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# The Role of the National Police in Prioritizing Restorative Justice in Resolving Insult and Defamation Cases Based on Circular Letter from the Chief of Police Number: SE/2/11/2021

(Case Study at the Deli Serdang Police Criminal Investigation Unit in Lubuk Pakam)

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## Abstract

The purpose of this paper is to study the concept of restorative justice in the Police of the Republic of Indonesia (Polri) and also to observe how the Police react, interact as well as their techniques in responding to complaints from the general public. In this paper, a case study is carried out by conducting a study of the case LP/B/880/I/2002/PKT/North Sumatra Police Date 17 May 2022. The case approach is conducted by studying the views and doctrines in legal science, which will find ideas that can give rise to legal understandings, legal concepts and legal principles that are relevant to the issue faced.

**Keywords:** restorative justice, insult case, defamation.

## Introduction

Repressive law enforcement places the Police of the Republic of Indonesia (Polri) as a sub-system of the criminal justice system. In essence, this is the goal of implementing the criminal justice system as mandated by the Criminal Procedure Code. In carrying out its duties in the field of criminal law enforcement, the National Police basically stands between two interests, namely interests that are aligned with the aim of seeking substantive truth and protecting human rights.<sup>1</sup> This goal is the big and main goal of the criminal justice system process. Carrying out activities to search for material truth, even though it ends in a court hearing, should start with an examination at the investigative level by the police sub-system, because these sub-police system is the gateway that can determine whether an alleged criminal act can be held accountable or not for the perpetrator. those examined can be identified as criminals.<sup>2</sup>

In carrying out its duties in the field of criminal law enforcement, the National Police basically stands between two interests, namely interests that are in line with social objectives and

<sup>1</sup>Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia.

<sup>2</sup>Article 285 of the Criminal Procedure Code (KUHAP).



fulfilling legal objectives, namely the creation of legal certainty. Law in the context of public order requires that law is not only a means of achieving certainty but must pay attention to order in society. The implementation of legal certainty and order in the midst of society carried out by the National Police allows conflicts to occur, especially in controversial cases. On the other hand, on a large scale, conflicts with an economic background give rise to conflicts between mining and/or plantation companies and local communities, cultural clashes, fights between residents. village and land disputes and many other conflicts that occurred so that the National Police took steps not to implement legal provisions because implementing them would actually cause disorder in society. The action taken by the National Police is the application of the principles of restorative justice.

Restorative justice is an alternative form of dispute resolution outside of court. According to Barda Nawawi Arief, it is defined as penal mediation. This mediation is often called "mediation in criminal cases" or "mediation in penal matters" which in Dutch terms is called "Starfbemiddeling".<sup>3</sup> Penal mediation is used to bring together the perpetrator of a crime and the victim, so this penal mediation is often also known as "victim offender mediation" or "offender victim arrangement".<sup>4</sup> The practice of penal mediation emerged as an alternative idea in solving problems in the criminal justice system. The restorative justice discourse seeks to accommodate the interests of victims and perpetrators of criminal acts, as well as finding better solutions for both parties, overcoming various problems in the criminal justice system. Penal mediation, which is part of the concept of restorative justice, places the criminal justice system in the position of mediator.

In the Criminal Procedure Code, investigators are given the authority to stop an investigation on the grounds that it is not a criminal act, there is insufficient evidence as a criminal act, and for the sake of the law. However, the Criminal Procedure Code does not give investigators the authority to resolve cases outside the court session or to set aside cases for certain considerations.

The Criminal Procedure Code regulates the withdrawal of reports or complaints only in certain cases, namely those that constitute a complaint offense. So that formal juridical investigators, except for offense complaints, must forward cases to the Public Prosecutor which, based on the investigation, are proven to be criminal acts. Meanwhile, in the development of criminality, the parties prefer to settle cases outside of court, even in cases that are classified as pure offenses/not complaint offenses.

On February 19 2021, the National Police Chief issued Circular Letter (SE) Number: SE/2/11/2021 concerning Ethical Cultural Awareness to Create a Clean, Healthy and Productive Indonesian Digital Space. The SE was issued in response to the President's request for the National Police to be more selective in handling cases of alleged violations of Law Number 11

<sup>3</sup>Barda Nawawi Arief, *Penal Mediation for Settlement of Cases Outside of Court*, Semarang: Magister Library, 2010, pages 1-2.

<sup>4</sup>Yuarsi Susi Eja, *Initiating a Safe Place for Women*, Yogyakarta: Center for Population and Policy Studies, Gadjah Mada University, 2002, page 87.



of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 (UU ITE).

This SE was then strengthened by the National Police Chief's Telegram Letter Number: ST/339/II/RES.1.1.1./2021 concerning Guidelines for Handling Cyber Crime Cases using the ITE Law which was issued on February 22 2021. Through this telegram the National Police Chief classified cases. with the ITE Law which can be resolved using Restorative Justice, namely defamation, slander or insult. The handling is guided by Article 27 paragraph (3) of the ITE Law and Article 207 of the Criminal Code.

