

Implementation of Restrictions on Defamation Regulations According to the ITE Law

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Abstract

The crime of defamation in the digital space is now specifically regulated in Article 27A of Law Number 1 of 2024 concerning the Second Amendment to the Electronic Information and Transactions Law (ITE). Despite this regulatory reformulation, a significant research gap exists regarding the effectiveness of the article's operational boundaries in mitigating legal ambiguity at the judicial level, as prior studies remain dominated by older case analyses that do not represent the latest normative dynamics. This study aims to analyze the limitations of this criminal regulation and its implementation in judges' considerations to maintain a balance between reputation protection and freedom of expression. Using a normative juridical method with a statutory approach, this study finds that the legal limitations of Article 27A rest on cumulative proof of the elements of the offense. The main element of "attacking honor or good name" requires objective proof, often requiring testimony from a linguist to identify defamatory content that damages dignity. Furthermore, the element of "with the intent to make it publicly known" is fulfilled if the content is publicly accessed through an electronic system. The results of the analysis of decisions indicate disparities in sentencing influenced by judges' subjective considerations regarding case background, expert testimony, and aggravating factors such as repeated behavior. In conclusion, the enforcement of Article 27A requires thoroughness in proving specific elements to ensure legal certainty and proportionality of decisions in defamation disputes in electronic media.

Keywords : *Electronic Information and Transactions; Defamation; Criminal Liability; Cyber Crime.*

A. Introduction

The crime of defamation, otherwise known as "defamation", is a serious legal issue that impacts an individual's reputation and integrity ¹. In this context, Law Number 1 of

¹ Annisa Pratiwi, Fatiya Cahya, and Leony Silitonga, "The Speech of the Defamatory Perpetrator Luhut Binsar Panjaitan by Haris Azhar and Fatia Maulidiyanti in Youtube Social Media Content 'There is Lord Luhut Behind the

2024 concerning the Second Amendment to Law Number 11 of 2008 plays an important role. Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 regulates various aspects of the use of information technology in Indonesia. One of the aspects regulated is defamation. The application of this rule often causes controversy and public debate.

The application of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 against defamation has wide implications. Many argue that this rule is often used to silence freedom of opinion. On the other hand, this rule is considered important to protect an individual's reputation. The conflict between freedom of opinion and the protection of good name is at the heart of the debate. It is important to understand how the law regulates this balance.

The legal review of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 also needs to consider the perspective of human rights. The protection of good name must be balanced with the right to freedom of opinion. This perspective will help in assessing whether the existing rules are proportional. In addition, this study will see how it compares with other countries. In addition to the legal aspects, this analysis also considers social and cultural aspects. The culture and values of Indonesian society influence how defamation is perceived. This cultural influence also affects law enforcement. For example, criticism on social media may be received differently in different communities.

The defamation cases that occurred in Indonesia show various legal dynamics. Reporting from Aptika Kominfo where there was an increase in case reports about ITE after the existence of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 which regulates defamation where in 2016 there were only 16 cases but in 2020 there was an increase until 2017 cases, where in the 1st quarter of 2021 cases about ITE had reached 108 cases ². In the case of defamation, the Southeast Asian of Freedom Network has recorded a significant increase where in 2020 during the covid pandemic there were 110 suspects who were prosecuted on the basis of defamation ³. Some cases show that the application of these rules is often subjective. There are instances where constructive criticism is considered defamation. Namely in the case of Saiful Mahdi who criticized the leadership of the faculty of engineering at Syiah Kuala University (Unsyiah) where the faculty leader passed a number of CPNS participants but the participant's file was not in accordance with the existing requirements but Saiful Mahdi was reported for alleged defamation on the basis of Law Number 1 of 2024 concerning

Economic-Ops Relations of Intan Jaya Military," *Nakula Journal: Center for Education, Language and Social Sciences* 2, no. 1 (2024): 80-89, <https://doi.org/https://doi.org/10.61132/nakula.v2i1.372>.

² Aptika Kominfo, "Legal Experts and Academics Value the Revision of the ITE Law to Narrow the Space for Multiinterpretation," Aptika Kominfo, 2022, <https://aptika.kominfo.go.id/2022/09/ahli-hukum-dan-akademisi-nilai-revisi-uu-ite-persempit-ruang-multitafsir/>.

³ Yusuf, "Uncovering Public Noise About the ITE Law, Minister of Communication and Information: Its Implementation for the Utilization of Digital Space," Aptika Kominfo, 2021, <https://aptika.kominfo.go.id/2021/02/mengungkap-kegaduhan-publik-soal-uu-ite-menkominfo-impleentasinya-untuk-pemanfaatan-ruang-digital/>.

Information and Electronic Transactions (ITE) ⁴.

In March 2024, there was a case that befell Mareen Vivian where a person named Abdul Mutalif Tuasikal made a post that contained defamation as well as a call to action aimed at accusing the victim of being a blasphemer. This starts from the victim who posts a status that contains the sentence "Your version of God is a weak god so you use fraud to get rid of others for the sake of your own stomach (but you manipulate it as if it were for many people)... Version B of God is the Most Powerful God who without B being evil to others, B is still blessed" so that this makes the defendant accuse that the victim is a blasphemer. In this case, Abdul Mutalif Tuasikal was convicted of defamation with a prison sentence of 9 months and a fine of Rp. 10,000,000 (Ten Million Rupiah).

