



## IMPLEMENTATION OF CRIMINAL SANCTIONS FOR PROSPECTION OF NEWSPAPERS REVIEWED FROM THE BOOK OF CRIMINAL LAW

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### Abstrak

The practical purpose of writing this journal is to find out whether the act of spreading newspaper news can be accounted for by its actions in terms of the Criminal Code. In this case it is not appropriate to be charged article 310 of the Criminal Code because the core of article 310 of the Criminal Code is that the product used to defame must be made by the person himself while the news from the newspaper is not a homemade result. If seen in Article 311 of the Criminal Code concerning criminal acts of defamation, the element is fulfilled.

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## I. INTRODUCTION

It cannot be denied that freedom of expression is one of the most important fundamental rights to be guaranteed in a constitutional state that is democratic and upholds the principles of human rights. Without a strong guarantee of freedom of expression, it is certain that there will be traffic barriers to the exchange of ideas and ideas and closed public access to information. One of the significant problems in the issue of freedom of expression is the problem of using criminal provisions related to defamation. The development of criminal provisions related to defamation that was born through various sectoral laws has resulted in the reduplication of existing criminal acts of defamation. In addition, the regulated norms are vague so that in their application there is a high tendency for abuse of authority and discriminatory attitudes. In the Criminal Code, insults are generally regulated in Chapter XVI and grouped into 7 sections, namely insulting, slander, insulting civil servants, slander complaints, false suspicions, and defamation of the dead.

Van Hattum stated that a criminal act is an event that causes a person to be convicted. In Van Hattum's formulation what is stated is not the act but the person. According to Moeljatno the difference arises because the word strafbaar (punishable) is officially used as the word feit (action or

event) as well as against the person who does it. This is confusing, because strafbaar is actually the person, while his actions cannot be punished but can only be prohibited. Moeljatno himself defined the criminal act as "An act which is prohibited and punishable by any person who violates the prohibition".<sup>1</sup>

Criminal law in the Criminal Code regulates the division of criminal acts into 2, namely crime (misdrijven) and violation (overtredingen). What is meant by crime is all the actions regulated in chapter II of the Criminal Code, while what is meant by violations are all acts regulated in chapter III of the Criminal Code where the division of criminal acts into types of crimes and violations is important because they have certain consequences.<sup>2</sup>

In addition, in the Criminal Code there are also specific forms of insult, namely insulting the president / vice president, insulting the head of a friendly country or representing a foreign country in Indonesia, insulting the Indonesian government, insulting the group, insulting the power of the public / agency. General. However, the Criminal Code it self does not provide a formula or definition of what is meant by insult. In particular, what is stipulated in the Criminal Code regarding insult is the elements of the criminal act of insulting and slander as stipulated in Article 310 and Article 311 of the Criminal Code. In this case also related to the matter of humiliation in which HJ, hereinafter referred to as Defendant I and NS, hereinafter referred to as Defendant II, distributed several clippings taken from the daily newspaper TERBIT. The content of the news is "KOMNAS INVESTIGATE RAPE OF OKU EAST OKNUM REGENT". The dissemination of the clippings was carried out in a manner where Defendant I and Defendant II were chatting with people in the village then gave them a newspaper to read, which contained a clipping about the news of the insult. Where this act could not be considered as spreading because Defendant I and Defendant II only gave newspapers to the people they were talking to and contained the clippings in the newspaper. In this case the one who can be held accountable is the newspaper publisher because Defendant I and Defendant II did not make or publish the newspaper, but only the people who informed them about the latest news.

HD finally reported this action to the local district court to be followed up because HD felt that his good name had been tarnished. What is meant by HD is an insult to his good name which can be subject to Article 310 paragraph (2) of the Criminal Code. Finally Defendant I and Defendant II were found guilty by the Baturaja District Court and sentenced to criminal penalties. However, after observing the elements of the article being imposed, namely Article 310 paragraph (2) of the Criminal Code, the acts committed in the above case should not be subject to criminal penalties because they do not fulfill the elements.

