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## **Criminal policy against the criminal actions of damning good name through Social Media**

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**Abstract.** This study uses normative research, using several approaches to statutory regulations, philosophical approaches and conceptual approaches. Advances in information technology can simplify and accelerate electronic communication with the potential to have negative impacts, such as the birth of new crimes, including defamation cases through social media, law enforcers can provide different interpretations, and it's not uncommon for Judges as the last bastion to enforce the law, in implementing the law they don't really provide justice and consistency of decisions. Electronic Transaction Information Law has not been able to provide a sense of justice in the articles there are multi-interpretation rubber articles that are easily interpreted unilaterally by law enforcement officials. Criminal law policy is an effort to prevent criminalization in providing protection to the community, through criminal law policies for legislators, applicable policies and executive policies.

**Keywords.** Criminal, policy, social media

### **Introduction**

The advancement of information technology which continues to advance at a rapid pace brings significant developments to the world of information technology, not only developed countries but also developing countries also spur the development of information technology in their society.

With the advancement of information technology, on the other hand, it has an influence on changes in people's behavior in global civilization. Technology can connect the world to be close and (*borderless*) and can cause significant changes in the economic, social, and cultural. Legal, political systems to take place so rapidly.

Al Wisnubroto in the Telematics Crime Management Strategy stated his opinion that:

This information technology is a double-edged sword because besides being able to contribute to the improvement of welfare, progress and civilization of society, it's also an effective means of illegal acts for every human being. At present a new legal regime has also been born known as cyber law or telematics law, namely crimes based on telematics technology.(Sinaga, 2016)

Social changes due to technological advances not only brings positive impacts as described above, but also has the potential to cause negative impacts, such as the birth of new crimes by using information technology facilities. Forms of crime due to technological

advances include “*Unauthorized Access to Computer Systems and Services, Illegal Contents, Data Forgery, Cyber Espionage, Cyber sabotage and Extortion, Offense Against Intellectual Property, and Infringements of Privacy*”.(Ersya, 2018)

Advances in information technology can simplify and accelerate electronic communication with the potential to have negative impacts, such as the birth of new crimes, including defamation cases through social media, law enforcers can provide different interpretations, and it's not uncommon for Judges as the last bastion to enforce the law, in implementing the law they don't really provide justice and consistency of decisions.(Hardinanto, 2016)

Law of the Republic of Indonesia Number 11 of 2008 concerning Electronic Information and Transaction 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 Transaction (Electronic Transaction Information Law) in Article 27 paragraph (3) doesn't provide legal protection for perpetrators who are deemed to have violated these rules, the application of the law as is the case in the case of Prita Mulya Sari which is considered defamatory and degrading to the Hospital and Baiq Nuril Makmun Honorary Teacher at SMA 7 Mataram West Nusa Tenggara, they were found guilty because disseminating, distributing and transmitting their content doesn't get the justice they should, because of that many legal experts who give mixed opinions, some say that they are victims.

The two cases of Prita Mulya Sari and baiq Nuril Ma'mun can be used as material for legal studies, because with these cases many legal experts have different views, there are judges who handle cases of insult /defamation still using legal considerations not using Article 27 paragraph (3) in the Electronic Transaction Information Law, however, the Judge still uses Article 310 of the Criminal Code (KUHP).

Article 27 paragraph (3) of the Electronic Transaction Information Law states "Everyone deliberately and without right distributes, transmits, makes accessible Electronic Information and / or Electronic Documents that have content of defamation and or defamation."

The criminal act of defamation or humiliation as regulated in Article 310 of the Criminal Code states, "Anyone who deliberately damages the honor or reputation of a person by accusing him of committing an act with the real intention of broadcasting the accusation, is punished for insulting, with a maximum imprisonment nine months or a fine of up to Rp. 4,500, - "whereas in paragraph (2)," if this is done in writing or pictures that are broadcast, shown in public or pasted, then those who do so are punished for insulting in writing with a maximum imprisonment of one year and four months or a fine as much as Rp. 4,500, -.

