

Legal Analysis of The Criminal Act of Defamation Committed Through Social Media in a Rapid Research Study (Decision Study 202/Pid.Sus/2023/Jkt.Tim)

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Abstract

The application of law in defamation cases refers to Law No. 19 of 2016 concerning Electronic Information and Transactions (EIT Law) has become a crucial issue in maintaining a balance between law enforcement and the protection of freedom of expression in Indonesia. This issue is closely related to the fact that public criticism of government officials is a common occurrence in democratic societies. This study employs a normative juridical method to examine court decisions related to criminal acts of defamation committed through social media, with a particular focus on Decision Number 202/Pid.Sus/2023/PN.Jkt.Tim. The main objective of this research is to analyze the legal provisions regarding defamation on social media, as well as to examine the judge's ratio decision in delivering an acquittal, which is considered to be in accordance with the prevailing positive law in Indonesia. This study also highlights the elimination of the unlawful nature of the act in defamation cases on social media, as reflected in the aforementioned decision. The findings indicate that although there are existing regulations concerning defamation and the protection of freedom of expression, these regulations have not yet fully provided legal certainty. In practice, law enforcement has also not ensured fair protection of citizens' freedom of expression. Therefore, a more selective and cautious approach in law enforcement is necessary, particularly in considering the absence of an unlawful element when a person exercises their right to express an opinion.

Keywords: *Defamation, Electronic Information and Transactions Law (EIT Law), Freedom of Expression.*

INTRODUCTION

The emergence of ideas and opinions is the natural nature of humans as social beings (zoon politicon) who instinctively need space to express themselves and interact. Abraham Maslow in his theory of the hierarchy of needs explains that self-actualization, which is the peak of human needs, requires individuals to express themselves authentically in public. In this context, freedom to express opinions is not only a right, but also an important part of the process of forming a person's identity and personal development.

In a democratic country like Indonesia, freedom of speech is a basic right guaranteed by the constitution. Article 28E paragraph (3) of the 1945 Constitution explicitly states that everyone has the right to freedom of association, assembly, and expression of opinion. This right is reaffirmed through various laws and regulations, including Law Number 9 of 1998 concerning the Law on Freedom of Expression in Public and various provisions in the 1945 Constitution that emphasize the importance of recognizing, protecting, and guaranteeing freedom of speech.

However, in practice, this freedom is not absolute. The development of digital technology, especially through social media, has opened up new space for people to express their opinions. Unfortunately, this space has also given rise to legal challenges, especially related to the use of Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE), as amended by Law Number 19 of 2016. This law, especially Article 27 paragraph (3), is often used to charge individuals with defamation, thus raising concerns about the criminalization of legitimate expression.

The Haris Azhar case is a concrete example of this problem. Haris, a human rights activist, was charged with defamation after expressing criticism of public officials through a research-based discussion on social media. Although Haris was ultimately found not guilty by the panel of judges at the East Jakarta District Court in Decision No. 202/PID.SUS/2023/PN.JKT.TIM, this case illustrates the potential for misuse of articles in the ITE Law that could threaten freedom of expression.

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Statistics show that the defamation articles in the ITE Law are the articles most often used in cases of criminalization of expression. Institutions such as SAFEnet and ICJR have recorded an increase in reported cases and potential violations of citizens' constitutional rights. This phenomenon has a chilling effect that limits the space for healthy and democratic public discussion. Based on this background, this article aims to examine the prosecutor's rationale in indicting Haris Azhar and examine the judge's reasons for handing down an acquittal. This analysis was carried out to assess the extent to which the implementation of positive law was carried out appropriately in the context of freedom of expression via social media. In this way, it is hoped that this research can contribute to strengthening legal protection for freedom of expression and encouraging regulatory reforms that are fairer and more democratic in the digital era.

FORMULATION OF THE PROBLEM

Based on the background above and to provide research limitations, several problems are formulated, as follows:

1. What are the legal provisions for defamation on social media?
2. How is the acquittal verdict in decision no. 202/pid.sus/2023/pn.jkt.tim in accordance with the positive law in force in Indonesia?
3. How is the erasure of the unlawful nature of the criminal act of defamation on social media in the research study reviewed from decision no. 202/pid.sus/2023/pn.jkt.tim?

