

PROBLEMATICS OF EVIDENCE IN CONSTITUTION ELECTRONIC INFORMATION AND TRANSACTIONS (UU ITE) ANALYSIS ARTICLE 27 PARAGRAPH (3) LAW NUMBER 11 OF 2008 ABOUT THE ITE CONSTITUTION ABOUT INSULTING

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Abstract: *Lately, the problem of the existence of the offense of defamation of good name has re-emerged and has been questioned by many. The emergence of public attention to this offense was caused by several cases of defamation that occurred. The case which was highlighted by several mass media and aroused public sympathy was the Prita Mulyasari case. The sympathy of the community was shown by raising "Prita Caring Coins" which were carried out in various regions. Prita was charged with a multi-layered article by the Public Prosecutor, namely Article 310 of the Criminal Code concerning defamation, Article 311 of the Criminal Code concerning written defamation in the form of defamation, and Article 27 Paragraph (3) of Law No. 11 of 2008 concerning Information and Electronic Transactions (ITE Law) concerning defamation and/or defamation through electronic information media and/or electronic documents. Prita's case stems from her complaint via email to a number of colleagues regarding the service at Omni International Hospital and the doctors who treated her. The ratification of Article 27 paragraph (3) of the ITE Law and the articles governing the offense of defamation or defamation in the Penal Code raises questions and raises the pros and cons regarding the application of the law in cases of insult or defamation. Normally defamation in the Criminal Code and ITE Law is the same. But in terms of perpetrators, criminal threats and elements in public both look different. Enforcement of defamation or defamation articles regulated both in the Criminal Code and in other laws and regulations is often highlighted sharply not only by legal practitioners but also by the public because it is considered to have hindered a lot of freedom of expression and express opinions in the community, for example on social media. Social media actually functions as a link of brotherhood between humans in the cyber world.*

Key Words: *Law Enforcement, Defamation, Criminal Law.*

1. INTRODUCTION:

Crime is behavior that violates the law and violates social norms so that the community opposes it (Kartono, 1992). In a social context, crime is a social phenomenon that occurs at every place and time (Matalata, 1987). This shows that crime is not only a problem for a particular society on a local or national scale but also a problem faced by all people in the world, in the past, present and in the future so that it can be said that crime as a universal phenomenon (Arief, 1994). It is undeniable, however, that of the many ideas about crime eradication strategies, it shows that the penal approach (criminal provision for perpetrators) is still the choice of many countries in the world. Although it must be realized that the crime eradication approach is not a single strategy. Because the eradication of crime cannot be done partially, but it must be done integrally, as stated by Barda Nawawi Arif, "policy approach," in the sense that there is integration between criminal politics and social politics, as well as integration between efforts to overcome the law (repressive) with non-penal approach (preventive) (Arief, 1996).

Although Packer recognizes the criminal as necessary, it is still regrettable, as a form of social control because the criminal contains suffering. According to Gross, the law that was imposed was a regrettable, necessity. Because criminal convictions cause suffering, it is necessary to justify and have to look for the basis (Gross, 1979). This shows that the criminal problem is not just a matter of policy, but also enters the realm of theoretical and philosophical debate about the reasons for the use of criminal sanctions. In connection with this, in the theoretical development of criminality several theories of punishment have been born, such as retaliation theory, goal theory and combined theory. The problem is whether the theory is still capable of carrying out theoretical functions in the present context? If not, what theoretical basis is most appropriate to justify the use of criminal law today? Lately, the problem of the existence of the offense of defamation of good name has re-emerged and has been questioned by many. The emergence of public attention to this offense was caused by several cases of defamation that occurred. The case which was highlighted by several mass media and aroused public sympathy was the Prita Mulyasari case. The sympathy of the community was shown by raising "Prita Caring Coins" which were carried out in various regions. Prita was charged with a multi-layered article by the Public

