AKP Viktor Pasaribu in sub-directorate V of the special criminal investigation directorate of the North Sumatra regional police, while secondary data included official documents, books, and research reports. The data collection method involves literature research to analyze literature and laws and regulations related to criminal defamation as well as field research in the North Sumatra Regional Police of North Sumatra Province to obtain primary data through interview techniques. After the data is collected, analysis is carried out using literature study techniques, data examination, data reconstruction, and data systematization, as well as qualitative descriptive analysis to obtain comprehensive conclusions from the results of the study (Windy et al., 2023).

RESULTS AND DISCUSSION

Penal Policy in Efforts to Counter Defamation Crimes on Social Networks

a. Defamation formulation policy in social networks

Formulation policy is a policy to formulate something in a law related to defamation can be seen based on Article 45 paragraph 3 of the Law of the Republic of Indonesia No. 19 of 2016 concerning amendments to the Law of the Republic of Indonesia No. 11 of 2008 concerning information and electronic transactions. Any Person who intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have the content of insult and/or defamation as referred to in Article 27 paragraph (3) shall be punished with a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp750,000,000.00 (seven hundred fifty million rupiah)

Everyone means an individual or corporation, both legal and unincorporated, intentionally means that someone who commits a criminal act must have an element of awareness or understanding, meaning that the person committed a criminal act of defamation in the conscious mind intentionally without being influenced by others and Without Rights means If a person commits an act but it is not done in a "No Rights" manner, and it is not done in an "Unlawful" manner, then that person cannot be criminalized.

The definition of "transmitting" is sending Electronic Information and/or Electronic Documents directed to one other party through an Electronic System while the definition is based on a large dictionary Indonesian The meaning of the word "transmit" is transmission (English: transmit), which means sending (forwarding), transmitting the spread of messages and so on from one person to another person (thing). Transmitting is sending or continuing a message from someone (thing) to another person (another object) (*Kamus Behas Indonesian Pusat Bahasa*, 2008). According to the author, the two understandings above can

provide the same understanding using the word "send", but the difference is the use of the words "information" and "message"

Distributing comes from the word "distribution which means "distribution (sharing, sending) to several people or several places" (*Kamus Behas Indonesian Pusat Bahasa*, 2008) which is defined as "distributing" sending and/or disseminating Electronic Information, and/or Electronic Documents to many people or various parties through Electronic Systems. The two definitions above according to the ITE Law use the word send while the big dictionary Indonesian uses the word distribution even though the meaning is the same but the definition of KBBI is not clarified by an object about electronics.

Access is the activity of interacting with Electronic Systems that stand-alone or in a network, Make accessible, access means an entrance, the word access shows that the action is an action contained in the use of information technology based on computer systems that occur in cyberspace. So the use of the word make accessible is information from electronics in computer-based electronic systems that can be received by electronic information receivers.

Although behavior makes it accessible more leads to material crimes. So the way to prove it can be similar to two other actions, first through science about information and communication technology systems. In ways of realizing an actual and appropriate action for actions that can channel, and express electronic information so that it arrives in a set of electronic devices that receive information. As well as looking from the tip of the base. One of the proof systems that looks at the ways of manifesting deeds.

Then the second way is to look at the fact that electronic information has been dispersed in cyberspace. Nor does it look at the original form of the deed. Proof by looking at the consequences of actions, looking at the end angle, and proving the second way is easier to do (Adami, 2015).

Electronic information is obtained starting from transmitting access to data in cyberspace using the internet network where the network is connected to all devices either hardware or software often called *software* and supported by a kind of device by using an application and disseminated on social networks, applications play an active role in transmitting or spreading something to one or two people. Dissemination can be done in the form of data in the form of files or it can also be in the form of videos or recordings where someone sends data often called electronic information.

