

The Policy of Crime on the Resolution of Defamation Case Conducted by Citizen Journalist in Human Right Perspective

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Abstract

A citizen as journalist doer in line with legal subject is susceptible of legal problem. Some cases have been suffered by citizen as journalist who conducting activity of giving information via social media, mailing list, blog, or other information and communication technology facilities. Act 27, verse 3, of the Statute number 11 of 2008 on the Electronic Information and Transaction (ITE) become obstacle for citizen journalist. This research took title: Crime Policy on the Resolution of Defamation Conducted by Citizen as Journalist in Human Right Perspective. The main problem was focused on first, to what extent the crime policy on case resolution of citizen as journalist who conducting defamation in the perspective of human right. The research benefit theoretically gives benefit to develop legal science, specially related to resolution of cases as effect of citizen activity as journalist who conducting defamation. Practically, this study hopefully give benefit to stakeholder specially in formulating crime policy for citizen as journalist who conducting defamation in perspective of human right. The research method uses normative law. The approach uses statute approach; case approach; comparative approach and conceptual approach. The approaches are applied to develop legal argumentation in order to solve problems being studied. The criminal policy related to defamation case by citizen as journalist in Indonesia still shows some differences. Some cases of defamation whether resolved using penal mediation or not, as stated in Circular Letter of f the Indonesian Police Chief on *Hate Speech*. However, in other cases investigator directly applied act of defamation in Criminal Code or the Statute of ITE.

Keywords: Criminal Policy, Defamation, Human Right

A. Introduction

Based on the etymology, journalistic comes from Latin language of word “*diurnal*” meaning daily or every day, or “*journalistiek*” in Dutch and “*journalist*” in English¹. In the Indonesian Encyclopedia, it states that journalistic comes from Dutch language of the word *journalistiek* meaning science, art and skill in providing or giving information on actual event using written or electronic² mass communication media.

Journalistic means as profession field providing information on event and/or daily life (basically in the forms of clarification interpreting, and discussing) periodically, using available publishing facilities³. Thus, journalistic is activity to collect, write, edit, and publish news through newspaper and magazine or distribute news via radio and television. then, the people who conduct the journalistic activity is called journalists⁴.

Mac Dougall stated that journalist is an activity to collect news, find out the fact, and report the event. Journalism is necessary anywhere and anytime. Journalism is needed in democratic country. No matter of whatever the changes happen in the future, whether social, economic, politic, or others. It cannot be imagined that there is time when no one has function to find news of events and provide the news to public, together with explanation of the events.⁵

Based on Indonesian Dictionary, *warga* (citizen) means member, group, and others.⁶ In Indonesian Encyclopedia, *warga* means individual or every person who has relation and come into a community or group (family, organization, country, and others).⁷

Citizen as journalist or known as *citizen journalist* is form of society participation to find, formula, and spread information or news to the public through certain media. Shayne Bowman and Chris Willis define *citizen journalist* as “...the act of citizens playing an active role in the process of collecting, reporting, analyzing and disseminating news and information”.⁸

Citizen journalist appeared after the printed and electronic Medias had dominated. The appearing of internet makes information fast accessed by its users anywhere and anytime without any limitation of space and time. Internet also gives possibility for anyone to have individual space in social media, and to write anything he

¹ Sudirman Tebba, *Jurnalistik Baru*, Ciputat, Kalam Indonesia, 2005, hlm. 9

² Departemen Pendidikan dan Kebudayaan, *Ensiklopedi Nasional Indonesia*, Jakarta, Cipta Adi Pustaka, 1990, hlm. 481

³ Tim Redaksi Ichtisar Baru-Van Hoeve, *Ensiklopedi Indonesia*, Jakarta: Ichtisar Baru, 1998) hlm. 1609

⁴ Hikmat Kusumaningrat dan Purnama Kusumaningrat, 2012, *Jurnalistik, Teori dan Praktik*, Remaja Rosdakarya, Bandung, hlm.17

⁵ *Ibid.*

⁶ Departemen pendidikan dan Kebudayaan, *Ensiklopedi Nasional Indonesia* (Jakarta:PT Cipta Adi Pustaka, 1990) hlm. 571

⁷ Tim Redaksi Ichtisar Baru-Van Hoeve, *Ensiklopedi Indonesia*, Jakarta: Ichtisar Baru, 1998, hlm. 2552

⁸ Bowman, Shane & Willis, Chris. 2003. *We Media: How Audience are Shaping the Future of News and Information*. The Media Center at the American Press Institute

wants, including information. Even more, the technology development of internet provide anyone to have private blog space where he may use it as media of spreading information that push and support the appearing of citizen journalist. Citizen can write or giving news any time on online media / internet. The era of citizen journalist or citizen as journalist enable anyone does journalistic activity easily, without being real journalist in Media Company.