In addition, in July 2024, there was a similar case that befell Melvi Mudti Nasution. It started when the defendant Muri Wahyuni Binti Ramli Akop on Monday, July 8, 2024, uploaded a photo of Witness Melvi Mudti Nasution Binti Amir Mahmud Nasution to an Instagram story (IG story) on his account with the username @muu.ri2896. The upload was accompanied by a post accusing the Witness of being "the perpetrator who hit me and destroyed my household". In addition to Instagram, the Defendant also uploaded a video about the Witness on social media TikTok through the @cutbilqisalfi account, which explained the Witness's full name, origin, and profession as a doctor whose behavior did not reflect his profession. As a result of the public upload, the witness who works as a general practitioner feels that his good name is attacked, embarrassed, and has an impact on his psychology and work. In this case, Muri Wahyuni was convicted of defamation with a prison sentence of 2 months.

Another case occurred in August 2024 where it happened to a member of the police named Ketut Putu Ardika, S.H. This incident began with an incident on Wednesday, August 7, 2024, at around 13.00 WITA at the Kemenuh petrol station, Gianyar Regency. At that time, victim witness I Ketut Putu Ardika, S.H., who is a member of the Police Investigation Unit, was queuing to refuel his car. The defendant, Kadek Agus Sastra Gedy, did not accept it because the witness filled fuel from a line that he thought was not in accordance with the position of the car tank. The defendant then deliberately recorded the witness using his mobile phone while uttering derogatory sentences, such as calling the witness an educated person who did not know the rules and did not finish school. A few hours later, at around 15.00 WITA, the defendant uploaded the video recording to his TikTok account '@46u563dy13' with the additional caption "the low-level HR officer pretends not to understand". The video went viral and has been watched by many people, garnering 204 likes and 63 comments, which caused the Witness to feel his honor and dignity as an individual and as a law enforcement officer to be demeaned in public. In this case, Kadek Agus Sastra Gedy was convicted of defamation with a prison sentence of 1 month.

A woman named Ratna Sari, S.Pd was also a victim of the crime of defamation

⁴ Wahyuni Sahara, "The Beginning of Saiful Mahdi Being Charged with the ITE Law Until He Got Amnesty from Jokowi," Kompas.com, 2021, <https://nasional.kompas.com/read/2021/10/06/15463521/awal-mula-saiful-mahdi-dijerat-uu-ite-hingga-dapat-amnesti-dari-jokowi?page=all>.

committed by Milda Jayanti. This started from a dispute between the Defendant and the victim's witness, Ratna Sari, which was triggered by debts and mutual insinuations on social media. The victim's witness, who is a content creator, previously borrowed Rp1,000,000 from the Defendant and returned it late. Feeling offended by a dialogue video uploaded by the victim's witness who according to the Defendant insinuated himself, the Defendant then counterattacked. On Wednesday, October 2, 2024, the Defendant used his personal Facebook account named "Mida" to upload a post addressed to Witness Ratna Sari. The post contained a dialogue video of the victim's witness accompanied by a long caption containing serious allegations.

The defendant accused Witness Ratna Sari of harassing someone else's husband and was almost visited by the wife of a policeman or soldier at her home. This post is set to be visible to the public and the Defendant's account has about 3,000 friends. As a result, the upload received 26 comments and 25 reactions, so that Ratna Sari Witness felt embarrassed and her good name was tarnished. The defendant submitted a witness explaining that Milda Jayanti's allegation that Ratna Sari was harassing someone's husband was true. The witness on behalf of Yusni has testified that it is true that Ratna Sari had harassed her husband by sending a photo to Yusni's husband after taking a shower. With Yusni's testimony, Milda Jayanti was still convicted of the crime of defamation with a prison sentence of 2 months.

From the above cases, there are differences in the court's decision when trying the defendant. Of the 4 decisions above, 3 were sentenced to imprisonment of less than 3 months, 1 was sentenced to 9 months in prison along with a fine of Rp. 10,000,000 (Ten Million Rupiah). One of the verdicts in the Milda Jayanti case also included a witness stating that Milda Jayanti made well-founded and fact-based allegations, but Milda Jayanti was still convicted of committing a criminal act and sentenced to 2 months in prison. This shows a difference in the verdicts, especially in the trial of the defendant.

Studies of defamation cases in Indonesia, including the Saiful Mahdi case and the latest cases after the enactment of Law No. 1 of 2024, show considerable variation in punishments. Ranging from nine months to two months in prison, and the Milda Jayanti case, where allegations that he thought were true even if they led to criminal punishment, illustrate that the implementation of this law is still subjective and needs to be reviewed regarding the limitations of its implementation. This phenomenon shows that, although Law No. 1/2024 has restructured defamation charges, its fundamental purpose of providing legal certainty and objective limits has not been fully achieved. The importance of this research stems from the need to investigate and analyze in depth the implementation of defamation rules outlined in Law No. 1 of 2024.

This study will examine how well this reformulation addresses the various interpretations and injustices found in court decisions. From these cases, it can be concluded that the application of the provisions on defamation restrictions in Article 27A of Law Number 1 of 2024 has not been fully effective in realizing legal certainty (*lex certa*) and still requires strict legal interpretation to prevent abuse and inconsistency in court

decisions related to freedom of expression.

Several previous studies have also discussed this matter, one of which is research conducted by Aura Anisah, et al (2025) in their journal The author emphasizes a review of procedures for handling cases and the investigation stage based on Law Number 1 of 2024. In addition, there is also another study by Andreas Antonio and Ade Adhari (2024) that examines aspects of legal certainty through a comparison of *the Common Law* and *Civil Law* systems. These previous studies have actually provided perspectives on the dynamics of the application of new norms to defamation articles, but in their research the case references used still use old cases such as the Haris Azhat case in 2021.