One example of a case of defamation or insult via online social media is the case reported by Ngatinem with police report number: LP/B/880/I/2002/PKT/Polda North Sumatra dated 17 May 2022 for acts of defamation or insult via online social media carried out by Ernawati as regulated in Article 27 paragraph (3) in conjunction with Article 45 paragraph (3) Law no. 19 of 2016 concerning ITE, where in the case investigation process a Restorative Justice approach was carried out through reconciliation between the parties and the reporter withdrew the report and the investigation was terminated with a decree number: 8.Tap/471.b/IX/2022/ Reskrim on the 18th September 2022.

### Restorative Justice Theory

The legal basis for Restorative Justice is found in Article 24 paragraph (1) of the Covenant on Civil and Political Rights which stipulates that every child has the right to obtain the right to protective measures, because their status as a minor should be used as a legal basis for Judges to terminate child matters. Such a decision is valid because the judge is given the freedom in Article 28 paragraph (1) of Law Number 4 of 2004 to explore, follow and understand the legal values and sense of justice that exist in society. Beijing Rules Point 11 stipulates that the transfer of formal legal processes to non-formal resolution channels through the application of a restorative justice model in handling children's cases can be carried out by a judge.

*Restorative justice* can be used as a reference for judges to resolve children's cases. Beijing rules provide maximum protection for children's future because they contain the following principles:

- a) The best interests of the child are the priority.
- b) Criminal justice should be avoided as much as possible.
- c) All forms of minimal intervention are carried out.
- d) Police, prosecutors, judges and other law enforcement officials use policy/discretion as much as possible in handling children's cases.
- e) Criminalization and punishment of children should be avoided unless serious harm occurs to the child or other people.
- f) Legal assistance must be provided immediately at no cost.

According to Rika Saraswati, in principle, restorative justice recognizes stakeholders, namely victims, perpetrators and communities, in determining the resolution of children's cases. Through restorative justice, there is an effort to bring together the victim and the perpetrator in order to seek recovery for the victim. On the other hand, the perpetrator is burdened with the



obligation to be responsible for his actions to the victim and the community and is responsible for admitting his crime and, if possible, redressing the victim's suffering.

This restorative justice approach is in accordance with the provisions referred to in Article 40 paragraph (1) of the CRC which stipulates that: States parties recognize the right of every child who is declared a defendant or is recognized as having violated criminal law to be treated in a manner consistent with increasing feelings of respect and self-esteem for children, which reinforces children's respect for human rights and freedoms from other people and which takes into account the age of the child and the desire to increase the child's reintegration and return the child to a constructive role in society.<sup>5</sup>

*Restorative justice* is a thought that responds to the development of the criminal justice system by focusing on the need for community involvement and victims who feel marginalized by the mechanisms that work in the current criminal justice system. Apart from that, restorative justice is also a framework of thinking that can be used in responding to criminal acts by law enforcers. Handling criminal cases using a restorative justice approach offers a different view and approach in understanding and handling a criminal act. In the view of restorative justice, the meaning of criminal acts is basically the same as the view of criminal law in general, namely attacks on individuals and society and social relations. However, in the restorative justice approach, the main victim of a criminal act is not the State, as in the current criminal justice system. Therefore, crime creates an obligation to repair damaged relationships resulting from a criminal act.

Meanwhile, justice is interpreted as a process of finding solutions to problems that occur in a criminal case where the involvement of victims, the community and perpetrators is important in efforts to repair, reconcile and ensure the sustainability of these repair efforts. Without ignoring the mechanisms that work in the formal legal system, settlement mechanisms through deliberative institutions also work in society. In various principles and models of restorative justice approaches, the dialogue process between the perpetrator and the victim is the basic moral and most important part of implementing justice. Direct dialogue between the perpetrator and the victim allows the victim to express what he feels, express hopes for the fulfillment of his rights and desires from a resolution of the criminal case.<sup>6</sup>

Through dialogue, it is hoped that the perpetrator will be inspired to correct himself, realize his mistakes and accept responsibility as a consequence of a criminal act committed with full awareness. From this dialogue process, the community can also participate in realizing the results of the agreement and monitoring its implementation. Therefore, basically restorative justice is also known as resolving cases through mediation (penal mediation).

Penal mediation in criminal law has a noble aim in resolving criminal cases that occur in society. Conceptually, Stefanie Tränkle said in Barda Nawawi Arief: The penal mediation that was developed started from the following ideas and working principles:

<sup>5</sup>Rika Saraswati, *Child Protection Law in Indonesia*, Bandung: Citra Aditya Bakti, 2009, page 18.

<sup>6</sup>Hj. DS. Dewi and Fatahillah A. Syukur, *Penal Mediation: Implementation of Restorative Justice in Indonesian Children's Courts*, Bandung: Indi Publishing, 2011, pages 38-41.