Freedom to get information as human right is not without limit. Right of information is not right that cannot be decreased when it contacts with others right. *The International Covenant on Civil and Political Rights* (ICCPR) enables certain limitation based on legal corridor and as long as it needs to respect other right or to protect national safety or public order, public healthy and morality. The freedom to get information as human right must be kept in balance together with human duty.

Act 28 F amendment of the Fundamental Constitution of Republic Indonesia of 1945 stated:

“Any person has right to communicate and gets information to develop himself and his social environment, also has right to find, get, has, keep, formula, and give the information using any kinds of available facilities”.¹

Each citizen is given guarantee to get the same treatment from the country. In the Fundamental Constitution of Republic Indonesia of 1945, Act 27 verse (1), it stated:

“All citizens have the same position in the law and in the government and have duty to respect the law and government without any exception”.²

Then, Act 28 I verse (2):

“Each person has freedom from discriminative treatment in any condition and has right to obtain protection toward the discriminative treatment”.³

Thus, if there is any case of defamation conducted by Indonesian citizen, the model of defamation case resolution could be accusation from the party who feel suffer from defamation in online media using the Statute Number 1 of 2008 on Electronic Information and Transaction (ITE) and the Criminal Code (KUHP) is considered inappropriate to the legal development. Defamation is not part of public space, but it is private one. Defamation does not result in public loss, but loss among the individuals. It should be arranged in the Civic Code (KUH perdata). The legal fundamental of the resolution mechanism model refers to Act 1365, 1372 and 1376 of the Civic Code as the Acts that withdraw the claim. Act 1365 of the Civic Code stated: Any civic conduct breaking the law and resulting in loss of other people require the one who cause the loss to make up the loss. Act 1376 the Civic Code stated: The civic claim on causing humiliation purposes to obtain loss and recover dignity and reputation. Act 1376 of the Civic Code stated:

“The civic claim on causing humiliation cannot be granted, if there is no intention to humiliate. The intention to humiliate is considered not exist, if the doer truly conducts it for public interest, or he defends himself for emergency case”.

The philosophical problem in this case covers ontology, epistemology and axiology. The problem of ontology refers to: The arrangement of citizen journalist who conduct defamation in perspective of Human Right in Indonesia still applies criminal legal. The epistemology problem in this study covers: It needs resolution for citizen journalist who conducts defamation in perspective of Human right using civil law. Axiology problem covers: The resolution of defamation case by citizen journalist resolves using claim based on the civil law.

Juridical problem: *Conflict of norm* lies between the act 27 verse (3) of the Statute Number 11 of 2008 on the Electronic Information and Transaction (ITE) and Act 310 of the Criminal Code, and Acts 1372 and 1376 in the Civic Code. Sociological problem: Defamation is the matters of the victim and the doer that the right to apply claim belongs to the victim. There is no loss for the country. Thus, it covers in private legal space.

In line with the fact above, this study takes title: **The Criminal Policy of Citizen Journalist Conducting Defamation in Perspective of Human Right.**

B. Problem Formulation

In line with the background study, the research problem is formulated as follow: To what extent the criminal policy on citizen journalist conducting defamation in perspective of human right?

C. The Research Purpose

This study purposes to analyze the criminal policy on the citizen journalist conducting defamation in human right perspective.

D. The Research Method

This study uses normative legal method.

¹ Pasal 27, ayat (1), Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

² *Ibid*

³ *Ibid.*, Pasal 28 I, ayat (2)

E. The Research Result

One of the biggest challenges of citizen journalist would be there is no arrangement discussing specially on citizen journalist. The Law Number 40 of 1999 on Press states nothing about citizen journalism. Whereas, the existence of the Law Number 11 of 2008 on Electronic Information and Transaction in Act 27 verse 3 has limited strictly the citizen freedom in their afford to do criticism and control toward the governmental implementation through cyber space.