In contrast to the studies that have been described above, this study not only examines the normative limits of the criminal act of defamation in Article 27A of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions, but also analyzes its implementation in several court decisions to assess the consistency of the application of criminal elements and their implications for legal certainty and protection of freedom of expression in the digital space.

A. Research Methods

This research uses a normative juridical approach with a statutory approach. Normative legal research is defined as legal research that focuses on secondary literature or data ⁵. The concept of pure law is the main factor in normative law research ⁶. The main focus of the research is to study and analyze laws and regulations relevant to the legal issues discussed. Data collection is carried out through library research, by examining various secondary data sources. The data includes three types of legal materials. The primary legal materials used are binding laws and regulations, such as the Criminal Code which in this journal will be called the Criminal Code and Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions which in this journal is called the ITE Law. Furthermore, secondary legal materials include various literature that provides in-depth explanations, such as doctrines or opinions of legal experts, results of previous research, journal articles, and relevant reference books. Finally, tertiary legal materials such as legal dictionaries and encyclopedias are used to provide further guidance and explanation of technical terms.

All collected data were then analyzed using deductive syllogism analysis techniques based on the submission of major and minor premises. The major premise is the withdrawal of a legal rule while the minor premise is a legal fact that can be presented. Then from these two premises, conclusions or conclusions can be drawn. The major premise in this study is Article 27A of Law Number 1 of 2024 while the minor premise in this study is the legal facts contained in several decisions presented by the author.

⁵ Rosania Paradias and Eko Soponyono, "Legal Protection of Victims of Sexual Harassment," *Journal of Indonesian Legal Development* 4, no. 1 (2022): 61–72, <https://doi.org/10.14710/jphi.v4i1.61-72>.

⁶ Muhammad Zainuddin and Aisyah Dinda Karina, "The Use of Normative Juridical Methods in Proving the Truth in Legal Research," *Smart Law Journal* 2, no. 2 (2023): 114–23, <https://journal.unkaha.com/index.php/slj/article/view/26>.

B. Results And Discussion

1. Defamation Regulation In The Criminal Code And The Ite Law

Defamation, previously still referred to the Criminal Code (KUHP) in Articles 310 and 311. This is because the use of social media social media is not as vibrant today so there are no regulations regarding Information and Electronic Transactions. Article 310 of the Criminal Code regulates defamation that is carried out deliberately with the intention of being known to the public. In Article 310, defamation can be done orally or in writing. However, there are exceptions, if we look at Article 310 paragraph (3) of the Criminal Code, which contains provisions that state that an act can be justified and not against the law if it is based on the defense of the public interest or self-defense, while the validity of the reason is completely left to the judge to determine it ⁷. Furthermore, Article 311 of the Criminal Code also regulates slander, where if the person who commits defamation, both verbally and in writing, cannot prove what is accused, it will be threatened as slander.

Along with the times, the defamation articles in the Criminal Code are considered no longer relevant, therefore in 2008 the defamation article was included in Law Number 1 of 2008 concerning Information and Electronic Transactions, more precisely in article 27 Paragraph 3. The existence of this article has attracted a lot of criticism, because it is considered a weapon of the ruler to silence criticism. This can be seen in cases that attract public attention such as the case of Haris Azhar and Fatia reported by Luhut Binsar Pandjaitan for alleged defamation using this article, the court decision states that Hariz Azhar and Fatia are not proven to have committed defamation in accordance with Article 27 Paragraph (3). Hariz Ashar is one of the many people charged in this case in court. The number of these cases is indicated to occur due to multiple interpretations in law enforcement and disparities in court decisions in handling these cases. This indicates the weakness of Article 27 Paragraph (3) of the ITE Law, so clarification and improvement in practice are needed ⁸.

In 2024, there will be a change in article 27 paragraph (3) of the ITE Law to article 27A of the ITE Law which reads "Every Person deliberately attacks the honor or good name of another person by accusing something, with the intention that it is publicly known in the form of Electronic Information and/or Electronic Documents carried out through the Electronic System" (Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Transactions Electronics, 2024). The amendments aimed at detailing the articles contained in the previous law are still considered unclear and lack concrete and objective definitions, so

⁷ Jennifer Angelina and Listyowati Sumanto, "Juridical Study of Defamation Cases Based on the Criminal Code with Legal Certainty," *Journal of Accounting Law Communication and Technology* 2, no. 1 (2024): 509–15, <https://doi.org/10.57235/jalakotek.v2i1.4648>.

⁸ Andreas Antonio and Ade Adhari, "Assessing the Implementation of the ITE Law in Enforcing Legal Certainty for Defamation Cases," *Ranah Research: Journal of Multidisciplinary Research and Development* 6, no. 4 (2024): 1079–87, <https://doi.org/10.38035/rrj.v6i4.979>.

they do not meet the standards of legal certainty⁹. In the Constitutional Court Decision Number 105/PUU-XXII/2024, the phrases "other person" and "something" in Article 27A violate the 1945 Constitution of the Republic of Indonesia because it is too broad and multi-interpreted, so it has the potential to criminalize expressions that are legitimate and protected by the constitution¹⁰.

