

## LEGAL ANALYSIS OF CRIMINAL ACTS BY PERPETRATORS ON SOCIAL MEDIA BY INTENTIONALLY ACCESSING ELECTRONIC INFORMATION / ELECTRONIC DOCUMENTS CONTAINING INSULTING / DEFAMATION (STUDY OF DECISION NUMBER 5201 K/Pid.Sus/2025/PN. Lubuk Pakam)

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### Abstract

The existence and use of the internet today is like a double-edged sword. Besides contributing to the improvement of human welfare and the advancement of civilization, it can also be a means for committing various unlawful acts, including criminal acts. These crimes include information espionage, data theft, credit card fraud, the spread of computer viruses, adult and child pornography, the distribution of problematic emails, and anti-ethnic, religious, racial, and intergroup (SARA) campaigns, terrorism, and extremism via the internet. These various forms of crime are known as "cybercrime." The term "cybercrime" is also equated with "Cybercrime," "Cybercrime," or "International Crime."

**Keywords:** *Crime, Social Media, Defamation*

### A. Background

The advancement of computer technology integrated with the cyber world (the internet) has undeniably given rise to various conveniences in interactions between subjects within a single country and even across the globe. This is a global network that has been expanded to facilitate communication and interaction between individuals across the universe through the medium of flat mini-screens. This is what is ultimately known as the emergence of a flat world (*the world is flat*), which sets aside the opinion and fact that the world is round in its manifestation. Everyone in any part of the world, with the capital of a communication device connected to the internet network, can access and obtain various data they want in a new world called the *cyber world*.<sup>1</sup> The development of computer and internet technology influenced by the concept of *cybernetics* has given birth to a new world known as *cyberspace*, *global village*, or internet and marks the beginning of a new era, namely the digital era or information era. *Cyberspace*, *global village* or internet, is a new world created by the unification of humans and technology based on science, and marks the beginning of the digital era. Just as in the conventional world, in cyberspace 'lives' a society (cybersociety) consisting of millions of internet users from all over the world who communicate or interact with each other through computer networks. Just as in our physical world today, in cyberspace society requires regulation both between societies and between societies, starting from norms to laws (*cyberlaw*).<sup>2</sup>

Law is basically a limitation for society in its behavior and for violations it is subject to coercive sanctions by the highest authority in a country. Law is necessary to create order in society and provide justice. This justice and order are achieved by safeguarding specific interests, both individual and collective. Society is dynamic, and within it, crime also arises. Technology and society are dynamic because they are constantly evolving, while law is static. Technology demands a legal response, and law stands at a crossroads: on the one hand, it strives to

<sup>1</sup>Radita Setiawan and Muhammad Okky Arista.2013. *The Effectiveness of the Electronic Information and Transactions Law in Indonesia in the Criminal Law Aspect*, via <https://jurnal.uns.ac.id/recidive/article/viewFile/32324/21500>, Recidive Vol 2 No 2 May-August 2013, p. 1.

<sup>2</sup> Josua Sitompul.2012. *Cyberspace, Cybercrimes, Cyberlaw: A Review of Criminal Law Aspects*, Jakarta: Tata Nusa, p.31.

accommodate technological developments for the benefit of society, but on the other hand, the law has a responsibility to safeguard existing technology, thereby ensuring that the various interests and needs of the wider community that have been met by that existing technology remain intact.<sup>3</sup> The development of technology and information has had a significant impact on human life. Today, nearly every aspect of life is influenced by technology. The technological revolution has brought many conveniences to people in carrying out their daily activities. One example is the ease of buying and selling transactions. While previously transactions could only be conducted face-to-face, today people can access them easily through a mobile phone screen. In this era, communicating with people thousands of miles away has become incredibly easy. With just an internet connection, someone can contact family, friends, and even business associates in other countries or continents. Publicly accessible information is also readily available. This phenomenon is known as *cyberspace*.<sup>4</sup> Transactions in the digital world fall under *the cyberspace component*. *Cyberspace* is an integral component of global technological and information development. *Cyberspace* serves as a platform for various digital matters, including competition in the economic, political, and other aspects of society. Uploading, accessing, and even storing personal data takes place entirely online.<sup>5</sup> The use of the internet is used to make it easier for people to carry out their daily activities, such as: *e-commerce* (trade transaction activities via the internet), *e-banking* (banking activities via the internet), *e-government* (government service activities via the internet), and *e-learning* (learning activities via the internet). The internet is not just a modern communication channel, but also a new home for segmented social groups. Various forums and communities have formed and thrived through the internet's presence. This demonstrates the internet's significant influence on human life today.<sup>6</sup>