Having an insulting charge means that a perpetrator is indicated to have the potential to strengthen, is said to have committed a criminal act by article 184 of the Criminal Procedure Code, at least two valid evidence, for example, someone makes a status on social media such as a facebook that says immoral words and abusive words. It can already be said to be a criminal defamation offense

Defamation According to the Criminal Code, it is a criminal offense that always causes debate among the general public and various community elements such as students/students and it is possible for officials who enforce the law, sometimes they always give their interpretations or opinions that lead to this problem to their followers in everyday life. The difference in

interpretation of a law always raises new questions, of course, people are considered capable of understanding the interpretation of the law and can accept it. In the existing laws and regulations in Indonesia, defamation (insult) is regulated and formulated in Article 310 of the Criminal Code so that the elements of defamation or insult can be stated, which are as follows:

1. Intentionally;
2. Attacking honor or reputation;
3. Accuse of an act;
4. Broadcast allegations to the public.

Deliberately means that the act is done on one's initiative and done on awareness without being influenced by a certain situation, what is attacked is dignity and a good name can be a career of people, through words or done through social media, to accuse someone of doing an act is to suspect to someone that he has committed a criminal act without sufficient basis and evidence, Broadcasting in this case either by word or can be done through social media generally in the form of videos in the form of records, which is broadcast in this case is something that can harm someone.

Regarding insults, Chapter XVI of the Criminal Code contains 12 articles from Article 310 to Article 321. Criminal acts in Chapter XVI of the Criminal Code are included as complaint offenses, as stated in Article 319 of the Criminal Code. Prosecution of a complaint offense can only be carried out by the party who suffered the crime. This means that first there is a complaint so that it can be processed by law without having to be represented then it will raise the question of what if the victim is a minor who does not understand the law, in this article, it becomes a weak point that lacks explanation and the child as a victim should be represented accompanied by the existence of child protection laws.

The criminal act of defamation or insult found in Article 27 paragraph 3 of the ITE Law is a special rule (*lex specialis*) from the general rules (*lex generalis*) criminal act of defamation or insult between the criminal code and article 311 of the criminal code philosophically there is no fundamental difference regarding the regulation of criminal defamation or insult between the criminal code and the ITE Law because the two things regulate the same thing, there is a difference that in the ITE Law includes elements of criminal defamation or insults committed through "social" media.

This difference in understanding occurs because of the demands of the community so that the law changes due to the development factors of the era humans are increasingly able to use technology, and humans can commit crimes, here the legislative field is required to have the ability to form a regulation to meet a rule of law in the future. With the latest law on ITE, it does not mean that humans will not commit crimes, but with the promulgation of a law, people who commit crimes will think twice about committing or not committing crimes because of the sanctions of crimes that have been committed.

When observing the formulation of the provisions of Article 27 paragraph (3) of the ITE Law, the article seems to control freedom in expressing

opinions/ideas where the matter in question is the most important part of a democratic country and is guaranteed from national legal instruments from what is conveyed will discuss more specifically the basic constitution of the Republic of Indonesia, namely from article 28 UUD1945 With the provisions in article 27 paragraph (3) of the ITE Law, so the basic needs of each individual can be limited if they are not interpreted correctly and result in people will no longer dare to express, express opinions or criticize one another for fear of being criminalized (Sengi, 2018).

From the two stated above, between the ITE Law and the written constitution, in terms of hierarchy, the 1945 Constitution is higher and the ITE Law is lower in degree when compared to our constitution. On the one hand, we are encouraged to be able to express opinions in the sense of freedom to express an idea, it does not mean that if we are given freedom, we express opinions at will without paying attention to everything whether what we say is true and based on the facts and ideas we put forward, whether we can be accountable even though our constitution is higher, it does not mean that we cannot be entangled in cases by a criminal act of contempt, here we are encouraged that can understand better.

b. Defamation Application Policy

Criminal crime is one of the types of perverted acts that are often present and integrated into every type of society. In tackling the emergence of *cybercrime*, of course, there are several efforts from the police, the efforts can be directly or indirectly in general directly in contact with the community through dialogue or discussion and indirect efforts are efforts given such as appeals through electronic media appeals through social media, communities and groups in friendship by conveying information related to *cybercrime* to be conveyed to all elements of society (Bilondatu & Susanti, 2022).

