

## THE LEGAL ANALYSIS OF DEFAMATION CRIMES IN FAMILY THROUGH THE SOCIAL MEDIA

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### Abstract

*The right to communicate and obtain information has been regulated in Article 28F of the 1945 Constitution of the Republic of Indonesia. However, the use of social media must still recognize the limits in its use so as not to harm oneself or others, including family. This problem is focused on the problem of defamation that can be ensnared in social media and the limits in expressing opinions. The method used is normative research. The findings of the study indicate that it is necessary to increase awareness in expressing opinions so as not to become shackles. This study concludes that there are limits that need to be known in giving opinions, namely not to insult morals and decency. As well as a legal analysis of criminal acts of insult committed in a closed space.*

*Keywords: Criminal acts; Defamation; WhatsApp; Family.*

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### Abstrak

Hak berkomunikasi dan memperoleh informasi telah diatur dalam Pasal 28F Undang- Undang Dasar 1945 Negara Republik Indonesia. Tetapi penggunaan social media tetap harus mengenal batasan dalam penggunaannya agar tidak merugikan diri sendiri maupun pihak lain, termasuk keluarga. Masalah ini difokuskan dalam masalah pencemaran nama baik yang dapat dijerat dalam media sosial dan batasan dalam menyampaikan pendapat. Metode yang digunakan adalah penelitian normatif. Temuan penelitian menunjukkan bahwa perlu peningkatan kesadaran dalam mengungkap pendapat agar tidak menjadi belenggu. Penelitian ini menyimpulkan bahwa ada batasan yang perlu diketahui dalam memberikan pendapat, yakni tidak boleh menghina moral dan kesusilaan. Serta analisis yuridis terhadap tindak pidana penghinaan yang dilakukan dalam ruang tertutup (obrolan tertutup).

*Kata Kunci: Tindak Pidana; Pencemaran nama baik; WhatsApp; Keluarga.*

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## INTRODUCTION

In the current era of globalization, changes in various sectors of human life are being felt, particularly those occurring at the start of the 21st century. One of the sectors that has developed rapidly and significantly is the information and communication technology sector. Its development has even altered the world order. The utilization of information technology, media, and communication has transformed both societal behavior and human civilization globally. The advancements in information and communication technology have also led to a world without borders, causing significant social, economic, and cultural changes to take place at a very rapid pace. This has made information technology a double-edged sword; while it contributes to improving human welfare and advancing civilization, it also serves as an effective means of committing unlawful acts.

Cyberspace, as an electronic medium for mobilizing information, both for disseminating and receiving information, has captured much attention from the public due to its ease of use and lack of limitations in terms of space and time. It is not only used as a communication medium among people but also as a platform for expressing opinions, ideas, suggestions, personal thoughts, and even criticism, among many other things. Article 28F of the 1945 Constitution of the Republic of Indonesia states that: "Every person has the right to communicate and obtain information to develop their personal and social environment, and has the right to seek, acquire, own, store, process, and convey information using all available channels." However, even though the state has granted its citizens the right to use information and communication media that greatly supports societal needs today, there must still be an understanding of the limitations in its use to avoid harming oneself or others<sup>1</sup>.

Defamation has long been a part of both criminal and civil law in Indonesia, as Indonesia inherited the legal system from the Dutch colonial period. Defamation laws in Indonesia are regulated under two major groups: criminal law, which is outlined in the Criminal Code (KUHP) and other laws that contain defamation provisions, and civil law. Defamation, as a criminal act under the Criminal Code (KUHP), is stipulated in Article 310, which states:

1. Paragraph (1): "Whoever deliberately attacks someone's honor or good name by accusing them of something, with the intent that the accusation be known to the public, is threatened with a maximum imprisonment of nine months or a maximum fine of four thousand five hundred rupiah."
2. Paragraph (2): "If the act is committed in writing or through an image distributed, displayed, or posted in public, the penalty is a maximum imprisonment of one year and four months or a maximum fine of four thousand five hundred rupiah."
3. Paragraph (3): "It does not constitute defamation or libel if the act is clearly done in the public interest or due to necessity in self-defense."

