



DOI: <https://doi.org/10.38035/sijal.v2i4>
<https://creativecommons.org/licenses/by/4.0/>

Legal Boundaries between Criticism and Defamation

Salisah Salsabilla¹

¹Mahasiswa Fakultas Hukum (Alumni), Universitas Jambi, Indonesia, salisah0908@gmail.com

Corresponding Author: salisah0908@gmail.com¹

Abstract: This article discusses the legal boundaries between legitimate criticism and defamation in the context of Indonesian law. The study uses a normative method with a statutory, case, and conceptual approach, examining provisions in the Criminal Code, the ITE Law, and relevant jurisprudence. The results of the study show that although freedom of speech is guaranteed in the constitution, its implementation still often conflicts with criminal provisions on defamation. Criticism delivered in good faith, based on facts, and in the public interest should not be criminalized. However, the multiple interpretations of the related articles often lead to the criminalization of legitimate criticism. This article emphasizes the importance of legal reform and the establishment of technical guidelines so that the boundaries between criticism and defamation become clearer, so that freedom of speech remains guaranteed without ignoring the right to a good name.

Keyword: Criticism, Defamation, Freedom of Speech, Criminal Code, ITE Law

INTRODUCTION

Freedom of speech is one of the fundamental rights guaranteed in a democratic constitutional state. In Indonesia, this guarantee is stated in Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that everyone has the right to freedom of association, assembly, and expression of opinion. However, the right to freedom of speech is not an absolute right. In practice, this freedom is limited by the human rights of others and by applicable legal provisions, one of which is related to the protection of a person's good name. Defamation, according to Article 310 of the Criminal Code (KUHP), is defined as an act of attacking a person's honor or good name by accusing them of something with the clear intention of making it publicly known. In the digital era, the phenomenon of defamation is increasingly complex with the development of social media which facilitates the rapid and widespread dissemination of information. Therefore, the Indonesian government specifically regulates defamation in Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE), especially Article 27 paragraph (3).

According to legal experts, such as Andi Hamzah, defamation is a form of crime against a person's honor or good name, the purpose of which is to maintain public order and protect human dignity. From a sociological perspective, respect for good names is part of the social values that are upheld in Indonesian society, which is known for its eastern culture that is thick with the principles of politeness and mutual respect. However, the development of the era and

the demands of democracy have opened up a wider space for the public to convey criticism of state administrators and fellow citizens. Criticism, in this context, is a form of legitimate public participation and is even needed in a democratic system of government. According to Satjipto Rahardjo, the law is not only seen as a written norm, but also as a tool to achieve social goals. Therefore, constructive criticism should be placed as part of social control that aims to improve the situation, not as a criminal act categorized as defamation. Problems arise when the boundaries between criticism and defamation become blurred. On the one hand, society has the right to express opinions, including criticism; on the other hand, individuals have the right to have their honor protected. In the practice of law enforcement in Indonesia, it is not uncommon for debate to occur whether a statement is categorized as legitimate criticism or has violated the law as defamation. Many cases have befallen activists, journalists, and the general public who have been reported for alleged defamation after conveying criticism in public spaces, especially on social media.

Legal experts argue that one of the causes of the blurring of these boundaries is because the definition of defamation in the Criminal Code and the ITE Law tends to be multi-interpretable and has not accommodated the development of information technology as a whole. According to Ridwan Khairandy, there is a lack of clarity in the formulation of the crime of defamation which results in legal uncertainty. This is exacerbated by law enforcement which is often repressive and disproportionate. On the other hand, the Constitutional Court in several of its decisions has emphasized the importance of distinguishing between criticism and defamation. Constitutional Court Decision Number 50/PUU-VI/2008, for example, states that criticism conveyed in good faith and in the public interest cannot be punished as defamation. This is in line with the principle of criminal law that an act can only be punished if it meets the elements of material and formal error. In addition, from a Human Rights (HAM) perspective, freedom of expression must always be maintained as part of the civil and political rights guaranteed in the International Covenant on Civil and Political Rights (ICCPR), which has been ratified by Indonesia through Law Number 12 of 2005. However, the ICCPR also recognizes that this right can be limited to protect the rights and reputations of others, as well as to maintain public order and morals.