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<sup>1</sup> Moeljatno, 2001, Asas-asas Hukum Pidana, Jakarta, Rineka Cipta, pp. 54.

<sup>2</sup> Prof. Dr (AIMS). H.M. Rasyid Ariman, 2015, Hukum Pidana, Malang, Setara Press, pp. 72.

## II. RESEARCH METHODS

The type of research used is normative juridical legal research, which is literature research, namely research on primary and secondary legal materials, consisting of statutory regulations and literature. The approach to the problem used in this study is a statute approach and a conceptual approach. The statute approach is an approach that is carried out by reviewing all laws and regulations from regulations related to the legal issues at hand.<sup>3</sup> Meanwhile, the conceptual approach is an approach that departs from the views and doctrines that develop in the science of law.<sup>4</sup>

## III. RESEARCH AND DISCUSSION RESULTS

*Nullum crimen, nulla poena sine praevia lege poenali*, which means that there is no act that can be punished, except based on criminal provisions according to the existing law rather than the act itself. Before entering into the description of criminal acts in related cases, the legality principle above states that a criminal act must be committed after the criminal provisions governing the related action. In this regard, based on the chronology of the case above, the emphasis of the problem was on the dissemination of newspaper reports by Defendant 1 and Defendant 2 which was carried out on Tuesday, January 26, 2010 at around 08.00 WIB located in the village of Kota Negara Kec. Madang Suku II district. Oku Timur. Regarding this, there has been a criminal regulation that is at least related to the act, namely the Criminal Code which has been in effect since 29 September 1958 so that the act is subject to Article 310 paragraph (2) of the Criminal Code because the act was committed on January 26, 2010.

The measure of an act that can be categorized as defamation of another person is still unclear because there are many factors that must be studied. In the case of defamation or insult to protect, it is the duty of every person to respect others from the point of view of his honor and good name in the eyes of others.

In a book published by Mudzakir, he argues:

There is a relationship between honor and good name in the case of defamation, so it can be seen first the meaning of each. Honor is a person's feeling of honor in the eyes of society, where everyone has the right to be treated as an honorable member of society. To attack honor means to do something according to the general judgment of attacking one's honor. Respect and actions that fall under the category of attacking someone's honor are determined according to the community environment in which the act is committed.<sup>5</sup>

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<sup>3</sup> Peter Mahmud Marzuki, 2014, *Penelitian Hukum, Edisi Revisi*, Jakarta, Prenada Media Group, pp. 133.

<sup>4</sup> *Ibid.*, pp. 135.

<sup>5</sup> Mudzakir, 2004, *Delik Penghinaan dalam Pemberitaan Pers Mengenai Pejabat Publik*, Dictum 3, pp.

This sense of honor must be objectified in such a way and must be judged by a certain action, someone in general will feel offended or not. It can also be said that a very young child cannot feel this offense, and that a lunatic cannot be offended. Thus, there is no criminal act of insulting both types of people.

A good name is a good judgment according to the general perception of a person's behavior or personality from a moral point of view. A person's good name is always seen from the other person's point of view, namely good morals or personality, so that the measure is determined based on general judgments in a particular society where the action is committed and the context of the action.

Defamation is also known as insult, which is basically attacking the good name and honor of someone who is not in a sexual sense so that the person feels wronged. This defamation or insult is regulated in articles 310-321 of the Criminal Code. Honor and good name have different meanings, but they cannot be separated from one another, because attacking honor will result in tarnished honor and good name, as well as attacking a good name will result in one's good name and honor can be tainted. Therefore, attacking either honor or good name is sufficient reason to accuse someone of insulting someone.

