



Police and Social Media: Law Enforcement Against Defamation and Libel in Social Media Comment Sections

Fuadi Isnawan

Fakultas Hukum Universitas Islam Indonesia

Email: fuadi.isnawan@uii.ac.id

Phone: 081818136818

Abstract - Offensive and defamatory comments on social media can significantly harm targeted individuals, damaging their reputation, self-esteem, and causing stress, anxiety, and depression. In Indonesia, these actions violate the Criminal Code and the Information and Electronic Transactions (ITE) Law. This paper explores relevant cases using a normative juridical research method, which involves analyzing legal documents, theories, and expert opinions to understand how the law is applied in cases of defamation and insult through social media comments. The normative juridical method is suitable for this study as it thoroughly examines the legal norms, principles, and regulations regarding defamation and insult. The study focuses on legal aspects, providing a structured framework to analyze and interpret laws, particularly the ITE Law and the Criminal Code (KUHP). These laws form a crucial legal foundation for addressing digital offenses. The legal theories related to defamation and libel aid in understanding the legal aspects of such cases, and expert opinions offer deep insights into the legal concepts of defamation and slander in social media contexts. The study finds that defamation and insult via social media involve spreading false statements that harm a person's reputation. The ITE Law and the Criminal Code (KUHP) aim to protect individuals' honor and good name. Key legal elements include the legal subject (any person), intent without right, dissemination of electronic information, and content containing insults or defamation. Article 27 paragraph (3) of the ITE Law highlights that creating or sharing electronic information with insults or defamation is a criminal act. Law enforcement is crucial to maintain individuals' integrity and dignity online, requiring professional, transparent, and accountable actions by the Indonesian National Police. They handle defamation cases based on public reports and evidence, ensuring suspects' rights and following strict legal procedures to ensure fairness and prevent arbitrary actions.

Keywords: Defamation, Law Enforcement, Libel

I. INTRODUCTION

Social networks have emerged as a transformative mode of communication in the digital age, representing one of the most significant shifts in social interaction. The pervasive influence of social media extends deeply into people's daily lives, impacting culture and social dynamics profoundly. These platforms, including Facebook, Twitter, Instagram, LinkedIn, and YouTube, facilitate global interaction, content sharing, and direct communication among users. The appeal of social media lies in several key features. Firstly, they enable real-time interaction, effectively removing geographical and temporal barriers in communication. Users can effortlessly connect with friends, family, and even strangers across vast distances. Secondly, social networks facilitate the instantaneous and widespread dissemination of information. Within moments, messages, photos, or videos can reach thousands of individuals worldwide, accelerating news distribution and fostering expansive discussions on significant topics. Thirdly, social media empower users to create and curate their online identities. By sharing personal photos, videos, and thoughts, individuals can express their interests, expertise, and values, thereby shaping their digital personas and engaging with like-minded online communities. These capabilities underscore the profound impact of social media on

modern communication, highlighting the importance of understanding its dynamics and implications for societal interactions. (Khatimah, 2018, p. 122)

While social media has tremendous potential to facilitate useful information exchange and positive interactions, it also provides a platform for harmful behaviors, including offensive and defamatory comments. The phenomenon of offensive and defamatory comments on social networks is a significant concern in modern society. Due to the ease of access to social media platforms and the anonymity that the Internet sometimes offers, many individuals exploit this opportunity to attack, belittle, and harass others online, leading to severe consequences for both the targeted individuals and society as a whole. (Jayananda et al., 2021, p. 262)

Firstly, insults and libel through social media comments can have devastating effects on the victim who is the target of the attack. Abusive, insulting, or demeaning comments can damage a person's reputation and self-esteem. Victims of attacks may experience stress, anxiety and depression as a result of such negative experiences. In some extreme cases, it can even cause mental health disorders or lead to suicidal thoughts. Secondly, offensive and defamatory comments also have a wide social impact. Communities connected through social media often witness conflicts and arguments caused by such negative comments. This can lead to social polarisation and fragmentation, with divisions between individuals or groups with different views. The opposition and attacks that develop on social media can also inhibit healthy and constructive dialogue, which in turn can hinder social progress and cooperation. Third, this question also has important legal aspects. In some countries, insults and defamation on social media can violate laws governing freedom of expression and personal privacy. However, law enforcement in the context of social media is often complex and difficult. Issues such as cross-border jurisdiction, anonymity, and difficulties in gathering evidence can hinder effective law enforcement. (Halid, 2021, p. 21)

According to Article 310 of the Criminal Code, defamation is the act of attacking a person's reputation by alleging something that is intended to be known by the public, including in the form of writings and images that are broadcast, shown, or posted in public. Defamation is regulated in the Criminal Code and Law No. 11/2008 on Electronic Information and Transactions (ITE). In the Criminal Code, defamation is regulated in Articles 310 to 321, which divide it into six types: insult, insult in writing, slander, mild insult, false complaint of defamation, and slanderous accusation. Defamation under Article 310 Paragraph (1) occurs when a person alleges certain humiliating acts even though it is not against the law. Article 310 Paragraph (2) concerns insult through writing or drawing. Article 27 Paragraph (1) prohibits distributing, transmitting, or making accessible Electronic Information or Electronic Documents that violate decency, and Paragraph (3) prohibits similar acts that contain insults or defamation. Article 28 Paragraph (1) prohibits the dissemination of false news that harms consumers in Electronic Transactions, while Paragraph (2) prohibits the dissemination of information that creates hatred or hostility based on SARA. Article 35 regulates the manipulation, creation, alteration, deletion, or destruction of Electronic Information or Electronic Documents with the aim of being considered as authentic data. (Aryansyah et al., 2022, p. 179)