Prosecutor, namely Article 310 of the Criminal Code concerning defamation, Article 311 of the Criminal Code concerning written defamation in the form of defamation, and Article 27 Paragraph (3) of Law No. 11 of 2008 concerning Information and Electronic Transactions (ITE Law) concerning defamation and/or defamation through electronic information media and/or electronic documents. Prita's case stems from her complaint via email to a number of colleagues regarding the service at Omni International Hospital and the doctors who treated her. Besides Prita, many other cases related to defamation, especially those carried out through social networking in cyberspace (cyber), for example, Luna Maya Artists who have tripped over defamation cases for writing status that cursed infotainment work on the social networking site Twitter. A similar case was experienced by Ningsih in Gorontalo over the status and comments in her Facebook account that were considered to contain defamation. Then someone named Farah also tripped over a defamation case allegedly related to the motive for romance for writing comments that were considered an insult to Facebook. Lately, there have been a lot of complaints about defamation cases, especially those made through cyberspace. The government's efforts to ensure the security of electronic transactions through the ITE Law should be appreciated. But in practice, there are many protests and criticisms from several communities of internet users. If it is read in passing without looking deeper, this ITE Law seems only as a savior for the security of electronic transactions or pornography on the internet, as has been widely reported by the media. "This law has far" deviated "from its original mission to protect trade and electronic transactions.

Article 27 Paragraph 3: Every person intentionally and without the right to distribute and/or transmit and/or make access to Electronic Information and/or Electronic Documents **that have content of defamation and/or defamation.** Article 27 paragraphs 1 and 3 of the ITE Law terminology violates the content of morality there needs to be a special explanation of what is called a violation of morality because remembering what is the definition of porn itself is still gray. In paragraph 3: "having a charge of insult and/or defamation" is a very broad terminology. Tia is a very subjective and multiple interpretation clause. Humiliation and pollution in the ITE Law will also crash into all criminal law concepts and doctrines in the Criminal Code that have been used as a reference at this time. Because in the Penal Code the insults are explained with a variety of different categories and threats, ITE mixes up the whole doctrine and presents a far heavier threat without the category of 6 years imprisonment and a 1 billion rupiah fine. In addition, the article does not provide justification for matters relating to the defense of the public interest. The government's efforts to ensure the security of electronic transactions through the ITE Law should be appreciated. But in practice, there are many protests and criticisms from several communities of internet users. If it is read in passing without looking deeper, this ITE Law seems only as a savior for the security of electronic transactions or pornography on the internet, as has been widely reported by the media. "This law has far" deviated "from its original mission to protect trade and electronic transactions. A crime that has not been regulated in full in the Criminal Code (hereinafter referred to as the Criminal Code), is further regulated in the ITE Law. One example is a criminal act of defamation or defamation. The qualifications of defamation or defamation as referred to in Chapters XVI Articles 310 to 321 of the Criminal Code vary greatly, depending on the elements of the criminal act as formulated in the description of the article. This needs to be seen also about the nature of criminal acts in general which in essence is a violation of norms which are also acts that violate the interests of the law, or which are only endangering the interests of the law itself. Defamation or defamation is formulated in Article 310 paragraph 1 and paragraph (2) of the Criminal Code as follows:

"Anyone who deliberately attacks the honor or reputation of a person, by accusing something, which means clear so that it is known publicly, is threatened, because of pollution, with a maximum jail sentence of nine months or a maximum fine of three hundred rupiahs". "If this is done with writings or pictures that are broadcast, displayed or posted in public, then the guilty person, because of written pollution, is liable to a maximum of one year and four months imprisonment or a maximum fine of three hundred rupiahs. In the ITE Act, criminal acts of defamation or defamation are regulated in Article 27 paragraph (3). Fill in Article 27 paragraph (3) jo. Article 45 (1) of the complete ITE Law is as follows: "Everyone intentionally and without the right to distribute and/or transmit and/or make access to Electronic Information data and/or Electronic Documents that have content of defamation and/or defamation". "Every person who fulfills the elements referred to in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be sentenced to a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah)." The ratification of Article 27 paragraph (3) of the ITE Law and the articles governing the offense of defamation or defamation in the Penal Code raises questions and raises the pros and cons regarding the application of the law in cases of insult or defamation. Normally defamation in the Criminal Code and ITE Law is the same. But in terms of perpetrators, criminal threats and elements in public both look different. Enforcement of defamation or defamation articles regulated both in the Criminal Code and in other laws and regulations is often highlighted sharply not only by legal practitioners but also by the public because it is considered to have hindered a lot of freedom of expression and express opinions in the community, for example on social media. Social media actually functions as a link of brotherhood between humans in the cyber world.