- (1) Conflict handling (Conflict Handling/Conflict bearbeitung): The mediator's task is to make the parties forget about the legal framework and encourage them to be involved in the communication process. This is based on the idea that crime has given rise to interpersonal conflict. That conflict is what the mediation process addresses.
- (2) Process oriented (Process Orientation/Prozessorientierung): Penal mediation is more oriented towards the quality of the process rather than the results, namely: making the perpetrator of the crime aware of his mistake, solving conflict needs, calming the victim from fear, etc.
- (3) Informal Process (Informal Proceeding/Informalität): Penal mediation is an informal, non-bureaucratic process, avoiding strict legal procedures.
- (4) There is active and autonomous participation of the parties (Active and autonomous participation/Parteiautonomie/Subjektivierung): The parties (perpetrator and victim) are not seen as objects of criminal law procedures, but rather as subjects who have personal responsibility and the ability to act. They are expected to act according to their own will.<sup>7</sup>

### Law Enforcement Theory

Law enforcement is the process of making efforts to enforce or function real legal norms as guidelines for behavior in traffic or legal relations in social and state life. Viewed from the perspective of the subject, law enforcement can be carried out by a wide range of subjects and can also be interpreted as law enforcement efforts involving all subjects. Law enforcement is an effort to make ideas about justice, legal certainty and social benefits a reality.<sup>8</sup>

Criminal law enforcement is an effort to realize ideas about justice in criminal law in legal certainty and social benefits into legal reality in legal certainty and social benefits into legal reality in every legal relationship.<sup>9</sup> According to Andi Hamzah, the term law enforcement is often misinterpreted as if it only operates in the field of criminal law or in the field of repression. The term law enforcement here includes both repressive and preventive. So it has more or less the same meaning as the Dutch term rechtshandhaving. In contrast to the term law enforcement, which is now given a repressive meaning, while preventive means providing information, persuasion and guidance is called law compliance, which means fulfilling and structuring the law. Therefore, it is more appropriate to use the term legal handling or legal control.<sup>10</sup>

According to Satjipto Rahardjo, law enforcement is an effort to make ideas and concepts become reality. Meanwhile, according to Soerjono Soekanto, conceptually, the essence of the meaning of law enforcement lies in the activity of harmonizing the relationship between values described in solid rules and final attitudes to create, maintain and maintain peaceful social life.<sup>11</sup> Criminal law enforcement consists of two core stages, namely:

- 1) Criminal Law Enforcement in Abstracto

<sup>7</sup>Barda Nawawi Arief, Penal Mediation ...Op. cit, page 21.

<sup>8</sup>Satjipto Rahardjo, Legal Studies, Bandung: Sinar Baru, 2000, page 15.

<sup>9</sup>Peter Mahmud, Marzuki, Introduction to Legal Studies, Jakarta: Kencana Prenada, 2012, page 15.

<sup>10</sup>Andi Hamzah, Important Principles in Criminal Procedure Law, Surabaya: FH University, 2005, page 2.

<sup>11</sup>Soerjono Soekanto, Factors that Influence Law Enforcement. Jakarta: Rajawali, 2014, page 24.



Enforcement of criminal law in abstracto is the creation/formulation stage (Formulation Stage) which ends when a statutory regulation is promulgated. The legislation/formulation stage continues with the application stage and execution stage. In the statutory provisions, three main problems of criminal law must be known, namely: Criminal acts (strafbaar feit/criminal act/actus reus), Mistakes (schuld/guilt/mens rea), Crimes (straf/punishment/poena)

## 2) Criminal Law Enforcement in Concreto

Enforcement of criminal law in concreto consists of: The implementation/application (investigation) stage and the stage of implementing the law by law enforcement officials, which can be called the judicial stage and the execution stage. Enforcement of criminal law in concreto is essentially a process of imposing a crime or a criminal process. The criminalization process itself is a process of enforcing criminal law in order to uphold truth and justice. These two stages are aspects or crucial points in the handling and prosecution of a criminal case because criminal law enforcement will be characterized as follows:

- a) Problems of dirty play (bribery and other disgraceful acts).
- b) The problem of optimizing scientific approaches (scientific culture/approach) in law enforcement. Enforcement of criminal law at the in concreto stage (application stage) is also still influenced by the habits/culture of dirty games and shortcuts carried out by law enforcement officials who are corrupt and collusive with perpetrators of criminal acts.

According to Barda Nawawi Arief, the term foul play is more relevant than judicial mafia, because it only gives the impression of the forms of disgraceful acts that occur during the court process, even though there are quite a few complaints from the public that they are the object of extortion and other disgraceful acts/dirty play before the case process is transferred. to court. Law enforcement is more or less an effort made to make the law, both in the narrow formal sense and the broad material sense, a guideline for behavior in every legal act, both by the legal subjects concerned and by law enforcement officials who are officially given the task and authority by law to guarantee the functioning of legal norms that apply in social and state life.<sup>12</sup>The problem of law enforcement is a complex problem due to a number of influencing factors such as:<sup>13</sup>

- a) Contents of statutory regulations;
- b) Interest groups in society;
- c) Legal culture; as well as
- d) Morality of law enforcers involved in the judicial process.