The existence and use of the internet today is like a double-edged sword. Besides contributing to the improvement of human welfare and the advancement of civilization, it can also be a means of committing various unlawful acts, including criminal acts. These crimes can include information espionage, data theft, credit card fraud, the spread of computer viruses, adult and child pornography, the distribution of problematic emails, and anti-ethnic, religious, racial, and intergroup (SARA) campaigns, terrorism, and extremism via the internet. These various forms of crime are then known as "*cybercrime*." The term *cybercrime* is also equated with "Cybercrime," "Cybercrime," or "International Crime."<sup>7</sup> These terms emerged considering the activities carried out through computer system networks and communication systems, both locally and globally (the internet), utilizing computer-based information technology, which is an electronic system that can be viewed virtually. Legal issues frequently encountered are those related to the electronic delivery of information, communication, and/or transactions, particularly in matters of evidence and matters related to legal acts carried out through electronic systems.<sup>8</sup> The characteristics of *cybercrime* are very different from ordinary crimes, so that the legal approach in this field can no longer be approached conventionally but must be through a non-conventional approach by prioritizing the principles of *lex informatica*. The characteristics of *cybercrime* are *borderless and use high technology as a medium, so the criminalization policy in the field of information technology must pay attention to the development of cybercrime prevention efforts, both regionally and internationally in the context of harmonization and uniformity of cybercrime regulations*.<sup>9</sup> *Cybercrime* is a form or dimension of contemporary crime that has received widespread international attention. Volodymyr Golubev, as cited by Barda Nawawi Arief and cited by Iman Sjahputra in the book *Consumer Protection in Electronic Transactions*, calls it the new form of antisocial behavior. Several other, more interesting names have been given to this type of cybercrime (cyberspace/virtual space offense), a new dimension of high-tech crime, a new dimension of transnational crime, and a new dimension of white-collar crime.<sup>10</sup>

<sup>3</sup> *Ibid.* P. 32.

<sup>4</sup> Astri Aprilianti. 2024. *Effectiveness and Implementation of the Electronic Information and Transactions Law as Cyber Law in Indonesia, Challenges and Solutions*, via <https://ejournal.hukumunkris.id/index.php/abioso/article/view/1002/251>, p. 2.

<sup>5</sup> Kadek Ary Purnama Dewi. 2025. *Personal Data Protection Law (Facing the Challenges of Payment System Acceleration)*. Jakarta: Kencana Prenada Media, p. 87.

<sup>6</sup> Nynda Fatmawati Octarina. 2018. *Criminal Reporting on Social Media*. Malang: Setara Press, p. 7.

<sup>7</sup> Sugeng. 2020. *Indonesian Telematics Law*. Jakarta: Kencana Prenada Media, pp. 83-84.

<sup>8</sup> Rio Armanda Agustian and Jeanne Dare Noviayanti Manik. *Electronic Information Crimes in a Positive Legal Framework*, via <https://journal.ubb.ac.id/>, Jurnal Hukum XVI/No.1/June 2021, P.93.

<sup>9</sup> *Ibid.* Pg. 85.

<sup>10</sup> Iman Sjahputra. 2010. *Consumer Protection in Electronic Transactions*. Bandung: PT. Alumni, p. 8.