2. RESEARCH METHODOLOGY:

This research is normative legal research that uses secondary data sources in the form of primary, secondary, and tertiary legal materials (Muhammad, 2004: 101-102; Soekanto, 2005). Primary legal material consists of laws and regulations related to defamation of defamation. Then the secondary legal material consists of international conventions, books, journals, articles, and other literature relating to the problem being studied. Whereas primary legal materials are encyclopedias and dictionaries. The collection of legal material is done through the study of documents or literature. The approach used is the statutory approach and philosophical approach. The statute approach (Statute Approach) is carried out by examining all the laws and regulations relating to the research conducted. While the philosophical approach is carried out by examining in depth the background of a rule or legal concept made, by basing the discussion on the theory of legal philosophy revolves around issues of nature, values, methods and also the purpose of a legal rule. The legal materials that have been collected are then analyzed qualitatively, comprehensively, and completely. Qualitative analysis is to describe legal material in the form of regular, collateral, logical, non-overlapping, and effective sentences, so as to facilitate the interpretation of legal material and understanding the results of the analysis. Comprehensive means an in-depth analysis of legal materials from various aspects in accordance with the scope of the study. While complete means that no part has been missed, all of which have been included in the analysis.

3. RESEARCH RESULTS AND DISCUSSION:

In the Criminal Code, the offense of defamation is explicitly regulated starting from Article 310 to Article 321. Related to this, the main question that needs to be asked is what is the meaning of defamation? Briefly, it can be stated that what is meant by defamation is to attack someone's honor or reputation. This understanding is a general understanding (genus offense) offense defamation. While the special nature or forms (offenses species) defamation include; defamation / defamation (Article 310 paragraph 1); written pollution / defamation (Article 310 paragraph 2); defamation (Article 311); mild insults (Article 315); defamation complaints (Article 317); false allegations (Article 318); and defamation of the person who died (Article 320).

First, Pollution / defamation. Explicitly the provisions regarding pollution/defamation are regulated in Article 310 which reads as follows:

- Anyone who deliberately attacks the honor or reputation of someone, by accusing something, which means that it is clear so that it is known publicly, is threatened, because of pollution, with a maximum criminal for a month or a maximum fine of three hundred rupiahs.
- If this is done with writing or picture that is broadcast, displayed or posted in public, then the person who is guilty of written pollution is liable to a maximum of one year and four months imprisonment or a maximum fine of three hundred rupiahs.
- It does not constitute defamation or written defamation, if an act of light is carried out in the public interest or because it is forced to defend itself.

If we consider the existence of the provisions of Article 310 of the Criminal Code regarding oral pollution regulated in Article 310 paragraph (1), and written pollution regulated in Article 310 paragraph (2). The elements of offense Article 310 paragraph (1) is (a) to attack someone's honor or reputation, (b) by accusing something, (c) intentionally, and (d) the intention to be known publicly. Based on these elements, so that a person can be convicted pursuant to Article 310 paragraph (1), the person must make defamation by accusing someone of having done something, the accusation is intended to be made public or known. The meaning of "attacking" in Article 310 paragraph (1) should not be interpreted as a physical attack, because the object is indeed not physical, but a feeling of respect and feelings of one's good name. The meaning of honor is personal feelings or self-esteem (Anwar, 1994). Honor is also interpreted as a feeling of respect for someone in the eyes of society or the public (Mudzakkir, 2009). Attacking honor, even if the person being attacked is a despicable person, means carrying out acts according to judgment generally attacking one's honor. A good name is a sense of self-esteem or dignity based on the views or a good assessment of the community of someone in a social relationship (Chazawi, 2009). In other words, a good name is an honor given by society to someone related to its position in society.