To enforce criminal law, it must go through several stages which are seen as an effort or rational process that is deliberately planned to achieve a certain goal which is a chain of activities that does not include values and ends in crime and punishment. These stages are:<sup>14</sup>

- (1) The Formulation Stage is the stage of enforcing criminal law in abstracto by the law-making body which carries out the activity of selecting values that are appropriate to current and

<sup>12</sup>Abidin, Farid Zainal. Principles of Criminal Law.. Jakarta: Sinar graphic. 2007. Page 35.

<sup>13</sup>Satjipto Rahardjo. Op. Cit. page 20.

<sup>14</sup>Andi Hamzah, Criminal Law Enforcement Problems, Jakarta: Sinar Graphics, 2008, page 21



future circumstances and situations, then formulating them in the form of the best legal regulations in the sense of fulfilling the requirements of justice. and usability. This stage is called the legislative policy stage.

- (2) Application Stage Is the stage of criminal law enforcement (criminal law enforcement stage) by law enforcement officials, starting from the police to the courts or examination before the court. Thus, law enforcement officers are tasked with enforcing and implementing the laws and regulations that have been made by lawmakers. In carrying out this task, law enforcement officers must adhere firmly to the values of justice and efficiency. This stage is called the judicial stage.
- (3) The Execution Stage is the stage of concrete law enforcement (implementation of the law) by criminal implementing officials. At this stage, criminal implementing law enforcement officials are tasked with enforcing the laws and regulations that have been made by the law-forming body through the implementation of criminal penalties determined by the court. Thus, the process of implementing the sentence has been determined in the court decision. In carrying out their duties, criminal officers must be guided by the criminal laws and regulations that have been made by the legislators and the values of use and justice.

### Pen Overview good name warning

The use of communication technology is an unavoidable need in the global era, characterized by various conveniences that people can choose to access various useful information. The influence on social behavior occurs because of the transition from the industrialization era to the information era which then gave birth to the information society. Rogers, as quoted by Amar Ahmad, stated that the information society is a society where the majority of the workforce are workers in the information sector, and information has become an element that is considered the most important in life.<sup>15</sup>

It's just that advances in information technology not only have a good impact on human life, because of the principle of freedom (liberalism) that lies behind the use of information technology. Therefore, even though users are given an agreement (terms and conditions) when accessing and using information technology such as YouTube, Instagram and Facebook, there is no application that can detect impolite or insulting statements written by a user and carry out preventive measures before sharing one's statement, so that someone can easily spread it and provoke someone, defame someone or commit other despicable actions.

The definition of defamation in English is often referred to as Defamation and in other countries, namely Slander, Calumny and Vilification, these three terms are used for verbal defamation. And written defamation is often called libel. Meanwhile, according to Black's Law Dictionary, defamation is an act that endangers another person's reputation by making false

<sup>15</sup>Amar Ahmad, Development of Communication and Information Technology: Roots of Revolution and Various Standards, Journal of Tabligh Da'wah, Vol. 13, no. 1, June 2012, page. 138



statements towards a third party. In civil law countries, criminal acts of defamation are often included in the category of criminal law crimes.<sup>16</sup>

The criminal act of defamation is a criminal act that attacks a good name, in the form of words, sentences and media that attack the honor of another person and can reduce the self-esteem and dignity of the defamed party. Or accusations against someone that they have done something and are spread to the wider community. 6 Disorders or violations that lead to someone's reputation in the form of false statements, slander, defamation, ridicule and insults. The criminal act of defamation has elements, namely the element of intent, the element of attacking honor and good name, and the element of being public. Meanwhile, in Indonesia there are several criminal acts that are categorized as criminal acts of defamation, namely:<sup>17</sup>

- a) accuse something verbally (article 310 paragraph 1 of the Criminal Code)
- b) accusing someone of something with writing or images that are broadcast (article 310 of the Criminal Code)
- c) slander (article 311 of the Criminal Code and article 36 paragraph 5 of Law No. 32 of 2002 concerning broadcasting)
- d) defamation complaint (article 317 of the Criminal Code)
- e) Distributing and/or transmitting and/or making accessible electronic information and/or electronic documents containing insulting and/or defamatory content (article 27 paragraph 3 of the ITE Law)

The regulation of criminal acts in Indonesia is due to the principle of legality, commonly known in Latin as "Nullum delictum nulla poena sine praevia lege" (there is no crime without prior regulations). This principle of legality first took form as a law in the American constitution of 1776. This principle was then included in Article 4 of the French Penal Code which was drafted by Napoleon Bonaparte. Article 1 paragraph (1) Wetboek van Strafrecht in the Netherlands which firmly states, "Geen feit is strafbaar dan uit kraft van eenedaaraan vorafgegane wetelijke strafbepaling". Furthermore, this principle is contained in Article 1 paragraph (1) of the Indonesian Criminal Code.

In the law on broadcasting, the criminal act of defamation is explained in article 36 paragraph 5, which contains the following, prohibited broadcast content, namely containing slander, inciting or misleading or fake news, featuring elements of violence, obscenity, gambling, narcotics abuse and illegal drugs or conflict between ethnicities, religions, races and between groups. Meanwhile, in the ITE law, the criminal act of defamation is regulated in article 27 paragraph (3).