Defamation and libel are two different but related legal concepts in the Criminal Code. Defamation, as stipulated in Article 310 paragraphs (1) and (2) of the Criminal Code, occurs when a person attacks another person's reputation with scandalous accusations, which are intended to be known by the public. This can be done through words or writings broadcast to the public. If the insult is not in the public interest or in self-defence, the offender may be subject to punishment. On the other hand, libel is regulated under Article 311 of the Criminal Code and is a more specific form of defamation, where the allegations spread by the offender are untrue. Article 311 paragraph (1) of the Criminal Code states that if a person accuses with the aim of defamation or defamation by writing and cannot prove his accusation, and the accusation is known to be untrue, then the perpetrator is punished for slander. Slander, according to the Big Indonesian Dictionary, is false or untrue words that are spread with the intention of demonising someone. In criminal law, slander is the act of defaming or libelling with writing, but the offender is allowed to prove it, and is found to be unable to do so. In

summary, the main difference between defamation and slander is that defamation includes any accusation that harms a person's reputation in public, while slander is specifically an untrue accusation that the offender cannot prove to be true. Defamation carries more severe punishment consequences due to the element of falsehood and malicious intent involved.(Fifink Praiseda Alviolita & Barda Nawawi Arief, 2019, p. 133)

The comment sections of social media platforms are particularly prone to instances of defamation and slander. Unlike other forms of digital content such as memes, images, or documents, comments are often spontaneous and reactive, making them a common medium for impulsive and harmful expressions. These comments can quickly spiral into public attacks, with the potential to go viral, further amplifying the damage to the victim's reputation. The immediacy and visibility of comment sections can exacerbate the harm caused by defamatory remarks, as they are instantly accessible to a wide audience. Additionally, the culture of comment sections, which can often be hostile and confrontational, further contributes to the prevalence of defamatory speech. The anonymity provided by these platforms can embolden individuals to make harmful comments without fear of immediate repercussions, creating a toxic environment where defamation can thrive unchecked. Effective regulation and monitoring of comment sections are crucial to mitigate these issues and protect individuals from the damaging effects of online defamation.

Law enforcement is the process of realising the desires in law into obligations that must be obeyed by society. According to Soerjono Soekanto, law enforcement lies in activities that harmonise the relationship of values outlined in solid rules and manifested through attitudes of action as a series of final value elaborations, with the aim of creating, maintaining and maintaining a peaceful association of life. Law enforcement cannot be separated from human rights but uses special legal means of force in accordance with statutory provisions, such as arrest, detention, and confiscation. The Indonesian National Police (Polri) is a national police institution directly responsible to the President. Polri carries out police duties throughout Indonesia, including maintaining public security and order, enforcing the law, and providing protection, protection, and services to the public. As a law enforcement agency and community security and order builder, Polri plays four strategic roles, namely community protection, law enforcement, prevention of law violations, and fostering community security and order.(Muhammad Arif, 2021, p. 96)

Understanding the dynamics of comment sections and their role in spreading defamation is critical not only for protecting individual reputations but also for maintaining the integrity of online discourse. This research will provide valuable insights into the nature of online defamation, highlight the vulnerabilities of current social media frameworks, and propose effective strategies for regulation and moderation. The potential impact of this work is significant, offering a roadmap for social media platforms to create safer, more respectful digital environments and helping to establish legal and ethical guidelines that can curb the proliferation of defamatory content. By addressing this pressing issue, the research aims to foster a more accountable and conscientious online community, ultimately contributing to the betterment of digital interactions on a global scale.

II. METHOD

The normative juridical research methods used in this article are document studies, which entail the use of legal material sources such as laws and regulations, legal theories, and scholarly judgments (Muhaimin, 2020, p. 45). The main legal regulations are the Criminal Code (KUHP) and the Electronic Information and Transaction Law (UU ITE). These two regulations provide an important legal framework for dealing with offences in the digital realm. Specifically, the legal theories used relate to defamation and libel, which helps to understand the relevant legal aspects in these cases. The expert opinions referenced are appropriate and relevant to the topic, providing an in-depth understanding of the legal concepts relating to acts of defamation and slander in the social media environment, who will examine cases on the topic using a case approach(Solikin, 2021, p. 60). This approach will provide a comprehensive picture of law enforcement against defamation and slander cases on social media. The

analysis process will consider various factors relevant to each selected case. Case selection criteria include: relevance to Defamation and Slander, diversity of cases, availability of data, and significant cases in the context of law enforcement and recent legal developments. The number of cases to be analysed will be determined flexibly, with a focus on diversity and adequate representation. A relevant timeframe will be set to accommodate diverse cases, covering cases that occurred in recent years, with a focus on the most relevant period for the phenomenon of defamation and libel on social media. It will obtain an in-depth description of the criminal offence of libel and defamation in social media comment columns and its law enforcement by the Police. The legal sources used in this research include books, scientific journals, and relevant and up-to-date references. Data analysis was conducted qualitatively, where the information obtained was analysed and presented in scientific and methodological language.

III. RESULT AND DISCUSSION

Understanding Criminal Offenses

The definition of criminal offenses related to defamation, as proposed by several criminal law experts, provides a foundational understanding of how defamatory acts are treated within the legal system. According to Bambang Waluyo, a criminal offense is an act prohibited and threatened with punishment, with punitive action applicable to anyone who violates such prohibitions. This concept is echoed by R. Tresna, who emphasizes that criminal acts are human actions contrary to the law, warranting punitive measures. Similarly, Moeljatno defines a criminal act as behavior that is prohibited and punishable under criminal law, focusing on the act's condition or event caused by an individual's behavior. Mahrus Ali and Utrech further expand on this by linking criminal offenses to wrongdoing by responsible individuals and violations of legal norms, respectively. Andi Hamzah consolidates these views by outlining the conditions under which behavior is considered criminal: it must be punishable by law, contrary to the law, committed by a guilty person, and the individual must be responsible for their actions. (Nababan et al., 2022, p. 195).

In the context of social media, these definitions are crucial for understanding the criminalization of defamatory comments in comment sections. Social media platforms provide a space where users can quickly and easily post comments, often without considering the legal implications of their words. When defamatory comments are made, they meet the criteria outlined by these legal experts: they are prohibited acts (posting defamatory statements), they violate laws protecting individual reputations, and they can be traced back to responsible individuals who made the comments. This alignment of social media defamation with traditional definitions of criminal offenses underscores the importance of robust law enforcement mechanisms to address and mitigate the impact of such harmful behaviors. As law enforcement agencies navigate the complexities of policing online interactions, understanding these legal definitions helps in formulating effective strategies to prosecute offenders and protect victims from the damaging effects of defamation in the digital age.