Honor and good name have different meanings, but the two cannot be separated from one another. Because attacking honor will result in honor and reputation being tainted, likewise attacking good name will result in someone's reputation and reputation being tainted. Therefore, attacking one of them, honor or good name, is sufficient to be used as an excuse to accuse someone of blasphemy. There are two measures that a statement accusing an act is considered to attack one's honor and good name, namely subjective and objective measures. According to subjective measures, there are people who feel attacked by honor and good name due to the words of others who accuse an act. When a person is said to be attacked by honor or his good name depends on the subjectivity of the victim, where he feels his personal integrity is polluted. Whereas according to an objective measure is based on a general measure of time and place to assess that action including acts damage the honor or good name or not. If the answer is positive, then it can be used as an excuse to determine the act as an act of tourism. Here the values that live in society become a measure. The police,

prosecutors, and judges must be able to capture the values of politeness that live in the community. The act of attacking someone's honor or reputation by accusing something must be done deliberately. The perpetrator does want a result that arises from his actions, namely the other person to whom the honor or reputation is attacked. In addition, intentions here must be addressed to all elements behind it (Lamintang and Samosir, 1979). Deliberation is also aimed at the element "publicly known, meaning that the offender in carrying out an act of attacking one's honor or good name, he realized that by doing so the act can be known by the public.

Article 310 paragraph (2) regulates written defamation, in which the elements consist; (a) all elements in paragraph (1); (b) accusing an act of being written or broadcast, displayed or posted; and (c) openly. The meaning of "broadcast" is writing or drawing made in sufficient quantities, can be printed or photographed copy, and then distributed in any way. While the meaning of "shown" is to show the writing or picture whose content or meaning is contemptuous to the public so that many people know it. The meaning of "affixed" is the writing or drawing affixed to other objects that are plastered, such as boards, building walls, and so on. Defamation both verbally and in writing, the culprit is not convicted if the act is carried out in the public interest or in self-defense. What is the meaning of the two words is not explained by juridical normative, so to judge it submitted to the judge's judgment based on the case examined. Second, slander. Defamation is generally defined as incorrect words that are usually used to accuse someone. In Indonesian grammar, defamation is interpreted as words intended to discredit people (Marpaung, 1997). Provisions regarding defamation are regulated in Article 311 which states that:

- If committing a crime of verbal pollution or written pollution, in the event that it is permissible to prove that what is alleged is true, does not prove it and the accusation is done contrary to what is known, then he is threatened because of defamation, with a maximum imprisonment of 4 years.
- Revocation of these rights in Article 35 No-13 can be dropped.

Based on the above provisions, the elements of Article 311 are (a) committing an oral or written pollution crime; (b) there is permission to prove the allegations; (c) can prove that truth; (d) accusations were made; and (e) the allegations are made contrary to what is known. From these elements, it means that a person who commits criminal acts of pollution both verbally and in writing, where on his accusation he is allowed to prove it and he cannot prove it, while the accusation is against the knowledge, the person is said to have committed libel. However, it should be noted that not every person who commits a crime of pollution can be allowed to prove the truth of his allegations. Only pollution offenses for certain reasons can be permitted, whereas pollution offenses committed for reasons other than that are not permitted to prove the truth of the allegations. Permission to prove the allegations in the crime of pollution can be granted by the judge, if (a) the allegation is made in the public interest; (b) done in self-defense, and (c) in the case of slander the civil servants who are carrying out their duties (Article 312). Proof in Article 312 is not permitted if the alleged case can only be prosecuted for a complaint and the complaint referred was not submitted (Article 313).

