

# IMPLEMENTATION OF CRIMINAL SANCTIONS AGAINST CRIMINALS OF HUMILIATION AND DEFAMATION THROUGH THE INTERNET

**Devi Ramadhona\***

<sup>1,2</sup>Faculty of Law, University of Bandar Lampung

e-mail: deviramadhona9@gmail.com

\*Correspondence: deviramadhona9@gmail.com

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**Abstract.** Technological developments have made cybercrime rates continue to grow. One example is humiliation and defamation through the internet. The purpose of this study is to identify and analyze the factors that cause perpetrators to commit criminal acts of defamation through social media, the application of criminal sanctions against perpetrators of criminal acts of defamation through the internet in terms of the perspective of criminal law in Indonesia. Indonesia and identify and analyze efforts to overcome the occurrence of criminal acts of Information and Electronic Transactions (ITE). The approach taken in this research is normative and empirical juridical with data sourced from library research and field research. The results of this study indicate that the factors that cause perpetrators to commit criminal acts of defamation through social media are economic factors, socio-cultural factors, injury factors, and lack of legal awareness. Efforts to overcome the occurrence of criminal acts of Information and Electronic Transactions (ITE) are by "*non-penal*" through various prevention efforts without having to use the criminal justice system. What is meant by "*non-penal*" is through various prevention efforts without having to use the criminal justice system.

**Keywords:** insults and defamation, internet, criminal sanctions.

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## INTRODUCTION

The era of the digital era, demands every individual to continue to develop and follow technological advances that are increasingly developing rapidly. Technological advances are marked by the emergence of internet media that can be operated using electronics such as mobile computers. The sophistication of finding technology to provide convenience, especially in helping human work. Technological advances also have an impact on electronic media in Indonesia ([Rosana](#), 2010) Nowadays, it is easier for people to get new information because of electronic media.

Electronic media develops along with the development of technology and information. Today's technological developments are increasing, the need for computer networks is needed by anyone at any time. The development of communication tools also supports connectivity between humans. The existence of technological advances, especially communication tools that can be accessed by all people to provide convenience for the public to find out various kinds of desired information ([Cahyono](#), 2016). In addition, people can also relate directly to the outside world without having to meet face to face, namely through social media, for example with Facebook, Twitter, bloggers, Instagram, and so on.

In addition to benefits, internet technology also brings negative impacts, one of which is the emergence of new crimes related to technology and the internet. This is because people can easily

and freely express and express opinions on social media. Crime related to information technology and the internet is called cybercrime or crime through the internet network can threaten anyone who comes from very minimal results either by individuals or groups with the result of greater losses both for society and the country ([Arief](#), 2009).

One example of cybercrime that often occurs is defamation and through social media. Defamation through electronic media is regulated in Law Number 11 of 2008 Junction Law Number 19 of 2016 ([Rajab](#), 2018) concerning Information and Electronic Transactions Article 27 paragraph (3) which states:

*"Everyone intentionally and without rights distributes and/or transmits and/or the accessibility of Electronic Information and/or electronic documents that have contents and/or good names."*

As referred to in the article above, any person in writing or uttering intentionally through electronic information and/or electronic documents insults other people and defame, can be subject to criminal sanctions. The forms of expression are various which are principally aimed at placing the position of others and humiliating the insulted person ([Kartiko dkk.](#), 2020). Insulting, inciting, or cursing is a bad act because it insults other people and considers their status.

A new legal regime has been born, known as cyberlaw (cyber law or telematics law), namely laws related to the use of information technology, cyber law, and mayantara law ([Ali](#), 2015). The Criminal Code regulates the monitoring contained

in Article 310 paragraph (1) which reads, Whoever intentionally damages or damages someone's the good name by accusing him of an act with a clear intention that the accusation will spread, shall be punished for being a man with a penalty of imprisonment for a maximum of nine months or a maximum of four thousand five hundred rupiahs. In addition, the articles contained in Law Number 19 of 2016 concerning Electronic Information and Transactions (ITE) are also expected to be able to suppress crimes committed in cyberspace ([Soesilo](#), 1995).

An example of a cybercrime case that occurred at the Tanjungkarang District Court Class IA with a Court Decision Number: 1053/PID.SUS/2019/PN Tjk stating that Venty Lebya Wati, SE Binti Iskandar (late) was guilty and sentenced to certain time imprisonment for 4 months and a fine as much as Rp. 5,000,000.00.- Venty Lebya Wati, SE Binti Iskandar (late) is proven to be wrong about the right to accidentally distribute and or transmit and make accessible electronic information and electronic documents that have content or good name as referred to in article 27 paragraph (3) following 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 Information and Electronic Transactions.

