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## Criminal Act Of Contempt Through Electronic Information Media

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### Abstract

The rapid current of globalization raises many problems in almost all aspects of human life, covering the political, social, cultural, economic, scientific and technological fields, so that fundamental changes in people's habits arise predominantly. Following the issuance of Law Number 11 Year 2008 on Electronic Information and Transactions (ITE) that was amended to Law Number 19 Year 2016 regarding the Amendment of Law Number 11 Year 2008 regarding Information and Electronic Transactions, many polemics and cases that lead to the pros and cons of the articles in the ITE Law took place. This study examines the classification of an offense of criminal act of contempt committed through electronic information media of and reveals the legal standing for such kind a criminal act. This study was conducted using normative method through analysis of legal interpretation and descriptive analysis. Apparently, the results confirm that the element of "contempt and/or defamation" contemplated in Article 27 paragraph (3) of ITE Law refers to Article 310 of the Criminal Code. Criminal acts of contempt committed through electronic information media are offense complaints that should be reported to the authorities by persons who feel that their honor or reputation is insulted or those who are empowered to obtain judicial justice from law.

**Keywords:** Criminal act of contempt; Contempt; Electronic Information Media

## I. INTRODUCTION

The rapid flow of globalization has led to the emergence of a large number of problems to almost all aspects of human life, such as in the political, social, cultural, economic, scientific and technological fields that trigger fundamental changes in the way of life and the habits of society. These conditions have an impact on changing the order of human social behavior patterns in society, so that legal provisions must also change. The law must be regulated according to the demands of development in society so that order in society is created. Thus, it can be said that the law should not be static, it must be dynamic, so the change of it must always be held in line with the development of the times and the dynamics of social life in society. (Sidik Suyanto, 2013; 1)

The term telematics is derived from France which is the origin of the basic form for telematique which describes the integration of communication network systems and information technology. Meanwhile, information technology refers only to the development of information processing devices. In further development, in practice, the term telematics is defined as telecommunications and information (telecommunication and informatics) and communication (Maskun, 2014; 1).

Indonesia itself has a law regulating the provisions in the field of information technology, namely Law Number 11 Year 2008 on Information and Electronic Transactions (hereinafter is referred to as the old ITE Law) enacted on 21 April 2008 and has been amended to through Law Number 19 Year 2016 on Amendment to Law Number 11 Year 2008 on Information and Electronic Transactions (hereinafter is referred to as the ITE Law) which came into force on 25 May November 2016. However, in the enactment of the ITE Law which was originally prepared to support economic growth in Indonesia through the digital economy and e-commerce in Indonesia has led to new problems.

The industrial environment has changed as core assets have become informational, and all kinds of devices are connected to the internet (Hong, Park, Park, Jeon, & Chang, 2018). Social media (e.g., social networking sites, weblogs, photo/video sharing, and virtual communities) as well as travel-related online reviews emerging from consumer-generated media have substantially impacted the tourism and hospitality industry (Hur, Kim, Karatepe, & Lee, 2017). Developing understandings of how communication about dementia is structured on social media may be an important step in developing strategies to support effective and appropriate communication in online spaces (Lawless, Augoustinos, & LeCouteur, 2018). Social media have caused information overload for users who normally have limited information processing capability, thus making the issue of task-information fit become critical (Zha, Yang, Yan, Liu, & Huang, 2018).

The articles in the ITE Law are considered to threaten the freedom of expression for Internet users. One of the "catch-all" articles in the ITE Act is article 27 paragraph (3) of the ITE Law, which specifically regulates insults. This has caused a lot of social conflict in the community because the offense in Article 27 paragraph (3) of the old ITE Law is an ordinary offense so that many internet users are trapped in the criminal act of defamation in electronic media. The setting of content and context in determining whether such acts can be judged to be an insult is very subjective to those who are referred to as the subject of the insult. The existence of the element of humiliation and defamation in a speech is a subjective thing felt by the opponent said. A speech perceived as an insult by a person is not necessarily an insult for others.

Since the ITE Act was legitimately issued, the rate of cases of criminal acts of humiliation involving internet users in Indonesia began to rise significantly. The provision in Article 27 paragraph (3) of the ITE Law shall be regarded as a provision of duplication with it's a 'catch-all' nature of formulation. The ITE Law Article 27 paragraph (3) on criminal acts through ITE prohibits anyone intentionally and without right to distribute and/or to transmit and/or to make accessible electronic information and/or electronic documents that have contents of contempt and/or defamation. It is known that there is a blurring of the norm in the phrase "to distribute and/or to transmit and/or to make accessible electronic information" since it seems to be too general. This provision does not distinguish between public and private communication. In addition, the article does not specify the definition of "defamation" referred to by law. The article only reinforces the enactment of the criminal code of defamation in the Criminal Code into the Law on ITE which is a new law created because of an additional element in the field of electronics or cyber that has very special characteristics.