Another thing to note is Article 314 of the Criminal Code, which relates to criminal acts of defamation, if a person who is alleged to have been blamed by a judge for an act alleged by him, in this case, cannot be dropped for defamation. Article 314 reads:

- If a person who is insulted by a judge's decision becomes permanent, is found guilty of the matter alleged, then a conviction for defamation is not possible.
- If the decision of a judge who remains acquitted of what is alleged, then the decision is seen as perfect evidence that the matter alleged is not true.
- If a criminal prosecution has been commenced for being insulted because of the alleged matter, the prosecution for defamation is terminated until a verdict becomes fixed, concerning the alleged matter.

Third, mild insults. The form of mild humiliation is contained in Article 315 of the Criminal Code which reads as follows:

Any deliberate insults that are not contaminated or written pollution committed against a person, whether in public by oral or written, or in front of the person himself orally or by deeds, or by letters sent or received to him, are threatened because of insults light with a maximum imprisonment of four months two weeks or a maximum fine of four thousand five hundred rupiahs. According to moral theory, criminal law with the moral dimension are two things that are very close. Criminalization of an act can be based on moral values that live in society. Immoral acts can be legalized in law into a criminal act. If an immoral act is not criminalized, then what will happen is a tension between morals and criminal law (Luthan, 2007: 35). This theory can be a justification for the criminalization of the crime of defamation in Indonesia in accordance with the culture of Indonesian people who still uphold eastern culture. Although the impact is more on immaterial losses, indirectly defamation can also have an impact on material losses on people who have certain positions, such as businessmen, doctors, or others, which cause a decrease in people's trust in them. For a doctor or businessman, a decrease in people's trust in them can cause material losses because it will affect income. Because of this material loss, defamation cases in many countries can also be resolved using civil law instruments. Based on the description above, the criminalization of the crime of defamation is intended to protect one's honor and good name and to encourage someone to treat others according to their dignity and dignity as human beings. Protection of honor and

dignity is guaranteed in the 1945 Constitution, namely article 28 G Paragraphs (1) and (2) which read: (1) Everyone has the right to protection of personal, family, honor, dignity, and property under his power, and is entitled to a sense of security and protection from the threat of fear to do or not do something that is a human right; (2) Everyone has the right to be free from torture or treatment which degrading human dignity and has the right to obtain political asylum from other countries (Muzdakkir, 2008). Meanwhile, the formulation of an offense for defamation can be seen from the theory of criminal law, both formal and material. In criminal law theory, it is known that the division of offense is based on its formulation, namely formal offenses, material offenses, and formal offenses. The formal offense is an offense whose formulation only emphasizes its actions, without requiring any consequences, for example, article

362 of the Criminal Code concerning theft. Whereas it is called material offense if the result of the formulation of an offense is the result, for example, 355 Paragraph (2) of the Criminal Code concerning murder. In addition to these two offenses, the formulation of offenses can be formal and material in nature, namely offenses whose formulations emphasize the manner in which their actions are carried out as well as their consequences, for example, article 378 of the Criminal Code concerning fraud. From the formulation point of view, the defamation offenses stipulated in the Criminal Code and Laws outside the Criminal Code are formal offenses that do not require the consequences of acts committed. In this offense a person can be convicted if the criminal elements have been fulfilled without having to cause certain consequences, for example in Article 310 of the Criminal Code where a person can be convicted only if it is proven to have intentionally committed an act of attacking someone's honor or good name by accusing a matter of intent to be made public. So it does not require the consequences of these actions. Formulation formally on the offense of defamation is prone to be misused, especially by the authorities for certain motives because the criteria for actions containing defamation depend on the subjective perception of the intended person. Therefore, it would be better if the articles were formulated materially or formally. The formulation materially or materially is more able to meet one of the principles that must be upheld in criminal law, namely *nullum crimen, nulla poena sine lege certa* (there is no criminal without clear statutory rules) (Hiariej, 2009: 4). Formulation materially or materially can minimize the occurrence of abuse or deviation from the spirit that is actually desired by a rule.