Oemar Seno Adji defines defamation as either attacking honor or good name (aanranding of geode naam). One form of defamation is "defamation in writing and is done by accusing something of something".<sup>6</sup>

There are 2 kinds of defamation, namely verbal defamation and written defamation. In his book Oemar Seno Adji states that defamation is known as insult, which is divided into the following:

a. Material humiliation

Insult which consists of a fact which includes an objective statement in words orally or in writing, then the determining factor is the content of the statement, both written and oral. It is still possible to prove that the allegations were made in the public interest.

b. Formal insult

In this case, it is not stated what the content of the insult was, but how the statement in question was issued. Its form and manner are decisive factors. In general, the way of expressing it is in crude and non-objective ways. The possibility to prove the truth of the allegations does not exist and it can be said that this possibility is closed.<sup>7</sup>

Criminal law regulates defamation in the Criminal Code in CHAPTER XVI, Article 310 of the Criminal Code to Article 321 of the Criminal Code, insults in this chapter include six kinds of insults, namely:<sup>8</sup>

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<sup>6</sup> Oemar Seno Adji, 1990, *Perkembangan Delik Pers di Indonesia*, Jakarta, Erlangga, pp. 36.

<sup>7</sup> Oemar Seno Adji, 1990, *Perkembangan Delik Pers di Indonesia*, Jakarta, Erlangga, pp. 36.

<sup>8</sup> Ismu Gunadi, 2014, *Cepat dan Mudah Memahami Hukum Pidana*, Jakarta, Kencana, pp. 190.

Article 310 paragraph (1) of the Criminal Code concerning pollution;

Anyone who deliberately attacks a person's honor or reputation, accusing something, which he means clearly so that it becomes public knowledge, is threatened with defamation, with a maximum imprisonment of nine months or a maximum fine of three hundred rupiahs.

Many experts use the term "offensive". The word "insult" comes from the word "disgrace". Some scholars use the word "reproach". The difference in terms is due to the use of words in translating the word "smaad" from Dutch. The word "insult" and the word "reproach" are synonymous words.<sup>9</sup>

In accordance with Article 310 of the Criminal Code which is generally defined: "an act that is detrimental to a person's good name and honor."<sup>10</sup>

The elements of Article 310 paragraph (1) of the Criminal Code are divided into two, namely the objective element and the subjective element.

- Objective Elements:

- a) Whoever;
- b) Attacking the honor or reputation of "someone";
- c) By accusing something.

Ad a. whoever

Whoever here shows the subject of criminal law, namely people / corporations. Where, Defendant I and Defendant II are Indonesian nationals, so they must obey the existing laws in Indonesia.

Ad b. attack someone's honor

The deed must make a person feel his honor is being attacked or feel aggrieved in order to fulfill this element. The actions of Defendant I and Defendant II were an act that made HD feel offended by their honor, but the actions committed by Defendant I and Defendant II were actually like a newspaper dealer so whether or not the actions committed by Defendant I and Defendant II could not be called an attack on honor because the product of the press was distributed and was not the product of Defendant I and Defendant II.

Ad c. by accusing something of something

In order to fulfill this element, one must first accuse something. This something is something that is made by someone himself and must be accompanied by a clear and correct place and time. So in this case, the actions committed by Defendant I and Defendant II did not fulfill this element because they only circulated photocopied news from a newspaper, which if the actions of

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<sup>9</sup> Leden Marpaung, 1997, Tindak Pidana Terhadap Kehormatan, Pengertian dan Penerapannya, Jakarta, PT. Grafindo Persada, pp. 11.

<sup>10</sup> Wawan Tunggul Alam, 2012, Pencemaran Nama Baik di Kehidupan Nyata & Dunia Internet, Jakarta, Wartapena, pp. 7.

Defendant I and Defendant II were said to have fulfilled the elements then the newspaper dealers could be subject to defamation.

- Subjective Elements:

a) With a real intention (*kenlijk doel*) so that the accusation is known general (*ruchtbaarheid te geven*);

b) Intentionally (*opzettelijk*);

Ad a. with the real intention of making the accusations public

In this case the act committed by the defendant by distributing photocopies containing news from a newspaper which defamed HD was an act committed so that the news could be known by the public or the public even though without the actions of Defendant I and Defendant II the news had already been reported. spread because the news was a press product that was sold to the public and could be purchased by anyone and anywhere so that the actions of Defendant I and Defendant II were not considered acts with the real intention of making the accusation public.

