

# Legal Review Regarding the Application of Criminal Sanctions for Acts of Defamation Through Social Media

Lily Solichul Mukminah

Universitas Mayjen Sungkono Mojokerto

Email: lilymukminah@gmail.com

**ABSTRACT** – This research examines the impact of imposing criminal sanctions on defamation through social media on society at large. Using a normative juridical research method, analysis is conducted on relevant legal regulations and the elements involved in defamation. The study highlights the importance of imposing criminal sanctions as an instrument to uphold justice, prevent similar actions in the future, and consider the psychological and social impacts on victims and perpetrators. By understanding the deterrence effect of criminal sanctions and evaluating their effectiveness, this research contributes to a comprehensive understanding of the role of legal enforcement in addressing defamation issues in the digital era. It provides insights into the complexities of defamation cases in the online realm and underscores the significance of legal measures in safeguarding individual rights and maintaining societal integrity in the face of evolving digital communication platforms.

Keywords: defamation, social media, criminal sanctions, criminal law, social impact.

## A. INTRODUCTION

In Indonesia, the rapid development of technology has influenced social change in society, changing the way they interact with each other and creating new norms and values. Apart from that, this development also has a significant impact on the dissemination of information with the existence of information technology which provides facilities for exchanging information quickly and efficiently (Jiang, 2020; Wahyudi et al., 2021).

The use of the internet as a channel for disseminating information has become a significant phenomenon in the digital era. This mainly occurs through various social media platforms that provide a platform for individuals and entities to interact, share content, and disseminate information to a wide

audience (Masnawati et al., 2022). Social media refers to online platforms that allow active participation from users in creating, editing and sharing multimedia content such as articles, photos and videos (Kurniawan et al., 2022).

In social media structures, users have the ability to publish their content through websites specifically designed for the purpose. Through the available features, users can upload various types of content, from writing to visuals such as photos and videos. Voting or rating features are also often included in social media platforms, allowing users to express their preferences for certain content and effectively increase its popularity among a wider audience.

With the ease of access and interaction offered by social media, information can spread quickly and reach a larger audience than through traditional channels. However, this phenomenon also raises a number of challenges related to the truth, accuracy and reliability of information disseminated in the digital environment. Therefore, it is important to critically consider the source and validity of information found on social media to minimize the risk of spreading false or inaccurate information.

The rapid development of information often gives rise to various forms of abuse (El (Asam & Samara, 2016) which involves defamation as a fairly serious criminal act (Yanchukova, 2002). This phenomenon is not only limited to fraud, insults and gambling, but also highlights deeper problems related to a person's integrity and reputation. In the current digital era, cases of defamation are increasingly occurring with various causes.

Defamation can arise as a result of fake or unverified news spread via social media or other online platforms (Alkiviadou, 2019; Nieto, 2020). Disclosure of research results that are distorted or misinterpreted can also trigger defamation, as can reporting crimes that are not

based on accurate facts. Not only that, other actions such as verbal harassment or inappropriate conversations online can also lead to defamation of a person.

Ardia (2010) stated that defamation is an action that negatively affects a person's reputation. This occurs when someone makes statements or comments that accuse the individual of certain actions, aimed at damaging their image and integrity. As a result, this can lead to feelings of shame, decreased self-esteem, or damage a person's dignity.

In handling defamation cases, criminal sanctions are one of the legal instruments applied to uphold justice. These sanctions include various forms of punishment, ranging from fines to imprisonment, which are given to perpetrators of these criminal acts. However, criminal sanctions should not only aim to punish perpetrators, but also to educate the public about the importance of respecting individuals' rights to privacy and integrity and considering the consequences of their actions in the digital space.

Defamation, according to the Criminal Code (KUHP), is defined as a form of insult or blasphemy against certain individuals. This insult occurs when someone accuses another individual of committing a certain action with the aim of making the accusation known by many people. The concept of "insult" in this context refers to an attack on a person's honour and reputation, which in turn can generate feelings of shame in the individual being attacked. Honor and reputation are very valuable aspects for every living individual. Therefore, criminal acts against honour and reputation tend to be directed against living individuals.

The purpose of this article is to investigate the imposition of criminal sanctions for acts of defamation via social media, as well as identifying the elements involved in these acts of defamation. By understanding these two aspects, it is hoped that a better understanding of how the law handles defamation cases in the current era of social media can be created.