Starting from the background the author is interested in analyzing criminal acts of a crime of good name, in this case, a case study on the decision of the Tanjungkarang District Court Number: 1053/PID.SUS/2019/PN Tjk. about defamation through social media. The

purpose of this study is to find out and analyze the factors that cause perpetrators to commit criminal acts of defamation through social media, the application of criminal sanctions against perpetrators of criminal acts of defamation through internet media from the perspective of criminal law in Indonesia. as well as efforts to tackle the occurrence of criminal acts of information and electronic transactions (ITE).

## **METHODS**

This study uses a normative juridical approach, namely by collecting various kinds of laws and regulations, theories and regulations related to the problems to be discussed and using an empirical approach through research by collecting primary data obtained directly from the object through interviews with respondents and sources related to research. The data in this study were sourced from library research and field research, while the types of data used in this study were primary data and secondary data. Secondary data were obtained through library research, studies of books, literature, and regulations relating to Information and Electronic Transactions (ITE). Primary data was obtained through observations and interviews. Data analysis is carried out by assembling data that is systematically arranged according to the explanation then described and analyzed qualitatively, namely by providing an understanding of the data in question and described in the form of sentences arranged systematically. Then the results of the analysis are interpreted in the form of a deductive

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conclusion which is a general description of the answers to the problems studied.

## RESULTS AND DISCUSSION

### **Factors that cause perpetrators to commit criminal acts of defamation through social media**

Research results at the Bandar Lampung District Prosecutor's Office show that the factors that influence someone to do good deeds on social media are due to the hurt and feelings of a person and legal awareness. Does not know or understand the actions he has committed in violation of the laws and regulations. And it's not uncommon to spread a good name on social media, not knowing that those who see it are wrong because they follow trends in their social environment. One of the triggering factors for cybercrime in Indonesia is heartache. Many reasons are the pain experienced by the perpetrator as a result of previous events. The first reason relates to someone who feels that the perpetrator does not get a sufficient sense of justice and protection so that as a result of the events experienced by the perpetrator, the perpetrator takes a retaliatory act which ultimately ensnares the perpetrator in a crime of good name through social media. An event experienced by the perpetrator is triggered by another interrelated event. It is not uncommon for criminals to commit crimes.

Based on interviews, it was found that another factor that influences someone to do good deeds on social media is the lack of public knowledge about the rules for using social media. One of the factors that also trigger the emergence of defamation

crimes on social media is because crimes committed on social media have unique characteristics ([Anas, 2020](#)), such as the scope of their crimes through cyberspace which includes various kinds of crimes, criminals who are vague or unclear, the mode of crime that is difficult to predict, to the types of losses that can include large scale due to the global use of the internet and anyone can access it, one of which is the impact on public trust in the information available. This is in line with the results of [Indriani \(2016\)](#) which shows that one of the factors that influence someone to do good deeds on social media is socio-cultural factors, especially in human resources.

The results of the study show that the reason for doing good things is to vent their frustration on the photos posted along with the statement that they are not paying their debts, and it makes Resha Rantika feel embarrassed because posting a photo of herself shows many people that she doesn't want to pay her obligations. The results were also obtained in a study conducted by [Aprilianti \(2019\)](#) where one of the good actions was carried out on social media because of illness. According to [Simbolon dkk., \(2019\)](#) it is known that 5 factors can cause many legal crimes or reputations through the internet in Indonesia, namely economic factors, environmental factors, and socio-cultural factors.

### **Implementation of Criminal Sanctions Against Criminals of Defamation Through Internet Media From the Perspective of Criminal Law in Indonesia**

Based on the results of interviews at

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the Tanjung Karang District Court Class IA with resource persons who are members of the judges in case No. 1053/Pid.Sus/2019/PN TJK. the results obtained that the application of criminal sanctions of a good name in the Electronic Information and Transaction Law (UU ITE) has privileges when compared to the arrangements contained in the Criminal Code (KUHP). The Information and Electronic Transaction Law (UU ITE) for every act that violates the law, the sanctions are not directly contained in the same article but are contained in a different article, this is certainly different from the Criminal Code (KUHP) where every act if there is a violation of the law, the sanctions will be attached to the same article.

Regulation of Good Name Management in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. It is contained in Chapter VII regarding prohibited acts, namely Article 27 paragraph (3), Article 28 paragraph (1), and Article 36. Article 27 paragraph (3) reads *"Every person intentionally and without rights distributes and/or transmits and/or makes Accessibility of Electronic Information and/or Electronic Documents containing content and/or good name"*. The elements of the article are Everyone; Intentionally and without rights; Distribute, and/or transmit and/or access Electronic Information and/or Electronic Documents; Has content and/or good name or legal entity content. everyone's understanding of the subject here enjoys as an individual as a law. Understanding intentionally and without rights can be obtained as an act that is contrary to the

law and negligent actions that are punishable by punishment. As for what is considered to contain the nature of injustice and based on its nature, what should be prohibited and threatened with punishment by law is distributing, and/or accessible electronic information, and/electronic documents, which can interfere with the nature of the injustice. The above actions can contain elements of offense if the offense that arises is an offense that is fully implemented in the presence of a prohibited act. Thus, this offense includes a formal offense or an offense with a formal formulation, namely defamation.