Ad b. Purposely

With purpose here it can be proven that the acts committed by Defendant I and Defendant II were carried out consciously and with the knowledge of Defendant I and Defendant II themselves.

Article 310 paragraph (2) of the Criminal Code regarding written pollution;

If this is done in writing or a picture that is broadcast, displayed or posted in public, then the guilty, because of defamation in writing, will be punished by a maximum imprisonment of one year and four months or a maximum fine of three hundred rupiahs.

The term "insult in writing" by some experts is used by the term "insult in writing". The difference is due to the choice of words to translate, namely the *smaadschrift* word which can be translated with the same or nearly simultaneous words.

Based on the above formula, insulting and insulting by writing have the same elements, the difference is that insulting by writing is done by writing or drawing while the other elements are not different. These elements are:

a) All elements (objective and subjective) in article 310 paragraph (1) of the Criminal Code;

b) With the broadcast text or images;

c) Shown in public or posted.

Ad a. all elements (objective and subjective) in article 310 paragraph (1) of the Criminal Code

All elements in Article 310 paragraph (2) of the Criminal Code must be fulfilled first then it can be subject to this Article 310 paragraph (2) of the Criminal Code.

Ad b. with text or images broadcast

The act committed by Defendant I and Defendant II by photocopying the contents of the news which contained defamation against HD was a form of written or broadcast images because it can be seen by many people.

Ad c. displayed in public or posted

This act by Defendant I and Defendant II made everyone know so that the act fulfilled this element.

Article 310 paragraph (2) of the Criminal Code is an article that aggravates Article 310 paragraph (1) of the Criminal Code in which to impose a sentence on someone using Article 310 paragraph (2) must first fulfill the elements contained in Article 310 paragraph (1). ) because the substance of the article is the same. What distinguishes Article 310 paragraph (2) from Article 310 paragraph (1) is the method or method used in committing insults. Article 310 paragraph (2) of the Criminal Code is an article that is used to increase criminal penalties in Article 310 paragraph (1) of the Criminal Code. A weighting article is an article that is used to exacerbate a criminal sentence for someone who violates the criminal law where the substance of the content of the article is the same as other articles but there is an element or factor that distinguishes it so that the criminal sentence is heavier.

R. Soesilo in his book entitled *The Criminal Code (KUHP) and his Complete Comments Article by Article* in the explanation of Article 310 of the Criminal Code, explains that, "insulting" is "attacking the honor and good name of a person". Those who are attacked usually feel "ashamed". The "honor" that is attacked here is only about the honor of "good name", not "honor" in the sexual field, the honor that can be defiled by offending his genitals in an environment of sexual lust.<sup>11</sup>

This sense of honor must be objectified in such a way and must be judged by a certain action, someone in general will feel offended or not. It can also be said that a very young child cannot feel this offense, and that a very mad person cannot feel this offense. Thus, there is no criminal act of insulting both types of people.<sup>12</sup> By looking at the explanation of these elements, the actions committed by Defendant I and Defendant II that were reported by HD and finally decided were inaccurate, because to be subject to Article 310 paragraph (2) of the Criminal Code, the act must comply with Article 310 paragraph (1) of the Criminal Code first. Meanwhile, the act did not fulfill one of the elements of Article 310 paragraph (1) of the Criminal Code, namely the element of "accusing something of something", so that it can be said that accused of this, Defendant I and Defendant II must be the people who make articles or news about defamation or an insult to HD itself, even though it was the press that produced the news or article from the *Harian Terbit*.

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<sup>11</sup> R. Soesilo, 1991, *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal*, Bogor, Politeia, pp. 225.