## Method

<sup>16</sup>Ari Wibowo, Criminalization Policy for Defamation Offenses in Indonesia, *Pandecta Journal*, Vol. 7, no. 1, 2012, page. 3.

<sup>17</sup>Shah Rangga Wira Prastya, Juridical Review Regarding Criminal Sanctions for Criminal Defamation Through Social Media, *E-Journal Kertha Wicara Faculty of Law, Udayana University, Faculty of Law*, Vol. 05, No. 02, June 2015, page.2.



The type of research carried out in preparing this thesis is empirical juridical research because apart from studying the laws and regulations relating to the process of reporting public complaints in the Police and also to observe how the Police react, interact as well as their techniques in responding to complaints from the general public.

The approach used in this research is the statutory approach (statute approach) and the case approach (case approach) in analyzing cases (case study). The case approach is carried out by conducting a study of the case LP/B/880/I/2002/PKT/North Sumatra Police Date 17 May 2022. The conceptual approach is carried out by studying the views and doctrines in legal science, which will find ideas that can give rise to legal understandings, legal concepts and legal principles that are relevant to the issue faced.

Primary legal materials consist of laws and government regulations, court decisions that have permanent legal force and other related regulations such as the Criminal Code. Secondary legal materials are materials that provide explanations of primary legal materials such as research, proceedings related to research. Tertiary legal materials, namely materials that provide instructions and explanations for primary legal materials and secondary materials such as dictionaries, encyclopedias (Wikipedia) and tables relating to the object of research.

### **The Role of the National Police in Prioritizing Restorative Justice in Resolving Insult and Defamation Cases Based on Circular Letter from the Chief of Police Number: SE/2/11/2021**

One of the cases that often occurs recently in our environment is defamation. This event can happen to anyone, anytime and anywhere. Public figures, officials and ordinary people can also become victims. In this case, advances and technological sophistication play a big role in supporting defamation cases. Various social networking applications are available today such as Facebook and Twitter, Instagram, WhatsApp, and so on which are very easy to access by users.<sup>18</sup>

Defamation must have two elements, namely accusations that attack the honor or good name of another person and accusations of committing a certain act. The legal provisions for insulting are based on the offense of complaint, namely that an insult case occurs if a party makes a complaint, meaning that people who are harmed by press reports who feel they have defamed their good name and feel insulted can complain to the legal authorities so that the case can be investigated. Cases of insulting the President, Vice President and State agencies are considered ordinary offenses, meaning that legal officials can take the initiative to carry out investigations and investigations without having to make a complaint from the injured party.<sup>19</sup>

Law no. 11 of 2008 concerning Information and Technology and Electronics (hereinafter referred to as the ITE Law) is a legal product that regulates problems in cyberspace or the internet. Several articles in the ITE Law that are prohibited from being violated when using the internet

<sup>18</sup>The definition of Users itself, namely users, is usually addressed to users of a system who are generally humans, for example computer users.

<sup>19</sup>Ade Ridwan Aryadi, <http://aderidwanaryadi.blogspot.co.id>. accessed on August 20, 2022



or actions that are prohibited from being carried out when accessing the internet are Article 27, Article 28, Article 29.

The Constitutional Court (MK) when giving a decision on the application for judicial review of Article 27 paragraph 3 of Law No. 11 of 2008 concerning Information and Electronic Transactions, in its legal considerations stated: literally that the elements in public, known to the public, or broadcast in Article 310 paragraph ( 2) The Criminal Code cannot be applied in cyberspace, so it requires extensive elements, namely distributing and/or transmitting, and/or making accessible electronic information and/or electronic documents that contain insulting and/or defamatory content. In essence, the Constitutional Court stated that certain articles in the Criminal Code were deemed inadequate to address legal issues that arise as a result of activities in cyberspace.

### Law on Insults and Defamation through Social Media

The development of information and communication technology has both positive and negative influences, like a double-edged sword. The use of information and communication technology on the one hand contributes to improving human welfare and civilization. In line with this, criminal law must follow suit, otherwise the development and progress of information technology, which has factually influenced changes in human life and civilization activities, will have a very bad impact.

In the criminal act of defamation of course there are actions included in it which are categorized as follows:

#### 1. Insults in Article 310 of the Criminal Code

In this Article 310 of the Criminal Code formulates as follows:

- (1) *Whoever intentionally attacks someone's honor or good name by accusing him of an act,*
- (2) *"Which means it is clear so that the matter becomes known to the public," is threatened for defamation with a maximum imprisonment of nine months or a maximum fine of four thousand five hundred rupiah.*
- (3) *If this is done through writing or images that are broadcast, displayed or posted in public, then the person guilty of written defamation is threatened with imprisonment for a maximum of one year and four months or a fine of four thousand five hundred rupiah.*

An act of attack is an act of saying paragraph (1) or writing paragraph (2) which contains accusations of committing certain acts aimed at a person's good name and honor which can cause the accused person's sense of self-esteem or dignity to be defamed or humiliated or humiliated. The meaning of the word insult here requires further observation, so the meaning of the word insult is that insult is not insulting or insulting with a letter.<sup>20</sup>