There is no need to prove defamation in this article, which is important that formally, electronic information and electronic documents contain elements that are prohibited by law. While the criminal sanctions are contained in Chapter XI regarding the criminal provisions in Article 45 paragraph (1) which reads *"Every person who meets the requirements as referred to in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be sentenced to a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah)"*. Article 28 paragraph (1) reads *"Everyone intentionally and without rights spreads false and misleading news that causes consumer losses in electronic transactions"*. The elements of the article are: Everyone, intentionally and without rights, spreads false and misleading news, resulting in consumer losses in electronic transactions. Understanding that everyone here enjoys as an individual as a legal subject ([Prodjodikoro, 2002](#)).

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Understanding intentionally and without rights can be obtained as an act that is contrary to the law and negligent actions that are punishable by punishment. We can interpret the meaning of fake and misleading news with the word persuasion as a tool for committing fraud (Article 378 of the Criminal Code), namely a hoax in which one word does not lie. Here, many lying words must be used which are arranged in such a way that one thing can be covered with other things, so that the whole story is something that seems true, but is misleading. As for what is considered to have an unfair nature and based on its nature, what should be prohibited and threatened with punishment by law is causing consumer losses in electronic transactions. While the criminal sanctions are contained in Chapter XI concerning the criminal provisions in Article 45 paragraph (2) which reads *"Everyone who meets the requirements as referred to in Article 28 paragraph (1) or paragraph (2) shall be sentenced to a maximum imprisonment of 6 (six) years. and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiahs)"*. Article 36 reads *"Every person intentionally and without rights or against the law commits an act as referred to in Article 27 to Article 34 which results in harm to another person"*. The elements of the article are Everyone; Intentionally and without rights or against the law; perform as referred to in Article 27 to Article 34; Causing harm to others. Understanding everyone here enjoys as an individual as a legal subject. Understanding intentionally and without rights can be obtained as an act that is contrary to the law and negligent actions that are punishable by punishment

(Sepang, 2018). What is prohibited by law is committing the acts as referred to in Articles 27 to 34 and causing harm to others. The offenses referred to in Article 36 are material offenses or material formulation offenses, offenses which have just been implemented are fully implemented with the emergence of prohibited consequences. Thus, the consequences of acts prohibited by law as referred to above, which result in harm to other people must be proven. Meanwhile, the criminal sanctions are contained in Chapter XI regarding the criminal provisions in Article 51 paragraph (2), Article 52 paragraph (3), and Article 52 paragraph (4). Article 51 paragraph (2) reads *"Every person who meets the requirements as referred to in Article 36 shall be sentenced to a maximum imprisonment of 12 (twelve) years and/or a maximum fine of Rp. 12,000,000,000.00 (twelve billion rupiah)"*. Article 52 paragraph (3) reads *"If the acts as referred to in Article 30 to Article 37 are directed against computers and/or Electronic Systems as well as Electronic Information and/or Electronic Documents belonging to the Government and/or strategic bodies including but not limited to defense institutions, central banks, banks, finance, international institutions, aviation authorities are threatened with a maximum criminal penalty of the principal of each article plus two thirds"*. Article 52 paragraph (4) reads *"If the criminal act as referred to in Article 27 to Article 37 is committed by a corporation, the punishment shall be the principal sentence plus two-thirds"*.

Defamation can be done through various media, including electronic media

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(internet), print media, and directly (verbal). In writing this law, will review the problem of forms of criminal acts of defamation through the internet media in terms of the perspective of criminal law and the legal system of criminal acts of defamation through the internet media in terms of the perspective of criminal law, namely according to the Criminal Code and Law no. 11 of 2008 concerning Information and Electronic Transactions.

**Efforts to overcome the occurrence of criminal acts of Information and Electronic Transactions (ITE).**

The results of the research at the Lampung Regional Police are one of the efforts to overcome the occurrence of Information and Electronic Transactions (ITE) Crimes, namely by holding the Intelligence Sector in the sense that the Police cooperate with the District Attorney's Office to conduct intelligence investigations, security, and fundraising to prevent criminal acts to support enforcement. both preventive and repressive laws in the fields of ideology, politics, economy, finance, socio-culture, defense, and security, implementing prevention against certain people and/or contributing to the realization and prevention of general and criminal acts as well as civil and state administration in their jurisdictions and Providing intelligence support for the Attorney General's Office for the success of the tasks and authorities of the Attorney General's Office, conducting cooperation and coordination as well as strengthening the legal awareness of the community in their jurisdiction.

