

JURIDICAL REVIEW OF CRIMINAL ACTS OF DEFAMATION

Nurbaiti Syarif,¹ Erik Kombi²

Abstract

Criminal acts of defamation that occur in our society, need attention and handling by law enforcement officials. The juridical basis that regulates the criminal act of defamation is Article 310 and Article 311 of the Criminal Code (KUHP) which describe in detail the criminal act of defamation. For this reason, the author wants to know how the perspective of criminal law on defamation offenses and legal remedies in overcoming criminal defamation acts. This study uses a normative juridical approach which refers to the typology of research on applicable laws, norms, rules, regulations and legislation. The normative approach is carried out through library research by studying theoretical matters. The perspective of criminal law against perpetrators of criminal acts of defamation is applied based on Article 310 and Article 311 of the Criminal Code, which is seen from the point of view of the occurrence of prohibited acts, a person will be held accountable for his actions if the action is against the law and there is no reason to justify or negate the unlawful nature of doing so. crime committed and his ability to be responsible. Meanwhile, legal efforts in dealing with criminal acts of defamation can only be processed by the law enforcements if there are complaints from parties who feel that their names have been defamed.

Keywords: *Juridical Review, Criminal Act, Defamation.*

I. INTRODUCTION

The development of the legal order in society is also followed by the development of the crime rate. Therefore, the ability of law enforcement in preventing and overcoming various crimes, both conventional and transnational crimes, must be further improved. Law enforcement is carried out by utilizing capabilities by officers in the form of professionalism in handling crimes and having practical experience related to the fields they handle.³

Law enforcement is a process of making efforts to enforce or actually function legal norms as guidelines for behavior in traffic or legal relations in social and state life. Viewed from the point of view of the subject, law enforcement can be carried out by a broad subject and can also be interpreted as an effort to enforce the law

¹ lecturer of Law Faculty, Universitas Tulang Bawang, nurbaity012@gmail.com

² Faculty of Law, Universitas Tulang Bawang, Bandar Lampung, E-mail: erikkombiUTB@gmail.com

³ Djoko Prakoso, 2007, Pembaharuan Hukum Pidana Di Indonesia, Liberty, Yogyakarta, p. 21

that involves all legal subjects in every legal relationship. Anyone who enforces normative rules or does something or doesn't do something based on the norms of the applicable law, means that he is carrying out or enforcing the rule of law. In a narrow sense, in terms of the subject matter, law enforcement is only defined as the efforts of certain law enforcement officials to guarantee and ensure that the law is enforced, if necessary, law enforcement officials are allowed to use force.⁴

The criminal act of defamation needs more attention, especially from law enforcement officers in the field of general crimes who have an important role in responding to various cases that occur. The juridical basis that regulates the criminal act of defamation is the Criminal Code (KUHP) which in detail describes the criminal act of defamation in Article 310 and Article 311 of the Criminal Code (KUHP).

Defamation is included in the category of general crime regulated in Article 310 of the Criminal Code (KUHP) which states that:

1. Any person who intentionally attacks someone's honor or reputation by alleging something, with the clear intention of making it known to the public, is punishable by a maximum imprisonment of nine months or a maximum fine of four thousand five hundred rupiahs.
2. If this is done by means of writing or pictures that are broadcast, displayed or posted in public, the threat of written contamination is a maximum imprisonment of one year and four months or a maximum fine of four thousand five hundred rupiahs.
3. It does not constitute defamation or written defamation, if the act is clearly carried out in the public interest or because it is forced to defend oneself.

Furthermore, the provisions in Article 311 of the Criminal Code (KUHP) states that:

1. If the person who commits the crime of defamation or written defamation is allowed to prove the truth of his accusation but he cannot prove it, and the accusation is made contrary to what he knows, then he is threatened with slander with a maximum imprisonment of four years.
2. The revocation of those rights in Article 35 can be imposed.

Defamation is subjective, meaning that the assessment of defamation depends on the party whose reputation is being attacked. Defamation can only be processed by the police if there is a complaint from a party who feels that his name has been defamed. The phenomenon that occurs in the current era, cases of criminal acts of defamation are still encountered so that law enforcement needs to be optimized within the scope of this field.

⁴ Maidin Gultom, 2010, *Penegakan Hukum Pidana*, Refika Aditama, Bandung, p. 41

Viewed from the point of view of the occurrence of prohibited actions, a person will be held accountable for these actions, if the action is against the law and there is no reason to justify or negate the unlawful nature of the crime he has committed and from the point of view of the ability to be responsible then only someone who is capable of being responsible can be responsible. can be held accountable for their actions.