RESEARCH METHODS

This study uses a normative legal method, namely legal research sourced from literature studies, with a focus on legal materials such as laws and regulations, official documents, and relevant legal literature. This study is descriptive analytical, namely describing and analyzing applicable regulations and providing legal arguments for the problems studied, especially related to defamation in research publications. The approaches used in this study are the statute approach and the case approach. The statute approach is used to examine regulations related to freedom of expression and defamation, while the case approach is carried out through an analysis of Decision No. 202 / PID.SUS / 2023 / PN.JKT.TIM which acquitted the defendant Haris Azhar. The data used consists of three types of legal materials, namely Primary legal materials, including the 1945 Constitution, the Criminal Code, Law No. 19 of 2016 concerning ITE, Law No. 39 of 1999 concerning Human Rights, BRIN Regulation No. 18 of 2022, and related court decisions. Secondary legal materials, in the form of books, scientific journals, and previous research results that support legal analysis. Tertiary legal materials, such as legal dictionaries, encyclopedias, and relevant online sources to strengthen understanding of the issues discussed. This method is expected to provide a theoretical and practical basis in evaluating the application of positive law in defamation cases related to freedom of expression on social media.

RESULTS AND DISCUSSION

Legal Provisions for Defamation in Social Media

The crime of defamation in the Indonesian legal system is regulated both in the Criminal Code (KUHP) and in Law Number 19 of 2016 concerning Information and Electronic Transactions (ITE). In the Criminal Code, defamation is classified as a form of insult regulated in Chapter XVI. Article 310 paragraph (1) of the Criminal Code states that a person can be punished if he intentionally attacks the honor or good name of another person with an accusation that is conveyed to be known to the public. If conveyed through writing or pictures, then Article 310 paragraph (2) applies, which is known as written defamation. However, Article 310 paragraph (3) provides an exception if the act is carried out in the public interest or as self-defense. This provision shows that in the context of classical criminal law, defamation can only be criminalized if it meets the subjective (intentional) and objective (attack on good name) elements.

In addition, Article 311 of the Criminal Code regulates slander, which occurs if the perpetrator of the defamation cannot prove the truth of his accusation. Article 315 of the Criminal Code regulates minor insults, which include acts of attacking honor without a specific form of accusation, such as cursing or mocking in public. All of these articles show that the Indonesian legal system pays great attention to protecting personal honor as a form of respect for human rights, but still provides space for responsible freedom of expression.

In the digital context, the crime of defamation is also specifically regulated in Article 27 paragraph (3) of the ITE Law. This article prohibits the distribution, transmission, or act of making accessible electronic information containing insults or defamation. This provision provides criminal sanctions as regulated in Article 45 paragraph (3) of the ITE Law with a penalty of up to 4 years in prison or a fine of up to IDR 750 million. However,

this article does not explicitly explain what is meant by "insults and defamation", but instead refers back to the Criminal Code as the basic norm (*genius delict*). This has drawn criticism because it opens up wide scope for interpretation and the potential for criminalization of legitimate public expression, especially through social media.

In response to this uncertainty, the government together with the National Police, the Prosecutor's Office, and the Ministry of Communication and Information issued a Joint Decree (SKB) on Guidelines for the Implementation of the ITE Law. This SKB emphasizes that content in the form of opinions, assessments, evaluation results, or verifiable truths cannot be categorized as defamation. In addition, Article 27 paragraph (3) of the ITE Law is an absolute complaint offense, which means that it can only be processed if reported directly by the victim concerned, not by an institution or legal representative without an original reporter. This SKB also states that the delivery of content in a closed space, such as a private group, cannot necessarily be processed by law.

Furthermore, evidence in cases of defamation through electronic media must also meet the provisions of Article 5 paragraph (1)-(3) of the ITE Law, which states that electronic evidence is considered valid if it is produced from an electronic system that complies with applicable legal provisions. This provides protection against potential manipulation of evidence in cases of defamation in cyberspace.