<sup>12</sup> Wirjono Prodjodikoro, 2003, *Asas-asas Hukum Pidana di Indonesia*, ed.3, Bandung, Refika Aditama, pp. 98.

If you look at article 311 of the Criminal Code which reads:

"If the person who commits the crime of defamation or defamation is allowed to prove what is alleged to be true, does not prove it, and the charges are against what is known, then he will be threatened with slander with a maximum imprisonment of four years."

The elements of Article 311 paragraph (1) of the Criminal Code are:

- a). Someone;
- b). Insulting others both verbally and in writing;
- c). The person who accuses him cannot prove his accusation and if the accusation is found to be untrue.

Ad a. Someone.

A person here is defined as a subject of criminal law consisting of individuals and corporations. In the above case, the said act includes an individual which means that he is included as a subject of criminal law.

Ad b. Insulting others both verbally and in writing.

The act that is done must be insulting or slander, which means that the news or information disseminated is something that is not true. In distributing the results of news clippings to others, the defendants did not know the truth about the news and it caused the victim's honor to be attacked and harmed the victim.

Ad c. The person who accuses him cannot prove his accusation and if the accusation is found to be untrue.

The defendant in the trial could not prove that the results of the news clippings were the truth and the act had been committed by the victim because the press could not prove whether or not an immoral act had occurred.

Slanderous acts according to R. Sugandhi, S.H., related to Article 318 of the Criminal Code, as we summarized, those who are subject to punishment in this article are people who deliberately commit an act that causes another person to be improperly involved in a criminal act, for example: secretly. secretly placing something of the origin of the crime in another person's house, with the intention that that person is accused of a crime.<sup>13</sup>

If you look at the judges' considerations, the most important element in Article 310 paragraph (1) of the Criminal Code is not considered so that the acts committed by Defendant I and Defendant II can be said to be fulfilled, even though if they include the element of "accusing something of something" it is an important and omitted element. Article 310 paragraph (2) of the Criminal Code should be inaccurate because the elements in Article 310 paragraph (1) of the Criminal Code are not fulfilled. What should have been imposed on the defendants was Article 311 of the Criminal Code

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<sup>13</sup> R. Sugandhi, S.H., 1980, Kitab Undang-Undang Hukum Pidana Berikut Penjelasannya, Surabaya, Usaha Nasional.



regarding slander because all elements in Article 311 of the Criminal Code were fulfilled. It is said to be fulfilled because what was done was insulting someone and the victim's blasphemy could not be proven true, therefore the act can be subject to article 311 of the Criminal Code and not Article 310 of the Criminal Code. Apart from the defendants who could be prosecuted by HD, they were the producers of the news or newspaper articles, namely the press from the Terbit Daily.

Because to see whether someone is involved in defamation or not, it must be seen from who made the news because the problems seen in the case used or other defamation problems are the object of the defamation act. The object is a newspaper report made by journalists from a press company called Harian Terbit. If we look at law number 40 of 1999 on the press:

c) Article 5 paragraph (2): the press is obliged to serve the Right of Reply

d) article 5 paragraph (3): the press is obliged to serve the right of correction

So that if there is an error in the news made by the press and the party who feels aggrieved must protest against the press first, then the press must exercise the Right to Reply and the Right to Correction because this is also in the code of ethics for Indonesian journalists which must be immediately revoked and rectify mistakes in reporting and serving the right of reply and also accompanied by an apology but if there is a criminal element in this case, those who feel aggrieved can report the case to the police and in its resolution use Law number 40 of 1999 concerning the press because the object of the problem is press product.

But if you look at the slander that you see is whether the person who committed the slander can prove the accusation directed at another person, if the accusation can be proven true, it does not include slander but if it cannot be proven then the accusing act is considered slander. The accusation committed in the case I used cannot be verified by the person who caused the newspaper clipping. Therefore, it is more precise that the act committed by the defendants was a defamation as regulated in Article 311 of the Criminal Code rather than an act of defamation as regulated in Article 310 of the Criminal Code.

