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Restorative Justice in Enforcement of the Criminal Law of Defamation Through Information Technology

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²ABSTRACT

The purpose of this research is to analyze the essence of restorative justice in defamation based on the ITE Law and the criminal justice process for defamation through information technology. This study uses primary data through the distribution of conventional and digital research questionnaires to respondents who are Police Investigators, Prosecutors, Judges, in 14 cities/districts in South Sulawesi Province. The results of the study show that the essence of restorative justice in defamation through information technology is the settlement of criminal acts of defamation through information technology by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly make a fair and balanced settlement agreement. for the victims and perpetrators by prioritizing recovery, and creating a pattern of good relations in the community. Restorative justice in the criminal justice process against defamation through information technology at the police investigation level, at the prosecutor's prosecution level, and at the district court trial level, has not been implemented optimally / less effective

Keywords: Restorative Justice; Law enforcement; Defamation

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I. Introduction

In 2013, the Ministry of Communication and Information (Kemenkominfo) reported that internet users in Indonesia reached 63 million people. Of this figure, 95 percent use the internet to access social media.^[1] The most accessed social media sites are *Facebook* and *Twitter*. Indonesia is ranked as the 5th *Twitter* in the world, behind the USA, Brazil, Japan and the UK. Indonesia is also ranked as the 4th *Facebook* after the USA, Brazil and India. So don't be surprised if *Facebook* founder & CEO Mark Zuckerberg in 2014 was willing to fly far to Indonesia to increase cooperation in the field of information technology.^[2]

The recent development of information technology tools and their applications has caused human interactions to undergo radical changes.^[3] In the past, various ways and forms of human communication, both using conventional media (such as print media; newspapers, magazines, tabloids, comics; 2-dimensional photos, etc.) have now become digital media, changing human mobility to be more free and active in expressing ideas. new ideas / ideas and creative in expression.

These social media products are in the form of images or videos that have additional text attached to the image/video. In general, it is disseminated through social media in cyberspace, including *Instagram*, *Facebook*, *Twitter*, *Tiktok*, and other information system applications. It can be popular because it is forwarded by the recipients (*responders*).^[4] This happens when it contains 'something' that is considered phenomenal or in accordance with the conditions experienced by the recipient (*responder*). Something phenomenal can be in the form of writing or image expressions found on these social media products.

Information Technology is like a battery that has two sides; positive and negative. Likewise, everything that is conveyed through information technology, such as social media products, can contain positive and motivating messages, but quite a lot of them also contain satire, and insults. Even in 2020 ago, Microsoft released a *Digital Civility Index* (DCI) report which measures the level of digital courtesy of world internet users when communicating in cyberspace, the result is that internet users in Indonesia rank the lowest in Southeast Asia, or can be said to be the most disrespectful in the Southeast Asian region.^[5]

Along with the rapid advancement of information technology and the formation of popular culture in the delivery of human expression in cyberspace (*cyberspace*), the law must also be able to protect and deal with problems that will arise / are happening from its misuse caused by human information (subject law).^[6] Therefore, the law must play a role in following up and even being able to prevent it before the misuse of information technology occurs. Not only in prevention, but also in punishing the person who creates or

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distributes the insulting content misuse can lead to acts against criminal law (*wederrechtelijk*) in the form of defamation of a person, profession, institution, and state symbols, as well as copyright infringement, and misuse of electronic media for its dissemination.

Indonesia's positive law is actually sufficient to protect these legal problems. The offense of defamation is regulated in Chapter XVI in Articles 310 to 321 of the Criminal Code, then to adjust to the times, Law no. 11 of 2008 concerning Information and Electronic Transactions, and further refined through Law no. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions. The Law already contains various forms of offenses for defamation offenses and their sanctions. However, in law enforcement, in fact there are quite a lot of cases related to defamation content circulating through social media.