Criminal sanctions against perpetrators of criminal acts of defamation are applied to perpetrators through the judicial process. Law enforcers in applying legal provisions against perpetrators of criminal acts are very concerned about several elements of errors that are met in order to be held accountable for their actions. In connection with the description above, the author raises the following problems, namely the perspective of criminal law on criminal acts of defamation and legal remedies in overcoming criminal acts of defamation. This study uses a normative juridical approach, where in this approach the research is carried out by examining the norms or laws and regulations and literature that have to do with the problems being discussed.

II. DISCUSSION

1. Criminal Law Perspective on the Criminal Acts of Defamation

The perpetrator of the criminal act of defamation will be punished if the crime he committed fulfills the elements specified in Article 310 and Article 311 of the Criminal Code (KUHP). Viewed from the point of view of the occurrence of prohibited actions, a person will be held accountable for these actions, if the action is against the law and there is no reason to justify or negate the unlawful nature of the crime he has committed and from the point of view of the ability to be responsible, then only someone who is able to accountable for their actions.

In criminal law against perpetrators of criminal acts of defamation to be held accountable, there must be an error, because there is a principle in criminal law which states that there is no crime without error. Criminal liability has the characteristics that it is personal or personal, only given to guilty people (culpability principle) and must be adjusted to the characteristics and conditions of the perpetrators of the crime. Liability in criminal law is responsibility according to criminal law. Everyone is responsible for all their actions, only their behavior causes the judge to impose an accountable punishment on the perpetrator.

Several things that must be considered in the perspective of criminal law against criminal acts of defamation based on the cases above are:

1. The criminal responsibility of the perpetrator is personal, meaning that, for his actions, criminal responsibility cannot be transferred to anyone or any party.

2. A new punishment will be imposed on the perpetrator for his actions, if it has been proven that the perpetrator has made a mistake in connection with his actions.
3. The punishment imposed on the perpetrator must be adjusted to the characteristics and condition of the perpetrator, with the possibility of flexibility or punishment modification.

The ability to be responsible is an element of error, so to prove the existence of an element of error, it must be proven again. Considering that this is difficult to prove and takes a long time, the element of ability to be responsible is considered secretly always present because in general, every normal person is considered mentally capable of being responsible, unless there are signs indicating that the defendant may be mentally abnormal. In this case, the judge ordered a special examination of the mental state of the defendant even though the defendant did not ask for it. If the result still doubts the judge, it means that the ability to be responsible does not stop, so that there is no error and a sentence cannot be imposed on the basis of the principle of no crime without guilt.

Based on the provisions in Article 44 paragraph (1) of the Criminal Code (KUHP), namely: "Anyone who commits an act that cannot be accounted for by him because he is mentally disabled in growth or is disturbed because of a disability will not be punished". If it is not accounted for because of other reasons, for example mentally abnormal because he is still young, then the article cannot be imposed if the judge is going to implement Article 44 of the Criminal Code (KUHP).

Things that must be considered in the context of accountability, the defendant in committing a crime must have an "unlawful nature" of the crime, which is the most important characteristic of a criminal act, regarding the nature of being against the law when it is associated with the psychological state (mental) of the maker of the crime. what he does can be "intentional" (*opzet*) or due to "negligence" (*culpa*). However, most criminal acts have an element of intent, not an element of negligence. This is feasible because usually, that does something on purpose.

The criminal law perspective on the criminal act of defamation is a form of criminal liability against the perpetrators of the criminal act of defamation based on errors that meet the elements of being against the law and there is no reason to eliminate/eliminate the unlawful nature of the actions committed. The fall of criminal liability in criminal law is based on the element of the ability to be responsible by the perpetrator, namely the perpetrator knows that his actions are prohibited by law but in the event that the perpetrator dies, there is a reason for forgiveness for him to avoid punishment in criminal law.

2. Legal Efforts in Combating the Criminal Acts of Defamation

Defamation can only be processed by law enforcement if there is a complaint from a party who feels that his name has been defamed. Every criminal act is processed based on the criminal procedure law in accordance with the applicable legal provisions. Indonesia as a state of law, is a logical consequence of the need for an institution that is able to oversee law enforcement, not only capable of carrying out police duties, it is also highly expected in every handling of criminal cases so that they can be resolved optimally.