## B. METHOD

The research in this study is a type of normative juridical research. This research focuses on the analysis of statutory regulations and legal materials relevant to the topic being discussed. This normative juridical research method is carried out by investigating and interpreting

existing legal norms to understand concepts related to defamation through social media.

In conducting normative juridical research, the author uses a systematic and analytical approach to identify applicable legal regulations and analyse the substance of these regulations. This research also involved an extensive literature study to collect relevant legal references regarding defamation related to social media.

This research process begins with identifying the problem to be researched, then continues with collecting related legal data. After that, the data is analysed systematically to find patterns or conclusions that can be drawn. This research method provides a strong foundation for the author to compose arguments supported by credible and relevant legal references.

By using normative juridical research methods, the author can provide an in-depth understanding of legal concepts and regulations related to defamation through social media. It is hoped that the results of this research can make a significant contribution to the understanding and handling of defamation problems related to the digital world in society and the legal system.

## C. RESULTS AND DISCUSSION

The imposition of criminal sanctions for criminal acts of defamation through social media is an integral part of law enforcement efforts to overcome problems that arise in the digital era (Kaesling, 2018; Tu & Stump, 2020). Defamation through social media is becoming increasingly relevant with the increasing use of digital platforms as primary channels for interacting and sharing information. The imposition of criminal sanctions aims to uphold justice, warn perpetrators, and provide legal certainty for the community (Dothan, 2016).

Defamation is an action that can be subject to criminal sanctions. In the Criminal Code, defamation is regulated in Article 310 paragraphs (1) and (2) which states:

- 1) Any person who deliberately attacks someone's honour or good name by making accusations about something, with the clear intention of making it known to the public, is threatened for defamation with a maximum imprisonment of nine months or a maximum fine of four thousand five hundred rupiah.

2) If this is done by means of writing or images that are broadcast, displayed or posted in public, then for written defamation you will be threatened with a maximum imprisonment of one year and four months or a maximum fine of four thousand five hundred rupiah.

Defamation is also regulated in Article 27 paragraph (3) in conjunction with Article 45 paragraph (1) of Law Number 11 of 2008 concerning Information and Electronic Transactions, which states:

Article 27 paragraph (3):

"Every person intentionally and without right distributes and/or transmits and/or makes accessible electronic information and/or electronic documents containing insults and/or defamation."

Article 45 paragraph (1):

"Every person who meets the elements as intended in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be punished with imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of IDR 1.000,000,000.00 (one billion rupiah)".

Anyone who deliberately attacks someone's honour, whether verbally, in writing, or via electronic or social media, can be subject to criminal sanctions for defamation. This is regulated in Article 310 of the Criminal Code and also in Article 27 paragraph (3) in conjunction with Article 45 paragraph (1) of Law Number 11 of 2008 concerning Electronic Information and Transactions. Thus, based on the laws and regulations governing defamation, the act of hurting a person's integrity and reputation is considered a serious offense that can be subject to legal sanctions in accordance with applicable provisions.

The imposition of criminal sanctions plays an important role in strengthening the effectiveness of the law and sending a signal that acts of defamation via social media are a serious offense. Kift et al. (2009) stated that through a fair and transparent judicial process, criminal sanctions are expected to provide a deterrent effect for perpetrators and prevent the spread of similar behaviour in the future. This sanction also has the potential to become an instrument to educate the public about the limitations in communicating and interacting in the digital space.

However, the imposition of criminal sanctions for criminal acts of defamation through social media does not always run smoothly. There are a number of challenges that need to be overcome, such as difficulties in identifying and arresting perpetrators, inadequate legal restrictions, and the complexity of assessing the social and psychological impacts of such actions (Pasqualucci, 2006; Lavi, 2015; Sive, & Price, 2019). Apart from that, the use of social media also involves international aspects, so coordination between countries is important in law enforcement in cases that cross national borders.

Furthermore, an in-depth study regarding the imposition of criminal sanctions for defamation via social media needs to consider various perspectives, including individual rights, freedom of speech, and the balance between legal protection and public interests (Laibuta, 2022). In addition, research can explore various alternative approaches in handling defamation cases, such as mediation, public education, and developing policies that are more responsive to the dynamics of the digital space.

Thus, the imposition of criminal sanctions for criminal acts of defamation through social media is a complex aspect and requires an evidence-based approach to achieve the goal of effective and sustainable law enforcement.