In the Draft Penal Code (RKUHP), the articles on defamation of defamation are retained, even the articles of defamation of the president and/or vice president that have been canceled by the Constitutional Court are still raised. It's just that in the Criminal Code Bill, the insulting article is no longer in the form of formal offense, but material. The formulation with a material offense can prevent abuse of power by the authorities because to use this article it must be proven that someone's actions have caused certain consequences, for example, as summarized in the RKUHP as resulting in causing trouble or riots in society, violence against people or goods, breaking up national unity and unity or others. Article contempt of the president and / or vice president is deemed to still need to be specifically regulated in the coming Criminal Code because the president and / or vice president are symbols of the State which must be preserved in authority, especially in eastern cultures such as in Indonesia, a leader must be respected more than others because shoulder a heavy mandate in protecting the community. But the formulation must be in the form of material offenses that have clear parameters. The formulation of a defamation offense in the form of material offense can be a middle ground of controversy over the criminalization of the defamation offense. First, the law will provide protection from insulting acts, slander, and others committed by someone. The law here does not only function as prevention because prevention of this kind of action is impossible, therefore it is necessary to have a legal umbrella that also contains sanctions as a drug that can heal the reputation that has already been injured as a result of this act. Second, the law also provides space for freedom of expression and expression so that society is always developing, as well as an expression of democracy in this reformation period (Erwin, 2000: 675).

To accommodate the spirit of freedom of the press, it is appropriate to make rules relating to defamation specifically for the press profession. UU no. 40 of 1999 concerning the Press (Press Law) currently in force cannot be said to *lex specialis* to the provisions of the Criminal Code because the criminal provisions in it are only administrative crimes. Thus, although the Press Law regulates the existence of the right to answer the press against a person's objections to a news release, it still has no effect on the criminal proceedings. Basically the press can still be subject to articles on defamation of defamation unless it is intended for the public interest. This is as regulated in Article 310 Paragraph (3) of the Criminal Code, that it does not constitute pollution or written pollution, if the act is clearly carried out in the public interest or because it is forced to defend itself. The problem that arises then is related to public interest parameters. The Criminal Code does not provide further explanation of the public interest, so the parameters are unclear. The clarity of public interest parameters is very important especially with regard to the press which does its work in the field of publication. For the occurrence of mild humiliation, aside from being done in public both verbally and in writing, the insult may also be carried out in front of or in the presence of one's own person in the form of words or deeds. Someone who cursed at others by saying whores, recorders, prostitutes or by acts such as spitting on people's faces, are acts that can be categorized as mild insults. Fourth, complaints slander. This term was stated by Wirdjono Prodjodikoro (Susilo, 1988). Defamation complaints are regulated in Article 317 of the Criminal Code which reads: Whoever intentionally submits a false complaint or notification to the authorities, both in writing and for writing, about a person so that his

honor or reputation is attacked, is threatened, for making a defamation complaint, with a maximum imprisonment of four years.