In the context of the Theory of Legal Certainty, the law ideally provides protection for the right to freedom of expression, especially when opinions or criticisms are conveyed within a scientific framework or public interest. Responsible freedom of opinion is a constitutional right as guaranteed in Article 28E paragraph (3) of the 1945 Constitution, but remains limited by applicable legal provisions in order to protect the rights and reputations of others. Therefore, this freedom does not mean absolute freedom, but rather remains within the corridor of law and ethics. When the criticism or accusations made are factual, based on the results of research or scientific studies, and are intended for the public interest, then such actions should not be qualified as defamation.

In the case discussed by the author, namely between Haris Azhar and Luhut Binsar Pandjaitan, the public interest aspect and the scientific basis of the content conveyed are key elements in assessing the act. Moreover, the content comes from a study by a civil society coalition working in the field of environment and human rights. Therefore, according to Article 310 paragraph (3) of the Criminal Code and the principle of freedom of expression regulated in international and national law, Haris Azhar's actions should not be criminalized because they were carried out in the context of public control over state officials. In this case, the judge has a central role as a balancer between legal certainty and substantive justice.

Thus, both the Criminal Code and the ITE Law regulate clear limitations regarding defamation, but their implementation must be adjusted to the development of the times, the digital context, and the spirit of protecting human rights. Law enforcement against defamation should not be used to silence criticism, but should focus on protecting against accusations that are clearly detrimental and baseless.

The Judge's Ratio Decidendi in Handing Down an Acquittal Verdict in Verdict No. 202/Pid.Sus/2023/Pn.Jkt.Tim is in Accordance with Positive Law in Indonesia

In criminal case No. 202/PID.SUS/2023/PN.JKT.TIM with defendant Haris Azhar, the Panel of Judges at the East Jakarta District Court issued an acquittal because the elements of the crime as charged by the Public Prosecutor were not proven. The legal considerations (*ratio decidendi*) used by the panel of judges were based on a legal analysis of the trial facts, applicable legal norms, and the principle of substantive justice.

The Panel of Judges is of the opinion that the video uploaded by the defendant via his YouTube channel entitled "THERE IS LORD LUHUT BEHIND THE ECONOMIC RELATIONSHIP-MILITARY OPS INTAN JAYA!! GENERAL BIN IS ALSO THERE!!" is part of the delivery of opinions based on a rapid study conducted by a civil society coalition. In this case, the judges consider that the content is a form of analysis and criticism of public policy, not a defamatory content as referred to in Article 27 paragraph (3) in conjunction with Article 45 paragraph (3) of Law No. 19 of 2016 concerning ITE.

Some of the important points of the *ratio decidendi* of the panel of judges include:

1. The phrase "Lord Luhut" is considered to be part of a popular expression and not a form of insult;
2. The statement "you could say they are playing in mining" has a factual basis in the form of the relationship between PT Toba Sejahtera and its subsidiary, PT Tobacom Del Mandiri, with foreign mining companies;
3. The sentence "we are also criminals" does not directly refer to the reporting witness and is not insulting, but is part of a general discussion;
4. The study that forms the basis of the video content is the result of research by a civil society coalition and is presented in the context of public advocacy;

5. Based on the Joint Decree of the ITE Law, content in the form of opinions, evaluations and criticism cannot be prosecuted under Article 27 paragraph (3) of the ITE Law if it does not specifically fulfill the elements of defamation.

The judge considered that there was no content of insult that was proven to be against the law. In the context of criminal law, Article 183 of the Criminal Procedure Code states that a defendant can only be found guilty if based on at least two valid pieces of evidence, the judge is convinced that the crime actually occurred. In this case, not only was the criminal element not proven, but the defendant's malicious intent (*mens rea*) to defame the reporting witness was also not fulfilled.

Therefore, based on the principle of legal certainty, the principle of legality, and the protection of the right to freedom of speech as guaranteed in the 1945 Constitution, the Acquittal verdict handed down by the judge against Haris Azhar is a concrete form of fair and proportional application of the law. This verdict shows that the court does not only function as a law enforcement institution, but also as a protector of the constitutional rights of citizens.

Thus, the ratio decidendi used by the judge in issuing the acquittal verdict against Haris Azhar is in accordance with the positive law applicable in Indonesia and reflects the balance between the enforcement of criminal law and the protection of the right to freedom of expression.