## B. Problem Formulation

Based on the background that has been presented, the formulation of the problem in this research is as follows:

1. How do the Criminal Law Provisions Regulate Criminal Acts of Crimes Perpetrated by Perpetrators in Social Media Accessing Information/Electronic Documents/Electronic Documents Having Content of insults/defamation?
2. How is the perpetrator criminally responsible for the crime?  
Defamation on Social Media (Case Study of the Decision)  
Lubuk Pakam District Court Number 5201/K.Pidsus/2025/PN.Lubuk Pakam)?

## C. Research Objectives

Based on the formulation of the problem that has been put forward, the objectives to be achieved in this research are as follows:

1. To Study and Analyze Criminal Law Provisions Regulating Criminal Acts Criminal Offenses for Social Media Perpetrators Accessing Electronic Information/Documents / Electronic Documents Contain Insults/Defamation.
2. To Review and Analyze Criminal Responsibility for Perpetrators Crime of Insult/Defamation on Social Media (Case Study of the Decision)  
Lubuk Pakam District Court Number 5201/K.Pidsus/2025/PN.Lubuk Pakam)

## D. Benefits of Research

1. Theoretically, it is useful to open insight and thinking paradigms in understanding and analyze legal problems in determining the elements of a crime Insults/Defamation on Social Media. Also useful as material references for further researchers can increase insight and provide contributions for the science of Privacy Law and Data Security.
2. Practically, this research is useful for law enforcement officers, especially for Police (investigators), Public Prosecutors, judges handling criminal cases especially the case of Cyber Crime in the virtual world, it is also useful for the community to raise awareness of legal provisions regarding Criminal Law Defamation.

## G. RESEARCH METHOD

### 1. Types and Nature of Research

The type of research is normative or doctrinal legal research which is also called library research, because it is mostly conducted on secondary data available in the library. In this research, secondary data as a source/information material can be primary legal material, secondary legal material and tertiary legal material. In Normative Research with secondary data as a source of data or information can be a primary legal source, secondary legal source and tertiary legal source. The implementation of normative research is generally aimed at Research on synchronization which can be done either vertically synchronized based on the hierarchy of laws and regulations or horizontal synchronization of equal laws and regulations. In this research, secondary data as a source/information material can be: a. Primary legal material, namely the 1945 Constitution of the Republic of Indonesia, Law of the Republic of Indonesia Number 11 of 2008 concerning Information and Electronic Transactions Jo. Law Number 19 of 2016, District Court Decision Number 5201 K/Pid.Sus/2025/PN.Lbk.Pkm.

### 2. Data Sources

As a specific example for normative legal research, data sources can be broken down into three types, namely as follows:

- a. Primary legal materials are legal materials that have binding force legally, consisting of: the Criminal Code (KUH Pidana), Criminal Procedure Code (KUHAP), and Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Information and Electronic Transactions, and Decision Number 5201 K/Pid.Sus/2025/PN.Lubuk Pakam.
- b. Secondary legal materials, namely materials that are closely related to legal materials primary and can help analyze and understand primary legal materials, can

in the form of: Draft legislation, legislation that is not

applicable, scientific works of scholars, research results, journals, and so on.

c. Tertiary legal materials are complementary to secondary legal materials and tertiary examples are the Law Dictionary (Black's Law Dictionary), Index and Bibliography.<sup>11</sup>

### **3. Data Collection Techniques and Tools**

Literature study is conducted to obtain useful data for research writing (thesis/dissertation) in the form of legal theories, principles, doctrines and legal rules obtained from primary legal materials, secondary legal materials, and tertiary legal materials. The way to obtain secondary data is by conducting a series of literature study activities by reading, citing books and reviewing laws and regulations, documents and information related to the research being conducted.<sup>12</sup>

### **4. Data Analysis**

Data analysis is defined as the process of statistically processing existing data to answer research questions. Data analysis techniques can be defined as the methods for analyzing data, with the goal of processing the data to answer the research questions.<sup>13</sup> Qualitative data analysis relates to data in the form of words or sentences produced from research objects and is related to events that encompass all research objects.<sup>14</sup>