Article 311 of the Criminal Code "Whoever commits a crime of insulting or insulting by writing, in the event that he is allowed to prove his accusation, if he cannot prove it and if the accusation is being committed he is found to be untrue, shall be punished for wrongly slandering with a maximum imprisonment of four years".(Binsneyder & Rosando, 2020)

Article 315 of the Criminal Code "Every deliberate insult that isn't defamatory or written defamation committed against a person, either in public orally or in writing, or in the face of the person himself orally or in deed, or by letter sent or received to him or her, is threatened with light humiliation with a maximum imprisonment of four months and two weeks or a maximum fine of four thousand and five hundred rupiahs ".(Hasanah, 2018)

Article 27 paragraph (3) of the Electronic Transaction Information Law "Everyone knowingly and without right distributes and/or transmits and/or makes accessible electronic information and/or electronic documents that contain defamation/defamation".(Sari et al., 2020)

The problem of the characteristics of activities in the cyber world that is cross-border is no longer subject to territorial boundaries. Traditional law requires a new law, because certain

articles of the Criminal Code area deemed inadequate to answer legal problems that arise as a result of activities in the cyber world. Included in the problem of implementing criminal sanctions in cases that occur in cyberspace and are seen as not providing legal justice.

Utilization of information technology, especially the management of information and electronic transactions, plays an important role in increasing national trade and economy in the context of globalization, so it's necessary to take concrete steps to direct the use of information technology in order to truly support national economic growth to achieve the welfare of society.

Article 36 of the Electronic Transaction Information Law states that "Every person intentionally and without rights or against the law commits an acts as referred to in Article 27 to Article 34 which results in losses to other people. For example, if someone disseminates electronic information that contains hatred and insults /defamation which results in losses for others, he will be subject to a maximum imprisonment of 12 years / a maximum fine of 12 billion rupiah (stated in Article 51 paragraph (2)).(Titi S. Slamet , Marianne Masako Paliling, 2020)

Article 51 paragraph (2) of the Electronic Transaction Information Law states that every person who fulfills the elements as intended in Article 36 shall be sentenced to imprisonment for a maximum of 12 (twelve) years/ a maximum fine Rp. 12,000,000,000.00 (twelve billion rupiahs).

A similar arrangement is also explained in Article 310 of the Criminal Code which states, "Whoever deliberately damages the honor or reputation of a person by accusing him of committing an act with the obvious intention of making the accusation public, is punished for insulting, with a maximum imprisonment of nine months or a fine as much as Rp 4,500,-"

Observing the two legal bases above, it's known that in both the Electronic Transaction Information Law and the Criminal Code, cases regarding defamation have been regulated in such a manner in statutory regulations. However, the problem that arise is not the existence or absence of these regulations, but the differences in the form of criminal sanctions imposed on each regulation. According to Andi Hamzah, hate speech has been regulated in Articles 154 to 158 of the Criminal Code, this article is called the colonial article because it was used by the Dutch government to defend it's government in Indonesia and in it's own country there was no such article until now.(Hutomo, 2021) Therefore, the Electronic Transaction Information Law is actually an Administrative Law and cannot provide a serious criminal threat, a maximum of 1 years in prison. It means that the criminal sanctions in the Electronic Transaction Information Law are only for compliance with these regulations, not for punishing people. Based on the above review, the problem formulation is in the form of a research question, namely how is the criminal law policy against criminal acts of defamation/defamation through social media ?

### **Research Method**

This study uses normative research, using several approaches to statutory regulations, philosophical approaches and conceptual approaches.(Michael, 2019)

### **Research Results and Discussion**

#### **Criminal Law Policy Against the Crime of Defamation / Defamation through Social Media**

R. Soesilo explained the definition of "carried out in a public place, a place that is visited by the public or where the public can hear, it's the right of every person to express his opinion on everything, especially on what he has really experienced himself, the right to express that opinion is protected by law. The Constitution of the Republic of Indonesia (second amendment)

in particular Article 28 E paragraph (3), which states "Everyone has the right to freedom of association, assembly and expression of opinion".(Kamalludin & Arief, 2019)

The defendant, as a patient from the Omni International Hospital, was dissatisfied with the hospital's services to submit a complaint about the incident he had personally experienced. The electronic letter made by the Defendant was a form of story and / or complaint regarding the incident that was actually experienced by the Defendant while the Defendant was being treated at the Omni International Hospital in Tangerang, which the Defendant then told to a limited circle, namely the closest people to the Defendant via e. -Private *emails* from people closest to the Accused. *E-mail* is a private, closed and confidential communication medium where not everyone can access and/or open and/or read all information contained in someone's *e-mail* address, this is evidenced by the necessity of having a *password* that must be owned by someone who owns the *e-mail* address.(Azhar & Sopyono, 2020)

Thus only people who have the right and have a password from that *e-mail* address can access and/or know any information sent to him through his e-mail address.(Ananda, 2018) Defendant Prita Mulyasari expressed her opinion and/or complaint about what was happening. When he was treated at the Omni International Hospital in Tangerang, he only sent his writings to the personal e-mail address of the people closest to him and was not published and/or sent through a blog or website of a public nature which could be consumed and/or the Defendant's story could only be accessed by the people closest to him and not the public or the general public.

