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JURIDICAL REVIEW ARTICLE 27A OF LAW NUMBER 1 OF 2024 CONCERNING THE SECOND AMENDMENT TO LAW NUMBER 11 OF 2008 CONCERNING INFORMATION AND ELECTRONIC TRANSACTIONS

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Abstract

Nowadays, the rapid development of communication through the internet has also led to various crimes committed using the internet media. The purpose of this research is to find out the differences in the offense of insult and or defamation contained in the Criminal Code and those contained in Law number 1 of 2024 concerning the Second Amendment to Law number 11 of 2008 concerning Electronic Information and Transactions (UU ITE). This research uses normative juridical research methods, namely legal research that prioritizes a library approach (library Research). That the difference in offense and defamation contained in the Criminal Code and the ITE Law is between defamation or offense contained in Article 310 of the Criminal Code and Article 27A jo. Article 45 paragraph (4) of the ITE Law is that in Article 310 of the Criminal Code that the element of an act that attacks honor or good name is an act that tells or damages the good name or dignity of another person is done directly by means of oral or written to inform the public, while in the ITE Law the act of damaging honor or good name is an act that damages or damages the good name or dignity of another person is done in the form of Electronic Information and / or Electronic Documents carried out through an Electronic System. The juridical review of Article 27A of the ITE Law is that the act of attacking the honor or good name of another person is carried out in the form of Electronic Information and / or Electronic Documents carried out through an Electronic System..
Keywords: Juridical, Insult, defamation,

Abstrak

Dimasa sekarang semakin pesatnya perkembangan komunikasi melalui internet, memunculkan pula berbagai kejahatan yang dilakukan dengan media internet. Adapun tujuan dari penelitian ini untuk mengetahui perbedaan delik penghinaan dan atau pencemaran nama baik yang terdapat dalam KUHP dan yang terdapat dalam Undang-Undang No.1 Tahun 2024 tentang Perubahan Kedua Atas UU No. 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik (Undang – Undang ITE). Penelitian ini menggunakan Metode penelitian yuridis normatif yaitu penelitian hukum yang mengutamakan pendekatan kepustakaan (library Research). Bahwa Perbedaan delik pelanggaran dan pencemaran nama baik yang terdapat dalam KUHP dan Undang - Undang ITE perbuatanya antara pencemaran nama baik atau pelanggaran yang terdapat dalam Pasal 310 KUHP dan Pasal 27A jo. Pasal 45 ayat (4) Undang - Undang ITE adalah bahwa dalam Pasal 310 KUHP bahwa unsur perbuatan yang menyerang kehormatan atau nama baik adalah perbuatan yang memberi tahu atau merusak nama baik atau harga diri orang lain itu dilakukan secara langsung dengan cara lisan atau tulisan untuk memberitahukan umum , sedangkan pada Undang - Undang ITE perbuatan merusak kehormatan atau nama baik adalah perbuatan yang merusak atau merusak nama baik atau harga diri orang lain tersebut dilakukan dengan bentuk Informasi Elektronik dan/atau Dokumen Elektronik yang dilakukan melalui Sistem Elektronik. Tinjauan yuridis Pasal 27A dari Undang - Undang ITE ini bahwa perbuatan menyerang kehormatan atau nama baik orang lain harus dilakukan dengan cara menuduhkan suatu hal, dengan maksud agar hal tersebut diketahui umum yang merupakan suatu fitnah bukan lah fakta sehingga bisa dipidana dalam Pasal 45 ayat (4) Undang - Undang ITE dengan pidana penjara paling lama 2 (dua) tahun dan/atau denda paling banyak Rp.400.000.000,00 (empat ratus juta rupiah)", hal ini menghilangkan frase "penginaan atau pencemaran nama baik" yang ada dalam pasal sebelumnya yang dinilai multi tafsir, sehingga terjadi perubahan guna kebebasan berpendapat dalam menyampaikan fakta atau pendapat melalui media elektronik.
Kata Kunci : Kajian Yuridis, Penghinaan, pencemaran nama baik

INTRODUCTION

This period of technological advancement led to the creation of various communication media that can quickly and efficiently provide a wide range of information in a short period of time and at a short distance. With the invention of communication tools in the form of computers, a new communication system known as a network, which can be accessed through the Internet with a computer, was created. In order to achieve effectiveness and efficiency in any problem-solving activity faced by humans, especially in communication, communication technology is very convenient and beneficial to humans as users. It helps to solve problems in human activities from simple to complex levels of difficulty.