## **III. RESULTS AND DISCUSSION**

### **1. Criminal Law Provisions Regulating Criminal Acts of Crimes Perpetrated by Perpetrators in Social Media Accessing Information/Electronic Documents/Electronic Documents Contains Insults/Defamation?**

According to the Constitutional Court, although everyone has the right to communicate and obtain information, it does not eliminate the state's right to regulate so that the freedom to communicate and obtain information does not violate the rights of others to obtain protection for themselves, their families, honor, dignity and good names which are also guaranteed by the constitution. The state's authority to regulate can be justified, even becoming the state's responsibility, especially the government, among other things by setting it out in the Law (vide Article 28 I paragraph (4) and paragraph (5) of the 1945 Constitution to create a more conducive situation for the fulfillment of the right to protection for themselves, their families, honor, dignity and good names). The formulation of the a quo Article only limits anyone who "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.

Insulting and/or defaming another person is contrary to the protection of human honor and dignity. Such actions demean human dignity. A person of faith, piety, and noble character will not insult or defame another. One of the differences between communication in the real world and the virtual world is the medium used, so every communication and activity via the internet will have an impact on people's lives in the real world. Therefore, although the severity of sanctions is the authority of the lawmakers, according to the Constitutional Court, the concept of criminalization in the ITE Law is an offense qualified as insult or defamation, so the concept will refer to the Criminal Code, but the criminal threat is more severe.<sup>15</sup>

The difference in criminal penalties between the Criminal Code and the ITE Law is reasonable because the distribution and dissemination of information through electronic media is relatively faster, has a wider reach, and has a massive impact. The restrictions imposed by the state are not in order to reduce the basic rights to seek, obtain, possess, store, process, and convey information, but rather to provide guarantees to others to enjoy their freedom from threats of attacks on their honor, their families, and degrading human dignity and dignity that can cause them to be unable to live properly as human beings who are honored by the Creator.

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<sup>11</sup>Suteki and Galang Taufani. 2018. *Legal Research Methodology (Philosophy, Theory and Practice)*. Depok: Rajawali Pers, p. 216.

<sup>12</sup>H.Ishaq.2017. *Legal Research Methods (Writing Theses, Dissertations, and Dissertations)*. Bandung: Alfabeta, 1st Edition, p. 115.

<sup>13</sup>V. Wiratna Sujarweni.2025. *Research Methodology*. Yogyakarta: Pustaka Baru Press, p. 103.

<sup>14</sup>Aris Prio Agus Santoso, Ahmad Rifai, Edy Wijayanti, and Rina Arum Prastyanti. 2023. *Introduction to Legal Research Methodology*. Yogyakarta: Pustaka Baru Press, p. 138.

<sup>15</sup>Danrivanto Budhijanto.2025. *Cybercrime Law 4.0 (Digital Crime and Artificial Intelligence)*. Bandung: PT. Refika Aditama, 1st Edition, p.75.

Article 27 paragraph (3) of the ITE Law does not regulate new criminal law norms, but only emphasizes the application of criminal law norms on insults in the Criminal Code into the law because there are special additional elements, namely developments in the electronic or cyber field with very special characteristics. Therefore, the interpretation of the norms contained in Article 27 paragraph (3) regarding insults and/or defamation cannot be separated from the criminal law norms contained in Chapter XVI regarding Insults contained in Article 310 and Article 311 of the Criminal Code so that the constitutionality of Article 27 paragraph (3) must be linked to Article 310 and Article 311 of the Criminal Code. Thus, the main or basic legal norms (*genus delict*) originate from the Criminal Code, while the legal norms in Article 27 paragraph (3) of the ITE Law are provisions for special application in the *a quo* law. Thus, the constitutionality of the criminal law norms on insult and/or defamation as referred to in Article 27 paragraph (3) depends on the constitutionality of Article 310 and Article 311 of the Criminal Code.