In relation to the criminal offence of defamation, according to Moeljanto, there are two instances of criminal offences, including certain events that produce prohibited consequences, and the number of people involved in the event. According to Leden Marpaung, there are several elements of criminal offences that are applied in the criminal offence, among others: (Anggaraini & Gunawan, 2019, p. 116)

Subjective Element of criminal offenses

This is an element that exists within the perpetrator. This legal principle states that "there is no punishment without fault." The mistake referred to here is the mistake caused by the element of intent. The Criminal Code does not provide a direct explanation of the word "intentionally." However, we can understand the meaning of the word "intentionally" based on *Memorie van Toeliching (M.v.T)*, which means intending and knowing. Therefore, it can be said that intentionally means intending or knowing what is done. A person who commits an act intentionally intends the act and is aware of what he is doing.

The subjective element in criminal law, which focuses on the perpetrator's intent, plays a crucial role in addressing defamation in social media comment sections. This legal principle, "there is no punishment without fault," hinges on the presence of intent or knowledge on the part of the perpetrator. Although the Criminal Code does not explicitly define "intentionally," the concept can be understood from the *Memorie van Toelichting* (M.v.T) as involving both intending and knowing. Therefore, when individuals post defamatory comments on social media, they must have intended or been aware of the harmful nature of their statements for their actions to be considered intentional.

In the context of social media, this means that when a user leaves a defamatory comment, they do so with the knowledge and intention of causing harm to the victim's reputation. This subjective element is critical in the legal assessment of such cases, as it distinguishes between inadvertent remarks and those made with malicious intent. Law enforcement agencies must therefore consider the intent behind defamatory comments to effectively apply legal consequences. Recognizing the subjective element helps in identifying the true nature of the offense and ensures that those who purposefully engage in defamation are made liable for their deeds. Given that damaging remarks can travel quickly and widely on social media and have a serious impact on the targeted individuals, this knowledge emphasizes the significance of intent in defamation proceedings.

For example, in 2022, celebrity Medina Zein was sentenced to six months in prison for defamation through social media against Marisyia Icha. This verdict was lighter than the public prosecutor's demand for Medina Zein to be sentenced to one year in prison. In this case, Medina Zein was found guilty of violating Articles 310 and 311 of the Criminal Code and or Article 27 paragraph (3) of Law Number 19 of 2016 concerning ITE. The problem began when Marisyia Icha suspected Medina Zein of selling her a fake bag. Therefore, Marisyia requested that the former cosmetics boss immediately return the money for the purchase of the bag. However, Medina Zein threatened and insulted Marisyia Icha through social media. Not accepting this, Marisyia Icha then reported Medina Zein to Polda Metro Jaya for alleged defamation. ("Jerat Hukum Pencemaran Nama Baik Di Media Sosial," 2024)

The subjective element in the criminal offence of defamation committed by Medina Zein against Marisyia Icha can be seen from the awareness and intention possessed by Medina Zein when committing the act. Medina Zein deliberately threatened and insulted Marisyia Icha through social media in response to the allegations made by Marisyia Icha regarding the sale of fake bags. Medina Zein knew that her actions could harm and humiliate Marisyia Icha's good name. This shows the subjective element of Medina Zein's actions, because her actions were carried out with full awareness of the negative impacts that might be caused.

Objective Element of criminal offenses

This is an element that comes from outside the perpetrator, which consists of human actions, namely active actions or actions not doing something. Then there are the consequences of human actions, which have a harmful impact but do not eliminate important elements protected fundamental law, including life and body, independence, property rights, honour, and so on. Finally, the conditions or circumstances, which are divided into the circumstances when the act is committed, the circumstances after the act is committed and the nature of the punishable and unlawful nature.

The objective element of criminal offenses includes external factors related to the perpetrator's actions, the consequences of these actions, and the conditions or circumstances surrounding them. These elements consist of active actions or omissions, which lead to harmful impacts without necessarily eliminating protected legal elements such as life, body, independence, property rights, and honour. Additionally, the objective element encompasses the circumstances under which the act is committed, the aftermath, and the inherently punishable and unlawful nature of the act.

In the context of defamation in social media comment sections, the objective element is particularly pertinent. When users post defamatory comments, their actions constitute active behavior that can have severe repercussions on the victim's honour and reputation. These harmful impacts are immediate and widespread due to the nature of social media platforms,

where comments can be quickly disseminated to a broad audience. The conditions under which these acts are committed—often anonymously and impulsively—further complicate the enforcement of legal protections. Law enforcement must navigate these complexities, ensuring that defamatory comments are recognized as unlawful actions with tangible harmful consequences, thus fulfilling the objective element of criminal offenses.

Based on the example above, the objective element in the criminal offence is the insult and defamation committed by Medina Zein against Marisya Icha through social media. Medina Zein's actions of threatening and insulting Marisya Icha openly on social media are concrete evidence of violations of Articles 310 and 311 of the Criminal Code and/or Article 27 paragraph (3) of Law Number 19 Year 2016 on ITE. These actions are considered unlawful because they have harmed Marisya Icha's good name and caused significant negative impacts. Therefore, there are objective elements of actions that can be subject to criminal sanctions.

In this regard, D. Simons put forward the definition of a criminal offence (*strafbaar feit*) as an unlawful act, committed intentionally or unintentionally by someone who is responsible for his actions, and has been determined by law as a punishable act. The elements of a criminal offence (*strafbaar feit*) consist of: (Chandra, 2022, p. 43)

1. Firstly, human actions encompass both active engagement (acts) and refraining from action (omissions), which can result in significant consequences. When individuals post defamatory comments on social media, they are actively engaging in behavior that can harm the reputation and honor of others. Moreover, the failure to remove or retract such comments, despite knowledge of their defamatory nature, also constitutes a harmful omission. These actions and omissions, which occur within the realm of social media discourse, have tangible consequences on the lives and well-being of those targeted by defamation.
2. Secondly, the conduct of posting defamatory comments is explicitly prohibited and punishable by law in many jurisdictions. Laws governing defamation typically outline the boundaries of acceptable speech and impose penalties for violating these boundaries. Therefore, individuals who engage in defamatory behavior on social media platforms can be held accountable for their actions under relevant legal statutes.
3. Lastly, the responsibility for committing defamatory acts rests with the individuals who make or propagate such comments. Whether through deliberate intent or negligence, those who participate in defamatory discourse on social media can be held responsible for the harm caused to others' reputations and honor. This attribution of responsibility is fundamental to the enforcement of laws against defamation in the digital realm, ensuring that perpetrators are held accountable for their actions.