Nowadays, due to the rapid expansion of communication via the Internet, many crimes are committed using online media. Undoubtedly, the use of the fast and intelligent Internet has led to crimes that are extremely complex and difficult to identify the perpetrators. This is because the Internet is an invisible (virtual) communication channel, so thieves can simply erase traces without being clearly identified.

The electronic transmission of information, communications and/or transactions may give rise to legal issues, particularly in relation to evidence and electronic legal proceedings.[1] In addition to the benefits of computer technology, there have recently been problems when computer networks used by

[1] Explanation of Paragraph 2 of Law Number 11 Year 2008 on Electronic Information and Transactions

different parties are misused by some parties for competing purposes. This is known as computer crime. In other words, it is more commonly referred to as information and electronic transaction crime, or cybercrime.

Crimes related to information and electronic transactions are currently developing in the areas of the social and communicative elements of these transactions. For example, there are several information and electronic transaction offences that appear to be protected by the freedom of expression on social media. While restrictions are necessary, the freedom of social contact in cyberspace and social media is often criminalised.

Online news sources, colloquially known as digital newspapers, are a type of mass media used to decorate information channels in the modern era. They do this by using electronic systems that are thought to be more effective and efficient in reaching a wider audience for news.[2] One of them that we often hear on social media is the instance of insult and even defamation through social media which is often a heated subject in the midst of society. This offense frequently serves as a tool for others to report acts of defamation that appear to criminalize an individual. Since the beginning of the enactment of the Electronic Information and Transactions Act No. 11 of 2008, there have been many cases that have come to the public's attention, from the Prita Mulia Sari case to the Constitutional Court's judicial review of the Act, to the government's revision and enactment of Act No. 19 of 2016 on Amendments to the Electronic Information and Transactions Act No. 11 of 2008, which is still causing a lot of controversy.[3]

The case involving the alleged insult and/or defamation of human rights defenders Faris Azhar and Fatia Maulidiyanti is currently under discussion. The Coordinating Minister for Maritime Affairs and Investment, Mr Luhut Binsar Panjaitan, had to bring the two to court as suspects for defamation.[4] Ultimately, however, on Monday 1 August 2024, a panel of judges at the East Jakarta District Court acquitted human rights and democracy activists Haris Azhar and Fatia Maulidiyanti of defamation charges against Luhut Binsar Pandjaitan, the Coordinating Minister for Maritime Affairs and Investment. The panel of judges concluded that the videotape of the two, which Haris posted on his YouTube account, did not contain any defamatory content. The lawyers representing Haris and Fatia were also pleased with the decision, seeing it as a guarantee of their clients' rights to freedom of expression and association.[5]

Finally, Law No. 1 Year 2024 on the Second Amendment to Law No. 11 Year 2008 on Electronic Information and Transactions (ITE Law) has been officially signed by President Joko Widodo. The offense of insult or defamation is one of several amendments made to the previous law in this new ITE Law. The provisions regarding the offense of insult or defamation through electronic channels, which were previously contained in Article 27 paragraph (3), have been removed from ITE Law No. 1 Year 2024. The defamation or hoax article previously regulated in Article 27 (3) is now regulated in Article 27A in the context of the general public.

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[2] Aan Aswari et al., "Harmonisasi Hukum Hak Untuk Dilupakan Bagi Koran Digital Terhadap Calon Mahasiswa Di Makassar," *Kanun Jurnal Ilmu Hukum* 20, no. 1 (2018): 39–62, https://doi.org/10.24815/kanun.v20i1.9656.