Thus, the elements of Defamation or insult (according to Article 310 of the Criminal Code) are:<sup>21</sup>

<sup>20</sup>Leden Marpaung, SH Crime Against the Honor of Sinar Graphics 2010, page 33

<sup>21</sup>Reydi Vridell Awawangi, Defamation in the Criminal Code and according to Law no. 11 of 2008 concerning Information and Electronic Transactions, Lex Crimen Journal Vol. III/No. 4/Aug-Nov/2014 , page 114



- 1) deliberately;
- 2) attack honor or good name;
- 3) accuse of committing an act;
- 4) broadcasting accusations so that they become public knowledge.

If the elements of insult or defamation are only uttered (verbal insults), then the act falls under Article 1 310 paragraph (1) of the Criminal Code. However, if these elements are carried out with letters or pictures that are broadcast, displayed or posted (blasphemy with letters), then the perpetrator can be charged or subject to legal sanctions under Article 310 paragraph (2) of the Criminal Code.

The things that make a person cannot be punished under the article of Defamation or Insult are:<sup>22</sup>

- 1) Submission of information is intended for the public interest.
- 2) To defend yourself.
- 3) To reveal the truth

In this way, people who convey information, verbally or in writing, are given the opportunity to prove that their intentions are correct. If you can't prove the truth, that's called blasphemy or slander.

## 2. Slander

Slander is formulated in Article 311 of the Criminal Code in full as follows:

*(1) If the person who commits the crime of defamation or written defamation is allowed to prove that what is alleged is true, does not prove it, and the accusation is made contrary to what is known, then he or she is threatened with defamation with a maximum prison sentence of four years.*

The elements of defamation, namely:

- 1) Someone commits the crime of insulting (smaad) or insulting with writing
- 2) If the person who committed the crime is "given the opportunity to prove the truth of the accusation", and if
- 3) After being given this opportunity, he was unable to prove the truth of his accusation, and
- 4) Making the accusation intentionally even though he knows it is not true

One of the elements of the offense of slander (later delict) is that the person who commits the crime of insulting or insulting with the writing is given the opportunity to prove the truth of the accusation he made. Article 312 of the Criminal Code as mentioned above, namely in the court room. However, it needs to be understood that the judge's power to give the perpetrator/accuser the opportunity to prove the truth of his accusation is limited. This limitation of power has been formulated in Article 313 of the Criminal Code, which reads: Evidence as intended in Article 312 is not permitted, if the alleged act can only be prosecuted because of a person's complaint and the complaint is not advanced.

## 3. Light insult

Light insults are formulated in Article 315, namely:

<sup>22</sup>Ibid, Page 115



*Every intentional insult that is not in the nature of defamation or written defamation is committed against a person, either in public orally or in writing, or in front of the person himself orally or in action, or in a letter sent or received to him or her, is punishable by insult light with a maximum imprisonment of four months and two weeks or a fine of four thousand five hundred rupiah.*<sup>23</sup>

Article 315 of the Criminal Code, the elements of light insult are:<sup>24</sup>

- 1) any intentional insult;
- 2) the insult must not be insulting or insulting with a letter (smaad or smaadschrift);
- 3) Judging from the way the act is carried out, namely on condition that one or all of these types of acts are carried out:
  - a. in public places orally or in writing;
  - b. in front of or in the presence of a person who is insulted verbally or by actions;
  - c. in writing sent or delivered to the offended person

In order for someone to be charged under Article 315 of the Criminal Code, the insulting words expressed verbally or in writing must be carried out in a public place, and the person being insulted does not need to be in that place. However, if the insult was not committed in a public place, then in order to be prosecuted under this article the following elements must be met:

- 1) by word of mouth or deed, meaning that the person being insulted must be in front of him (see and hear for himself);
  - 2) with a letter or writing, meaning the letter must be addressed (sent) to the person insulted.
4. Defamation Complaint

What is meant by defamation by complaint as regulated in Article 317 of the Criminal Code is submitting a particular complaint to the authorities and this complaint contains an insult. A slanderous complaint is formulated in Article 317 which is as follows: Whoever deliberately submits a false complaint or notification to the authorities, either in writing or in writing, about a person so that his honor or good name is attacked, is threatened for making a slanderous complaint, with a maximum imprisonment of four years.<sup>25</sup>

Complaining or complaining and submitting a notification or report have similarities. The second form of action is conveying information to the authorities about a criminal act by someone. In relation to whether criminal prosecution can be carried out against the perpetrator of a criminal act, there are different requirements between criminal acts of complaint and ordinary criminal acts.

5. Give rise to false assumptions

Generating false suspicions is formulated as follows: Whoever intentionally, by an act, creates false suspicions against someone that he has committed a criminal act, is threatened for creating false suspicions with a maximum imprisonment of four years.