Thus the element "so that it becomes public knowledge" was not fulfilled. Thus the Defendant's act of sending electronic letters to a number of people in a limited circle was not a crime because it didn't fulfill the main element of Article 310 paragraph (1) of the Criminal Code which was charged by the Prosecutor General.(Supiyati, 2020)

### **Legal Protection for Offenders of Defamation / Defamation through Social Media Based on Restoration Justice**

The emergence of objections from some people to Article 27 paragraph (3) regarding defamation and /or insulting through Social Media which resulted in a *constitutional review* of Article 27 paragraph (3) to the Constitutional Court, it was revealed that the objections of the plaintiffs were against the criminal provisions contained in the Electronic Transaction Information Law, especially the threat of criminal sanctions in Article 45 paragraph (1), namely imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah).

This provision is considered too heavy compared to the threat of sanctions in Article 310 paragraph (1) of the Criminal Code, namely imprisonment for a maximum of 9 (nine) months or a maximum fine of four thousand and five hundred rupiahs. The impact of the regulation of imprisonment for 5 (five) years or more, has consequences in accordance with the provisions of the Criminal Procedure Code that suspects perpetrators of criminal acts in this Article can be subject to detention.(Rhamdhatul Muthia dan Ridwan Arifin, 2019)

This article also contains duplication of criminal offenses from the Electronic Transaction Information Law, which already all provisions of the criminal act of defamation and/or defamation have actually been regulated in the Criminal Code. Returning all forms of punishment into the Criminal Code in accordance with the capacity of the content which regulates in more detail and guarantees legal certainty, "with multiple interpretations, the response to the use of the article doesn't have a single legal certainty.(Nurlatifah, 2018) This article is also applied in a variety of ways, starting from the investigation process, the



indictment, the detention procedure, the procedure for withdrawing the report and mediation, including the interpretation of the article itself.

For example, the case of Prita Mulyasari versus the Omni International Hospital which started with the sending of an electronic letter (email) regarding her complaint about the services she received from the Omni International Hospital. The Omni International Hospital responded to this complaint by complaining that Prita Mulyasari had committed defamation. By law enforcement officials, the complaint qualifies as a violation of Article 27 paragraph of the Law on ITE which reads, "Everyone knowingly and without right distributes and/or transmits and /or makes access to electronic information / electronic documents that contain defamation /defamation good."

Therefore, Prita Mulyasari was subject to detention because of the threat of sanctions for violating Article 27 paragraph (3) of the Electronic Transaction Information Law for five years or more. The detention of Prita Mulyasari resulted in a reaction from the public who felt that the threat of criminal sanctions in Article 45 paragraph (1) was too burdensome. (Ningtias, 2018)

1. The provisions of the Electronic Transaction Information Law article 43 paragraph (3) and (6) create problems for investigators because criminal acts in the field of Information Technology and Electronic Transactions are so fast and perpetrators can easily obscure acts or evidence of crimes.

2. Regarding law enforcement in terms of searches, seizures, arrests that require permission from the head of the court to several powers of Civil Servant Investigators which delay the law enforcement process.

Article 27 paragraph (3) of the Electronic Transaction Information Law clearly doesn't explain whether this offense is included in the category of complaint offense or in the category of Ordinary Offense, the offense for insulting in Article 27 paragraph (3) of the ITE Law is subjective. That is, the feeling that someone's reputation or honor has been attacked is the full right of the victim. It's the victim who can determine which part of the Information or Electronic Documents offends his honor or reputation. However, this subjective judgment must be balanced with more objective criteria.

### **Conclusion**

Electronic Transaction Information Law has not been able to provide a sense of justice in the articles there are multi-interpretation rubber articles that are easily interpreted unilaterally by law enforcement officials.

Criminal law policy is an effort to prevent criminalization in providing protection to the community, through criminal law policies for legislators, applicable policies and executive policies. Thus, the criminal law policy is a policy in criminalization efforts aimed at creating security, justice, order, tranquility, peace, protection of human rights, welfare and happiness in the order of social life.

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