In criminal law it is known as criminal liability. The element of criminal responsibility is very important in criminal law because it is to determine whether a suspect or defendant can be subject to criminal sanctions or not. Sianturi stated, criminal responsibility, namely:

In foreign languages, criminal responsibility is referred to as "toerekenbaarheid", "criminal responsibility", "criminal liability". It has been stated that criminal liability is meant to determine whether a suspect / defendant is responsible for a crime that occurs or not. In other words whether the defendant will be convicted or released. If he is convicted, it must be evident that the act committed was against the law or that the defendant was able to take responsibility. This ability shows errors

from the act in the form of intentional or negligent. This means that the action was despicable and the accused was aware of the action being carried out.<sup>14</sup>

According to Sudarto "it is not enough to convict someone if that person has committed an act that is against the law or is against the law. So even though the act fulfills the statutory offense formulation and is not justified, it does not yet fulfill the requirements for imposing a sentence. For conviction there is still a need for the imposition of a sentence, that is, the person who commits the act is guilty or guilty ".<sup>15</sup>

The defendants can also carry out criminal responsibility because the elements of guilt have all been fulfilled. The elements of error are divided into:

- a) There is an act against the law (criminal act),
- b) Able to be responsible,
- c) Has one form of error, namely deliberately (*dolus*) or negligence (*culpa*),
- d) There must be no excuses.<sup>16</sup>

Ad a. There is an act against the law (a criminal act)

The actions committed by the defendants were illegal because the actions committed by the defendants violated the Criminal Code so that the elements of the guilt had been fulfilled.

Ad b. Be able to be responsible

The defendants were not persons who were under interdiction or were mentally ill or mentally disabled so that the defendants were able to take responsibility for the actions they had committed.

Ad c. Has one form of error, namely deliberately (*dolus*) or negligence (*culpa*)

In committing the criminal act the defendants did it deliberately and understood what the defendants were doing.

Ad d. There must be no excuses

There is no excuse for all acts which fall under the realm of criminal defamation.

#### IV. CONCLUSION

Based on the discussion and description in the previous chapters, it can be concluded that the acts committed by Defendant I and Defendant II regarding defamation cannot be justified, but still responsible for the criminal act of defamation because:

The actions of Defendant I and Defendant II did not fulfill the elements of Article 310 paragraph (2) of the Criminal Code, to fulfill the elements of Article 310 paragraph (2) of the

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<sup>14</sup> Sianturi, 1986, *Asas-asas Hukum Pidana Di Indonesia dan Penerapannya*, Jakarta, Alumni AHAEM-PETEHAEM, pp. 250.

<sup>15</sup> Mahrus Ali, 2015, *Dasar-Dasar Hukum Pidana*, Cetakan ketiga, Jakarta, Sinar Grafika, pp. 156.

<sup>16</sup> Tim Dosen, *Hand Out Hukum Pidana*, Surabaya, Laboratorium Hukum Pidana Fakultas Hukum Universitas Surabaya, pp.66.

Criminal Code must fulfill the elements of Article 310 paragraph (1) of the Criminal Code and the actions of Defendant I and Defendant II did not fulfill the elements of Article 310 paragraph (1) of the Criminal Code.

The actions carried out by the defendants fulfilled all the elements contained in Article 311 of the Criminal Code regarding slander so that the more appropriate indictment is Article 311 KUHP not Article 310 KUHP.

Defendants can be subject to criminal responsibility because the defendants have committed an illegal act (a criminal act), are able to take responsibility, have one form of error, namely deliberate (*dolus*), and there is no excuse for the defendant's actions.

Based on the conclusions that have been described, suggestions that can be used for solving similar problems at a later date are:

- a. Article 311 of the Criminal Code should be applied to the acts committed by the defendants to HD.
- b. Apart from the defendants, HD could sue the person who made the news, in this case the press, using Law Number 40 of 1999 concerning the press.

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