According to Munir, there are 4 criminal elements from article 27A of the ITE Law, namely each person, intentionally, attacking someone's honor or good name, and with the intention of being known to the public¹¹. This can be explained in the following points:

a. Everyone/Anyone

The definition of who is a copy of "Hij die" (the Wetboek van Strafrecht manuscript), namely any person or entity who, if they have fulfilled the elements of a criminal act regulated in an article, is referred to as a perpetrator or person who commits a criminal act¹².

b. Intentionally

The "intentional" part should be proven by showing who the content is distributed to and the purpose behind it. The examination should focus on whether the dissemination is intended to demean a person or to uncover an alleged crime. If the perpetrator spreads defamation intentionally, then the subjective factor is met and the perpetrator can be held criminally responsible¹³.

c. Attacking Someone's Honor and Good Name

The definition of "attacking someone's honor or good name" is an act that degrades or destroys the good name or self-esteem of another person to the detriment of that person, including insulting and/or slandering to the detriment of others¹⁴.

d. With the intention of making it known to the public

The element of "with the intention that it is known to the public" has been fulfilled

⁹ Yoanda Widi Pranata, "Reconstruction of Article 27 paragraph (3) of the ITE Law and its implications for freedom of opinion in Indonesia," *IJOLARES* 3, no. 2 (2025): 41-47, <https://doi.org/https://doi.org/10.60153/ijolares.v3i2.164>.

¹⁰ Dicky Andika Rauf, Ahamd, and Moh Rivaldi Moha, "Equivalence of Freedom of Expression and Protection of Good Name after Changes in Information and Electronic Transaction Law," *Al-Zayn : Journal of Social & Legal Sciences* 3, no. 2 (2025): 601-21, <https://doi.org/10.61104/alz.v3i2.1104>.

¹¹ Munir, "Study of Article 27 A of Law No. 1 of 2024 concerning the Second Amendment to Law No. 8 of 2008 concerning ITE," *Fundamental: Legal Scientific Journal* 13, no. 2 (2024): 1-12, <https://doi.org/10.34304/jf.v13i2.284>.

¹² Erwin Asmadi, "The Formulation of Delik and Criminalization for Non-Criminal Defamation on Social Media," *De Lega Lata: Journal of Law* 6, no. 1 (2021): 16-32, <https://doi.org/https://doi.org/10.30596/dll.v6i1.4910>.

¹³ Nadiyah, Ronny Winarno, and Wiwin Ariesta, "Legal Studies on the Use of Artificial Intelligence (AI) That Results in Attacking Honor," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 3, no. 3 (2025): 2415-22, <https://doi.org/https://doi.org/10.62976/ijjel.v3i3.1287>.

¹⁴ Evita Afrilia Raranta, Rudolf S Mamengko, and Roy V Karamoy, "The Application of Article 27a of Law Number 1 of 2024 in the Practice of Criminal Justice 1," *Journal of the Faculty of Law Unsrat Lex Privatum* 14, no. 5 (2025), <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/60229>.

if the defamation is carried out by spreading something through an electronic system, which makes information and/or electronic documents accessible and known by various parties or the public at large ¹⁵.

The above are the general elements that can be found in the reading of the article. In practice, there are several other elements, namely words or content that degrade a person's dignity, are communicated through electronic media, and cause loss or disgrace to the targeted party ¹⁶. Sentences or words that contain defamation in order to be prosecuted must meet the public element or be known to the public, meaning that if done directly, they must be in front of two or more people, and they must be done on social media that can be accessed by the public ¹⁷.

Defamation regulation in Indonesia is considered a rubber article by many people. Article 27 of the ITE Law is referred to as a rubber article because it contains many interpretations and subjective meanings ¹⁸. Legal certainty for the victim is still considered non-existent. The implementation of the restrictions on defamation regulations in accordance with Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008, especially in article 27A, must be specifically studied. This is because to prove that the occurrence of defamation must be proven through the elements of the article both in terms of the language used and the place used.

2. Analysis Of Judges' Considerations In Court Decisions

Analisis terhadap pertimbangan hakim merupakan langkah krusial untuk memahami bagaimana batasan Pasal 27A UU ITE diimplementasikan secara konkret dalam praktik peradilan. Fokus utama pada bagian ini adalah untuk menilai konsistensi penerapan unsur-unsur delik, serta bagaimana hal tersebut berimplikasi pada kepastian hukum dan perlindungan kebebasan berekspresi. Melalui pengkajian terhadap beberapa perkara yang telah diputus, studi ini menyoroti disparitas putusan yang muncul akibat perbedaan latar belakang kasus, peran keterangan ahli bahasa, serta faktor subjektif hakim lainnya. Secara lebih sistematis, ringkasan hasil analisis

¹⁵ Renata Christha Auli, "Viralizing Facts on Social Media, Can You Be Subject to Defamation Articles?," *Online Law*, 2024, <https://www.hukumonline.com/klinik/a/memviralkan-fakta-di-medsos--bisa-kena-pasal-pencemaran-nama-baik-lt5d83b35260ae6/>.

¹⁶ Muh Mahsyah Nawaffani et al., "The Ethical Challenges of Online Journalism: A Case Study of JawaPos.Com News in the Context of ITE Law Regulation," *Journal* 3, no. 2 (2025): 105–18, <https://doi.org/10.54090/pawarta.899>.

¹⁷ Monika Yuliani Mamir Tanar, Deddy R.C Manafe, and Adrianus D Dima, "Criminal Accountability for Defamation through Social Media in the Kupang City Area," *Journal of Public Relations* 2, no. 3 (2024): 133–45, <https://doi.org/https://doi.org/10.59581/jrp-widyakarya.v2i2.3440>.