[3] Nerissa Arviana, Sari Mandiana, and Jusup Jacobus Setyabudhi, "Analisis Kasus Prita Mulyasari Dalam Putusan Peninjiauan Kembali No. 225 Pk/Pid.Sus/2011," *YUSTISIA MERDEKA : Jurnal Ilmiah Hukum* 6, no. 2 (2020): 78–81, https://doi.org/10.33319/yume.v6i2.47.

[4] Arta Melani et al., "ANALYSIS OF LANGUAGE CRIMES IN THE CASE OF " LORD LUHUT " DEFAMATION Linguistik Forensik : Penghinaan Dan Pencemaran Nama Baik Artis Dewi Persik Ole," *Inlit Journal* 1, no. 1 (2023): 1–6.

[5] Dian Dewi Purnamasari, "Aktivis Haris-Fatia Divonis Bebas Dari Tuduhan Pencemaran Nama Baik Luhut," kompas.id, 2024, https://www.kompas.id/baca/polhuk/2024/01/08/aktivis-haris-fatia-divonis-bebas-dalam-kasus-pencemaran-nama-baik-luhut.

Based on the above description, the author is interested in writing this article entitled "Juridical Review of Article 27A of Law No. 1 of 2024 on the Second Amendment to Law No. 11 of 2008 on Electronic Information and Transactions". The description above raises a number of issues that will restrict further discussion of this thesis research, including the following:

1. What is the difference between the offenses of insult and/or defamation found in Law No. 1 of 2024 concerning the Second Amendment to Law No. 11 of 2008 concerning Electronic Information and Transactions and those found in the Criminal Code?
2. What is the status of the legal evaluation of Law No. 1 of 2024's Article 27A, which is the Second Amendment to Law No. 11 of 2008 on Electronic Transactions and Information?

RESEARCH METHODS

This research approach uses a qualitative method,[6] which is an approach that focuses on in-depth observation. The data analysis used in this research is descriptive-analytical, that is, the laws and regulations in force are described thoroughly and systematically, and then the problem solving is analyzed.

Normative legal research methodology is applied.[7] Legal study that emphasizes a library research method is the goal of the normative legal approach. The study of social norms and their relationship to practical implementation is another goal of the normative legal method.[8] It seeks to identify the law in actuality by examining and testing legal features.

DISCUSSION

1. Differences in the Offenses of Defamation and or Libel Contained in the Criminal Code and Those Contained in Law No. 1 of 2024 on the Second Amendment to Law No. 11 of 2008 on Electronic Information and Transactions

Defamation in English is known as slander, calumny, and vilification. According to Oemar Seno Adji, defamation is an act of attacking someone's honour or good name (aanranding of goede naam). One form of defamation is defamation committed in writing by alleging something.[9]

For information, defamation articles are regulated in the old Criminal Code and Law No.1 of 2023 concerning the Criminal Code which will take effect after 3 years from its enactment as follows:

Article 310 of the Criminal Code:

1) Any person who deliberately attacks the honor or good name of another by making verbal allegations about a certain matter with the obvious intention of giving publicity thereto,

[6] Patricia Leavy, *Research Design: Quantitative, Qualitative, Mixed Methods, Arts-Based, and Community-Based Participatory Research Approaches* (New York: The Guilford Press, 2017), https://www.ptonline.com/articles/how-to-get-better-mfi-results.
[7] Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020).
[8] Nitaria Angkasa et al., *Metode Penelitian Hukum*, ed. M. Akib, Maroni, and Hamzah, I (Lampung: CV. Laduny Alifatama, 2019).
[9] Eddy Rifai, *Pertanggungjawaban Pidana Dalam Tindak Pidana Pers* (Lampung: Program Studi Magister Hukum Fakultas Hukum Universitas Lampung, 2010).

shall be guilty of defamation and shall be punished by imprisonment for not more than 9 months or a fine of not more than Rp. 4.5 million.