Ever since the ITE Law was established, every person has the right to legal assurance when dealing with behaviors that go against online ethics. The Cyber Crime Unit, which investigates crimes in cyberspace, has made numerous instances pertaining to the ITE Law public. There are two ways that investigators can gather information and proof, find suspects, ascertain the *tempus* and *locus* of crimes while looking into cybercrime or criminal offenses using social media. Here are these techniques: (Simbolon et al., 2018, p. 18)

1. Online methods leverage computer systems and the internet to track down individuals responsible for posting defamatory content. This involves utilizing digital forensic techniques to trace the origin of defamatory comments, monitor online activities, and gather digital evidence that can be used in legal proceedings. Through online methods, law enforcement agencies can swiftly respond to instances of defamation on social media platforms, ensuring accountability for perpetrators.
2. Offline methods complement online approaches by employing computer forensic tests and conventional investigative techniques to procure evidence of defamation. Computer forensic tests involve examining digital devices, such as computers and smartphones, to extract relevant data that may contain evidence of defamatory behavior. Additionally, offline methods encompass traditional investigative practices, such as conducting interviews, gathering witness statements, and obtaining physical evidence, to build a comprehensive case against individuals accused of defamation. By combining online and

offline methodologies, law enforcement agencies can enhance their capacity to investigate and prosecute cases of defamation effectively.

The development of technology has made defamation more commonplace in today's society. The act of harming someone's reputation by producing false remarks is known as defamation, and this is how the term is frequently translated into English. A person's reputation and sense of self-worth are protected from defamation by legislation outside of the Criminal Code as well as by the Criminal Code, which treats it as a criminal offense. Each person possesses honor and a good reputation as a sign of self-respect. (Brian Obrien Stanley Lompoliuw, 2019, p. 48) Defamation is closely related to insult, which is an act that harms a person's good name or reputation. Using sophisticated technology, such social media or software, defamation can happen. Because it may disturb public order and result in both material and immaterial losses for the persons involved, this act is regarded as a criminal offense. (Amri Teguh Ramadhan & Ashabul Kahfi, 2022, p. 80) According to the law, insulting or defaming someone is a crime that is covered in Chapter XVI of the Criminal Code, specifically Articles 310 through 321. Legal standards are one of the repercussions of this dispute. Guidelines for social interaction over the internet are provided by the Electronic Information and Transaction Law (ITE Law) and Article 310 paragraph (1) of the Criminal Code. The ITE Law also governs the sentencing guidelines for offenses committed online. Even if the state grants people freedom, everyone's human rights are nevertheless legally protected, restricted, and governed by written regulations. (Lidya Suryani Widayati, 2018, p. 4) This is done to prevent abuse that can cause injustice and interfere with the human rights of others. The crime of defamation or insult is often committed by individuals or groups through their social media accounts. Sometimes we hear their defence on the grounds of freedom of speech without realising that they are violating the law by interfering with the rights of others. (Adrizar, 2021, p. 638)

Comments on some social media posts that contain defamatory content According to the ITE Law, disseminating, transferring, and/or producing electronic information and/or documents that include insults and/or defamation is considered defamation and is governed by Article 27 paragraph (3). Based on this idea, the ITE Law's regulations against defamation include the following components: (Asmadi, 2021, p. 23)

1. Every Person: This element refers to an individual, be it an Indonesian citizen, foreign citizen, or legal entity, as explained in the definition provided by Article 1 number 21 of the ITE Law. (Nedra Wati, 2021, p. 145)

In the context of law enforcement against defamation in social media comment sections, the element of individuality, as defined in Article 1 number 21 of the ITE Law, holds significant relevance. This provision identifies the scope of accountability, encompassing Indonesian citizens, foreign citizens, and legal entities, who engage in defamatory behavior online. By recognizing the individuality of perpetrators, law enforcement agencies can effectively target and hold accountable those responsible for posting defamatory comments on social media platforms.

The inclusivity of this definition acknowledges that defamation can be perpetrated by a wide range of actors, including individuals from diverse backgrounds and legal entities operating in the digital sphere. Whether it's a disgruntled user posting defamatory comments anonymously or a corporate entity spreading false information for malicious purposes, all individuals fall within the purview of the law when it comes to combating defamation online.

This element serves as a guiding principle for law enforcement agencies tasked with enforcing regulations against defamation in social media comment sections. By adhering to the provisions outlined in the ITE Law, authorities can ensure that perpetrators, regardless of their nationality or legal status, are held accountable for their actions. This inclusive approach to law enforcement promotes fairness and equality in addressing instances of defamation, safeguarding the reputation and dignity of individuals targeted by malicious online behavior.

2. Intentionally and Without Right: This element refers to an act committed by the perpetrator of the crime with premeditated intent and awareness, without the consent of the entitled party.

Intentionality is a form of guilt that falls under the subjective element. According to Hiariej, the consequences of this mistake affect the extent of the punishment. In the elucidation of this article, the form of fault is clearly stated, so that the public prosecutor has the obligation to prove the existence of intent in committing the prohibited act. According to the history of the formation of the Criminal Code, as quoted by Pompe, the requirements for intentionality are "willen en wetens" or willing and knowing. These two requirements are absolute, which means that a person is considered to have committed an act intentionally if the act is committed with knowledge and deliberate intention. The deliberate intention to commit a criminal offence is basically contained in the mind of the perpetrator, but it must be measured by visible indicators through the perpetrator's actions. In this case, intent is measured through the perpetrator's knowledge that his/her post will have a certain impact and the perpetrator wants the post to be read and responded to by netizens. (Samudra, 2020, p. 95)

According to Utrecht, this term is used to describe the element of "against the law" which is often referred to as "wederrechtelijk". This term is used to indicate that an act or intention is unlawful. This is in line with van Hamel's two-group division of "wederrechtelijk", namely: (Samudra, 2020, p. 96)

- a. Positive understanding: In this view, "wederrechtelijk" is defined as "contrary to law" according to Simons, or as a violation of the rights of others according to Noyon.
- b. Negative understanding: In this view, "wederrechtelijk" is defined as "not based on law" or "without right" as adopted by the Hoge Raad.