¹⁸ Catharina Nikkari, "Like a Double-Edged Knife: Does the ITE Law Provide Legal Certainty or a Tool for Overcriminalization?," Institute for Scientific Studies, Faculty of Law, University of Indonesia, 2024, <https://lk2fhui.law.ui.ac.id/portfolio/bak-pisau-bermata-dua-uu-ite-memberikan-kepastian-hukum-atau-alat-overcriminalization/>.

terhadap empat putusan pengadilan terkait kasus pencemaran nama baik tersebut disajikan dalam tabel berikut:

Table 1. Analysis Results 4 Defamation Case Verdict

Decision Number	Amar Verdict	Legal Considerations
4/Pid.Sus/2025/P N Amb	Proven to have legally committed a criminal act of defamation. Sentenced to 9 months imprisonment and a fine of Rp. 10,000,000 (Ten Million Rupiah), if you do not pay the fine, it will be changed to imprisonment for 2 months	The legal considerations were based on the testimony of various experts, who concluded that the Defendant's Facebook upload was fake and unfounded. Experts determined that the post, which falsely referred to the victim as a "RELATED SUSPECT (Blasphemy)", was incitement aimed at inciting hatred and hostility towards the individual. The continuous dissemination of suspect status by the Defendant, despite knowing that it was false, indicates a deliberate attempt to slander the victim.
6/Pid.Sus/2025/P N Mbo	Proven to have legally committed a criminal act of defamation. Sentenced to 2 months in prison	The legal considerations were based on the testimony of linguist Iskandar Syahputera, who stated that the Defendant's upload had a directing function. This shows that the comments were deliberately made to persuade the public to disseminate information accusing the victim of being a "domestic destroyer", thus fulfilling the elements of "intention to disseminate the information to the public" and "attacking honour".

17/Pid.Sus/2025/ PN Gin	Proven to have legally committed a criminal act of defamation. Sentenced to 1 month imprisonment	The defendant's action of recording the victim's witness without permission and uploading it to the social media platform TikTok with the caption "a low-level human resources officer pretending not to understand" is considered to meet the element of deliberate dissemination of information to the public. These accusations clearly degrade the honor and dignity of the victim as a police officer. The witness statement from the petrol station also showed that the victim's witness did not violate any regulations, so the Defendant's actions could not be justified.
46/Pid.Sus/2025/ PN Psw	Proven to have legally committed a criminal act of defamation. Sentenced to 3 months in prison	These legal considerations are strengthened by the testimony of two experts. Linguist Untung Kustoro, S.Hum, decided that the Defendant's Facebook upload that branded the victim as the perpetrator of harassing her husband was a criminal act of defamation because it contained allegations of defamation. According to ITE expert, Ir. MUH. YAMIN, S.T., M.Eng, the Defendant's actions met all the requirements of Article 27A of the ITE Law, namely deliberately degrading honor by making allegations that were disseminated through an electronic system

and published.

Source: Court Decision

In case number 4/Pid.Sus/2025/PN Amb, the defendant was sentenced to 9 months in prison and a fine of Rp. 10,000,000 (Ten Million Rupiah) If we look at the legal facts, we can know that the Defendant Abdul Mutalif Tuasikal consciously and repeatedly posted a narrative accusing the witness Maureen Vivian of being a suspected blasphemer and riot provocateur. In fact, at the time of the post, the victim's witness was not a suspect in any case. The defendant is proven to meet the Elements of a Criminal Offense (Article 45 paragraph (4) jo. Article 27A of the ITE Law jo. Article 64 paragraph (1) of the Criminal Code).

The elements of defamation and the effects seen from the defendant's treatment made the victim feel ashamed and defamed. The Panel of Judges was of the view that the Defendant had spread posts containing defamation against the victim repeatedly with the aim of being known to the public because it was spread through social media and marked with comments and had been read by others. The content of the post contains allegations that the victim is a defamatory perpetrator and the accusation cannot be proven by the defendant. The impact of the posts spread by the defendant is the damage to the victim's reputation. Then the Judge quoted expert testimony Dr. Yudi Prayudi S.Si, M.kom who explained that what the defendant did had fulfilled the elements in the defamation article in accordance with the ITE Law, namely article 27A of the ITE Law. The element of "*intentionally*" was fulfilled because the defendant had consciously posted on the defendant's Facebook account.

Then the element of "attacking honor or good name" was fulfilled because the defendant's post contained unfounded and unprovable accusations that damaged the victim's reputation in the eyes of the public. The element of "with the intention of making it known to the public" was fulfilled because the defendant posted on a technology-based social media platform, namely Facebook, where the post could be accessed by the public. Apart from the expert opinion at the trial, there are incriminating things for the defendant in this case according to the judge, namely the defendant's actions disturb the community, humiliate and degrade the dignity of the victim, and tarnish his good name and the defendant has been convicted before.

In Case number 6/Pid.Sus/2025/PN Mbo, the defendant was sentenced to 2 months in prison, a legal fact was found where the defendant Muri Wahyuni uploaded a photo of the witness dr. Melvi Muti Nasution with a writing that referred to the victim as a perpetrator and a household destroyer. As a result, the victim, who works as a doctor, feels very embarrassed and hampered by the specialist education process. The defendant meets the Elements of a Criminal Act (Article 27A jo. Article 45 paragraph (4) of Law No. 1 of 2024?

The panel of judges considered the opinion of Expert Iskandar Syahputera explaining that the sentence posted by the defendant had met the element of defamation because it contained allegations against the victim and contained a call or invitation to disseminate the accusation so that it was known to the wider public. Then the Muklis member, SH. M.Hum explained that to determine the elements of a criminal act, it must meet the subjective element, where in this case the subjective element is the defendant and the objective element is the action committed by the defendant. In this case, the objective element has been fulfilled because the defendant disseminated things that contained accusations to the victim with the aim of making it known to the public.