The elements of a criminal act of defamation refer to the elements that must be fulfilled in order for an act to be categorized as defamation according to the law. These elements are often the basis for law enforcement agencies to assess whether an action can be considered a criminal act of defamation or not.

In Article 310 of the Criminal Code, which is quoted as follows: "Any person who deliberately attacks someone's honour or good name by accusing someone of something, with the clear intention of making it known to the public, is threatened for defamation with a maximum imprisonment of nine months or a maximum fine of four thousand five hundred rupiah." So, from the provisions of Article 310 of the Criminal Code mentioned above, the following elements must be proven, the element of intent; elements of attacking honour and good name; and elements in public.

The element of intent or deliberate action is also an important part of the criminal act of defamation (Nwabueze, 2019). To be considered a criminal offense, the act must be done intentionally or with the clear aim of harming

someone's reputation. Meanwhile, if the act is carried out without intention or without a clear motive to damage someone's good name, it may not meet the elements of defamation.

One of the main elements of a criminal act of defamation is a statement or action that is detrimental to a person's reputation for integrity. These can be false statements, slander, or insults that directly or indirectly lead to damaging the individual's image or dignity in the eyes of society.

Apart from that, the disclosure or dissemination of detrimental information is also an important element in the criminal act of defamation. This can happen through various media, including social media, newspapers, or live conversations. In a digital context, the dissemination of detrimental information can become easier and more widespread, making this element increasingly important in legal assessments (Laidlaw & Young, 2018; Borovyk et al., 2023).

If these three elements are fulfilled, then a person can be said to have committed a criminal act of defamation. Thus, the elements of a criminal act of defamation include statements or actions that harm a person's reputation, the intention or intention to cause harm, and the dissemination of detrimental information. Understanding and identifying these elements is an important first step in handling defamation cases and upholding justice in the legal system.

One aspect that is important to study is the deterrent effect of implementing criminal sanctions against perpetrators of defamation on preventing similar cases in the future (Carter & Schense, 2017; Hui et al., 2017). By imposing strict and effective criminal sanctions against perpetrators, it is hoped that the public will become more alert and think twice before carrying out acts of defamation. Empirical research shows that the threat of serious criminal sanctions can reduce an individual's tendency to commit criminal acts. Therefore, an evaluation of the deterrent effect of applying criminal sanctions against defamation can provide valuable insight in efforts to prevent the spread of such acts in the future.

Studying the impact of applying criminal sanctions for acts of defamation on society at large is an important step in understanding the effectiveness and consequences of law enforcement in cases like this. By considering the deterrent effect on preventing future cases, the psychological impact on victims, and the social impact on perpetrators and society, this

research is expected to provide comprehensive insight into the role of criminal sanctions in dealing with defamation in society.

## D. CONCLUSION

The imposition of criminal sanctions for acts of defamation through social media is an integral part of law enforcement efforts to overcome problems that arise in the digital era. With the existence of regulations governing acts of defamation, both in the Criminal Code and Law Number 11 of 2008 concerning Information and Electronic Transactions, perpetrators who deliberately attack someone's honour can be subject to criminal sanctions.

The elements of a criminal act of defamation include statements or actions that harm a person's reputation, intent or deliberate intent to cause harm, and the dissemination of detrimental information. Understanding and identifying these elements is an important first step in handling defamation cases.

The application of criminal sanctions against perpetrators of good defamation has several impacts that need to be evaluated. Its deterrent impact on preventing future cases can reduce an individual's tendency to commit similar actions. However, it is also necessary to consider the psychological impact on the victim and the social impact on the perpetrator and society.

The application of criminal sanctions, as regulated in applicable legislation, is an important instrument in sending a signal that actions detrimental to a person's reputation and honour in the digital realm are serious actions that will not go without consequences. By establishing clear legal standards and imposing strict sanctions against perpetrators, we not only provide a deterrent effect for those who intend to commit similar acts, but also provide protection for the public from the potential spread of harmful and damaging information. In an era where social media has become an integral part of everyday life, a responsive and effective legal approach is required to ensure that the digital space remains a safe and trusted environment for all individuals. Therefore, through strengthening law enforcement, developing adaptive policies, and a comprehensive approach to public education, we can achieve the common goal of maintaining the integrity and dignity of individuals and society at large in an increasingly complex digital realm.

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