<sup>23</sup>Leden Marpaung, Op, *cit*, page 101

<sup>24</sup>Reydi Vridell Awawangi, Op.*cit*, page 116

<sup>25</sup>*Ibid* page 107



The word action is very abstract in nature, it can consist of unlimited concrete forms, so I think the meaning here is that the word action is only limited by the form of an action which can give rise to false suspicions about someone who has committed a crime. The form of action and the consequences must be rational, meaning that people in general can think about it.

#### 6. Insults to the Dead

Regarding insults or defamation of "people who have died" is regulated in Article 320 of the Criminal Code, which reads:

- (1) *Anyone who commits an act against a dead person and the act is insulting or insulting with a letter if he were still alive, is punished with imprisonment for a maximum of four months and two weeks or a fine of up to three hundred rupiah.*
- (2) *This crime is only prosecuted on the complaint of one of the blood relatives or the same blood family in straight or deviant descent up to the second degree of the person concerned or on the complaint of the husband (wife).*
- (3) *If according to the custom of maternal descent (matriamhale instellingen) the power of the baFak is exercised by someone other than the father, then the crime can be prosecuted based on that person's complaint.*

#### 7. Insults to Official Bodies (Public Bodies)

Regarding insults or defamation of official bodies or public bodies, this is regulated in Articles 207 - 208 of the Criminal Code. Article 207 reads:

*Any person who intentionally publicly orally or in writing insults a power held in the territory of the Republic of Indonesia or a government body held herein, shall be punished by imprisonment for a maximum of one year and six months or a fine of a maximum of four thousand five hundred rupiah.*

The elements of the offense of Article 207 of the Criminal Code are:

- 1) Actions carried out intentionally;
- 2) In the form of insults (belediging);
- 3) Done in public;
- 4) Aimed at a power held in the territory of the Republic of Indonesia or a government body located there

Insults and/or defamation are regulated in Article 27 paragraph (3) and Article 45 paragraph (3). UU no. 11 of 2008 concerning Information and Electronic Transactions

Article 27 paragraph (3)

*Any Person intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents which contain insulting and/or defamatory content.*

Article 45 paragraph (3):

*Every person who intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents containing insulting and/or defamatory content as intended in Article 27 paragraph (3) shall be punished by a maximum*



*imprisonment of 4 (four) years and/or a maximum fine of Rp. 750,000,000.00 (seven hundred and fifty million rupiah).*

Looking at the contents of the Defamation Article of the ITE Law as mentioned above, in order to fulfill the requirements for Defamation, the elements are:<sup>26</sup>

- 1) each person;
- 2) deliberately.
- 3) without the right to distribute and/or transmit and/or make accessible electronic information and/or electronic documents;
- 4) contains insulting and/or defamatory content. What is meant by the element of intention or intention here is that the person really knows and wants the information containing the contamination to be spread to damage someone's honor or good name.

### **Implementation of Restorative Justice in Cases of Insult and Defamation through Social Media Based on Circular Letter from the Chief of Police Number: SE/2/11/2021**

In the case of insult and defamation through social media reported by Ngatinem, the housewife's job address is Jalan Bakti III Dusun III KecBatang Kui observeds Deli Serdang with report number: LP/BP/880/VI/2022/PKT/Polda North Sumatra on May 17, 2022, against Ernawati regarding posts on her Facebook account. Starting on Friday 13 May 2022 at around 13.00 WIB, Sister Megawati (the reporting child) found that there was a fa account ownercebooks. An YandaCaem made a status by attaching a photo belonging to the reporter and containing the words: *"Hey Ngatinem Dog...you don't have to be smart when you talk...you know what about my children...if I neglected my children surely none of my children would go to school, no one would recite the Koran...your pig... Indeed, you...because you want to introduce a male into your housecDon't let your child go to his father's place... once my child asked for food at your house, once my child asked for pocket money from you... you are a bitch who asked a man to sleep at your house before you got married... Dear Mimi Manda, who has studied the Koran and finished school. undergraduate.... socYou say you're crazy... you trick all your neighbors, you say you're married, don't understand, you're cohabiting.*

That against postingan ernawati and YandaCaem on Friday 13 May 2022 the reporter (Ngatinem) felt humiliated and humiliated, that the reporter and the reported person had a family relationship and were friends on social media facebook.

Based on the police report, investigators have carried out an investigation by summoning witnesses, namely Ngatinem (reporter), Megawati (child of the reporter) and Ernawati (reporter). With screenshot evidence of FA facebook account Yanda Caem.