This is done using technology-based social media platforms, namely Instagram and TikTok, so that it meets the elements in article 27A of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions. The judge considered that the defendant had previously caught the victim while he was with the defendant's husband in 1 car. The judge also considered based on article 45 paragraph (7) of the ITE Law which states that the acts regulated in article 27A of the ITE Law are not punished with 2 conditions, namely if they are done in the public interest or done because they are forced to defend themselves. However, after further analysis, the two conditions were not met from the actions taken by the defendant.

The panel of judges also weighed through the facts behind the defendant's actions and argued that it was a human thing where the defendant who was still the wife of the defendant's husband was jealous and the defendant's husband never provided clarity to the defendant. However, the panel of judges argued that the method taken by the defendant could not be justified because it violated the law. The defendant was charged by the prosecutor, namely imprisonment for 4 months. For this, the panel of judges tried the defendant with .

In Case number 17/Pid.Sus/2025/PN Gin, the defendant was sentenced to 6 months in prison, but was sentenced to 1 year probation. This means that the defendant does not need to go to prison unless he commits another criminal act within the next one year. It was found that the Defendant was involved in a fight with witness I Ketut Putu Ardika at the Temesi petrol station due to queue problems. The defendant recorded the witness saying, "This is an educated person who buys petrol... don't know the rules," then uploaded it to TikTok with the aim of embarrassing the witness. This makes the defendant proven to meet the elements of Article 45 paragraph (4) jo. Article 27A of the Criminal Code).

The panel of judges weighed the testimony of the victim's witness, I Ketut Putu Ardika and the witness from the gas station officer at the scene, Dito Andriawansyah. From the testimony of witnesses and the testimony of the defendant, the panel of judges weighed based on 3 elements that meet article 27A of the ITE Law, namely each person, intentionally, and attacking the honor or good name of another person by

accusing something, with the intention that it is known to the public in the form of Electronic Information and/or Electronic Documents carried out through the Electronic System. From the facts obtained at the trial, the panel of judges argued that the actions taken by the defendant had met the elements of defamation where the defendant posted through a technology-based social media platform, namely tiktok, the posts spread by the defendant contained accusations and insults that defamed the victim, and with the uploading of the defendant's post, it could be seen by the public.

Based on Decision Number 46/Pid.Sus/2025/PN Psw, this case involves the Defendant Milda Jayanti Alias Melda Binti Tasman who was charged with committing a criminal act of defamation through social media. The legal facts revealed at the trial show that on October 2, 2024, the Defendant uploaded a dialogue video and a screenshot of a comment on his Facebook account named "Mida" with a caption accusing the victim's witness, Ratna Sari, of being a bully of people's husbands ("don't let sa spil kan how many husbands are the people you harass"). The post is public, accessible to about 3,000 of the Defendant's Facebook friends, and has received 26 comments and 25 reactions from other users.

In passing the verdict, the Panel of Judges took the main considerations from the suitability of valid evidence, namely:

1. Witness Statement: Witness statement of victim Ratna Sari and witness Haslinda who confirmed the existence of the post and the impact of the embarrassment experienced by the victim
2. Expert Statement: The Judge considered the opinion of the Linguist (Untung Kustoro, S.Hum) who stated that the Defendant's speech was a statement of bad reputation or defamation, as well as the ITE Expert (Ir. Muh. Yamin) who explained that the act fulfilled the elements of electronic information distribution that attacked honor.
3. Evidence: There is a printed out of a screenshot of the Facebook post and the mobile phone unit used by the Defendant
4. Defendant's Statement: The defendant's confession confirmed that he had uploaded the post because of emotions due to debt-receivables problems and felt offended by the victim's satirical video.

Fulfillment of the elements of criminal acts in Article 45 paragraph (4) jo. Article 27A of the ITE Law (second amendment) is declared legally proven. The Panel of Judges considered that the element of "Everyone" was fulfilled because the Defendant was a subject of law who was physically and spiritually healthy. The element of "deliberately attacking honor or good name" is also fulfilled because the Defendant consciously (willens en wetens) wants the post to be known to the public so that the victim's witness feels ashamed. In addition, the use of the Facebook platform as a medium of dissemination proves the fulfillment of the element "through the Electronic System".

Regarding criminal liability, the Panel of Judges stated that the Defendant must

bear the legal consequences because no excuse or justification was found that could eliminate his mistake. However, in his consideration, the Judge applied the principle of Restorative Justice based on PERMA Number 1 of 2024 because there had been a peace agreement between the Defendant and the victim at the trial. Finally, the Defendant was sentenced to imprisonment for 3 (three) months, with the provision that the criminal sentence does not have to be served unless in the future there is a decision by another judge because the Defendant committed a criminal act before the probation period of 6 (six) months ended.

From the case above, it can be seen that it is related to the limitations on the implementation of defamation rules in accordance with article 27A of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions. Based on the case decisions that have been analyzed, a criminal act of defamation must meet the elements of defamation. Apart from the elements in article 27A of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions, there are other incriminating elements for the judge's consideration, namely "Even though each is a crime or violation that is related in such a way that it is seen as a continuing act".

This element must be proven according to the facts if the defendant commits defamatory acts repeatedly, such as in the case of decision number 4/Pid.Sus/2025/PN Amb. The most important element that must be proven in accordance with article 27A of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions is the element of "Attacking the Honor and Good Name of a Person" where it must be proven by evidence that legally, this problem focuses on the treatment of the defendant, especially the language used by the defendant whether it includes these elements or not. Of the 4 cases analyzed, there were 3 cases that presented linguists to prove this. In addition, another element is "in the form of electronic information and/or electronic documents carried out through an electronic system" where article 27A of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions basically only regulates a criminal act whose scene or media uses an electronic system.