Criminality is the quality or state of being criminal and, as such, the term refers both to an attribute of persons who commit crime and the criminal behavior in which they engage (Stephen Wormith & Schafers, 2015). The power of Congress to punish for contempt is inextricably related to the power of Congress to conduct oversight and perform investigations (Tatelman, 2008). An intention to interfere with or impede the course of justice is required for there to be criminal contempt, but is not necessary for civil contempt under the common law (Lenthall & Harman-Wilson, 2008). Although evidence clearly points to adult criminal behaviors as a potential outcome of early maltreatment, this relationship is likely to be indirect, influenced by a host of intervening factors (Cuadra, Jaffe, Thomas, & DiLillo, 2014).

## **II. METHOD**

This study was conducted using normative law research. We applied conceptual and stature approaches to legislation. We collected articles of legislation governing communications through electronic information media. We also conducted library studies to collect data on media from Denpasar, Bali, Indonesia prosecutor's office. We examined results of studies with a relevant scope with that of the present study conducted in different places and contexts. We analyzed the data obtained through the analysis of legal interpretation and descriptive analysis techniques. The result of data analysis is presented in the form of formal method by description.

## **III. DISCUSSION**

### ***Classification of Criminal Acts of Contempt***

The Ministry of Communication and Information (Menkominfo) Indonesia and members of the House of Representatives (DPR) have revised and passed the Information and Transaction Law (ITE) in

Law Number 19 Year 2016 on Amendment to Law Number 11 Year 2008 regarding Information and Electronic Transactions . The difference to Article 27 paragraph (3) is seen from the reduction of sanctions, in the form of imprisonment and fine of 6 years and a fine of Rp. 1.000.000.000, - (one billion rupiah) to a maximum imprisonment of 4 years and a maximum fine of Rp. 750.000.000, - (seven hundred fifty million rupiah). In addition the amendment adds the notion of "distributing, menstrasmisikan, and making accessible".

The notion of distributing, transmitting and making accessibility according to the explanation in Article 27 of the ITE Law is:

What is meant by "distributing" is sending and/or disseminating electronic information and/or electronic document to many people or various parties through Electronic System;

"Transmission" means transmitting electronic information and/or electronic documents directed to one party via the Electronic System;

What is meant by "making accessible" means all other acts than distributing and transmitting something through electronic systems that cause electronic information and/or electronic documents to be known by other parties or the public.

The provision of Article 27 Paragraph (3) of the Act of ITE related to defamation by law enforcement is often interpreted as "normal offence" because in the ITE Act there is no provision stipulating that the article is a complaint offence. However, according to the Constitutional Court, in its decision No. 50/PUU-VI/2008 adjudicating the lawsuit against the provisions of Article 27 paragraph (3) of the ITE Act, stated that the interpretation of norms contained in the provisions of Article 27 paragraph (3) of the criminal law norms contained in Chapter XVI on Contempt set forth in chapters 310 and 311 of the Criminal Code as a genus delict which requires a clause (klact) to be prosecuted. Thus, the provision of Article 27 paragraph (3) of the ITE Act is a complaint offense (klacht delict) (Sigid Suseno, 2012; 218)

Meanwhile, the formulation of contempt offense can be seen from the theory of criminal law both formal and material (O.C Kaligis, 2012; 52). In criminal law theory there is a division of offense based on the formulation, namely formal offense and material offense. Formal offense is a delict whose formulation only emphasizes its actions alone, without requiring any consequences, such as article 362 of the Criminal Code on theft. While the so-called material offense is when the principal of the formulation of a offense is the result, for example 355 Paragraph (2) of the Criminal Code on Maltreatment that results in death.

Formulation of offense formally on contempt offense is often misused, let alone by rulers and individuals for certain motives because the criteria of deeds containing contempt depend on the subjective perception of the intended person. Therefore, it would be better if the articles are formulated in a material way. The formulation of contempt offense in the form of material offense could be a middle ground for controversy against criminal offense of offense especially in the ITE Act.

The Elements of Criminal Acts Committed through Electronic Information Media in the Act on ITE

Universal computer crime is the attempt to enter and/or use computer facilities or computer networks without permission with or without causing any change and or damage to the computer facilities entered and/or used. (Magdalena, Marry & Setiyadi, 2007; 81).

There are legal elements that can be used as qualifications for defamatory offenses through electronic information media contained in Article 27 paragraph (3) of the ITE Law, namely: the objective elements in the article are: First is act: to distribute; to transmit; and to make information accessible. Second is against to the law, the action done "without rights"; Third is the object is electronic information and/or electronic documents containing contempt and/or defamation.