2) If it is done by means of writings or portraits broadcast, exhibited or affixed in public, it is guilty of defamation, punishable by a maximum imprisonment of 1 year and 4 months or a maximum fine of IDR 4.5 million.

3) Does not constitute libel or defamation, if the act is clearly done in the public interest or in self-defence.

Article 433 of Law No.1 of 2023 on the Criminal Code:

1) Any person who, by means of an accusation, orally attacks the honour or good name of another person with the intention of making it known to the public, shall be guilty of defamation and shall be punished by a maximum term of imprisonment of 9 months or a maximum fine of category II.

2) If the act referred to in paragraph 1 is committed by means of writings or drawings broadcast, exhibited or affixed in a public place, he shall be guilty of defamation and shall be liable to a maximum term of imprisonment of 1 year and 6 months or to a maximum fine of category III.

3) The acts referred to in paragraphs 1 and 2 shall not be punished if committed in the public interest or in self-defence.

In this discussion, however, the author focuses on Article 310 of the Criminal Code, which is still in force. From the provisions of Article 310, it has been formulated that defamation can take the form of:

1) Oral defamation (smaad) - Article 310(1),

2) Defamation in writing (smaadschrift) - Article 310 (2).

A prohibited act is an act committed "with intent" to injure the honour or to attack the honour or good name of another person. Thus, the elements of defamation or insult (according to Article 310 of the Criminal Code) are:

1) Intentionally;

2) Attacking honour or good name;

3) Accusing of an act;

4) Broadcasting the accusation for public knowledge.

If the elements of insult or defamation are only spoken (verbal defamation), the act is classified under Article 310(1) of the Criminal Code. However, if these elements are carried out by means of a letter or a picture that is sent, shown or affixed (defamation by letter), the perpetrator may be prosecuted or subject to legal sanctions under Article 310 (2) of the Criminal Code.[10]

The things that make a person not punishable by the article Defamation or Insult are:

1) The submission of information is intended for the public interest.

[10] Yunan Prasetyo Kurniawan et al., "Penerapan Teori Keadilan Bermartabat Dalam Kasus Korban Pelecehan Seksual Yang Melakukan Pencemaran Nama Di Media Sosial," in *Serina IV Untar 2022 Pemberdayaan Dan Perlindungan Konsumen Di Era Ekonomi Digital* (Universitas Tarumanegara, 2022), 305–14, https://doi.org/https://doi.org/10.24912/pserina.v2i1.18546.

2) For self-defence.

3) To reveal the truth.[11]

This gives the person giving the information, whether orally or in writing, the opportunity to prove that what he is saying is true. If he cannot prove that it is true, it is called defamation or libel.[12] Based on the wording of the above article, it can be argued that defamation can be prosecuted under Article 310(1) of the Criminal Code if the act must be carried out in such a way that the act contains an accusation as if the person defamed (insulted) had committed a certain act with the intention of spreading the accusation (known to many people).

The alleged act need not be a criminal offence (fraud, embezzlement, adultery, etc.). Although prostitution is not a criminal offence, it can be quite embarrassing for the person concerned if it is made public. The accusation must be made orally, because if it is made in writing or by drawing, the act is classified as written defamation and is subject to Article 310(2) of the Criminal Code.[13]

Article 310(1) of the Criminal Code was amended and declared conditionally unconstitutional by Constitutional Court Decision No. 78/PUU-XXI/2023. The decision declares that Article 310(1) of the Penal Code is contrary to the 1945 Constitution and has no binding legal force until it is interpreted: "Whoever deliberately attacks the honour or good name of a person by asserting something orally, with the clear intention of making it known to the public, is guilty of defamation and shall be punished by a maximum of nine months' imprisonment or a maximum fine of three hundred rupiahs".

After the Constitutional Court Decision No. 78/PUU-XXI/2023, we can conclude that Article 310 paragraph (1) of the Criminal Code has the following elements:

1. Whoever;
2. Intentionally;
3. Attacking someone's honour or good name;
4. By alleging something;
5. Orally;
6. With intent to bring it to public knowledge.