Law enforcement efforts against criminal defamation through information technology based on the ITE Law as a process for the real enforcement of legal norms have created new problems in Indonesia.^[7] The problem is the accumulation of defamation cases in law enforcement agencies, as in the Makassar Polrestaes during January-September 2021 there were 70 cases of defamation through information technology / social media registered as reports. These problems will flow to the next problem, namely prisons that exceed capacity.^[8] The limited number of law enforcement officers can also be an obstacle in the implementation of law enforcement which should be fast, simple, and low-cost. This is because the Indonesian legal system still supports the concept of retributive justice as a method of criminal retaliation against criminals. The existence of legal certainty to be achieved through retributive justice is to fairly punish everyone who makes a mistake. The role of the state is very important in terms of its implementation. However, the main problem that arises is whether the retributive concept has fulfilled the sense of justice for the victim and the community? Obviously not. Because there is no involvement from victims, perpetrators, and/or families of victims/perpetrators as well as the community which is facilitated by the state to negotiate to achieve the goal of peace and a sense of justice that is accepted by both parties, as well as the community. That is why a new concept to fulfill the sense of justice needs to be implemented, which emphasizes on restoring a sense of justice to victims and the community, and restoring conditions to perpetrators.

In the case of criminal defamation, it is very important to restore the rights of victims who have been defamed. Because the current punishment (*retributive justice*) is not necessarily able to restore a fair and balanced condition of the victim. That is why the concept of *restorative justice* is needed in restoring personal relationships between victims and criminals, as well as restoring the harmony of life together in society.^[9]

Indonesian Law Enforcement Institutions have attempted to implement the principles of restorative justice as an instrument of recovery in the form of implementing special policies, including; At the investigation level, the Indonesian Police Regulation issued on August 20, 2021 with number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice, replaces the Circular Letter of the Chief of Police Number SE/8/VII/2018 concerning the Application of *Restorative Justice* In the Settlement of Criminal Cases. . At the prosecution level, the Prosecutor's Regulation issued on July 21, 2020 with number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. At the trial level in court, the Supreme Court issued a Decree of the Director General of the General Judiciary Agency on December 22, 2020 with the number 1691/DJU/SK/PS.00/12/2020 concerning the Enforcement of Guidelines for the Implementation of Restorative Justice (*Restorative Justice*). Then to equalize the perception of law enforcement officers and reduce multiple interpretations of the ITE Law, a Joint Decree of the Minister of Communication and Information of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Head of the Indonesian National Police on June 23, 2021 with numbers 229 of 2021, 54 of 2021, was issued. KB/2/VI/2021 concerning Guidelines for the Implementation of Certain Articles in Law number 11 of 2008 concerning Electronic Information and Transactions as amended by Law number 19 of 2016 concerning Amendments to Law number 11 of 2008 concerning Electronic Information and Transactions. But in fact, the implementation of the special policy has not been able to answer the problems that arose at the beginning, in the case of defamation which should have been reduced and the handling of which should have been completed quickly by peaceful means and restoration of the situation.^[10]

In addition to the specific policies above, there is still a need for a basic principle that can influence the application of restorative justice to defamation cases in order to run optimally in an area. This is because the law enforcement process in each region is clearly different based on factors that influence it, such as the customary law that applies to that area, as well as the lifestyle and interaction of the local community.

The ideal of restorative justice itself is the restoration of a situation that is not enough just to forgive on a peace deed (*dading*) because it is requested by law enforcement officials based on the concept of restorative justice and witnessed by community leaders, but even more noble is the acceptance of forgiveness and inner feelings. The relief from the victim and the community to forgive the perpetrator and accept the restoration of the situation becomes harmonious again.

21 Research Methods The

type of research used in this study is empirical or sociological (*non-doctrinal*) normative legal research, namely research that examines the law in the reality of society (*law in action / das sein*), namely the reality that deviates from the applicable rules (*law in book*). / *das sollen*) in empirical facts in the form of criminal defamation through information technology and the application of restorative justice in the law enforcement process.

The location of this research is in South Sulawesi Province by taking 14 (fourteen) sample cities/districts, including Makassar City, Bone Regency, Soppeng Regency, Wajo Regency, Parepare City, Sidenreng Rappang Regency, Enrekang Regency, Tana Toraja Regency, Luwu Regency, 23 Palopo City, North Luwu Regency, East Luwu Regency, Bulukumba Regency, and Selayar Islands Regency.