With the rise of the internet, defamation is also regulated in Article 27 paragraph (3) of Law No. 19 of 2016, amending Law No. 11 of 2008 concerning Information and Electronic Transactions (ITE), which states: "Any person who knowingly, and without authority, distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents containing defamation and/or insults." This article specifically regulates defamation that occurs in cyberspace. The penalties for this article are regulated in Article 45 paragraph (1)<sup>2</sup>. Recently, the most prevalent defamation cases are those that occur on social media. In 2020, the Indonesian National Commission on Human Rights (Komnas HAM) received 22 complaints related to the ITE Law. Based on a survey conducted by

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<sup>1</sup> Hafied Cangara, 2015, *Pengantar Ilmu Komunikasi*, Rajawali Pers, Jakarta, hlm.1

<sup>2</sup> The 1945 Constitution of The Republic of Indonesia

Komnas HAM in 2020 with 1,200 respondents across 34 provinces, 36.2% of people felt restricted in expressing themselves on social media (the internet).

Public fear of expressing opinions on social media is due to the legal consequences that could entrap them. This is caused by unclear definitions and interpretations of Article 27 paragraph (3) of the ITE Law, which fails to accommodate people's behavior on social media, often leading to accusations of it being a multi-interpretative (rubber) article that has the potential to result in over-criminalization. Amnesty International Indonesia recorded at least 15 cases and 18 victims related to the ITE Law concerning freedom of expression. These data were collected from early 2021 until mid-March 2021. Additionally, the number of prosecutions of netizens increased from 2019 to 2020. In 2019, there were 24 prosecutions, whereas in 2020, there were 84 cases. This makes the ITE Law a double-edged sword. While its purpose is to provide security in the use of social media as a means of communication and information, and to prevent unlawful acts, it also poses a threat to the right to freedom of expression and opinion on social media in Indonesia.

In early 2022, the Indonesian National Police handled 162 defamation cases, including those involving electronic media. This data was obtained from the Robinopsnal Bareskrim Polri for the period of January 1 to January 19, 2022. In the same period of the previous year (2021), 118 defamation cases were handled, showing an increase of approximately 37%. Additionally, the number of Regional Police Departments (Polda) handling such cases also increased, from 23 in 2021 to 27 in 2022. Based on the background described above, the author is interested in conducting a study titled: "The Legal Analysis of Defamation Crimes in Family/Relatives WhatsApp Groups."

## **METHOD**

In preparing this Legal Research Journal, normative legal research was used using data in the form of legal documents, both primary, secondary and tertiary legal materials, as well as various relevant literature to answer the problem formulation in this research.

## **RESULT AND DISCUSSION**

### *1. The Application of Sanctions for Defamation Crimes in Family/Relative WhatsApp Groups in Indonesia*

Based on the stipulations of Article 310 of the Criminal Code above, the elements of the criminal offense regarding the imposition of sanctions on the perpetrators of defamation in Indonesia are known. The elements of defamation according to Article 310, paragraph (1) of the Criminal Code are as follows:

- a. Accusing someone of doing something. This action can only be called defamation if it is carried out by accusing a specific individual (who is clearly identifiable as having committed an act similar to the accusation, thereby tarnishing the reputation of that person in the eyes of the public). Blaming something certainly refers to actions deemed socially unacceptable, or actions considered immoral or personally unacceptable in the eyes of others.
- b. A person's dignity is attacked. Someone may be insulted, but the feeling of being insulted cannot be measured solely by the substance of the attack; rather, it depends on the expression used to convey criticism and the choice of specific insulting words, such as "fool" or "stupid."

An attack on honor by accusing someone of committing an act aims to protect that person's dignity and can result in the individual losing their self-awareness, respect, dignity, and being subject to slander and humiliation. Because of this, the understanding of criminal law as a whole consists of general principles of criminal law and, in relation to this, prohibitions against certain actions

(active/aggressive or negative/passive), and such actions contain threats as follows: criminal sanctions for those who violate these prohibitions. In this context, the reference is to the criminal offense of defamation committed by an individual, and the criminal elements within it will be considered by the investigating judge according to the jurisdiction. One of the specific regulations or laws that surpasses the Criminal Code and governs defamation actions through social networks is outlined in the Electronic Information and Transactions Law No. 19/2016.