Meanwhile, defamation through social media or electronic media is regulated in Article 27A *Jo*. Article 45 paragraph (4) of Law Number 1 of 2024 concerning the Second Amendment to Law No. 11 of 2008 concerning Electronic Information and Transactions. Article 27A of the ITE Law reads: Every person intentionally attacks the honour or good name of another person by alleging a matter, with the intention that it is publicly known in the form of Electronic Information and / or Electronic Documents carried out through an Electronic System.

Article 45 paragraph (4) reads: Every person who intentionally attacks the honour or good name of another person by alleging a matter, with the intention that the matter is known to the public in the form of Electronic Information and / or Electronic Documents carried out through the Electronic

[11] Rizky P.P. Karo Karo, "Analisis Kritis Delik Pencemaran Nama Baik/ Penghinaan (Studi Perbandingan : Indonesia Dan Belanda)," *Jurnal Law Pro Justitia Vol.* 5, no. 2 (2020): 1–23.

[12] Mintowati Mintowati, "Pencemaran Nama Baik: Kajian Linguistik Forensik," *Paramasastra* 3, no. 2 (2016): 27–37, https://doi.org/10.26740/parama.v3i2.1525.

[13] Nindya Dhisa Permata Tami and Nyoman Serikat Putra Jaya, "Studi Komparasi Pengaturan Pencemaran Nama Baik Menurut Hukum Pidana Dan Hukum Perdata Di Indonesia," *Law Reform* 9, no. 1 (2013): 106, https://doi.org/10.14710/lr.v9i1.12437.

System as referred to in Article 27A shall be punished with a maximum imprisonment of 2 (two) years and / or a maximum fine of Rp. 400,000,000.00 (four hundred million rupiah).

In the elucidation of explanation 27A of the ITE Law states that what is meant by "attacking honour or good name is an act that degrades or damages the good name or dignity of another person to the detriment of that person, including defamation and/or slander".

From the explanation of the above article, it is clear that the difference between defamation or insult contained in Article 310 of the Criminal Code and Article 27A jo. Article 45 paragraph (4) of Law No. 1 of 2024 Concerning the Second Amendment of Law No. 11 of 2008 Concerning Electronic Information and Transactions is that in Article 310 of the Criminal Code, the element of defamation is an act that degrades or damages the good name or dignity of another person, which is made known to the public directly by means of.[14] In the ITE Law, the act of defamation is an act that degrades or damages the good name or dignity of another person in the form of electronic information and / or electronic documents carried out through an electronic system.

2. Juridical Analysis of Article 27A of Law Number 1 Year 2024 on the Second Amendment to Law Number 11 Year 2008 on Electronic Information and Transactions

As stated in the Explanation of Law of the Republic of Indonesia No. 1 of 2024 on the Second Amendment of Law No. 11 of 2008 on Information and Electronic Transactions, "The freedom to express thoughts and opinions in good and correct language and the right to obtain information through the use and application of information technology are aimed at promoting the general welfare and intellectual life of the nation. These freedoms and liberties are also important for maintaining a clean, healthy, ethical, productive and equitable digital space and for providing security and legal certainty to users and electronic system operators.

In reality, there are problems in the implementation of Law No. 11 of 2008 on Electronic Information and Transactions, as amended by Law No. 19 of 2016 on Amendments to Law No. 11 of 2008 on Electronic Information and Transactions. These problems include:

a. The emergence of objections from some members of the public to several criminal provisions, such as Article 27(3) and Article 28(2), which have been challenged several times before the Constitutional Court (Judicial Review).

b. The first amendment to Law No. 11/2008 on Electronic Information and Transactions, namely Law No. 19/2016 on the Amendment to Law No. 11/2008 on Electronic Information and Transactions, which is still considered incapable of solving the problem; and

c. The emergence of different understandings of several articles, so that their application can be recognised.[15]

This law further strengthens the norms established in Law No. 11 of 2008 on Electronic Information and Transactions, as amended by Law No. 19 of 2016 on Amendments to Law No. 11 of 2008 on Electronic Information and Transactions. The norms include:

[14] Boby Erika et al., "Analisa Atas Perubahan Undang-Undang Informasi Transaksi Elektronik (ITE)," *Jurnal IKAMAKUM* 3, no. 1 (2023): 335–46.