In determining the *locus delicti* of cybercrime cases, in this case defamation through electronic systems, the proof can be done by collecting evidence and the perpetrator can also conduct a digital forensic test to meet the elements carried out through an electronic system ¹⁹. If these elements are not met, the defendant cannot

¹⁹ Alfian Maranatha Seichi Rumondor, Herlyanty Y.A Bawole, and Deizen Devenz Rompas, "Juridical Analysis of Legal Liability for Defamation through Social Media: Perspectives of Law Number 1 of 2024 concerning Information and Electronic Transactions," *LEX PRIVATUM Jurnal Unsrat* 13, no. 4 (2024): 1-7, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/57250>.

be charged with article 27A of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions. Another limitation is the element of "with the intention of making it known to the public" in proving that the defendant must be proven to have disseminated his uploads publicly. This can be marked by conducting an analysis of the account used by the defendant regarding the settings of posts whether they are regulated for public or private. If it is only set for private or for example through a private chat, it cannot meet the element of "with the intention of being known to the public". This element can also be proven by seeing how many people have seen the upload and can be marked by comments or *likes* on the upload.

The results of this study also show that the application of the limitation on the regulation of the crime of defamation as stipulated in Article 27A of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) requires careful and specific proof of cumulative criminal elements. Based on a review of the court's ruling, the legal limitations of the application of this article depend heavily on the ability to prove aspects of *"attacking the honor or good name of a person"* and *"with intent to make the public known"*. Proving the *element of "attacking a person's honor or good name"* requires extensive research, often involving the testimony of linguists, to determine whether the uploaded content, whether oral or written, objectively contains insults, accusations, or defamation that is detrimental to the dignity of the victim. Further, the *element of "through the Electronic System"* must be forensically proven, which includes the identification of the locus delicti and the distribution medium used.

From the above verdict, it is known that related to isitlah regarding the phrases *"attacking honor"*, *"good name"*, and *"accusing something"*, which because they are not specifically defined in the law, so that the interpretation of these various phrases is considered subjective, this shows that the formulation of this article has not been able to solve the main problem, namely maintaining legal certainty. According to the author's frugality, in order to maintain a balance between the protection of personal dignity and freedom of speech, lawmakers should clarify more specific and limited definitions

In this study, the occurrence of criminal disparities imposed by the panel of judges for the same criminal act in this article based on the author's research is caused by several factors, including:

1. Judge Discretion Authority, where the judge's discretion in deciding cases must be based on discretion, both because there is a law or not. Judges have the authority to find the truth so that their verdicts reflect legal values and also the sense of justice that lives in society.
2. The Principle of Freedom and Independence of Judges, where in terms of judicial power is known as independent power carried out by a Supreme Court and the judiciary under it, as well as a Constitutional Court to organize the

judiciary to uphold the law and justice. This is in accordance with Article 24 Paragraph (10, Paragraph (2), and (3) of the 1945 Constitution.

3. Internal and External Factors of the Judge, this factor is something that can be considered. Internal factors come from the judge himself such as education, age, and experience of the judge. Meanwhile, external factors include the defendant's psychological condition, age, evidence, and the consequences of the act.

C. Conclusions and Recommendations

Based on an analysis of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law), especially Article 27A, it can be concluded that the restriction and implementation of defamation regulations in the digital realm requires specific and careful proof of criminal elements.

Thus, the legal limitations on the application of the defamation article in the ITE Law are based on the study of the language and context of the dissemination of information through electronic systems. The difference in the verdict in similar cases shows that the judge's consideration is based on the background of the case and the expert testimony at the trial, as well as the association between the evidence possessed and the elements of the applicable rules are important.

Furthermore, it is necessary to sharpen the formulation of articles that are still considered very subjective such as the phrases "*attacking honor*", "*good name*", and "*alleging something*" or technical guidelines to prevent abuse by law enforcement officials, as well as to ensure the protection of constitutional rights, especially freedom of opinion guaranteed by the 1945 Constitution.