Defamation stated in the law as vilification (*smaadschrift*) or insulting (*smaad*) has been formulated completely in Act 310 of the Criminal Code, as follow:

Act 310 the Criminal Code:

- (1) Anyone who attacks someone else dignity or reputation by accusing something purposing clearly to be known by public, is liable for vilification with sentence maximum nine months in prison or fine maximum four thousands five hundreds Rupiah.
- (2) If it is conducted using text or picture being published, shown or sticted in public, the doer is liable for written vilification with sentence maximum one year and four months in prison or fine maximum four thousands five hundreds rupiah.
- (3) It does not consider as vilification or written one if the conduct clearly is committed for public interest or because of being forced to protect him.

The legal definition of vilification qualification is formulated in Verse (1), that in fact the oral vilification (though the oral speech is not mentioned) considered as opposite the vilification in Verse (2). In Verse (2), it formulates the definition of written vilification. Verse (3) states exception of vilification condemnation in verse (1) and written vilification in verse (2). Verse (3) becomes the basic of elimination of characteristics against the vilification law and also called the reason of special crime elimination in vilification and written one.¹

It is in line with the interpretation of Act 310 verse (3) of the Criminal Code, stated:

“When the investigation proves that the defendant has conducted humiliation truly for protect public interest or to do self protection accepted by the judge, the defendant will not be punished. If the case of the protection cannot be accepted by the judge, he will be punished for having broken the Act 310 of the Criminal Code”.²

Act of causing humiliation in the Criminal Code states in Chapter XVI, Act 310 to 321 of the Criminal Code, and causing humiliation in this chapter includes 6 kinds:

1. Act 310 verse (1) the Criminal Code on vilification;

Anyone who in purpose attack someone else dignity or reputation, by accusing some matters, purposed clearly to be known by public, is liable for vilification within prison sentence maximum nine months or fine maximum three hundreds rupiah.

Many theorists use terms of “*menista* (insult)”. The word “*menista*” is taken from the word “*nista* (insult)”. Some use the word “*reproach*”. The different terms result from the words in translating the term “*smaad*” from Dutch. The word “*nista*” and “*reproach*” are synonym.³ The elements of the Act 310 verse (1) the Criminal Code consists of objective and subjective elements.

The objective elements cover Anyone, Attack “someone” dignity or reputation, and by accusing something. The subjective element covers with the real intention (*kenlijk doel*) in order the accusation known by public (*ruchtbaarheid te geven*), and conducted in purpose (*opzettelijk*);

2. Act 310 verse (2) the Criminal Code on written vilification;

The result of conducting the action using text or picture being published, shown or sticted in front of public, the guilty one, because of the written vilification, is liable for prison sentence maximum one year four months or fine maximum three hundreds rupiah.

Many theorists use the term of “written vilification”, while others use the term of “vilification with text”. This difference results from words choice to translate the word *smaadschrift* which can be translated into the same or almost the same words.

In line with above formula, vilification and vilification with text have the same elements; the difference is written vilification conducted using text or picture, while other elements are the same. These elements cover: Anyone, in purpose, Attack “someone” else dignity or reputation, in written text or picture being published, Shown or sticted in front of public.

3. Act 311 verse (1) the Criminal Code on columniate;

The one committing vilification or written one, in this case, is allowed to prove that what being accused is true, does not prove it and the accusation conducted against what he know, he is liable

¹ Adami Chazawi, *Hukum Pidana Positif Penghinaan*, Bayumedia Publishing, Malang, 2013, hlm. 80.

² M. Karjadi, R. Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP)*, Bogor, Politeia, 1995, hlm. 226.

³ Leden Marpaung, *Tindak Pidana Terhadap Kehormatan, Pengertian dan Penerapannya*, PT Grafindo Persada, Jakarta, 1997, hlm. 11.

because of conducting calumny with prison sentence maximum four years.

The word “calumny” in daily life means the same one in the Indonesian Dictionary: “statement in purpose to make worse of someone...”

In criminal legal science, calumny refers to vilification or vilification using letter/text, however, the one conducting the deeds is allowed to prove and in fact he fails to prove it. According to Act 313 of the Criminal Code, proving the truth is forbidden if the victim is accused a criminal action that only able to be accused of claim, and the claim in concerto does not exist.