[15] Abdul Halim Barkatullah, *Hukum Transaksi Elektronik -Sebagai Panduan Dalam Menghadapi Era Digital Bisnis e-Commerce Di Indonesia*, *Nusamedia*, 2017.

a. Electronic evidence as referred to in Article 5;

b. Electronic certification as referred to in Article 13;

c. Electronic Transaction as referred to in Article 17;

d. Prohibited acts, including Article 27, Article 27A, Article 278, Article 28, Article 29, and Article 36 along with the criminal provisions stipulated in Article 45, Article 45A, and Article 45El;

e. The role of the Government as referred to in Article 40; and

f. The authority of civil servant investigators as referred to in Article 43.

Article 3 of the ITE Law outlines the objectives of the government in enacting this law on electronic information and transactions, where the use of information technology and electronic transactions is based on the principles of legal certainty, benefits and prudence, good faith and freedom of choice of technology or technology neutrality. Article 4 also states that the use of information and electronic technology shall be made with the aim of:

a. To educate the nation as part of the global information society;

b. To develop trade and the national economy to improve the welfare of the people;

c. To improve the effectiveness and efficiency of public services;

d. To provide the widest possible opportunity for everyone to develop their ideas and skills in the use and application of information technology in the best and most responsible way;

e. To provide a sense of security, justice and legal certainty for users and organisers of information technology.[16]

The limitation of the author's research is focused on Article 27(3) of the ITE Law. As mentioned above, Article 27(3) of the ITE Law has been challenged several times before the Constitutional Court (Judicial Review). This underlines the need to revise the article. The ITE law has caused many victims in its implementation, especially in relation to insults and defamation. According to the All Can Be Hit website managed by SAFENet to PAKU ITE, the number of ITE cases tends to increase every year.

The material to be analysed is a case of insult and/or defamation allegedly committed by human rights activists Faris Azhar and Fatia Maulidiyanti in 2023. Both were reported as suspects for allegedly defaming Mr Luhut Binsar Panjaitan, the Coordinating Minister for Maritime Affairs and Investment. In fact, the judges of the East Jakarta Court in their decision number 202/Pid.Sus/2023/PN. Jkt Tim on behalf of the defendant Faris Azhar and Decision Number 203/Pid.Sus/2023/PN JKT.TIM on behalf of the defendant Fatia Maulidiyanti, both were acquitted by the panel of judges because it was deemed not legally and convincingly proven that they had insulted and defamed through electronic media through their podcast show.[17]

[16] Aptika Aptika, "Ahli Hukum Dan Akademisi Nilai Revisi UU ITE Persempit Ruang Multitafsir," Aptika Kominfo, 2022, https://aptika.kominfo.go.id/2022/09/ahli-hukum-dan-akademisi-nilai-revisi-uu-ite-persempit-ruang-multitafsir/.

[17] Han Revand Putra, "Beranda Nasional Haris Azhar Dan Fatia Maulidiyanti Didakwa Langgar UU ITE, Direktur PSHK Desak Hakim Gunakan Interpretasi Futuris," Tempo, 2023, https://nasional.tempo.co/read/1715616/haris-azhar-dan-fatia-maulidiyanti-didakwa-langgar-uu-ite-direktur-pshk-desak-hakim-gunakan-interpretasi-futuristik.

In its consideration, the panel of judges cited a Latin saying Cogitationis Poenam Nemo Patitur, which means that no one should be punished for what he thinks, which is in line with philosopher Rocky Gerung's statement that freedom of thought is absolute and freedom of expression cannot be restricted, and other considerations that the Unitary State of the Republic of Indonesia as a democratic state upholds freedom of thought, opinion and expression as a fundamental right of every human being as stated in Article 28 of the 1945 Constitution.