The above can be spelled out into several elements that can be elaborated, namely:

“...intentionally and without rights...”

That the element of intent is an element inherent in almost all formulations of criminal acts. The element is considered still a bit ambiguous and will lead to multiple interpretations. When viewed in context with the concept of deliberate, this implies that there is an element of intention behind the action. Providing that a person's opinion does not have the intention of attacking a person's personal or good

name, but there is a party who feels that their reputation is defamed and sued, doesn't this trigger confusion in interpretation? Therefore, this is very subjective, since measurement and limitation of an opinion that is considered to attack and defame a person are not regulated in this ITE Law..

“...to distribute and or to transmit and/or to make electronic information accessible...”

The "accessible" element is more likely to be the owner of the right to such information or opinion, but the provider actually has the space to be able to access the person's information or opinion, so that the question arises, that is, whether the element also includes it (service provider/provider) or not. The idea as mentioned above has not been regulated in detail in the provisions of the ITE Law. Because the arrangement is more inclined to an effort to convey or send a person information to others, in the future, there will be many information failed to deliver to the public will be much.

“...contains contempt and/or defamation...”

The element of "contempt and/or defamation" contemplated in Article 27 paragraph (3) of the ITE Law refers to the Criminal Code, namely in Article 310 of the Criminal Code. This Article provides a basic notion of humiliation, that is, the act of attacking the honor or reputation of another person with the intent to be known by the public. Accordingly, the act of distributing, transmitting, making information accessible in this article shall be aimed at attacking the honor or reputation of others in order to be known by the public. The person must act on the natural personality (*natuurlijk persoon*), not the legal person (*rechtspersoon*).

#### ***Formulation of the Act on Criminal Acts of Contempt in the Book of Criminal Code (KUHP)***

In order to protect and create prosperity for the people, criminal law has a central position to resolve the conflict (crime) that occurred. One of the criminal acts inviting debates in the society today is a criminal act of contempt. In Indonesian legislation, the criminal act of contempt is regulated and formulated in Article 310 of the Criminal Code consisting of 3 (three) verses in the Book of Criminal Code, namely:

Anyone who deliberately attacks a person's honor or reputation by accusing something, in the light of which is publicly known, is threatened with contamination, with a maximum of nine months in jail or a fine of up to three hundred rupiah.

If it is committed with writings or pictures broadcast, displayed or posted in public, then those guilty of written contamination shall be subject to imprisonment of a maximum of one year and four months, or with a maximum fine of three hundred rupiah.

It is not a written contamination if a visible act is committed in the public interest or is forced to martial.”

Based on the formulation of the above article it can be argued that contempt can be prosecuted with Article 310 paragraph (1) of the Criminal Code if such act must be done in such a way that, in his action the accusation is tucked, as if the defiled person has committed a certain act, with the intention that the accusation be made public (known by the people). The allegations must be made verbally, because if done in writing or drawing, the act is classified as written contamination and subject to Article 310 paragraph (2) of the Criminal Code. This crime of humiliation is also not necessary in public, it is sufficient to know if it can be proven that the defendant has the intention to broadcast the allegations.

To facilitate this, the formulation of the provisions on the offense must contain and fulfill several elements, namely: an act; the act is prohibited and threatened with punishment by law; and the deed is done by a person who can be accounted for.

Thus, a criminal act (criminal event) can only be prosecuted if it meets the elements of a offense. However, not all criminal events can be prosecuted except for complaints. In other words, there are some offenses that can be prosecuted if there are complaints or requests from parties undergoing criminal events. The complaint here should be distinguished from a report. A report is a mere notification, whereas the complaint is an absolute requirement for prosecution.

Based on the above description, there is or no request from the victim or the victim's family, does not affect the prosecution. In the provisions of the Criminal Code there are several types of offense that can only be prosecuted if there is a complaint from the patient (the victim) and this kind of offense is

classified as offense complaints. The offense of defamation or any defamation laid down in Article 310 to Article 321 of the Indonesian Criminal Code shall include the offense of complaint, except in Article 316 of the Criminal Code, it refers to the contempt committed against the civil servants who are performing their legitimate duties.

#### **IV. CONCLUSION**

Based on the above descriptions, in relation to the subject matter and purpose of writing this study, several conclusions are drawn as follows:

The classification stage of such act as contempt must be done carefully and carefully considering the act of contempt is very subjective to the humiliated and humiliation must be classified as offense complaints so that a person who is entitled to report the offense form of humiliation is the person who feels harmed or even the person who is empowered to do so.

Formal formulation of defamatory offense is often misused, let alone by the ruler and the elements for certain motives because the criteria of deeds containing humiliation depend on subjective perception to the intended person. Therefore, it would be better if the articles are formulated in a material way.

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