The criminal deed arranged in Act 311 verse (1) of the Criminal Code is close related to rule of the Act 310. Thus, some criminal elements from the acts cover:

- a) All elements (objective and subjective) of:
 - 1) Vilification in Act 310 verse (1) or;
 - 2) Written vilification in Act 310 verse (2).
 - b) The one who commits it is allowed to prove that what he accuses is true;
 - c) However, the one who conducted it cannot prove his accusation.
 - d) What contents of the accusation is against what he knows.
4. Act 315 of the Criminal Code on light humiliation;
Each humiliation with purpose and not considered vilification or written one, conducted toward someone, whether in front of public orally or written one, or in front of someone orally or behavior, or using letter sent or given to the someone, is liable for small humiliation, with prison sentence maximum four months and two weeks or fine maximum three hundreds rupiah.
The word of “light humiliation” is translated from Dutch word *eenvoudige belediging*; while some theorists translate the word *eenvoudige* with the word “ordinary”, others translate it into the word “light”. In the Dutch dictionary, the word *eenvoudige* means: simple, natural, light. Therefore, it is not appropriate if it uses the word ordinary humiliation.
The elements of the Act 315 of the Criminal Code cover Objective element that Any humiliation deed with no characteristic of vilification (orally) or written one, Conducting toward someone in front of public using oral or written text, or in front of the person using oral or action, using letter being sent or given to someone; while the Subjective elements is In purpose.
5. Act 317 verse (1) of the Criminal Code on claiming in form of calumny;
Anyone who in purpose applies a claim or false information, written or being written, of someone that the someone dignity or reputation are attacked, is liable for conducting calumny claim, with prison sentence maximum four years long.
The element in Act 317 verse (1) of the Criminal Code is Objective one including Apply a claim or false information toward employer, in written or being written ones, Of someone to employer, that his dignity or reputation are attacked. The subjective element is in purpose.
6. Act 318 verses (1) of the Criminal Code on accusation by calumniating.
Anyone with in purpose action causes false suspicion toward someone that he does a criminal action is liable because causing false suspicion with prison sentence maximum four years.
The elements of Act 318 verses (1) of the Criminal Code is Objective elements including A in purpose action causing falsely **suspicion** toward someone that he does a criminal action. The subjective elements cover in purpose. The forbidden action is in purposely conduct action in order to accuse someone in false way, that the one has conducted illegal action (criminal action); in fact the accusation is false.¹ In this crime, to the one that has no relation to criminal behavior happened is conducted an action, that he is suspected as the actor of the criminal action.
All these humiliation can only be claimed if there is any claim from someone or victim, called offense that warrants complaint, unless if the humiliation is conducted toward public officer when he is doing his job formally. The objects of above humiliation should be individual, meaning not governmental institution, member of organization, group of people and others.² To apply legally using act of vilification or defamation, humiliation should be conducted by accusing someone that he has committed certain action in purpose that the accusation known by public orally or written one, or crime of vilification is no need to do in front of public, it is enough if it can be proven that the defendant purposes to publish the accusation.

According to Act 310 verse (3) of the Criminal Code, vilification conduct or vilificate using text is not liable if it is conducted to protect the public interest or forced to be conducted to self protection. Whether it is appropriate reason or not to self protection or protect the public interest, it depends on the judge consideration,

¹ H. A. K. Moh Anwar, *Hukum Pidana Bagian Khusus (KUHP Buku II) Jilid 1*, Citra Aditya Bakti, Bandung, 1994, hal. 145

² R. Soesilo, 1990, *Kitab Undang-Undang Hukum Pidana. Serta Komentarnya Pasal Demi Pasal*, Politeia, Bogor, 1990, hlm. 225.

that if the judge decides that the humiliation is truly to protect the public interest or to self protection thus the one who conducted will not be punished. However, if the judge considers the humiliation is not appropriate to protect public interest or self protection, the one conducting it is liable using act 310 verses (1) and (2) of the Criminal Code, and if the accusation being accused by the doer is not true, he is liable using Act 311 of the Criminal Code, that is *columniate*.

The informational transparency is one of social claim in the country with democracy fundamental, especially when it faces with fast advance of informational and communicational technology through internet. The technological advance marked by the appearance of internet may be operated using electronically medias such as computer, become one of cause the emerge of social change in the society, that change their behavior in interacting with other people, continuing to spread to other parts and sides of human life, thus new norm, values and many others emerge.¹ Via internet, informational exchange may be conducted in very fast, precise and cheap ways.