Criminal acts of insult or defamation are often carried out on social media such as *Facebook, Instagram, Twitter*, and other social media committed by a person or a group of people regulated in the Criminal Code in articles 310 to 321 Related to the enforcement of this law, law enforcement or application policies with perpetrators of criminal defamation in the context of handling crimes that occur in cyberspace are considered less effective or This efficiency is due to several factors reviewed in the legal system approach as *stated by Lawrence M. Friedman, that law enforcement is influenced by elements contained in the legal system, namely legal structure, legal substance, legal culture (legal culture) (Friedman, 1969) (Friedman, 1969)*. A legal structure that leads to police facilities and infrastructure such as computers and internet networks in carrying out crime prevention, the legal substance of laws and regulations on defamation number 19 of 2016 concerning electronic information and transactions, rules provide appropriate explanations so as not to cause differences of opinion and multi interpretation, legal culture, moral awareness of law enforcement officials, conviction and obedience of the law in carrying out their duties; and his duty as a policeman.

Non-Penal Policy in Efforts to Overcome Defamation Crimes on Social Networks

a. Religious Policy

Religious policy or approach in this way of religion in this case discussed is how religion can bring change to crime some cases decrease because there is a good approach Pondok IT aims to provide professional, resilient, and noble morals in building IT strength in Indonesia as well as supporting the community and government to prevent crime in cyberspace (Hasan, 2022). The efforts carried out by the IT lodge to combat crime in cyberspace are very focused on the "preventative" nature, namely prevention or deterrence before crimes occur. On the foundation of an educated religion, scientifically submit the guiding norms of philosophically good behavior and guidance for the life of faith. Activities in this case can be abstract mental health (*social hygiene / mental health*) or physical and technological (techno-prevention) (Tahir, 2013).

b. Moral Policy

According to Caplin and Hurlock, morality is defined as related to customs that are part of the morals of a society, while wantah defines it as the ability to determine moral benchmarks for good and bad of a person. Social life will produce actions that encourage to act according to the rules that live in society.

Moral norms relate to behavior that is inwardly speaking of one's will to do what is appropriate or not by the law (Lamintang, 2009). So that every circle of society can comply with the law so that norms can be realized in the form of sanctions according to applicable rules. Moral norms produce morality that is expected to have a positive effect on one's daily actions. Often someone does things that happen in cyberspace due to a lack of understanding of morality in social media (Bilondatu & Susanti, 2022). Which deeds are good and which deeds are not good?

Obstacles Faced in Efforts to Overcome Defamation Crimes on Social Networks

a. Constraints on Public Understanding Related to the ITE Law

The development of technology in Indonesia is a way to make it easier for people to carry out activities on social networks by utilizing various applications or social media, but the facts that occur quite a lot if we observe comments from the public written on social media are classified as rude comments that are not ethical. This shows the moral value of a society This research aims at understanding the community as a group of various elements of society, they should have a good understanding of the ITE Law. Daily activities are very close to social media and information technology which is also always active in carrying out activities in cyberspace.

Some people still do not understand the existence of the ITE Law such as in the interior villages or overseas people who live in cities due to a lack of reading about the ITE Law. But some people who can read and hear a lack of knowledge or apathy about the law have no intention of knowing more deeply as if the wind passes. However, when a law is formed, the wider community is

considered to know and understand even though the situation is not as we imagine. Although the government has tried its best to carry out socialization.

Based on the results of research conducted by researchers to the North Sumatra Regional Police at the Directorate of Special Criminal Investigation in the V cyber unit, the resource person, AKP Mr. Viktor Pasaribu, said that some people do not know or lack understanding of the existence of the ITE Law when carrying out activities in cyberspace, commit insults or defamation, and if dealing with the police, it is not uncommon to enter bars that lead to a criminal act. in Article 27 paragraph 3 of Law No. 11 of 2008 before finally being revised by Law No. 19 of 2016. Regarding the ITE Law, however, the perpetrators feel remorse when dealing with the law and the perpetrators say they do not understand the actions they do, this shows that there is still a lack of understanding about the existence of the ITE Law even though the police have conducted seminars on campuses or other places.

b. Constraints on Infrastructure

One of the things that encourages the effectiveness of police law enforcement is adequate infrastructure, namely police enforcement tools in conducting surveillance in cyberspace such as computers or laptops. It is also necessary to create a sufficient police room in the police, facilities, and infrastructure such as official vehicles provided by the State such as official motorcycles and official cars, of course, cannot be separated from the recommendations conveyed during meetings with police leaders to support the performance of the police. Facilities and infrastructure must exist and be presented to create law enforcement. This kind of means can help carry out police duties.