Hazewinkel-Suringa argues that the concept of "wederrechtelijk" in the formulation of a criminal offence should be interpreted as "without a legitimate right". The term "right" is closely related to civil law. In Dutch, this term is referred to as "subjectief recht". In the context of the ITE Law, which regulates the act and management of electronic information and transactions, a more appropriate term in the public sphere is "authority", although the concept of authority is closely related to position. According to the Explanatory Memorandum of the Dutch Criminal Code plan, the use of the term "against the law" is necessary. This is because if it is not used, there is a concern that when a person performs an act that is actually prohibited by law, even though the act is his or her right, the act may also be subject to the applicable statutory prohibition. Whereas, if a person exercises his or her right, the act should not be considered "unlawful", and punishment should only be meted out to those who actually break the law. Therefore, the relevant article should clearly state "against the law" as an element of the prohibited act. In some cases, there may indeed be acts that are designed to be done unlawfully. For example, a police officer who uploads a wanted list to a website for the public to see will not be punished because the police officer has not broken the law by virtue of his authority. In addition, this also refers to Article 310 paragraph (3) of the Criminal Code which states that defamation will not be punished if it is done in the public interest or in self-defence. The relationship between "intentionally" and "without right" is cumulative, meaning that both must be fulfilled. If one of them is not fulfilled, then this element of the article is not fulfilled : (Samudra, 2020, p. 97)

In the context of law enforcement against defamation in social media comment sections, the element of intentionality and absence of right holds significant importance. This aspect refers to the deliberate and conscious actions of the perpetrator, who engages in defamatory behavior with premeditated intent and awareness, without the authorization or consent of the affected party.

When individuals post defamatory comments on social media platforms, they do so with the deliberate intention to harm the reputation or honor of another individual or entity. This malicious intent is often evident in the content and tone of the comments, which may contain false information, insults, or derogatory remarks aimed at tarnishing the target's image. Moreover, perpetrators typically lack the legal right or authorization to make such defamatory statements, as they are not entitled to damage the reputation or honor of others without just cause.

By recognizing the element of intentionality and absence of right, law enforcement agencies can distinguish between legitimate forms of expression and malicious acts of

defamation in social media comment sections. Perpetrators who intentionally engage in defamatory behavior, without the legal right to do so, can be held accountable for their actions under relevant legal statutes. This ensures that individuals are not allowed to misuse the platform of social media to spread false information or engage in character assassination, thereby upholding the principles of justice and fairness in online discourse.

3. Distribute and/or Transmit and/or Make accessible: This element shows the actions taken by the perpetrator to spread his criminal acts to be known by many people. The ITE Law does not provide a clear definition of the terms "distribute," "transmit," and "make accessible," which may lead to various interpretations in its application.

However, to ensure legal certainty, in the Amendment to the ITE Law, this phrase was finally added to the Explanation of Article 27 paragraph 1, which contains the definition of "distributing" is sending and/or disseminating Electronic Information and/or Electronic Documents to many people or various parties through an Electronic System. The definition of "transmitting" is sending Electronic Information and/or Electronic Documents addressed to one other party through an Electronic System. The definition of "making accessible" is any action other than distributing and transmitting through an Electronic System that causes Electronic Information and/or Electronic Documents to be known by other parties or read. (Alicia Lumenta, 2020, p. 27)(Samudra, 2020, p. 98)

In the context of law enforcement against defamation in social media comment sections, the element of distributing, transmitting, and making accessible electronic information is crucial for understanding how defamatory content spreads and reaches a wider audience. This element refers to the actions taken by perpetrators to disseminate their defamatory acts, making them known to many people through various electronic systems.

When individuals post defamatory comments on social media platforms, they often do so with the intention of reaching a broader audience and maximizing the impact of their harmful content. The act of distributing, transmitting, or making accessible defamatory information involves sharing it through electronic systems, such as social media platforms, messaging apps, or email, with the aim of reaching multiple recipients or making it publicly available.

While the ITE Law initially lacked a clear definition of these terms, recent amendments have provided clarity to ensure legal certainty in their application. The addition of explanations to Article 27 paragraph 1 defines "distributing" as sending and disseminating electronic information to many people or various parties through electronic systems. "Transmitting" refers to sending electronic information addressed to another party through electronic systems, while "making accessible" encompasses actions that cause electronic information to be known or read by other parties, beyond distribution and transmission. (Lianthy Nathania Paat, 2020, p. 17)

This clarification in the ITE Law underscores the importance of addressing the spread of defamatory content in online spaces. By understanding how electronic information is distributed, transmitted, and made accessible, law enforcement agencies can effectively combat defamation in social media comment sections. This includes identifying the methods used by perpetrators to disseminate defamatory content, tracking its circulation across electronic systems, and holding individuals accountable for their role in spreading harmful information online. (Asmadi, 2021, p. 24)

According to the considerations stated in the Constitutional Court Decision Number 2/PUU-VII/2009 page 89, it can be explained as follows: (Kasenda, 2018, p. 10)

- a. Distribute: It is the act of spreading or disseminating information through electronic means or media aimed at specific people as desired.
- b. Transmitting: Is the act of putting information into an electronic media network that can be accessed by the public without restrictions on place and time, meaning that the information can be accessed by anyone, anytime, and anywhere.
- c. Access: Is an activity of interacting with Electronic Systems, both stand-alone and networked.

4. **Electronic Information and/or Electronic Documents:** This element includes two forms of objects, namely electronic information and electronic documents. Electronic information is defined as electronic data or a set of electronic data that can be in the form of writing, sound, images, and so on that have meaning or can be understood by a person capable of recognizing them. An electronic document is any piece of information that may be viewed, heard, and/or seen through a computer or other electronic device. It can be made, forwarded, communicated, received, or saved in an analog, digital, electromagnetic, optical, or similar format. The definition of electronic information is given below in Article 1 Number 1 of the ITE Law.:

"Electronic Information is one or a set of electronic data, including but not limited to writings, sounds, images, maps, designs, photographs, electronic data interchange (EDI), electronic mail, telegram, telex, telecopy, or the like, letters, signs, numbers, Access Codes, language, or perforations that have been processed which have meaning or can be understood by a person capable of understanding them."(Bagus Andri Dwi Putra & Edi Wahjuningati, 2021, p. 3) (Syahrul Bakti Harahap & Herlina Hanum Harahap, 2020, p. 135)

Meanwhile, the definition of Electronic Document is explained in Article 1 point 4 of the ITE Law as follows:

"Electronic Document is any Electronic Information created, forwarded, sent, received, or stored in analogue, digital, electromagnetic, optical, or similar form, which can be seen, displayed, and/or heard through a Computer or Electronic System, including but not limited to writings, sounds, images, maps, designs, photographs, or the like, letters, signs, numbers, Access Codes, language, or perforations that have meaning or meaning or can be understood by a person capable of understanding them."(Daud, 2024, p. 361)

Electronic information encompasses a wide range of digital data, including written text, audio recordings, images, designs, photographs, and various forms of communication such as electronic mail, telegram, and telex.