In the context of Indonesian law, it is important to emphasize the parameters that can distinguish legitimate criticism from defamation. Experts have proposed several indicators, including: the purpose of conveying the statement, the context of the statement, the form or method of delivery, and the consequences caused. Criticism that aims to provide input for the common good and is delivered in a polite manner and based on correct facts should be protected by law. Conversely, statements that intend to demean someone's personal dignity without a strong basis can be categorized as defamation. Another suggested approach is through the principle of restorative justice, which focuses more on restoring relationships and peaceful resolution between the disputing parties. This principle is considered more appropriate in handling defamation cases that are often rooted in personal conflicts or misunderstandings. In the latest developments, the revision of the Criminal Code that was passed in 2022 brought updates related to the crime of defamation. One of them is the emphasis on the element of the complaint offense and efforts to encourage non-litigation resolution before proceeding to the criminal process. However, there are still concerns that these provisions can still be misused to silence public criticism.

With this background, this article will discuss in more depth the legal boundaries between criticism and defamation in Indonesia. The discussion will cover the perspective of legal theory, applicable regulations, and relevant case studies. It is hoped that this study can contribute to formulating clear and fair boundaries, so that freedom of expression is maintained without ignoring the individual's right to protection of a good name.

METHOD

This study uses a normative legal method, which is often referred to as doctrinal legal research. This method was chosen because the focus of the study is to examine the legal norms that regulate criticism and defamation in the Indonesian legal system. As stated by Soerjono Soekanto and Sri Mamudji, normative legal research aims to analyze legal principles, legal systematics, and the application of law in a particular case. With this approach, the study is not directly related to empirical data in the field, but rather focuses more on literature studies and literature reviews. The types of data used in this study consist of primary legal materials and secondary legal materials. Primary legal materials include relevant laws and regulations, including the 1945 Constitution of the Republic of Indonesia, the Criminal Code (KUHP), Law Number 11 of 2008 concerning Electronic Information and Transactions and its amendments, and other related laws such as Law Number 39 of 1999 concerning Human Rights and Law Number 12 of 2005 which ratifies the International Covenant on Civil and Political Rights. In addition, this study also examines Constitutional Court decisions and jurisprudence from relevant courts to enrich the analysis. Secondary legal materials used include literature or books written by legal experts, scientific articles, law journals, and previous research results that discuss similar topics. The opinions of these experts play an important role in strengthening the arguments in the discussion, especially in understanding the concept of legally valid criticism and its limitations with defamation. The data collection technique is carried out through library research, namely by searching, reviewing, and examining the legal materials that have been mentioned. All data obtained are then analyzed qualitatively, where the data is classified, presented, and then conclusions are drawn based on systematic legal logic. This study uses several approaches, namely the statute approach, which focuses on analyzing the contents of written legal norms; the case approach, which analyzes concrete cases as examples of the application of the law; and the conceptual approach, which examines the opinions of experts to understand the basic concepts relevant to the research theme. By using this method, the study is expected to be able to provide a comprehensive picture of how Indonesian law regulates and distinguishes between legitimate criticism and defamation, and how it is implemented in legal practice in Indonesia.

RESULTS AND DISCUSSION

This study found that the legal regulations regarding criticism and defamation in Indonesia still leave various problems, both from the normative side and in the practice of its application. Although freedom of opinion is constitutionally guaranteed, restrictions through criminal provisions related to defamation often give rise to complex legal dilemmas.

1. Freedom of Opinion and Its Limitations

Article 28E paragraph (3) of the 1945 Constitution states that everyone has the right to freedom of opinion, but Article 28J paragraph (2) emphasizes that in exercising their rights and freedoms, everyone must submit to the restrictions stipulated by law in order to guarantee recognition and respect for the rights and freedoms of others. This shows that Indonesian law recognizes the concept of limitation of rights, where freedom of opinion is not absolute. From a Human Rights perspective, as emphasized in the International Covenant on Civil and Political Rights (ICCPR), freedom of opinion is a fundamental right that can be limited only for legitimate purposes, namely protecting the reputation or rights of others and maintaining security and public order.

2. Regulation of Defamation in the Criminal Code and the ITE Law

Article 310 of the Criminal Code is the main legal basis that regulates defamation. This article states that defamation occurs when someone intentionally attacks the honor or good name of another person by accusing them of something with the intention of making it publicly known. If the act is carried out in writing or with images that are distributed, Article 311 of the Criminal Code concerning defamation is imposed, which carries a heavier

criminal penalty. In addition, the ITE Law through Article 27 paragraph (3) also strengthens protection of good names in the context of information technology, which reads: "Any person intentionally and without the right to distribute and/or transmit and/or make accessible electronic information and/or electronic documents that contain insults and/or defamation." In practice, Article 27 paragraph (3) of the ITE Law is a fairly controversial article because it is often used to legally process people who convey criticism on social media. Cases such as reports against activists or journalists who criticize government policies show that the line between criticism and defamation is still blurred.