Along with the development of technology, users of these technologies are also getting smarter on the positive and negative sides. Technology users who commit crimes often go undetected by relevant regulatory agencies because of the lack of computer software systems that can detect and block them.

Another thing that becomes an obstacle is the internet network apart from applications as a blocking system. The network also has a great influence in conducting surveillance in cyberspace which is often called *cyber patrol*, without an internet network, applications and computers cannot be run properly. Although not infrequently cyber police must have difficulty in securing cyberspace when the network is disconnected or experiencing interference.

Police in the cyber unit, especially in the North Sumatra Regional Police, do not stop supervising, the task of the National Police can track applications and make disclosures according to the instructions of the application software used, so that the mandated tasks can run well, of course, it needs cooperation from other agencies such as the Ministry of Communication and Information whose job is to block sites on social networks that are considered bad.

c. Constraints on Human Resources

The human resources referred to here are the resources of law enforcement officers from the police institution in the cyber unit. In the description of the authority of investigators, special units of information and communication technology in law enforcement institutions, obstacles in structuring human resources so far due to limited police personnel available, and lack of budget to recruit new personnel (Fauzi et al., 2024).

The ability of law enforcement officials in the field of information and communication technology is very important. Law enforcement officials who do not have the ability in the field of technology will make the police institution not run properly, computer equipment and equipment cannot work, and the authority possessed by the police institution cannot be exercised to eradicate criminal defamation that occurs in cyberspace.

Not only the ability of human resources or the ability to complete tasks well, but also the morale and integrity of police members who have been a byword amid society which has become a complaint of the community, the morals and professionalism of these second police members are always in line and hand in hand.

CONCLUSIONS AND RECOMMENDATIONS

Based on the analysis of the defamation formulation policy on social networks, it can be concluded that this policy is regulated in Article 45 Paragraph 3 of RI Law No. 19 of 2016 concerning Electronic Information and Transactions. The article confirms that any person, whether an individual or a corporation, who intentionally and without the right to disseminate electronic information or electronic documents containing insult or defamation may be subject to a maximum prison sentence of 4 years and a fine of up to Rp750,000,000.00. However, there are some weaknesses in the implementation of this policy. For example, the definitions of "transmit" and "distribute" are not yet very clear in the context of electronic law, as well is uncertainty in the complaints process, especially if the victim is a minor. In addition, there are differences in interpretation between the ITE Law and the Criminal Code related to insults and defamation, which can confuse the application of the law. Nevertheless, the existence of the ITE Law should have a deterrent effect on perpetrators of cyber crimes, although freedom of opinion must be properly maintained by the constitution. Thus, there needs to be a better understanding of this policy to ensure that the expression of opinions carried out remains by applicable law and does not harm other parties.

Based on tackling defamation crimes on social networks, non-penal policies can be an effective alternative in countermeasures. First, through a religious approach, such as that carried out by Pondok IT, Islamic values are instilled in computer programming education. This not only aims to create professionalism in the IT field but also to form good character and minimize cyber crime by applying religious values. Second, through moral policies, people are encouraged to internalize moral norms in social media behavior. A lack of understanding of morality can lead to offenses in cyberspace, therefore, an emphasis on morality is expected to reduce incidents of defamation. Thus,

such a non-penal approach contributes positively to creating a more secure and ethical cyber environment.

In tackling the crime of defamation in social networks, several obstacles arise. First, the a lack of public understanding of the ITE Law, especially in rural areas or overseas. Second, inadequate infrastructure, such as computer software and internet network interference.

FURTHER STUDY

Third, limited human resources in the police cyber unit, both in the number of personnel and in information technology training. Finally, it is necessary to pay attention to the morale and integrity of police members to ensure the effectiveness of law enforcement. By overcoming these obstacles, it is hoped that tackling defamation crimes can be done more effectively.

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