Defamation is an offense that attacks an individual's good reputation through words, expressions, or media that offend a person's honor and feelings and can diminish the dignity of the person whose reputation is tarnished. It includes accusations against individuals that they have committed certain acts and disseminating this information to the public. Violations that damage an individual's reputation include slander, false statements, defamation, insults, and ridicule. The offense of defamation has aspects of intent, elements of violation of honor and reputation, as well as elements of publicity.

In general, it can be understood that the legal basis for imposing criminal sanctions on perpetrators of defamation through social media, in this case, WhatsApp, can refer to the provisions of Article 27, paragraph (3) of Law No. 19/2016, which states: "Every person intentionally and without right disseminates and/or transmits and/or makes accessible electronic information and/or electronic documents containing material that offends and/or defames, as long as the person does not violate the criminal elements specified in this article, they are entitled to freely express opinions or post content in the form of videos or photos about social networking views and the right to obtain information through the use and utilization of information and communication technology for the purpose of promoting public welfare, educating the nation, and ensuring safety, fairness, and legal guarantees for the community, users, and operators of electronic systems."

Furthermore, there is restorative justice issued by the Chief of Police with the number SE/2/II/2021 regarding "Cultural Awareness of Ethics to Create a Clean, Healthy, and Productive Digital Space in Indonesia," which provides justice to victims based on mediation principles. Restorative justice is a resolution of criminal cases through mediation that requires the presence of the perpetrator, the victim, and the community to conduct a family discussion, where the perpetrator can explain the motives behind their actions in the WhatsApp group, especially if it occurred in a family or relative WhatsApp group. Additionally, the perpetrator can be held accountable for their actions, allowing the victim to understand the explanation provided by the perpetrator. After the mediation process is completed, the perpetrator must restore or compensate for the losses or conditions experienced by the victim due to the perpetrator's actions. Furthermore, the perpetrator has the opportunity to express remorse for all the actions they have taken.

Not only in the Criminal Code, but insults are also regulated in Law No. 19 of 2016 concerning Information and Electronic Transactions. Article 27, paragraph (3) states: "Every person intentionally and without right distributes and/or transmits and/or makes accessible electronic information and/or documents that contain insults and/or defamation." In Law No. 19 of 2016, Article 45, paragraph (1) states: "Every person who intentionally and without right distributes and/or transmits and/or makes accessible electronic information and/or documents that contain material that violates decency as referred to in Article 27, paragraph (1) is subject to imprisonment for a maximum of 6 (six) years and/or a fine of up to Rp1,000,000,000.00 (one billion rupiah)." However, Law No. 19 of 2016 does not include forms of defamation as defined in the Criminal Code. Law No. 19 of 2016 only establishes the qualification of the criminal act of insult or defamation. Defamation can occur not only directly but also through social media. Of course, there are various efforts made by the government to protect an individual's honor or reputation. There have been numerous reports received by the police regarding defamation cases. Because cases of defamation can easily be committed by anyone, this is an issue that needs to be taken seriously.

It is important to note, specifically regarding the scope of prohibited acts regulated in the Electronic Information and Transactions Law. A Joint Decree was issued by the Minister of Communication and Information, the Attorney General, and the Chief of Police.

- a. Article 27, paragraph (1): The focus of this article is on the acts of transmitting, distributing, and/or making accessible, not on the acts of indecency itself. The perpetrator intentionally makes the content visible to the public or sends it back.
- b. Article 27, paragraph (2): The focus of this article is on the acts of transmitting, distributing, and making accessible gambling content that is prohibited or does not have permission under applicable laws and regulations.
- c. Article 27, paragraph (3): The focus of this article is on:
  - a. Acts committed intentionally with the intention of distributing/transmitting/making accessible information that attacks a person's honor by making certain accusations known to the public.
  - b. It is not a criminal offense if the content consists of insults categorized as abuse, ridicule, and/or inappropriate words, or if the content consists of assessments, opinions, evaluations, or facts.
  - c. It is a complaint offense, so it must be reported by the victim themselves, not by institutions, corporations, professions, or positions.
  - d. It is not considered a criminal offense of insult and/or defamation if the content is disseminated through a closed or limited chat group.
  - e. If a journalist personally uploads their writing on social media or the internet, the provisions of the Electronic Information and Transactions Law still apply, except when done by a press institution, in which case Law No. 40 of 1999 concerning the Press applies.
- d. Article 27, paragraph (4): The focus of this article is on acts committed by individuals or organizations or legal entities and conveyed publicly or privately, whether by coercion for the purpose of unlawfully benefiting themselves or others or threatening to reveal secrets, threatening to disseminate personal data, personal photos, and/or personal videos.