The use of criminal law in regulating society through criminal laws and regulations is essentially a part of policies ([Putri](#), 2019). Furthermore, to determine how a rational business step in carrying out policies cannot be separated from the goals of development policy itself integrally. Thus, to determine any policy, including criminal law policies, it is always related and inseparable from the goal of national development itself, namely how to realize welfare for the community. Crime prevention policies or commonly known as criminal politics.

According to GP Hoefnagles in [Arief](#), (2009) prevention efforts can be achieved by (implementing criminal law application), (prevention without punishment), and influencing public views on crime and punishment through mass media (influencing public views on crime) and punishment.). the first category includes efforts to overcome through the penal route, while the second and third include crime prevention efforts through the non-penal route. Against these 2 (two) facilities. criminal policy is a rational and organized effort of a society to tackle crime. Criminal policy in addition to being carried out repressively through the penal approach justice system can also be carried out through "*non-penal*" through various prevention efforts without having to use the criminal justice system, for example, public mental health efforts, legal counseling, civil law, and administrative law, and so on.

The non-penal approach covers crime prevention a very broad range of encompasses both policy and practice. Talking about criminal policy (criminal

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policy) which includes a penal approach through the criminal justice system, by itself it will use criminalization which regulates the scope of actions that are against the law, criminal liability, sanctions that can be applied, both in the form of (punishment) and action (treatment). The means of crime prevention policies are carried out by using penal means (criminal law), then the "legal policy" criminal must pay attention to and lead to the achievement of the objectives of social policy inform of the welfare and social defense (Arief, 2009). Crime prevention must have a balance between penal and non-penal means (integral approach).

Criminal politics that is carried out using the penal means the use of the criminal justice system, starting from criminalization to criminal execution (Silaen & Siregar, 2020). The penal approach must be continuously carried out through various efforts to improve the criminal justice system, both from the aspect of legislation (criminalization, decriminalization, and depenalization), improving system infrastructure, improving the quality of human resources, and increasing public participation in the criminal justice system. Systematically, this criminal justice system includes a network of justice systems with sub-systems of the police, prosecutors, courts, and correctional facilities that utilize criminal law as the main means. Criminal law, in this case, includes material, formal criminal law and criminal law enforcement with the means of punishment() can be carried out through a process consisting of three stages, namely the formulation stage (legislative policy), the application stage

(judicial/judicial policy) and the execution stage (executive/administrative policies). Based on these three actions, criminal law enforcement actions which consist of three powers or authorities, namely legislative or formative powers in terms of determining or formulating what can be punished related to the main problems in criminal law include those that are contrary to the law, errors or criminal liability and sanctions. what legislators can wear. The application stage is the power in terms of applying criminal law by law enforcement officers or courts and execution or administrative in implementing criminal law by implementing or criminal officials.

Broadly speaking, efforts to counter the occurrence of criminal acts and Electronic Transactions that have been explained by one of the judges at the Tanjung Karang District Court Class IA are holding legal counseling to the public in general which has been carried out usually once a year so that the general public is aware of the law and is wise in using the media. social.

## CONCLUSIONS

Based on the results of research and discussion, it can be as follows, causes of perpetrators of criminal acts of defamation through social media include socio-cultural factors, liver disease factors, and legal awareness factors. The implementation of criminal sanctions against perpetrators of criminal acts of defamation through internet media from the perspective of criminal law in Indonesia is verbally insulting Article 310 paragraph (1) of the Criminal Code; insulting by letter/written

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Article 310 paragraph (2) of the Criminal Code; slander (last) Article 311 paragraph (1) of the Criminal Code; slander by deed Article 318 of the Criminal Code, blasphemy against a dead person. Article 320 paragraph (1) and 321 paragraph (1) of the Criminal Code, distributes and/or transmits and/or accesses Electronic Information and/or Electronic Documents that have content and/or good name. Article 27 paragraph (3) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, spreads false and misleading news that causes consumer losses in electronic transactions. Article 28 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, is against the law to commit acts as referred to in Article 27 to Article 34 of Law Number 19 of 2016 concerning Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions that cause harm to other people. While the criminal act of defamation regulated in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, the criminal sanctions are contained in Chapter XI concerning criminal provisions, in Article 51 paragraph (2), Article 52 paragraph (3) and Article 52 paragraph (4). Efforts to prevent Information and Electronic Transactions (ITE) crimes, especially at the Lampung Regional Police, are carried out by taking approaches penal and non-penal through various prevention efforts without having to use the criminal justice system, for example, community mental health efforts,

counseling on civil law and administration law, and so on. The approach non-penal covers crime prevention a very broad range of encompasses both policy and practice.

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