References

- Andika Rauf, D., Ahamd, & Rivaldi Moha, M. (2025). Ekuivalensi Kebebasan Berekspresi dan Perlindungan Nama Baik Pasca Perubahan Undang-Undang Informasi dan Transaksi Elektronik. *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 3(2), 601–621. <https://doi.org/10.61104/alz.v3i2.1104>
- Angelina, J., & Sumanto, L. (2024). Kajian Yuridis Kasus Pencemaran Nama Baik Berdasarkan KUHP yang Berkepastian Hukum. *Journal of Accounting Law Communication and Technology*, 2(1), 509–515. <https://doi.org/10.57235/jalakotek.v2i1.4648>
- Antonio, A., & Adhari, A. (2024). Menilai Implementasi Undang Undang ITE dalam Menegakkan Kepastian Hukum Terhadap Kasus Pencemaran Nama Baik. *Ranah Research : Journal of Multidisciplinary Research and Development*, 6(4), 1079–1087. <https://doi.org/10.38035/rrj.v6i4.979>
- Asmadi, E. (2021). Rumusan Delik dan Pidanaan Bagi Tidak Pidana Pencemaran Nama Baik di Media Sosial. *De Lega Lata: Jurnal Ilmu Hukum*, 6(1), 16–32. <https://doi.org/https://doi.org/10.30596/dll.v6i1.4910>
- Auli, R. C. (2024). *Memviralkan Fakta di Medsos, Bisa Kena Pasal Pencemaran Nama Baik?* Hukum Online. <https://www.hukumonline.com/klinik/a/memviralkan-fakta-di-medsos-bisa-kena-pasal-pencemaran-nama-baik-lt5d83b35260ae6/>
- Kitab Undang - Undang Hukum Pidana (2021).
- Kominfo, A. (2022). *Ahli Hukum dan Akademisi Nilai Revisi UU ITE Persempit Ruang Multitafsir*. Aptika Kominfo. <https://aptika.kominfo.go.id/2022/09/ahli-hukum-dan-akademisi-nilai-revisi-uu-ite-persempit-ruang-multitafsir/>
- Munir. (2024). Kajian Pasal 27 A UU No. 1 Tahun 2024 Tentang Perubahan Kedua Undang-Undang Nomor 8 Tahun 2008 Tentang ITE. *Fundamental: Jurnal Ilmiah Hukum*, 13(2), 1–12. <https://doi.org/10.34304/jf.v13i2.284>
- Nadiyah, Winarno, R., & Ariesta, W. (2025). Kajian Hukum Terhadap Penggunaan Artificial Intelligence (AI) yang Berakibat Menyerang Kehormatan. *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory*, 3(3), 2415–2422. <https://doi.org/https://doi.org/10.62976/ijijel.v3i3.1287>
- Nawaffani, M. M., Alhasbi, F., Hanifah, N., & Haryanto, I. N. S. (2025). Tantangan Etika Jurnalisme Online: Studi Kasus Pemberitaan JawaPos.com dalam Konteks Regulasi UU ITE. *Pawarta*, 3(2), 105–118. <https://doi.org/10.54090/pawarta.899>
- Nikkari, C. (2024). *Bak Pisau Bermata Dua: UU ITE Memberikan Kepastian Hukum atau Alat Overcriminalization?* Lembaga Kajian Keilmuan Fakultas Hukum Universitas Indonesia. <https://lk2fhui.law.ui.ac.id/portfolio/bak-pisau-bermata-dua-uu-ite-memberikan-kepastian-hukum-atau-alat-overcriminalization/>
- Paradias, R., & Soponyono, E. (2022). Perlindungan Hukum Terhadap Korban Pelecehan Seksual. *Jurnal Pembangunan Hukum Indonesia*, 4(1), 61–72. <https://doi.org/10.14710/jphi.v4i1.61-72>
- Pratiwi, A., Cahya, F., & Silitonga, L. (2024). Tindak Tutur Pelaku Pencemaran Nama Baik Luhut

- Binsar Panjaitan Oleh Haris Azhar Dan Fatia Maulidiyanti Dalam Konten Sosial Media Youtube 'Ada Lord Luhut Dibalik Relasi Ekonomi-Ops Militer Intan Jaya.' *Jurnal Nakula : Pusat Ilmu Pendidikan, Bahasa Dan Ilmu Sosia*, 2(1), 80–89.
<https://doi.org/https://doi.org/10.61132/nakula.v2i1.372>
- Raranta, E. A., Mamengko, R. S., & Karamoy, R. V. (2025). Penerapan Pasal 27a Undang-Undang Nomor 1 Tahun 2024 Dalam Praktek Peradilan Pidana 1. *Jurnal Fakultas Hukum Unsrat Lex Privatum*, 14(5).
<https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/60229>
- Rumondor, A. M. S., Bawole, H. Y. ., & Rompas, D. D. (2024). Analisis Yuridis tentang Pertanggungjawaban Hukum Terhadap Pencemaran Nama Baik Melalui Media Sosial: Perspektif Undang - Undang Nomor 1 Tahun 2024 tentang Informasi dan Transaksi Elektronik. *LEX PRIVATUM Jurnal Unsrat*, 13(4), 1–7.
<https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/57250>
- Sahara, W. (2021). *Awal Mula Saiful Mahdi Dijerat UU ITE hingga Dapat Amnesti dari Jokowi*. Kompas.Com. <https://nasional.kompas.com/read/2021/10/06/15463521/awal-mula-saiful-mahdi-dijerat-uu-ite-hingga-dapat-amnesti-dari-jokowi?page=all>
- Tanar, M. Y. M., Manafe, D. R. ., & Dima, A. D. (2024). Pertanggungjawaban Pidana Pencemaran Nama Baik Melalui Media Sosial Di Wilayah Kota Kupang. *Jurnal Relasi Publik*, 2(3), 133–145. <https://doi.org/https://doi.org/10.59581/jrp-widyakarya.v2i2.3440>
- Undang Undang Nomor 1 Tahun 2024 Tentang Perubahan Kedua Atas Undang Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik (2024).
- Widi Pranata, Y. (2025). Rekonstruksi Pasal 27 Ayat (3) UU ITE Dan Implikasinya Terhadap Kebebasan Berpendapat Di Indonesia. *IJOLARES*, 3(2), 41–47.
<https://doi.org/https://doi.org/10.60153/ijolares.v3i2.164>
- Yusuf. (2021). *Mengungkap Kegaduhan Publik Soal UU ITE, Menkominfo: Implementasinya untuk Pemanfaatan Ruang Digital*. Aptika Kominfo.
<https://aptika.kominfo.go.id/2021/02/mengungkap-kegaduhan-publik-soal-uu-ite-menkominfo-implementasinya-untuk-pemanfaatan-ruang-digital/>
- Zainuddin, M., & Karina, A. D. (2023). Penggunaan Metode Yuridis Normatif dalam Membuktikan Kebenaran pada Penelitian Hukum. *Smart Law Journal*, 2(2), 114–123.
<https://journal.unkaha.com/index.php/slj/article/view/26>