The first provision on defamation in Article 27(3) of Law No. 11 of 2008 reads as follows: “Any person who intentionally and without right distributes and/or transmits and/or makes available electronic information and/or electronic documents containing insults and/or defamation”. The criminal penalty contained in Article 45 of Law No. 11 of 2008 reads: “Any person who fulfils the elements referred to in Article 27(1), (2), (3) or (4) shall be punished with imprisonment for 6 (six) years and/or a fine of up to Rp. 1,000,000,000.00 (one billion rupiah)”.

In addition, the first amendment of Law No. 19 of 2016 on Amendments to Law No. I1 of 2oo8 on Information and Electronic Transactions, the defamation article is still regulated in Article 27 paragraph (3) has not changed, it is only stated in Article 1 point 4: "The provisions of Article 27 shall remain with modifications to the explanation of paragraph (1), paragraph (3) and paragraph (4), so that the explanation of Article 27 shall be as provided in the explanation of article by article of this Law".

In the explanatory notes to Law No. 19 of 2016 amending Law No. I1 of 2008 on Electronic Information and Transactions, Article 27(3) states: "The provisions in this paragraph refer to the provisions on defamation and/or libel set forth in the Criminal Code (KUHP).

Meanwhile, the criminal provisions previously stipulated in Article 45 paragraph (3) are changed to Article 45A paragraph (3) which reads: ‘Every person who intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain insults and/or defamation as referred to in Article 27 paragraph (3) shall be punished with a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 750,000,000.00 (seven hundred fifty million rupiah)’.

Then the second amendment contained in Law No. 1 of 2024 on the Second Amendment to Law No. 11 of 2008 on Electronic Information and Transactions, Article 27A, which reads: “Any person who intentionally attacks the honour or good name of another person by alleging a matter with the intention that it becomes public knowledge in the form of electronic information and/or electronic documents carried out through an electronic system”.

The criminal provisions relating to Article 27A are regulated in Article 45(4) of Law No. 1 of 2024 on the Second Amendment to Law No. 11 of 2008 on Electronic Information and Transactions, which reads as follows Any person who intentionally attacks the honour or good name of another person by alleging a matter with the intention that the matter be known to the public in the form of electronic information and/or electronic documents made through the electronic system referred to in Article 27A shall be punished with a maximum of 2 (two) years imprisonment and/or a maximum fine of Rp. 400,000,000.00 (four hundred million rupiah).

The first element of the article on defamation in Article 27(3) of Law No. 11/2008 on Electronic Information and Transactions only mentions the phrase "insulting content and/or defamation". This is considered to be open to multiple interpretations and appears to be ambiguous, and therefore seems to restrict freedom of expression in the communication of facts or opinions through electronic media. Furthermore, the second amendment to Article 27(3) of Law No. 19/2016 amending Law No. 11/2018 on Electronic Information and Transactions states that the article on defamation refers to the provisions on defamation and/or libel regulated in the Criminal Code (KUHP), namely Article 310 of

the Criminal Code. This is still subject to multiple interpretations, as Article 310 of the Criminal Code itself was corrected with the birth of the Constitutional Court Decision No. 78/PUU-XXI/2023 on Article 310 of the Criminal Code.

It is only in Article 27A of Law No. 1 of 2024 on the Second Amendment to Law No. 11 of 2008 on Electronic Information and Transactions that the elements of the article are clarified, so that there are no multiple interpretations.

The elements of Article 27A of Act No. 1 of 2024 on the Second Amendment to Act No. 11 of 2008 on Electronic Information and Transactions are as follows

a. Any person
b. Intentionally
c. Attacking the honour or good name of another person
d. By way of alleging a matter
e. With the intention of making the matter public
f. In the form of electronic information and/or electronic documents made through an electronic system.