The Elimination of the Unlawful Nature of the Criminal Act of Defamation on Social Media in a Research Study Reviewed from Decision No. 202/Pid.Sus/2023/Pn.Jkt.Tim

In the context of Indonesian criminal law, the element of "against the law" is one of the basic requirements that must be met for an act to be categorized as a crime. This unlawful nature is divided into two forms: formal (violating written regulations) and material (contrary to the values of justice or social norms). In the case of Haris Azhar, the Panel of Judges considered that the defendant's actions did not fulfill the elements of being against the law, both formally and materially, so they issued an acquittal.

The actions of Haris Azhar and Fatia Maulidiyanti which are the main case in decision No. 202/PID.SUS/2023/PN.JKT.TIM are open discussions based on the results of scientific studies conducted by a coalition of nine civil society organizations. The discussion was then uploaded via Haris Azhar's YouTube account. From a criminal law perspective, although the element of electronic information distribution is fulfilled, the substance of the content conveyed is academic opinion and data-based criticism. The Panel of Judges considered that phrases such as "Lord Luhut" or "playing in the mine" could not be categorized as defamation, because they did not contain malicious intent or elements of insults that are valid according to law.

This decision shows that an action can only be categorized as defamation if all the elements as regulated in Article 27 paragraph (3) in conjunction with Article 45 paragraph (3) of the ITE Law are met. If there is no evidence of any content of insult or defamation committed unlawfully, then the act cannot be punished. In this case, Haris Azhar's actions are actually considered as part of academic freedom and freedom of expression guaranteed by Articles 28E and 28F of the 1945 Constitution, as well as various national and international human rights instruments that have been ratified by Indonesia.

In addition, the principles in the Joint Decree of the three institutions (POLRI, Attorney General's Office, and KEMENKOMINFO) strengthen that the distribution of academic content based on studies, criticism, and opinions cannot be subject to criminal sanctions, unless it contains slander that cannot be accounted for. Therefore, the judge stated that the unlawful nature of Haris Azhar's actions was removed, because there was no malicious intent, and the discussion that was carried out was actually aimed at encouraging transparency and public interest.

This analysis shows that in assessing the elements of the criminal offense of defamation, context and substance are important. The approach to the unlawful element should not be merely formal, but must also pay attention to material values in society and the spirit of protecting human rights. In the future, strengthening academic freedom and protecting expression based on scientific data need to be important considerations in national criminal law reform, including in the drafting of the new Criminal Code.

CONCLUSION

The Haris Azhar case as stated in Decision No. 202/PID.SUS/2023/PN.JKT.TIM is an important precedent in the enforcement of criminal law in Indonesia, especially in relation to criminal acts of defamation through social media. First, the provisions of the defamation law, both those regulated in the Criminal Code and the ITE Law, must be interpreted carefully and not merely used as an instrument of criminalization of freedom of expression. Rigid and formalistic interpretations without considering the social context and purpose of public statements risk

curbing democracy and threatening freedom of expression. Second, the judge's ratio decidendi in issuing an acquittal against Haris Azhar was in accordance with applicable positive law, both from the formal aspect of the Criminal Procedure Code and from a material perspective on the protection of citizens' constitutional rights. The judge considered that the content distributed by the defendant was part of an academic study and a form of social control over public officials, not an act of insult or defamation. Third, the elimination of the unlawful nature of the criminal act of defamation in this case reflects that the elements of a criminal offense must not only be fulfilled formally, but must also be tested from the aspects of evil intent (*mens rea*), social goals, and public interest. The panel of judges correctly placed Haris Azhar's actions within the framework of academic freedom and freedom of expression that are legitimate according to national and international law. Thus, this decision reflects the strategic role of the judiciary in maintaining a balance between law enforcement and the protection of human rights. In the long term, reformulation and harmonization of legal norms are needed, especially in the ITE Law and the Criminal Code, to be more adaptive to the dynamics of freedom of expression in the digital era, and to guarantee protection for individuals who convey criticism based on data and public interest. The principle of justice based on law, ethics, and social logic must continue to be the main foundation in the practice of criminal justice in Indonesia.

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