As part of general criminal law, the criminal law provisions in the ITE Law are subject to general criminal law principles, both material and formal. If there are any additions, these additions are complementary. Therefore, the provisions of the criminal law norms cannot override the validity of norms in general criminal law, but rather strengthen the validity of general criminal law by adding new elements as additional elements so that they can be applied appropriately in accordance with developments in the social or technological fields that cannot be fully addressed using the instruments of general criminal law. The validity and interpretation of Article 27 paragraph (3) of the ITE Law cannot be separated from the basic legal norms in Article 310 and Article 311 of the Criminal Code as a *genus* of crime that requires a complaint (*klacht*) in order to be prosecuted. This must also be applied to acts prohibited in Article 27 paragraph (3) of the ITE Law so that they must be interpreted as crimes that require a complaint (*klacht*) in order to be prosecuted in court.<sup>16</sup> A criminal act of defamation can also be committed indirectly. Given the increasingly advanced technology, people can also commit crimes through social media. The crime of defamation can be committed online, therefore the ITE Law regulates how the law addresses this issue. Article 27 paragraph (3) of the ITE Law regulates defamation through electronic media.

Article 27 paragraph (3) of the ITE Law, which reads, Any person who intentionally and without the right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain insults and/or defamation. Article 45 of the ITE Law, which reads: Any person who fulfills the elements as referred to in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be punished with imprisonment of a maximum of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah). Regarding this matter, it is also continued in Article 45 of the ITE Law which explains that, "Any person who fulfills the elements as referred to in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be punished with imprisonment of a maximum of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah)."<sup>17</sup>

Another point that needs to be emphasized here is that the offense of defamation in Article 27 paragraph (3) of the ITE Law is subjective, just like in Article 310 of the Criminal Code. This means that the feeling of having an attack on a person's good name or honor lies solely with the victim. It is the victim who can determine which part of the Information or Electronic Document attacks their honor or good name. However, this subjective assessment must be balanced with more objective criteria. Without more objective criteria, the intended legal protection provided through Article 27 paragraph (3) of the ITE Law can be misused. These criteria can be established based on the clarity of the identity of the person insulted and the content of the information or electronic document that is considered insulting or defamatory.<sup>18</sup>

## 2. How is the perpetrator criminally responsible for the crime?

### Defamation on Social Media (Case Study of the Decision)

Lubuk Pakam District Court Number 5201/K.Pidsus/2025/PN.Lubuk Pakam

#### Position Case

- A. That on Monday, March 6, 2023 at around 08.00 WIB in Pagar Jati Village, Lubuk Pakam District, Deli Serdang Regency, Witness Ponia Putri Siahaan has upload photos and videos via social media Facebook, Instagram and Tiktok contains defamation content against the victim witness Lamtiur Silitonga.
- B. That in the social media account belonging to Witness Sonia Putri Siahaan, there has been upload photos and videos by writing the following words:
  - That in the social media account belonging to Sanksi Sonia Putri Siahaan, it has been

<sup>16</sup> *Ibid* . P. 76.

<sup>17</sup> Beniharmoni Harefa and Abdul Kholiq. 2024. *Criminal Law* . Depok: PT. Raja Grafindo Persada, p. 163.

<sup>18</sup> *Ibid* . P. 179.