By looking at this joint decree, it can be concluded that gossip or sharing in a WhatsApp group does not constitute an offense of defamation because the conversation is private and limited. Article 27, paragraph (3) states: "Every person intentionally and without distributing and/or making accessible electronic information and/or electronic documents that contain insults and/or defamation." It is clear from this article that electronic information containing insults and/or defamation can be subject to imprisonment and fines. However, based on the results of the joint decree, there are limitations regarding the scope of defamation. If insults and/or defamation are committed in a closed space and are not publicly accessible, this does not constitute an act of defamation.

## *2. Factors Influencing the Application of Sanctions for Defamation Crimes in Family/Relatives WhatsApp Groups in Indonesia*

The factors that cause law enforcement to be less than optimal can be attributed to several issues, such as the lack of public awareness about ongoing violations in the digital realm, the complexity of investigations in a digital environment, and the limited regulations specifically addressing crimes on instant messaging platforms like WhatsApp. Many law enforcement actions or the application of law against perpetrators of defamation or defamation crimes in family/relative WhatsApp groups face several hindering factors in the application of penalties against the perpetrators, including: a) The evidence required is more complicated compared to ordinary crimes, as it necessitates presenting experts related to the evidence used in court. b) Witnesses presented (besides the victim) cannot witness the incident directly but can only observe it through social media. c) It is challenging to ascertain the detailed damages because there are no measurable benchmarks for the victim's material losses, as this crime relates more to social impacts such as feelings of shame and psychological effects on the victim. In addition to the aforementioned hindering factors in the application of penalties against suspects of



defamation or insult through family/relative WhatsApp groups, there are other factors that the author believes hinder the application of penalties against offenders:

- a. **The Law Itself:** Within criminal law regulations, some rules aim to justify the circumstances surrounding a criminal act; thus, the legal framework is generally formulated in laws that outline prohibited actions accompanied by sanctions. The legal factors themselves include principles contained within a law to ensure that it exerts a strong influence that results in certain consequences. The underlying purpose is to ensure that the law effectively guides behavior in society. Although many offenders are caught, this does not deter other perpetrators, indicating that the penalties imposed are still perceived as relatively light, allowing many offenders to commit defamation or insult through social media again. This suggests that the law lacks the deterrent effect necessary to dissuade offenders from committing defamation or insults via social media. In practice, the implementation of regulations relies on data collection through direct measurements, which must adhere to fair regulations; this situation arises due to a lack of understanding of fairness, forming only a single stage of activities to resolve an issue that adheres to established norms.
- b. **Law Enforcement Factors:** Law enforcement has a very important role and hierarchy. Law enforcement is a fundamental basis in the progression of legal processes, which involves taking action against violations of established regulations, thus generating various issues. For instance, a lack of personnel makes the work in each respective field less effective, particularly in educating the public about the dangers of defamation or insult through social media, as enforcement officials have not reached all levels of community life. The law has a functional role regarding conditions and activities of the spirit, which reflects the attitude of individuals that distinguishes them from others in establishing regulations. If there are no flaws in the order, but the level of good and bad conduct of law enforcement officials is not sufficiently acceptable, issues will inevitably arise. Thus, one key to successful law enforcement is the state and mental activity of the law enforcement personnel themselves. Currently, there is a tendency for community segments to interpret law enforcement as solely their responsibility, meaning that the law is often identified with the actions of individuals in positions of authority. Throughout the execution of their duties, there are often perceptions of behavior that exceed their authority.
- c. **Infrastructure and Facilities Factors:** In this case, adequate support must be provided through hardware and programmatic tools, as well as appropriate equipment. For instance, program tools involve changing attitudes and behaviors accepted by individuals, which currently tend to respond similarly to simple events. There are often instances where police or judges face obstacles in their tasks. Fundamentally, what needs to be done, or what is mandated for judges, is vast and complex. Therefore, everything that can be used as a means to achieve goals or objectives and facilities has a significant role. Without adequate infrastructure and facilities, law enforcement will not be able to perform optimally. Law enforcement will be challenging if there are no elements that can serve as tools to achieve objectives or functions effectively. Without certain facilities or means, it is unlikely that law enforcement will proceed smoothly. These facilities should include educated and skilled personnel, well-organized systems, adequate equipment, sufficient finances, and so forth. If these aspects are not fulfilled, achieving the goals of law enforcement seems impossible.
- d. **Community Factors:** The enforcement of laws and regulations is meant to regulate society composed of numerous individuals. The goal is to achieve planned living standards within various groups, where community awareness of the law can vary significantly.
- e. **Cultural Factors:** In community life, culture cannot be easily separated; thus, culture is fundamental in shaping behavior that dictates what is permissible and what is prohibited. Legal culture in society involves a process of internalizing compliance with regulations for the