Based on the formulation of this Article, the definition of pollution or contempt refers to the same meaning in the Criminal Code. This is because as explained earlier that the entire provisions in the Criminal Code both in the form of general rules Book I and special rules Books II and III are essentially a criminal system so that they become guidelines for criminal legislation outside the Criminal Code. To ensnare the perpetrators with Article 27 paragraph (3) above, there are two things that need to be considered by law enforcement officials so that the existence of the Article is not used as a political tool to suppress the creativity of the Press world. First, it is proven that the subjective and objective elements of Electronic Information and/or Electronic Documents which have a humiliating and/or defamation charge are cumulative in nature. That is, law enforcement officials do not necessarily declare the offender guilty of violating Article 27 paragraph (3) if the subjective element is proven, but still must prove whether the Electronic Information and/or Electronic Documents that have content of defamation and/or defamation do violate the values in society or not. Second, the need to add one element of error, namely the element of malice specifically related to reporting through ITE's advice. This element needs to be added because the press, broadcasters, and NGOs related to the promotion of human rights and government policies have specificities, namely as a social institution that has an important role in carrying out the functions of social control over the administration of the State and social life. In addition, the specificity of such an arrangement is supported by the right of the people to obtain information that their manifestations are carried out. With the addition of this element, not all articles related to ITE are categorized as violating Article 27 paragraph (3) if the perpetrators do not have malicious intentions. The weakness of Article 27 paragraph (3) of the ITE Law lies in the threat of criminal sanctions that apply to seven forms of defamation. In fact, the legal consequences of each form of defamation are not the same, so the leveling of the threat of sanctions without considering how the act is done and the consequences are not appropriate based on the doctrine of criminal law. Article 27 (3) does not separate which elements are ballast and which are mitigating elements related to defamation through ITE facilities. As a result, the threat of criminal sanctions is not equated to all forms of defamation.

In criminal law discourse, the determination of a type and weight of criminal law must be based on one of the ordinal proportionality theories. The ordinal proportionality theory teaches that in determining the type and weight of a criminal for an act must be compared with similar and more or less serious criminal acts (Hirsch quoted in Luthan, 2007: 161). The facility factor which is the differentiator of Article 310 of the Criminal Code and Article 27 Paragraph (3) of the ITE Law above is not suitable to be used as a basis for the distinction of criminal threats in the two rules, because publication through cyberspace does not always have a greater level of accessibility than through the real world, and vice versa. In order to avoid inequality, then the threat of criminal Article 27 Paragraph (3) of the ITE Law is better revised and adjusted to the provisions contained in the Criminal Code, or it can also be vice versa. Because the existence of criminal injustice in two or more rules can lead to opportunities for the disparity in punishment imposed by the judge. If this case does occur, it will be prone to injustice in criminal proceedings.

4. CONCLUSION:

Although the articles of defamation are a colonial legacy, they are still relevant to be applied in Indonesia because they are still in accordance with the cultural values of the people, religious values, and protected interests. The basis of justification for the criminalization of the defamation offense is moral theory and individualistic liberal theory. However, in order not to be misused, improvements are needed to the existing rules. Because of its subjective nature, the defamation offense should be formulated as material or formal offenses with clear parameters. In addition, there is a need for harmonization between the Criminal Code and the ITE Law related to the criminal weight that is threatened. This imbalance can result in disparities in court decisions in defamation cases. Defamation cases that lately occur mostly done through cyberspace (cyber) and cases like this are predicted to continue to increase because currently, the public is fond of enjoying virtual technology. One of the causes of the high number of defamation cases in cyberspace is because most people still do not realize that the virtual world is now the same as the real world. Therefore it is necessary to socialize acts that are prohibited in cyberspace, and it needs to be instilled to the public that the ethics that must be held in the real world also apply to cyberspace. This effort can be done as a preventive measure besides repressive efforts which must also continue to be done through fair and dignified law enforcement.

5. SUGGESTION:

Because of its subjective nature, the defamation offense should be formulated as material or formal offenses with clear parameters. In addition, there is a need for harmonization between the Criminal Code and the ITE Law related to the criminal weight that is threatened. This imbalance can result in disparities in court decisions in defamation cases. Defamation cases that lately occur mostly done through cyberspace (cyber) and cases like this are predicted to continue to increase because currently, the public is fond of enjoying virtual technology. One of the causes of the high number of defamation cases in cyberspace is because most people still do not realize that the virtual world is now the same as

the real world. Therefore it is necessary to socialize acts that are prohibited in cyberspace, and it needs to be instilled to the public that the ethics that must be held in the real world also apply to cyberspace. This effort can be done as a preventive measure besides repressive efforts which must also continue to be done through fair and dignified law enforcement.

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