Based on the results of the study that legal efforts in overcoming criminal acts of defamation, namely carried out through investigations, investigators have obligations under Article 7 of the Criminal Procedure Code, namely:

1. Receiving a report or complaint from someone regarding a criminal act;
2. Take the first action at the scene;
3. Ordering a suspect to stop and checking the suspect's identification;
4. make arrests, detentions, searches and confiscations;
5. Carry out inspection and confiscation of letters;
6. Taking fingerprints and photographing a person suspected of committing a crime;
7. Summon people to be heard and examined as suspects or witnesses;
8. Bring in a necessary expert in connection with the examination of the case;
9. To terminate the investigation.

In the event that the investigation has been completed and the results of the investigation have also been reported and described in detail, then from the results of the investigation it is deemed sufficient initial evidence to carry out an investigation, the investigator can carry out further handling by taking action. take legal actions that directly intersect with human rights, namely in the form of restrictions, maybe even "violations" of human rights, such as forced arrests and even detention of the alleged perpetrators of defamation.

Investigative actions as an effort in handling criminal acts of defamation are as follows:

a. Receiving a Report on the alleged criminal act of defamation

In accordance with their duties and obligations, the police receive a report regarding the occurrence of a criminal act of defamation. In the case of the criminal act of defamation, the police immediately conducted an examination of the complainant who was also a victim of the criminal act of defamation.

b. Taking the First Action on the alleged criminal act of defamation

After receiving the report, the investigator checks to the crime scene about the truth of the report or complaint by examining it at the scene. If the report or complaint is true that a criminal incident has occurred, then the suspect is still at the

place, the investigator may prohibit the suspect from leaving the scene. Furthermore, investigators carry out necessary examinations, including checking the identity of suspects or ordering people suspected of committing criminal acts to stop and prohibiting people from entering and leaving the scene of the incident. Then the investigator must try to find and collect the information and evidence used to commit the crime. In the event that the inspection at the scene of the incident has been completed and evidence has also been collected, a provisional conclusion must then be drawn up. After the incident has been concluded, the investigating officer / investigator matches the evidence that has been collected with each other, for example between the evidence obtained at the scene of the incident with the statements of witnesses who saw the incident themselves or witnesses who are victims of criminal acts of defamation. good. Matching the evidence is very important, because the evidence is very important, because the evidence determines the evidence of the suspect's actions at trial. The evidence will be matched with the testimony of the victim and other witnesses.

c. Forced efforts (dzwang middlen): Arrest, Detention and Confiscation of evidence for alleged criminal acts of defamation Arrest

After the investigator/investigator receives a report or complaint regarding the occurrence of a criminal event in the form of a criminal act of defamation, then as a continuation of an act committed by a person, if the investigator has a strong suspicion accompanied by sufficient preliminary evidence, the investigator can be arrested against suspect. In this regard, investigators in using coercive tools in the form of arrest and detention must be based on the belief that there is a presumption of guilt. This means that before the investigator makes a decision to arrest/detain, the investigator must have sufficient preliminary evidence and a strong suspicion that a criminal act has been committed by the suspect.

Arrest cannot be carried out arbitrarily, because it violates human rights. To arrest a person, the investigator must issue an arrest warrant accompanied by the reasons for the arrest and a brief description of the nature of the suspected crime case. Without an arrest warrant, the suspect can refuse the officer in question. An arrest warrant will only be issued if there is a strong suspicion that a criminal act has occurred along with sufficient preliminary evidence.

Freedom of movement is a human right that is guaranteed by the 1945 Constitution for every citizen, so detention can only be carried out by order of a legitimate power according to the regulations stipulated in the law. In carrying out detention, the investigator has considerations of concern that the suspect will run away, damage or eliminate evidence and repeat the crime of defamation. For the purposes of the investigation, if it turns out that the suspect has actually committed a criminal act of defamation or is strongly suspected of committing a criminal act

based on sufficient preliminary evidence or in circumstances that raise concerns that the suspect has fled, the evidence will be destroyed and the evidence will be repeated. In addition, it is also intended for the purpose of investigation, for the purpose of examining the judge at trial, the suspect can be detained. The provisions of Article 20 of the Criminal Procedure Code (KUHP) authorize investigators, public prosecutors or judges to carry out detentions or further detentions where each time they make such detentions, they must use a detention order.