3. Analysis of the Elements of Legitimate Criticism According to Law

Criticism is part of freedom of opinion that is protected by law. According to legal experts, such as Satjipto Rahardjo, criticism is a form of legitimate public participation as long as it is aimed at the public interest and is delivered objectively. Legitimate criticism must meet the following elements:

- a. Good faith, that is, delivered without malicious intent to defame;
- b. Based on facts, not baseless accusations;
- c. Constructive, aimed at improving or providing input.

If criticism is carried out by fulfilling these elements, it should not be categorized as defamation. This is emphasized in the Constitutional Court Decision No. 50/PUU-VI/2008 which states that criticism delivered in good faith for the public interest cannot be criminalized.

4. Differences Between Criticism and Defamation

Based on the research results, the differences between criticism and defamation can be analyzed through several aspects, namely:

- a. Purpose of delivery: Criticism aims to provide input or corrections to certain policies or actions, while defamation aims to bring down or damage the reputation of others.
- b. Objectivity: Criticism is based on clear data and facts, while defamation often takes the form of subjective accusations or insults.
- c. Context of delivery: Criticism is usually delivered in the right forum and with polite language, while defamation can occur in public spaces without regard to communication ethics.
- d. Legal consequences: Legitimate criticism cannot be prosecuted, while defamation can be processed legally because it violates the rights of others.

5. Challenges in Law Enforcement

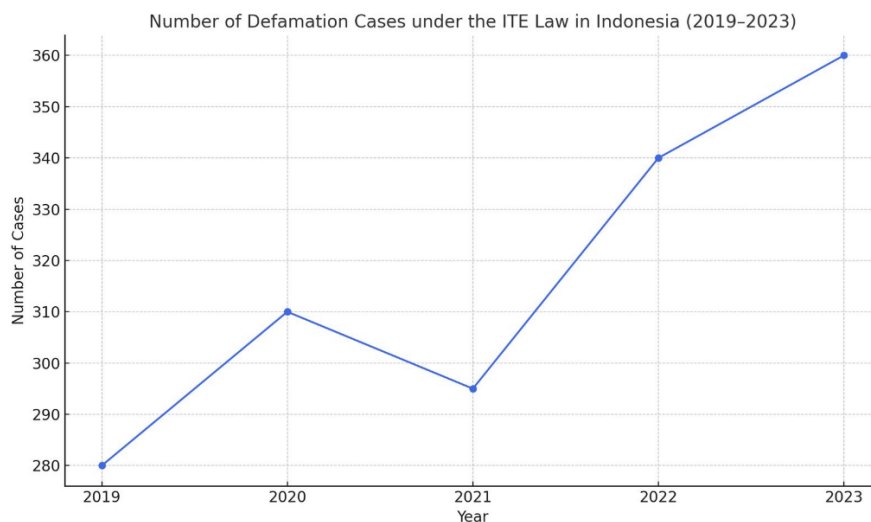
One of the major challenges in distinguishing between criticism and defamation is the multiple interpretations of existing legal norms. Article 310 of the Criminal Code and Article 27 paragraph (3) of the ITE Law have general wording, thus providing ample room for law enforcement officers to interpret them. In addition, the approach to law enforcement in Indonesia tends to be repressive, where public criticism is often responded to with criminal reports. The case of Baiq Nuril Maknun, a teacher who was initially convicted for spreading a recording of verbal abuse she experienced, is an example of how defamation law can cause injustice when its application is not proportional.

6. Efforts to Settlement and Legal Protection

In the revised Criminal Code which was ratified in 2022, there were significant changes related to the offense of insult or defamation, where the element of the complaint offense is more emphasized. This means that the legal process can only be continued if there is a complaint from the victim directly, so it is hoped that it can minimize the misuse of the law. In addition, the application of restorative justice in resolving defamation disputes is starting to be encouraged, where the settlement process focuses more on restoring the relationship between the reporter and the reported peacefully without having to proceed to court.