II. Discussion

on the Nature of Restorative Justice in Defamation through Information Technology

A good name is human dignity and honor. A good name is a good judgment according to general assumptions about a person's behavior or personality from a moral point of view. 5 A person's good name is always seen from the point of view of others, namely good morals or personality, so that the size is determined based on general assessments in a particular society in the place where the act is carried out and the context of the action. Meanwhile, defamation is an act that attacks the honor and dignity of a person, causing a bad judgment on a person's personality. In the Indonesian Thematic Thesaurus, it was found that "Good Name" is related to success, reputation, fame, honor, prestige, self-respect, izah, pride, majesty, kindness, greatness, nobility, fame, splendor, glory, purity, height, virtue, makramat, dignity, widita, glory, popularity, prestige, popularity, trust, virtue.

Based on the Indonesian Thesaurus, it can be concluded that a good name is closely related to positive things and right things that are worthy and even human rights to be owned by every human being based on his behavior and morals.

The Islamic perspective holds that:

Islamic law was revealed to protect human dignity. Every behavior that degrades human dignity, both personally and as a member of society, is certainly prohibited by Allah SWT. In Islamic law, the term *jinayah*, which is an act that is prohibited by *sharia* because it can pose a danger to life, property, offspring, and reason.

Islamic law stipulates worldly punishments for other types of acts that degrade human honor, namely in the form of *Ta'zir* whose execution is left to the authorities or judges or those who have judicial power. Perpetrators of defamation or degrading human dignity are also threatened with hell in the hereafter, because Islam really protects the honor and good name of a servant. Islam strictly forbids the act of swearing, swearing, calling with bad nicknames, backbiting, pitting against each other, and similar acts related to human honor or dignity. Islam also humiliates those who commit these sins, and threatens them with a painful promise on the Day of Judgment, and classifies them as the wicked.

The Christian perspective views that a good name is more valuable than any wealth, it is written in the book of Proverbs 22 verse 1 which reads "a good name is more valuable than great wealth, being loved by people is better than silver and gold". Then it is strengthened by the Psalms of David in Psalm 15 which is entitled "Who may come to the Lord?", one of the answers is in verses 2 and 3 which read:

"He who acts without reproach, who does what is just and speaks the truth, with all his heart, who does not spread slander with his tongue, who does not harm his friend and does not bring reproach on his neighbor."

Christianity really values the good name of every human being. At the beginning of the Bible, it is stated that God commanded Moses to write down the law, in the third commandment it is stated that do not take the name of the Lord God in vain. This confirms that from the very beginning the word of God guided by Christianity highly values a name as the noble identity of the owner of that name, these values are also guided by Christians to greatly value the good name of each human being, especially the name of God.

Defamation through information technology can have very significant legal consequences. 12 Because the function of information technology is to make acts of defamation more widespread, fast, and permanent through digital traces/histories. In general, defamation is carried out through social media. Social media is a popular and familiar product of today's information technology. In the 8 McGraw Hill Dictionary, social media is defined as a means used by people to interact with each other by creating, sharing, and exchanging information and ideas in a virtual network and community. The characteristics of social media in information technology are *real-time*, global, structured, and inexpensive.

1. Real-time, social media sends and receives information in a very short time and quickly, depending on the capabilities of the facilities used.
2. Globally, social media is universal, touches a wide range of local and international networks, and is enjoyed by all people/groups of people.

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3. Cheap and simple, social media based on information technology tools that are easily accessible at low costs.

Based on that, defamation through information technology produces an impact that is not the same as defamation through conventional media that is shown in public or humiliation in public. The impact of defamation through information technology is related to the victim's personal and social environment. So that what is affected is not only the mind, but also the prestige of the victim's life in his social environment.

Defamation through information technology can have 2 impacts, namely:

Personal impact:

1. Shame.
2. The less prosperous mind.

Social Impact:

1. Digital track record/history, for example *screenshots* that spread uncontrollably.
2. Negative stigma from the social environment.
3. Barriers to the existence and expression of life.