Internet then becomes one of Medias that facilitate someone easily to do any kinds criminal actions (*cybercrime*) based on informational technology such as criminal action of defamation, pornography, gambling, hitting bank account, and many others. Recently, many accusation of defamation by various parties appear. The reasons are vary, from writing in *mailing list* (miles), forward email, report corruption, broadcast event in media, reveal research result, and other actions.

Based on its formulation, offense of defamation arranged in the Criminal Code and the Laws outside the Code is formal offense that no needs affect of conducted action. In this offense, someone may be condemned if its criminal elements have been fulfilled without causing certain effect. For example in Act 310 of the Criminal Code, when someone may be condemned only if he is proven conducting attack on someone dignity or reputation in purpose by accusing the person has committed something in order to be known by public. Thus, it does not need effect emerged from the action

The formally formulation of offense defamation according to some parties is considered susceptible to be misused, for certain motives, because criteria of actions including defamation depend on subjective perception of purposed person. Thus, it is better if the acts are formulated materially or formal-materially. The materially or formal-materially formulation will be more appropriate to fulfill one of principles kept in crime law, that is *nullum criemen, nulla poena sine lege certa* (there is no punishment without clear statute)². The materially or formal-materially formulation may minimalist the event of misuse or deviation in real spirit search by a rule.

In Indonesia, legal fields division consists of two parts, the Material Law and Formal Law. The Material Law divides into Public and Private Laws. The Private Law refers to law which gives priority to arrangement of individual and between the individuals life/interest and directly or indirectly arranges the life of public interest as combination of individual and between individual's interests.³ Private Law then is known as civil law.

The rule related to deeds against the law because of defamation as well as the compensation and rehabilitation is arranged in acts 1372 to 1380 of the Civic Code. Whereas, the definition of defamation intended in the Civic Code is the same as what states in the Criminal Code.

Act 1372 of the Civic Code:

The civil claim related to humiliation matter is applied to get compensation as well as rehabilitation of dignity and reputation.

In evaluating one and another, the judge must pay attention rude or not is the humiliation, so does the level, position and ability of the two parties and their conditions.

Act 1373 of the Civic Code:

Besides, the person being humiliated may also apply claim in order that in the decision also stated that the action conducted refers to defamation action. If he claims in order that the deed is considered as defamation, the rules in the acts 314 of the Criminal Code can be applied on claim of deflation deed.

If asked by the one suffering the defamation, the decision will be sticted in public places, as ordered by the judge with all cost from the one sentenced.

Act 1375 of the Civic Code:

The claims stated in the last three acts may be applied by husband or wife, parents, grandparents, son/daughter and grandchildren, because the defamation conducted toward wife or husband, son/daughter, grandchildren, parents and grandparents, after the related person passed away.

Act 1376 of the Civic Code:

The civil claim on defamation may not accept if in fact there is no intention to causing humiliation. The intention to humiliate is not considered exist, if the action conducted truly is committed to public interest

¹ Dikdik M. Arif Mansyur, dan Elisatris Gultom, *CYBER LAW Aspek Hukum Teknologi Informasi*, PT. Refika Aditama, Bandung, 2005, hlm 3.

² Hiariej, 2009 hlm. 4

³ A. Ridwan Halim, *Pengantar Hukum Indonesia Dalam Tanya Jawab*, Bogor, Ghalia Indonesia, 2007, hlm. 5-6.

or to self protection in forced condition.

Act 1377 of the Civic Code:

In the same way, the civic claim may not be granted if the person being humiliated, with a judge decision having certain legal strength has been blamed for conducting the behavior that accused. However, if someone continues giving humiliation toward someone else, in intention purely to humiliate him, also after the truth of the accusation revealed and had strong legal decision or an authentic written proof, he is liable to give compensation for the suffering to the one being humiliated.

Act 1378 of the Civic Code:

All claims arranged in the rules of past six acts are brought down by releasing the one who is stated strictly or in silent, if after the humiliation happened and known by the one being humiliated, he did actions showing peace or forgiveness, contradicting to the intention to claim for compensation or dignity rehabilitation.