7. Relevant Cases

This study also examines several cases that show how defamation law is applied in practice. One of them is the case involving human rights activist Haris Azhar and KontraS Coordinator Fatia Maulidiyanti who were reported on suspicion of defamation after criticizing state officials. This case shows that even though criticism is intended for the public interest, there is still a risk of being prosecuted if the party who feels aggrieved reports it. Cases like this show the need for a renewed approach to dealing with public criticism, so that freedom of expression remains guaranteed and the right to a good name remains protected in a balanced manner.



Source: SAFEnet (Southeast Asia Freedom of Expression Network), Annual Reports 2019-2023

The graph illustrates the number of defamation cases handled under Indonesia's Information and Electronic Transactions (ITE) Law from 2019 to 2023. The data shows a fluctuating but overall increasing trend in reported cases. In 2019, there were 280 recorded cases, which rose to 310 in 2020. Although there was a slight decrease in 2021 to 295 cases, the numbers increased again in subsequent years, reaching 340 in 2022 and peaking at 360 in 2023. This upward trend highlights ongoing challenges in balancing freedom of expression with the protection of reputation, especially amid the growing use of digital platforms. The data underscores the urgency for clearer legal boundaries to prevent the misuse of defamation provisions in suppressing legitimate criticism.

CONCLUSION

The results of this study confirm that Indonesia needs more comprehensive legal reform to clarify the boundaries between criticism and defamation. The formation of technical guidelines for law enforcement officers in handling defamation cases can be an initial solution to prevent criminalization of legitimate criticism. In addition, it is also important to increase public legal literacy so that they understand the rights and obligations in expressing opinions in public spaces, especially in the current digital era.

REFERENCE

- Andi Hamzah. *Delik-Delik Khusus Kejahatan terhadap Kehormatan*. Jakarta: Sinar Grafika, 2005.
- Gohar, M., Anwar, S., Ali, M., Choi, J. G., Alquhayz, H., & Koh, S. J. (2020). Partial bicasting with buffering for proxy mobile IPV6 mobility management in CoAP-based IoT networks. *Electronics*, 9(4), 598.
- Asshiddiqie, Jimly. *Pengantar Ilmu Hukum Tata Negara*. Jakarta: Rajawali Pers, 2006.

- Lubis, Todung Mulya. In Search of Human Rights: Legal-Political Dilemmas of Indonesia's New Order. Jakarta: Gramedia, 1985.
- Fatmawati, I., & Ali, H. (2021). Determination Attitude Toward Using and Purchase Intentions: Analysis of Perceived Ease of Use and Perceived Usefulness (Case Study of. *Dinasti International Journal of Management Science*, 3(1).
- Rahardjo, Satjipto. Ilmu Hukum. Bandung: Citra Aditya Bakti, 2000.
- Soekanto, Soerjono dan Sri Mamudji. Penelitian Hukum Normatif: Suatu Tinjauan Singkat. Jakarta: Rajawali Pers, 2004.
- Elviana, E., & Ali, H. (2022). Determination of Financial Distress and Stock Prices: The Effect of Financial Performance and Sales Growth (Financial Management Review Literature). *Dinasti International Journal of Economics, Finance & Accounting*, 3(3), 241-252.
- Havidz, S. A. H., Jianmu, Y., Aima, M. H., & Ali, H. (2017). Technical and scale efficiency employing data envelopment analysis: Empirical evidence from Islamic public banks in Indonesia. *International Journal of Application or Innovation in Engineering & Management (IJAIEEM)*, 6(8), 85-94.
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
- Kitab Undang-Undang Hukum Pidana (KUHP).
- Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik beserta perubahannya.
- Djamaluddin, S., Putridan, M. J., & Ali, H. (2017). Financial distress comparative analysis of Japanese electronic manufacturer after financial global crisis 2008 using Altman, Ohlson, and Zmijewski model. *The International Journal of Business and Management*, 5(7), 131-141.
- Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia.
- Undang-Undang Nomor 12 Tahun 2005 tentang Pengesahan Kovenan Internasional tentang Hak-Hak Sipil dan Politik.
- Putusan Mahkamah Konstitusi Nomor 50/PUU-VI/2008.
- SAFEnet (Southeast Asia Freedom of Expression Network). Annual Reports 2019–2023. <https://safenet.or.id>
- Widodo, D. S., Silitonga, P. E. S., & Ali, H. (2017). Analysis of Organizational Performance: Predictors of Transformational Leadership Style, Services Leadership Style and Organizational Learning (Studies in Jakarta Government). *International Journal of Economic Research*, 14(2), 167-182.