Based on the primary data in this study, there are obstacles in the application of restorative justice in the South Sulawesi region, namely the parties, especially the victims and their families, do not want to reconcile and forgive the perpetrators because of *Siri'* which are closely held by the people of South Sulawesi. *Siri'* is a feeling of deep shame as a result of violating one's honor and dignity. *Siri'* demands an act of self-respect (compensation) regarding *tumasiri'* (embarrassed family) and is directed at the perpetrator who committed the *appakasiri'* (shameful) act. *Siri'* is part of local customary law. customs in *Lontara* are called *ade 'pura onro* (customs that have been previously established and cannot be changed) which are fixed customs that cannot be changed, because it has been mutually agreed upon by the king and the people to be implemented and obeyed which has been witnessed before the One God. (Lord). Violation of these customary provisions results in the destruction of the country they live in. Violation of *Siri'* will cause a reaction from the *tumasiri'*, so that in the case of defamation through information technology, the reaction from the *tumasiri'* is that they will not forgive the perpetrator and expect severe punishment (criminal retaliation) for the perpetrator. This is an obstacle in the application of restorative justice by law enforcement officers at the investigation, prosecution and trial levels.

The concept of Restorative Justice is an alternative settlement of criminal cases centered on the recovery of victims/families, perpetrators of crimes/families, and the involvement of community elements in the agreement process. The main principle is the participation of victims and perpetrators, the participation of citizens as volunteer mediators or facilitators of case resolution. According to Howard Zehr, restorative justice is defined as a process to involve, enable the involvement of a wider range of parties, namely parties who have an interest in a specific violation, then jointly identify and direct the harm, need, and obligation in order to heal and place the rights of the parties as a possible point to be resolved.

According to Sharpe,

Restorative justice has fundamental characteristics with various values called involvement/participation or participation, democracy, responsibility, recovery, security, healing, and reintegration.

According to Tony F. Marshall,

Restorative justice focuses on victims, namely how to restore the victim's condition while still imposing moral responsibility on the perpetrator, both to restore the victim and to get sanctions.

The concept of Restorative Justice actually already exists and is applied in the pattern of settlement of customary criminal cases that has been used for centuries. For example, in the Papuan customary criminal law system, the mechanism for resolving problems through customary courts prioritizes deliberation and consensus, the value of justice is reflected in the return of victims' losses, so the focus is on victim recovery. According to Barda Nawawi Arief, the settlement of deliberation is actually not a new thing for Indonesia, even customary law in Indonesia does not distinguish the settlement of criminal cases from civil cases. These cases can be resolved amicably with the aim of achieving balance or restoration of the situation.

Law No. 11 of 2012 concerning the Juvenile Criminal Justice System defines restorative justice as the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation.

Indonesian National Police Regulation No. 8 of 2021 concerning Handling Crimes Based on Restorative Justice, the definition of restorative justice is the settlement of criminal acts by involving the perpetrators, victims, families of perpetrators, families of victims, community leaders, religious leaders, traditional leaders or stakeholders to jointly seek a fair solution. through peace by emphasizing restoration to its original state. This Police Regulation is formulated to accommodate the norms and values that apply in society as a solution while at the same time providing legal certainty, especially benefits and a sense of community justice.

Prosecutor's Office Regulation of the Republic of Indonesia No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, defines restorative justice as the settlement of criminal cases by

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involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration back to its original state, and not revenge. The basis for the Attorney General's consideration in making the Prosecutor's Regulations is that state power in the field of prosecution must be able to realize legal certainty, legal order, justice and truth based on law and respect religious norms, decency, and morality, and must explore human values, law, and ethics, and justice in society.

Decree of the Director General of the General Court of Justice No. 1691/DJU/SK/PS.00/12/2020 concerning Guidelines for the Implementation of Restorative Justice in the General Courts Environment, states that restorative justice is an alternative for resolving criminal cases which in the criminal justice procedure mechanism focuses on punishment which is converted into a dialogue and mediation process. Involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly create an agreement on a fair and balanced settlement of criminal cases for both victims and perpetrators by prioritizing restoration to its original state, and restoring patterns of good relations in society. The basic principle according to this Decree is the existence of recovery for victims who suffer as a result of crime by providing compensation to victims, peace, perpetrators carrying out social work or other agreements, as well as in the application of fair law in this restorative justice must be impartial, not taking sides, not being arbitrary, and only siding with the truth in accordance with the applicable laws and regulations and taking into account the equality of compensation rights and balance in every aspect of life.