- upload photos and videos with the words "Perpetrator: Desita Lamtiyur"  
Silitonga / Lamtiyyur Silitonga (land thief mafia), Position: Head of Pagar Jati Village, Deli Serdang, North Sumatra”);
- Uploading a video with the words: “You think you have the right to that”;
  - Uploaded a video with the words: "The police are hacking up, the land is still in dispute, Security guard, sir, please ask for instructions from the authorities, I am Hendrik. Siahaan, Mr. Silaban has the rank of Captain AKP, Assistant Commissioner of Police AKBP AKP, Mr. Jokowi The Chief of Police here is backing up not to be arbitrary towards the community, this land is still in dispute”;
  - Uploaded a video with the words: "Head of Pagar Jati Village, you thief, you know you are a cultivator People know your land, Village Head Desita Lamtiur Silitonga, thief, land mafia cultivator, fake letter, but because there is a lot of money that's why you can win like this, you know the thief thief, village head thief, you have a lot of money, you are a thief, you take it out your old members, you put in new ones who are thieves, you know you are a land mafia thief You are Desita Silitonga, Desita Silitonga, land mafia, people's land”;
  - Uploaded a video with the words: “Land mafia, Desita Lamtiur Silitonga land mafia, Desita Lamtiur Silitonga as the Head of Pagar Jati Village, a village head, you thief thief, you're a thief Desita, if it wasn't like this you wouldn't get it, you thief you know you are, Desita Lamtiur Silitonga you thief, you land mafia, you take the land of the common people, You can buy us too, you said, you're probably scared, because what are you, General, you're behind You budget for that two star, even Sambo can do it, you know what Sambo can do death penalty”;
  - Uploaded a video with the words: “Hey Desita, Desita Silitonga is a land mafia, Desita Silitonga LAND MAFIA, Desita Lamtiur Silitonga, the Head of Pagar Jati Village, is a mafia land, it will be amazing later, it will be amazing later, you are not happy Desita, Desita Lamtiur Silitonga, a village head, a land mafia, a land mafia thief, help us, sir Jokowi, we are the little people, our land has been taken by a land mafia named Desita. Lamtiur Silitonga, you shameless land thief, you are the village head as the head village”;
- C. That the upload was uploaded on March 3, 2023 by Witness Sonia Putri Siahaan, then in Sonya Siahaan's Facebook account, she tagged the account Facebook Artiana Muara belongs to the Defendant, then by the Defendant via the Facebook account Artiana Muara re-uploaded the video with the words: “Land mafia, Desita Lamtiur Silitonga land mafia, Desita Lamtiur Silitonga as Head of Pagar Jati Village a village head, thief you're a thief, thief you're Desita, if it's not like this you won't got you, thief you know you, Desita Lamtiur Silitonga thief thief you, land mafia You, you take the land of the common people, you can even buy us, you say, you must be scared, because Are you a General? You are behind the two-star, you can even budget for Sambo. "Do you know what can be done to Sambo if sentenced to death?" then spread it to the media. social media through the Defendant's Artiana Muara Facebook account, resulting in defamation good and insults against victim witnesses are widespread on social media;
- D. That the act was discovered by the victim witness Lamtiur Silitonga on Monday. March 6, 2023 at approximately 08.00 WIB when the victim witness Lamtiur Silitonga is currently in Pagar Jati Village, Lubuk Pakam District, Lubuk Pakam District, Deli Serdang Regency and at that time the victim witness received a WhatsApp message from Witness Dompok Maruli Tua Aritonang, the contents of which are screenshots uploaded from the account Sonya Siahaan's Facebook contains defamation and insults against witnesses The victim, seeing this, then the victim witness accessed Sonya's Facebook account Siahaan and in that account, Witness Sonia Putri Siahaan marked the account Facebook Artiana Muara belongs to the Defendant and then the Victim Witness Lamtiur Silitonga watching a video upload saying bad words about the victim witness Lamtiur Silitonga;
- E. That the Defendant's actions in re-uploading photos and videos on the account Facebook belonging to Witness Sonia Putri Siahaan resulted in the victim witness Lamtiur Silitonga

as the Head of Pagar Jati Village, he experienced a decline in public trust, mental the victim witnesses are decreasing and the victim witnesses feel ashamed in front of society, so that witnesses experience mental stress.<sup>19</sup>

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<sup>19</sup>Decision of the Supreme Court of the Republic of Indonesia Number 5201 K/Pid.Sus.2025/Lubuk Pakam District Court.