common good, fundamentally encompassing values that underpin the prevailing laws and serving as an abstract conception of what is appropriate and inappropriate. The greater the alignment between legal regulations and community culture, the easier it will be to enforce laws. Conversely, if a legal regulation is incompatible or opposed to the community's culture, it will become increasingly difficult to implement or enforce the law.

Moreover, proactive measures to prevent defamation in Family WhatsApp Groups can help create a healthy communication environment and maintain harmony. Here are some measures that can be taken:

- a. **Establishment of Clear Group Rules:** Creating and establishing clear communication etiquette rules in Family WhatsApp Groups. These rules can include prohibitions against sharing personal information, avoiding harsh language, and reminding members to speak respectfully.
- b. **Education on the Impact of Defamation:** Educating family members about the negative impacts of defamation. Understanding the consequences of actions that demean other family members can raise awareness about the importance of good communication.
- c. **Awareness of Shared Content:** Encouraging family members to be mindful of the content they share in the group. Conveying the message that every word and image shared has the potential to harm reputation and relationships within the family.
- d. **Promotion of Positive Communication:** Building a culture of positive communication by encouraging wise dialogue, positive thinking, and focusing on constructive matters. This can create a more supportive atmosphere and reduce the risk of conflict.
- e. **Designation of an Admin as Conflict Manager:** Appointing an admin or moderator responsible for addressing conflicts or potential defamation. The admin can moderate conversations, provide reminders regarding communication ethics, and promptly respond to violations of group rules.
- f. **Message and Content Filtering:** Implementing filtering features for harmful messages and content within the WhatsApp Group. This can help prevent the dissemination of unwanted or harmful information.
- g. **Open Communication:** Encouraging open and honest communication among family members. Motivating family members to express their feelings directly if there are any discomforts can help address issues quickly before they escalate into larger conflicts.
- h. **Education on Digital Security:** Providing education on digital security to family members, including how to protect their privacy and personal information online.

These collaborative efforts can create a supportive environment in Family WhatsApp Groups, reduce the risk of defamation, and strengthen family bonds. Understanding and a shared commitment to positive communication ethics are key to establishing healthy relationships and minimizing potential conflicts within the family.

## CONCLUSION

In the Joint Decree of the three institutions, it can be concluded that gossip or sharing in a WhatsApp group does not constitute an offense of defamation because the conversation is private and limited. Article 27, paragraph (3) states: "Everyone intentionally and without distributing and/or making accessible Electronic Information and/or Electronic Documents containing insults and/or defamation." It is clear in this article that electronic information containing insults and/or defamation can be subject to imprisonment and fines. However, based on the results of the joint decree, there are limitations regarding the scope of defamation. If insults and/or defamation occur in a closed space and are not publicly accessible, this does not constitute an act of defamation.

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The factors hindering the application of criminal penalties against perpetrators of acts of insult or defamation through social media consist of five (5) parts: first, legal factors; second, law enforcement factors; third, facilities and infrastructure factors; fourth, societal factors; and lastly, cultural factors.

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