When individuals engage in defamatory behavior on social media platforms, they may utilize various forms of electronic information to convey their harmful messages. This can include written comments, audio recordings, manipulated images, or other multimedia content aimed at tarnishing the reputation or honor of another individual or entity. By recognizing electronic information as the medium through which defamation occurs, law enforcement agencies can effectively identify and address instances of malicious behavior in online spaces.

Moreover, the expansive definition of electronic information provided in the ITE Law underscores the diverse nature of defamatory content that may be encountered on social media platforms. Whether it's a written comment containing false allegations, an edited image intended to ridicule someone, or a recorded voice message spreading rumors, all forms of electronic information fall within the purview of defamation laws when used to harm others' reputations.

Electronic Information and Electronic Documents are distinguishable, but inseparable. Electronic Information is data or a collection of data in various forms, while an Electronic Document is a form of wrapper or container of Electronic Information. For example, in an e-mail, any information contained in it is Electronic Information, while the e-mail itself is a form of Electronic Document.(Samudra, 2020, p. 99)

This provision explains that electronic information and electronic documents can be used as valid evidence in accordance with Article 5 of the ITE Law. In its application, additional explanations regarding the terms "distribute," "transmit," and "make accessible" have been added to avoid diverse interpretations. In addition, experts in the field of information technology can provide the necessary information in proving crimes involving information technology-information systems.

5. **Contains insult or defamation**

Initially, the concept of the criminal offence of defamation regulated in the ITE Law caused problems because the Law did not provide an explanation of the phrase "insult and/or defamation" in Article 27 paragraph 3.(Muhammad Iqbal, 2024, p. 7) (Samudra, 2020, p. 100)

The article does not provide a detailed definition of "insult" referred to by legal regulations. The article only clarifies that the criminal law norms on defamation in the Criminal Code also apply in the ITE Law, which is a new legal regulation that includes additional elements in the electronic or cyber field that have very special characteristics. Therefore, as affirmed in Constitutional Court Decision No. 50/PUU-VI/2008, the interpretation of the norms contained in Article 27 paragraph (3) of the ITE Law regarding insult and/or defamation cannot be separated from the criminal law norms stipulated in Article 310 and Article 311 of Chapter XVI on Defamation of the Criminal Code. The definition of "insult and defamation" referred to in Article 27 of the ITE Law can be found in Article 310 paragraph (1) of the Criminal Code which states as follows: (Butar - Butar, 2023, p. 80)

Any person who intentionally attacks the honour or good name of a person by alleging something, with the intention that it will become public knowledge, shall be punished with imprisonment for a maximum of nine months or a maximum fine of four thousand five hundred rupiahs." (Article 310 paragraph (1) KUHP)

The definition of "defamation" under Article 310 paragraph (1) of the Criminal Code must fulfil the following elements: 1) done intentionally, 2) attacking someone's honour or good name by alleging something, and 3) with the aim of making it known to the public. The second element, namely "attacking the honour or good name of a person by alleging (Butar - Butar, 2023, p. 80)

Acts that violate a person's honour and good name are prohibited in criminal law. Criminal law protects a person's good name, dignity, and honour because it is one of the legal interests that is part of the constitutional rights of every individual guaranteed by the 1945 Constitution. Similarly, in the context of international law, if actions that damage a person's good name, dignity, or honour are subject to criminal sanctions, this is not contrary to the 1945 Constitution. Based on the explanation above, it can be concluded that the regulation of defamation offences in Article 27 paragraph (3) of the ITE Law by considering human rights cannot be separated from individual rights related to equal rights and the obligation of every citizen to respect the rights of others. In this case, there is a balance between the interpretation and implementation of human rights, so that the regulation cannot be considered as a violation of the individual rights of citizens who submit applications. pragmatic approach.(Simamora et al., 2020, p. 41)

Article 27 paragraph (3) of the ITE Law has the following elements: (Tanos, 2016, p. 168)

- a. Firstly, the subjective element of guilt is characterized by the word "intentionally." This implies that law enforcement authorities must demonstrate that the perpetrator intentionally engaged in defamatory behavior. This includes knowingly posting comments or content with the intention of harming the reputation or honor of another individual or entity on social media platforms.
- b. Secondly, the unlawful element is represented by the phrase "without right," which is synonymous with acting "against the law." This signifies that engaging in defamation without legal authorization or justification is unlawful and subject to prosecution under relevant statutes.
- c. Thirdly, the element of conduct refers to the prohibited actions outlined in Article 27 paragraph (3) of the law, which include distributing, transmitting, or making accessible electronic information or documents containing insults and defamation. This element can be satisfied when there is evidence of insulting or defamatory content being disseminated through electronic means.

These elements align with the provisions of Article 310 of the Criminal Code, which also addresses insults. By establishing the presence of intentional defamation, unlawful behavior, and prohibited actions, law enforcement agencies can build a strong case against individuals accused of defamation in social media comment sections. This involves gathering evidence of defamatory content, assessing the intent behind the actions, and ensuring that perpetrators are held accountable for their online behavior.