That in the investigation of cases of suspected criminal acts, every person intentionally and without right distributes and/or transmits and/or makes accessible infelectronic formations and/or electronic documents that contain insulting or offensive contentcFor the good name as intended

<sup>26</sup>Reydi Vridell Awawangi, Defamation in the Criminal Code and according to Law no. 11 of 2008 concerning Information and Electronic Transactions, Lex Crimen Journal Vol. III/No. 4/Aug-Nov/2014, page 120



in Article 27 paragraph (3) in conjunction with Article 45 paragraph (3) of Law Number 19 of 2018 concerning ITE, Restorative Justice efforts have been carried out with peace between the two parties as outlined in a letter of mutual agreement which contains:

1. That the reporting party (ngatinem) and the reported party (Ernawati) have understood each other that's what the family knows
2. That the reported party (Ernawati) will delete posts on the account febook a,n YandaCaem.
3. That the reported party (Ernawati) has provided wages in the form of cash amounting to Rp. 1,000,000,- to the reporting party
4. The Reporting Party will submit the complaint report to unit VI Tipiter sat Criminal Investigation Unit of the Deli Serdang Police with report number LP/BP/880/VI/2022/PKT/Polda North Sumatra on May 17 2022

Suggest an agreement between both parties as outlined in a joint agreement letter, then an investigation into the alleged criminal act of any person intentionally and without the right to distribute and/or transmit and/or make accessible this felectronic formations and/or electronic documents that contain insulting or offensive content cThe reputation threat as intended in Article 27 paragraph (3) in conjunction with Article 45 paragraph (3) of Law Number 19 of 2018 concerning ITE has been stopped by issuing a letter of termination of investigation No. 8.Tap/471.b/IX/2022/Reskrim.

## Conclusion

Termination of investigation with the issuance of a letter of termination of investigation No. 8.Tap/471.b/IX/2022/Reskrim carried out by the Deli Serdang Police Criminal Investigation Unit is in accordance with the National Police Chief's Circular Letter Number SE/2/11/2021. Provisions issued through SE No.SE/2/11/2021.

Handling criminal acts based on restorative justice must meet general and specific requirements. General requirements apply to activities carrying out criminal investigation, investigation or investigation functions, while special requirements only apply to criminal acts based on restorative justice in investigation or investigation activities. As stated in the National Police Chief's Regulation, the general requirements for handling criminal acts based on restorative justice include material and formal requirements.

## References

- Abidin, Farid zainal. 2007. *Asas-Asas Hukum Pidana..* Sinar grafika. Jakarta
- Ade Ridwan Aryadi, <http://aderidwanaryadi.blogspot.co.id>. diakses pada tanggal 20 Agustus 2022
- Amar Ahmad, *Perkembangan Teknologi Komunikasi dan Informasi: Akar Revolusi dan Berbagai Standarnya*, Jurnal Dakwah Tabligh, Vol. 13, No. 1, Juni 2012.
- Andi Hamzah, 2005, *Asas-asas Penting dalam Hukum Acara Pidana*, FH Universitas, Surabaya
- Andi Hamzah, 2008, *Masalah Penegakan Hukum Pidana*, Sinar Grafika, Jakarta



- Ari Wibowo, Kebijakan Kriminalisasi Delik Pencemaran Nama Baik di Indonesia, *Jurnal Pandecta*, Vol. 7, No. 1, 2012
- Barda Nawawi Arief, 2010. *Mediasi Penal Penyelesaian Perkara di luar Pengadilan*, Pustaka Magister, Semarang
- DS. Dewi dan Fatahillah A. Syukur, 2011. *Mediasi Penal: Penerapan Restorative Justice di Pengadilan Anak Indonesia*, Indi Publishing, Bandung
- Kitab Undang-Undang Hukum Acara Pidana (KUHAP)
- Leden Marpaung, S.H. 2010, *Tindak Pidana Terhadap Kehormatan Sinar Grafika*. Jakarta
- Peter Mahmud, Marzuki, 2012, *Pengantar Ilmu Hukum*, Kencana Prenada, Jakarta
- Reydi Vridell Awawangi, Pencemaran Nama Baik Dalam Kuhp Dan Menurut Uu No. 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik, *Jurnal Lex Crimen* Vol. III/No. 4/Ags-Nov/2014
- Rika Saraswati, 2009, *Hukum Perlindungan Anak Di Indonesia*, Citra Aditya Bakti, Bandung
- Satjipto Rahardjo, 2000. *Ilmu Hukum*. Sinar Baru: Bandung.
- Shah Rangga Wira Prastya, Tinjauan Yuridis Mengenai Sanksi Pidana Terhadap Tindak Pidana Pencemaran Nama Baik Melalui Media Sosial, *E-Journal Kertha Wicara Fakultas Hukum Universitas Udayana Fakultas Hukum*, Vol. 05, No. 02, Juni 2015
- Soerjono Soekanto, 2014. *Faktor-faktor yang Mempengaruhi Penegakan Hukum*. Rajawali, Jakarta
- Surat Keputusan Direktur Jenderal Badan Peradilan Umum Nomor: 169 I/DJU/SK/PS.00/12/2020 Tentang Pedoman Penerapan Restorative Justice Di lingkungan Peradilan Umum.
- Undang-Undang Nomor 2 Tahun 2002 tentang Kepolisian Negara Republik Indonesia
- Yuarsi Susi Eja, 2002. *Menggagas Tempat Yang Aman Bagi Perempuan*, Pusat Studi Kependudukan dan Kebijakan Universitas Gadjah Mada, Yogyakarta
- Zulfa, Eva Achjani, 2011. *Pergeseran Paradigma Pidana*, Penerbit Lubuk Agung, Bandung