The basic thing we can see in the application of this article is that the term 'defamation' is no longer in this article, the existing act is mentioned as attacking the honour or good name of another person. Regarding the criminal punishment for the act of defamation has also been changed in Law No. 11 of 2008, which initially stated a maximum of 6 years imprisonment and a maximum fine of Rp 1,000,000,000. 00 (one billion rupiah), then in Law No. 19 of 2016 to a maximum of 4 years imprisonment and a maximum fine of Rp. 750,000,000.00 (seven hundred and fifty million rupiah), and finally in Law No. 1 of 2024 to a maximum of 2 years imprisonment and a maximum fine of Rp. 400,000,000.00 (four hundred million rupiah).

In the application of Article 45(4) of Law No. 1 of 2024 on the Second Amendment of Law No. 11 of 2008 on Electronic Information and Transactions, there are also exceptions, which are regulated in Article 45(7), which reads as follows: "The act referred to in paragraph (4) shall not be punished if: a. it is committed in the public interest; or b. it is committed in self-defence".

The interesting thing about Law No. 1 Year 2024 on the Second Amendment to Law No. 11 Year 2008 on Electronic Information and Transactions is that, in order to prevent the use of this defamation article, it is regulated in Article 45 paragraph (6), which reads as follows: "If the act referred to in paragraph (4) cannot be proven to be true and contrary to what is known, after having been given the opportunity to prove it, defamation shall be punished by imprisonment for 4 (four) years and/or a maximum fine of Rp750,000,000 (seven hundred and fifty million rupiah)".

We can conclude something new in article 45 paragraph (6) on defamation. If it cannot be proven and it is contrary to what is known by the public, slander can be punished with 4 years imprisonment. This article is intended so that people do not report arbitrarily, if it is not proven and the reported party does not accept it, then this article can be used. This article has a higher fine than defamation, with a maximum fine of Rp750 million. The existence of Article 45(6) on defamation will make someone who wants to report defamation to be more careful. If it cannot be proven, it will affect the reporter, whose criminal penalties and fines are doubled.

CONCLUSION

The difference between the offences of insult and/or defamation contained in the Criminal Code and those contained in Law No. 1 of 2024 on the Second Amendment to Law No. 11 of 2008 on Information and Electronic Transactions is that the offences of insult and/or defamation contained in the Criminal Code are regulated in Article 310, while the ITE Law is regulated in Article 27A jo. Article 45 paragraph (4) of Law No. 1 of 2024 on the Second Amendment of Law No. 11 of 2008 on Electronic Information and Transactions, in the event that the act is between defamation or insult contained in Article 310 of the Criminal Code and Article 27A jo. Article 45(4) of Act No. 1 of 2024 on the Second Amendment to Act No. 11 of 2008 Concerning Electronic Information and Transactions is that in Article 310 of the Criminal Code that the element of defamation of honour or good name is an act that degrades or damages the good name or dignity of another person that is carried out directly by means of oral or written for public knowledge, while in the ITE Law the act of defamation of honour or good name is an act that degrades or damages the good name or dignity of another person in the form of electronic information and / or electronic documents carried out through an electronic system.

Juridical review of Article 27A of Law No. 1 of 2024 on the Second Amendment to Law No. 11 of 2008 on Electronic Information and Transactions reads: "Any person who intentionally attacks the honour or good name of another person by alleging a matter with the intention that it becomes publicly known in the form of electronic information and / or electronic documents carried out through an electronic system", the criminal penalty in this article is regulated in Article 45 paragraph (4) that: Any person who intentionally attacks the honour or good name of another person by alleging a matter with the intention that it becomes publicly known in the form of electronic information and/or electronic documents carried out through the electronic system referred to in Article 27A shall be punished with a maximum of 2 (two) years imprisonment and/or a maximum fine of Rp.400,000,000.00 (four hundred million rupiah). Another thing related to Article 27A Jo Article 45 is regulated in Article 45 paragraph (6) which reads that: If the act referred to in paragraph (4) cannot be proved to be true and contrary to what is known, after having been given the opportunity to prove it, the offence of defamation shall be punished with imprisonment for 4 (four) years and/or a maximum fine of Rp.750,000,000 (seven hundred and fifty million rupiah).

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