Based on various sources of the description of the definition of restorative justice above, the author does not agree with the phrase returning to its original state. The word original state according to the KBBI refers to the meaning of material or physical (material). The human mind is not an object or something else that can be equated with it. Meanwhile, the alternative punishment sought in this restorative justice is the restoration of the situation to its original state, which is considered impossible for a wounded human mind to return to its original state. Because after all the form of forgiveness is given, the memory in the human brain will not forget the events that hurt the mind (unless the person suffers from a medical illness that causes memory loss). However, it is different if restorative justice is applied to the crime of theft or robbery, then the phrase "recovery" to its original state can be used, because there was a material loss that occurred, and it is something that can be replaced/recovered with a similar and agreed value. For example, in civil cases, an immediate decision ordering that an object be returned to its original state is correct, because it is material. It is very different from the condition of the human mind which is not an object or object that can be disputed.

The results of empirical research in this study reveal that the obstacles that often occur to the failure of the application of restorative justice in criminal defamation cases through information technology are cultural/customary factors (siri') high self-esteem from the parties, both victims, perpetrators, and victims' families. /perpetrator. The mind of the victim and his family will be very difficult to forgive, and vice versa, the perpetrator and his family are also reluctant to apologize to the victim.

This is corroborated by the impact of defamation through information technology. Previously it has been described that the characteristics of information technology are very short and fast, global in nature with a wide network for all human groups, cheap and simple in use. So that it has a very significant impact on the victim, such as shame and a less prosperous mind. It also has an impact on the victim's social life, such as a digital track record/history in the form of content spreading a good name through information technology whose distribution is not controlled, coupled with the negative stigma from their social environment that prevents the victim from being there and expressing. Therefore, as fair and balanced as any agreement on the application of restorative justice that has been taken by the parties involved, it will still not be able to return it to its original state, especially the shame of the attack on human dignity/esteem (victim/family) in South Sulawesi Province.

The factor of lack of understanding of the parties (victims, perpetrators, families of victims/perpetrators, and elements of society) about the values of restorative justice which is useful in achieving legal goals is also an obstacle in the application of restorative justice for the settlement of criminal defamation cases through information technology in Sulawesi Province. South.

In terms of achieving legal goals, restorative justice for defamation through information technology has been able to create a sense of justice, benefit, and certainty. The purpose of law according to Gustav Radbruch states that it is necessary to use the principle of priority of the three basic values which are the objectives of the law. This matters because in reality, legal justice often clashes with benefits and legal certainty and vice versa. Among the three values the basis of the purpose of the law, in the event of a conflict, there must be someone who sacrificed. For this reason, the principle of priority used by Gustav Radbruch must be implemented in the following order:

1. Legal Justice;
2. Legal Benefits;
3. Legal Certainty.

This fair and balanced value in the application of restorative justice is the basic value of restorative justice for defamation through information technology as a law. Fair and balanced values here become the legal moral

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basis, in order to support an agreement that is considered reasonable. Fair in recovering the victim, and appropriate for the prosecution of the perpetrators. Balance is intended as something that is demanded by the victim from the perpetrator to have the same value because the shame/suffering experienced by the victim is very embarrassing and against the cultural and religious values that apply in society.

The legal benefits of defamation restorative justice through information technology are:

- a. Recovery of victims, awareness of perpetrators, and creating a pattern of good relations in the community.
- b. Fulfillment of the principles of fast, simple and low cost justice with balanced justice.
- c. Realizing the purpose of the law by heeding the religious and cultural values that live in society.
- d. Realizing the reform of the criminal justice system.

Legal certainty from the restorative justice of defamation through information technology is the passage of the regulations themselves relating to the enforcement of criminal defamation laws through information technology. As well as the running of the criminal justice process on the case, and also realizing the principle of equality before the law without discrimination (equality before the law), and directing the community to order (law as a tool of social engineering).

Based on the description above, it seems clear that the essence of restorative justice in defamation through information technology is the settlement of criminal acts of defamation through information technology by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly make a fair and balanced settlement agreement for the victims and perpetrators by prioritizing recovery, and creating a pattern of good relations in the community.

III. Conclusion The

essence of restorative justice in defamation through information technology is the settlement of criminal acts of defamation through information technology by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly make a fair and balanced settlement agreement with an emphasis on on the recovery of victims, accountability of perpetrators, and restoring a harmonious situation in society. So that the application of restorative justice is useful in fulfilling the principles of a fast, simple, low-cost trial, and realizing legal goals by heeding religious and cultural values that live in society, as well as realizing the reform of the criminal justice system.

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