Documents used to commit criminal acts of defamation are confiscated or secured. In terms of human rights, property rights are one of the human rights that cannot be contested, but with an interest in resolving a case, the property rights need to be confiscated. As for the purpose of holding a confiscation, it is necessary to provide confidence to the judge that it is the suspect who has committed the crime. When an investigator is about to confiscate a piece of evidence, he or she must first show a proof of identity, a letter of assignment and so on to the owner of the items.

d. Examination of Suspects and Witnesses

Examination of suspects and witnesses is the most important part or stage in the investigation process. From the suspect and the witness, information will be obtained which will reveal everything about the criminal act of defamation. In this regard, before the examination begins, the investigator needs to prepare everything needed whether the examiner for the suspect or witness has been appointed, where the suspect or witness will be examined and whether the suspect or witness to be examined has been summoned in accordance with applicable regulations. The preparations referred to include:

1. Appointment of examining investigator
2. Material preparation
3. Preparation of the examination site
4. Preparation of examination facilities

The ability of the examiner investigator is very decisive so that the examination carried out can achieve the desired target. This requires an appropriate and authoritative approach. Do not act violently as if the suspect or witness feels compelled to give a confession. Act naturally so that the suspect feels that his rights are respected in accordance with the provisions of the applicable law. In order to conduct an examination of a suspect, the investigator must fulfill the provisions stipulated in Article 51, 53, 114, 115 and Article 133 of the Criminal Procedure Code (KUHP). A suspect who has been arrested or has been detained, then within 1 x 24

hours after the detention order is executed, he must be examined. To examine suspects by investigators seen from criminal cases, namely:

1. Because he was caught red-handed, then the suspect can be directly examined.
2. Due to the report, the suspect was legally summoned by investigators.

In the event that a suspect is summoned, he must observe a reasonable time lag between the receipt of the summons and the day of examination. The person who is summoned will be heard as a suspect or a witness must come. If he does not come, he will be called again with orders to the officers/investigators to be brought to him. For a suspect before the investigation begins against him, it is the duty of the investigator to notify him of the right to obtain legal assistance. The suspect's statement was heard without pressure from anyone and or in any form. Witnesses are a very decisive piece of evidence in the judicial process. Because the witness is someone who can provide information about a criminal act that has occurred, where he hears, sees and experiences the event himself. Witnesses are examined separately, but they may be met with one another and they are obliged to provide true information.

Minutes of Investigation are a series of examinations carried out by investigators in investigating a criminal act. After the investigator considers that the examination of a criminal act has been sufficient, the investigator by virtue of the power of his oath of office immediately prepares an official report. The minutes of the investigation are also attached at the same time as all the minutes made in connection with the actions required in the context of the investigation. After completing all the required minutes, the investigator submits the case file to the public prosecutor, which is the submission in the first stage consists of case files only.

III. CONCLUSION

Based on the analysis of research results and discussion, it can be concluded as follows The criminal law perspective on the criminal act of defamation, namely in criminal law, the form of criminal liability against the perpetrators of the criminal act of defamation is based on an offense that meets the element of being against the law and there is no reason to eliminate/eliminate the unlawful nature of the act committed. In the second phase where the case has been P21 and has been transferred to the Prosecutor's Office, if the suspect dies it will cause the loss of criminal responsibility or punishment of the suspect as a perpetrator of a criminal act of defamation. The fall of criminal liability is based on the existence of an element of responsibility by the perpetrator, namely the perpetrator knows that his actions are prohibited by law but in the legal process the perpetrator dies so that there is a forgiving reason for him not to be sentenced.

Defamation punishment, forced efforts (dzwang middlen): Arrest, Legal efforts in overcoming criminal acts of defamation are carried out by implementing criminal law. Perpetrators of criminal acts are subject to legal proceedings based on the provisions of laws and regulations, namely starting from the process of investigating criminal acts of defamation guided by Article 7 of the Criminal Procedure Code (KUHAP) including: receiving reports on alleged criminal acts of defamation, taking First Action on alleged acts of detention and confiscation of evidence on suspicion criminal acts of defamation, examination of suspects and witnesses, implementation of punishment against perpetrators of criminal acts of defamation.

Suggestions that can be given regarding legal studies of criminal acts of defamation are as follows:

1. It is expected that law enforcement officers can examine in depth the criminal act of defamation based on the perspective of criminal law in order to be able to provide appropriate criminal sanctions for perpetrators in the context of criminal liability.
2. It is expected that the Police Officers will intensively evaluate legal remedies for criminal acts of defamation based on sufficient evidence so that they can strengthen the results of the case title and to determine further proceedings in criminal cases.

REFERENCES

Djoko Prakoso, 2007, *Pembaharuan Hukum Pidana Di Indonesia*, Liberty, Yogyakarta

Maidin Gultom, 2010, *Penegakan Hukum Pidana*, Refika Aditama, Bandung

UUD 1945 Hasil Amandemen dan Proses Amandemen UUD 1945 Secara Lengkap

Undang-Undang Nomor 1 Tahun 1946 tentang Hukum Pidana

Kitab Undang-Undang Hukum Pidana (KUHP)