Criminal Law Enforcement in the Police Regarding the Criminal Offence of Insult and Defamation in Social Media's Comment

The implementation or execution of criminal action against someone who commits a crime is the most appropriate method to ensure justice is achieved. Criminal crimes can cause physical suffering, embarrassment, and mental and psychological damage that must be carefully considered by law enforcement officials. Criminal crimes, such as insults and defamation through social media, can cause deep grief to the victims. Therefore, appropriate and maximum punishment and sanctions must be given if the perpetrator requires it. Victims of such crimes deserve full justice, both in terms of the law and their psychological and mental recovery, especially if they are victims of insult or defamation crimes through social media and are women. (Idham, 2021, p. 86)

Before discussing the application of penalties for online defamation and insults, it is important to understand how to determine the existence of online defamation and insults. In assessing online defamation and insults, content and context are key factors to consider. Only the directly affected person can subjectively determine which part of the electronic information or document they consider to be damaging or defamatory. Meanwhile, 'context' provides an objective assessment of the content. Understanding the context will involve understanding the feelings of the victim and the perpetrator, the intent and purpose behind the dissemination of the information, as well as the interests involved in the dissemination of the content. Therefore, to better understand the context, the opinions of experts, such as linguists, psychologists, and communication experts, are indispensable. (Marcellino Roberto et al., 2021, p. 73)

Law enforcement, according to Purnadi Purnacaraka, is an activity that regulates the relationship between the values encompassed in the prevailing norms or views, with the intention of reflecting a consistent attitude of action and upholding these values as an elaboration of the highest values, with the aim of creating, maintaining, and maintaining peace in group life. Satjipto Raharjo provides an understanding that law enforcement involves the implementation of laws that are not only limited to the words listed in the regulations, but also based on the spirit and deeper meaning of the Act or the law itself. Wayne Favre states that law enforcement involves a process in which law enforcers use discretion (consideration between law and morals) in making decisions that are not strictly regulated by the rule of law, but involve personal judgement. On the other hand, Andi Hamzah explains that law enforcement is a process that includes prevention efforts (to prevent actions that violate the law) and enforcement efforts (in a way that approaches the goals desired by the law) against violations of the law, which can harm the perpetrator. In this context, law enforcement is an effort to achieve or create order, security, and tranquility in society, both through preventive measures and enforcement after a violation of the law. In other words, law enforcement is carried out both preventively and repressively. (Kasenda, 2018, p. 20)

The Indonesian National Police (POLRI), which is the National Police of the Republic of Indonesia, is a government institution that has the main responsibility in law enforcement, maintaining security and public order, as well as providing services, protection, and protection to the community. The implementation of this task involves all members of the National Police, from officials at the central level to the regional level, even members on duty in the field. The principle of the rule of law of the Republic of Indonesia requires that the implementation of these duties must be based on applicable law. The police are authorised or discretionary by criminal law to conduct legal proceedings against anyone involved in a crime. This police authority is not to influence the criminal process, but to strengthen law enforcement. Investigations and investigations at the police level are regulated in the Criminal Procedure Code and further explained in Perkap No 14/2012 on the Management of Criminal Investigations. Criminal investigations must be carried out professionally, transparently and accountably for each criminal case, with the aim of realising the rule of law that reflects a sense of justice. (Yulia et al., 2019, p. 663)

The police can only take action in handling hate speech cases if there are reports from the public regarding the cases they experience. This means that without a report from the community who is a victim or has legal standing as a reporter, a case investigation cannot be

carried out, because the spread of hate speech is included in the complaint offence. Therefore, the public is expected to immediately make a report if they find other people spreading bad information about them through social media. In proving hate speech cases, there are many pieces of evidence used and examined during the investigation process, such as screenshots of hate speech, evidence of electronic devices used to post (disseminate) hate speech such as mobile phones and notebooks. Other important pieces of evidence are testimonies from witnesses and victims, as well as testimonies from expert witnesses who have the ability to analyse the authenticity of the electronic evidence obtained. Investigators will conduct further examination by requesting testimony from witnesses, including testimony from victim witnesses. Witnesses who are considered to know the events of the case will be questioned to strengthen the physical evidence obtained. Information from witnesses and physical evidence will usually bring clarity about the suspect or perpetrator of the hate speech crime that has occurred. (Sepima et al., 2021, p. 112).

Investigation is regulated in Article 1 point 1 of KUHAP, which states that investigators in the investigation process are police officers of the Republic of Indonesia or certain civil servants specifically authorised by law. Article 1 point 2 of KUHAP in Chapter I, which explains the General Explanation, states that investigation is a series of actions carried out by investigators in accordance with the provisions of this law to seek and collect evidence that can explain the criminal offence that occurred and to find the suspect. Furthermore, KUHAP regulates investigators in Article 6, which provides limitations on investigating officers in criminal proceedings. The limitation is that the investigating officer can come from the Police and civilian investigating officers. A police officer who wants to become an investigator must fulfil the rank requirements as stipulated in Article 6 paragraph (2) of KUHAP. The starting point of the examination before the investigator is the suspect, because from the suspect information is obtained about the criminal event being examined. Although suspects are the starting point of the examination, they should not be seen as objects of examination (inquisitors). Suspects must be placed in the position of human beings who have dignity and dignity and are considered as subjects, not objects. The criminal offence committed by the suspect becomes the object of investigation, and according to Article 8 of Law No. 48/2009 on Judicial Power, the suspect must be presumed innocent in accordance with the legal principle of "presumption of innocence" until there is a court decision that has permanent legal force. Legal arrangements for the investigation of criminal offences are regulated in the Criminal Procedure Code, which states that in examining a suspect, an investigator must pay attention to the applicable information and must not act outside of that information. One of the provisions regulating the rights of suspects in the examination is contained in Articles 14, 15, and 32 of the Criminal Procedure Code, which use the terms suspect, defendant, and convict in each suspect's position in the examination process. (Nababan et al., 2022, p. 198)

The source of the investigator's actions in investigating comments containing insults and defamation by receiving complaints from victims who feel they have been given comments containing insults and defamation. Further actions taken by investigators are as follows: (Suyanto, 2018, p. 32)

1. Based on the source of the above actions, the investigator has the obligation to immediately carry out the necessary investigative actions on complaints from victims who feel they have been given comments containing insults and defamation
2. If the investigation has begun, the investigator must notify the public prosecutor in accordance with Article 109 paragraph (1).
3. The investigator shall arrest the suspect and conduct examination and other necessary actions in the context of the investigation, as stipulated in Article 111 paragraph (1, 2, 3) of the Criminal Procedure Code.
4. In situations where the suspect is not caught red-handed, the investigator shall conduct a careful investigation to study and scrutinise the incident, in order to determine whether or not the investigation can proceed.
5. If the results of the research state that the investigation can be continued, the investigator takes actions in accordance with his/her authority to compile a case file. Once the case

file is complete, the investigator shall submit the case file to the public prosecutor in accordance with Article 110 paragraph (1).

6. However, if the results of the research state that the investigation is not continued due to insufficient evidence or the event is not a criminal offence, the investigator will legally stop the investigation and inform the public prosecutor, the suspect, and his family of the termination of the investigation.

ased on Article 1 point 2 of KUHAP, the function of investigation related to comments containing insults and defamation in social media is, among others, to search for and collect evidence related to criminal offences, clearly explain the criminal offences that occurred and find suspects involved in the criminal offences. In Chapter 3 - Inquiry and Investigation, the function of investigation can be concretely described as follows:(Purwoleksono, 2015, p. 60)

1. Identify the type of criminal offence committed, which is closely related to the principle of legality.
2. Knowing the time or when the criminal offence was committed, which relates to the temporal aspect.
3. Determining the place or where the criminal offence occurred, which relates to the location of the incident.
4. Investigating the methods or tools used in committing the criminal offence, which relates to the instruments used.
5. Understanding how the criminal offence was committed, which aims to obtain information about the modus operandi of the criminal offence.
6. Finding out the reasons or motives behind the criminal offence, for example revenge, to gain an understanding of the perpetrator's intentions.
7. Identifying the perpetrators of the criminal offence, which is important to determine the legal liability that can be demanded.

The police are also given forced efforts related to the criminal offence, one of which is the arrest of the person who committed the criminal offence. According to Article 1 Item 20 of KUHAP, arrest is a temporary measure to limit the freedom of a suspect if there is sufficient evidence to support the interests of the investigation. Meanwhile, detention is the placement of a suspect or defendant in a certain place by an investigator, public prosecutor, or judge. One of the purposes of arrest is to prevent arbitrary action against the suspect/defendant. Therefore, the implementation of arrest must be in accordance with the provisions stipulated in KUHAP. The main purpose of arrest is to secure the suspect as an initial step in the investigation process to obtain preliminary evidence for the next stages of investigation and detention. These actions include:(Yahman, 2021, p. 89)

1. The arrest is carried out for investigation, prosecution, or trial.
2. An arrest order against a suspect who is strongly suspected of committing a criminal offence can only be issued if the investigator has sufficient preliminary evidence.
3. The implementation of arrest is carried out by using an arrest warrant.
4. An arrest warrant includes:
 - a. Consideration with the governing legal basis
 - b. The names of the officers carrying out the arrest, rank, identity number, and position
 - c. The identity of the suspect to be arrested
 - d. A brief description of the criminal offence that is the basis for the arrest
 - e. The place or office where the suspect will be examined
 - f. The period of validity of the arrest warrant
5. Every time they finish executing an arrest warrant, the executing officer must make an official report.

In addition to arrest, the investigator also has a forced effort in the form of confiscation related to the criminal act. Article 1 point 16 of the Criminal Procedure Code explains that confiscation is a series of actions by investigators to take and store objects, both movable and immovable, which have a physical form or not, for the benefit of evidence in the investigation, prosecution and trial. Confiscation aims for "evidentiary" purposes, especially in court proceedings. Without evidence, the possibility of a case cannot be submitted to the court.

Therefore, investigators conduct seizures to be used as evidence in investigations, prosecutions, and court trials. Article 38 of the Criminal Procedure Code states that confiscation can only be carried out by investigators with the written permission of the Chief of the local District Court. However, in an emergency situation where the investigator must act immediately, and it is not possible to obtain prior permission, the investigator may confiscate only movable objects and must immediately report it to the Chairman of the local District Court for approval. Objects that can be confiscated in accordance with Article 39 of KUHAP include: (Lubis, 2020, p. 58)

- a. Objects or bills suspected of being wholly or partly obtained from a criminal offence or as a result of a criminal offence by a suspect or defendant;
- b. Objects that are used directly to commit a criminal offence or to prepare for it;
- c. Objects used to obstruct the investigation of a criminal offence;
- d. Objects specifically made or intended for the commission of a criminal offence;
- e. Other objects that are directly related to the criminal offence committed;
- f. Objects seized in civil or bankruptcy cases may also be seized for investigation, prosecution, and settlement of criminal cases, in accordance with the provisions mentioned above.

IV. CONCLUSION

In conclusion, it can be said that defamation and insult through social media comments refer to the act of damaging a person's reputation by making false statements. The ITE Law together with the Criminal Code (KUHP) regulate these crimes to protect a person's honour and good name. The main elements in law enforcement against defamation and slander on social media include: legal subject (any person), intent without right, act of disseminating or transmitting electronic information, and content containing insult or defamation. Article 27 paragraph (3) of the ITE Law emphasises that the act of disseminating, transmitting or creating electronic information containing insults and/or defamation is a criminal act. It covers various forms of electronic data used to spread harmful messages with the aim of damaging a person's reputation. Thus, law enforcement against defamation and insults on social media is important to maintain the integrity and dignity of individuals in cyberspace.

Law enforcement must be carried out professionally, transparently, and accountably by the Indonesian National Police, in accordance with applicable laws. To handle defamation cases, the police require reports from the public and use various evidence, including expert testimony. Investigations are conducted to gather evidence and determine suspects, who must be treated with respect for their rights, including the presumption of innocence. Investigations and detentions are conducted in accordance with strict legal procedures to ensure fairness and prevent arbitrary actions. In practice, laws governing the criminal offences of defamation and humiliation through social media provide an important legal framework to protect individuals from being harmed and dehumanised online. However, the implementation of these laws on the ground often faces a number of challenges and limitations. One of the main challenges faced by law enforcement is in identifying and collecting electronic evidence necessary to prosecute criminal offences in the digital space. The anonymity and speed of information flow in social media makes it difficult for law enforcement to determine the identity of perpetrators and collect sufficient evidence to effectively prosecute criminal offences. In addition, limitations in the capacity and technical knowledge of law enforcement are also an obstacle to the implementation of this law. The process of investigation and law enforcement in the digital realm requires specialised expertise in collecting digital evidence and conducting computer forensic analysis, which may not be possessed by all law enforcement officers.

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