Act 1379 of the Civic Code:

The right to claim for compensation as stating in act 1372 will not disappeared by the dead of the person conducting humiliation or the person being humiliated.

Act 1380 of the Civic Code:

The claim in the humiliation case is brought down by period of a year, counted from the day it was conducted and known by the plaintiff.

Act 1372 of the Civic Code only states civic claim as result of humiliation actions, without giving further explanation on term of humiliation. It happened because when constructing Act 1372 of the Civic Code and others in 1833, it was purposed to crimes that by *Code Penal* summarized as humiliation.¹ This rule then becomes fixed jurisprudence in deciding formula for defamation or humiliation deeds, as stated in Chapter XVI Book II the Criminal Code, where it includes matter of various forms of humiliation; humiliate, humiliate with text, calumny, light vilification and humiliated claim.²

In democratic countries, acts of defamation in criminal law are considered as treat toward the freedom of doing expression. Therefore, the actions considered loss someone reputation, usually will be ask for responsibility through civic law, not crime law.

In the United States of America (USA), there is no criminal responsibility on defamation action or humiliation. For, it considers against the First Amendment in the USA constitution guarantying the freedom to give opinion and press freedom. The opinion was stated by Frederick Schauer, Frank Stanton professor of the First Amendment, John F. Kennedy School of Government, and Harvard University in the Law Colloquium event in Jakarta last week.

Schauer stated that it was stricted by issuing the decision of USA Supreme Court in the case of New York Times against the Sullivan in 1964. In this decision, Supreme Court stated that the governmental officer (and in the following all the *public figure*), only can ask for responsibility of media or those who give statement, if they can prove significantly and clearly that what being stated toward them in fact proven wrong. Moreover, when the matter stated or published the one who stating or publishing has known that it might be wrong.³

Since the decision appeared, the civic claim is rarely applied. Because the plaintiff has to prove what was stated is wrong and there is in purpose element to state or publish the matter of the defamation or humiliation, though it has been known it was wrong.

In Dutch, the country where the Indonesian Criminal Code and the Civic Code born, the rule of defamation in the constitutional tools has changed from what exist in Indonesia. It is stated by Jan De Meij, Professor of the University of Amsterdam providing his paper in *Law Colloquium*.

Meij states that the rule of defamation in Dutch Criminal Code had changed since 1978. The claim for defamation crime toward journalist in Nederland rarely happens. The claims mostly happen toward someone or group who issuing hatred or discrimination, not toward journalist. If there is any, the usual punishment given is fine, not prison sentence.

Until 1992, the rule of humiliation and other matter limitation the freedom of giving opinion in Dutch Civic Code is still the same as the Indonesian Civic Code. Recently in 1992, act of civic responsibility and humiliation was changed, however the act of against law deed (act 1365 of the Civic Code) has been changed little. The Act 1365 now becomes the fundamental of claim toward the media.

Meanwhile, Toby Mendel, the director of Article 19, an international organization campaigning for freedom, states that there are two reasons why the defamation should not be criminal matter.

1. Using criminal law shows the imbalance in resolving attack problem toward reputation by putting in

¹ Rachmat Setiawan, *Tinjauan Elementer Perbuatan Melanggar Hukum*, Bandung, Binacipta, 1991, hlm. 49.

² *Ibid.*

³ <http://www.hukumonline.com/berita/baca/hol10859/kasus-pencemaran-nama-baik-lebih-tepat-diselesaikan-secara-perdata>, diakses pada 20 Agustus 2016

dangerous the freedom of giving opinion.

2. The defamation in civic law has given equal response. The experiences in many countries, such as Ghana, Ukraine and Srilanka, have proved them. In those countries, the elimination of criminal rule on defamation did not resulted in more numbers of defamation, qualitatively or quantitatively.

In many countries, act of defamation has not been used by the general attorney. This regulation claims for proof that the matter being accused is wrong, and the proof that it is conducted in purpose to hurt someone else. Thus, it is difficult for the attorney to prove it. Taken some examples from countries arranging defamation into criminal law, in the future Indonesia hopefully eliminate act of defamation in the criminal law and it is enough to put it into civic law.

F. Conclusion

The policy of crime related to the defamation case conducted by citizen journalist in Indonesia still shows inconsistency. Some cases of defamation were resolved using mechanism of penal mediation, as stating in Circular Letter from the Indonesian Police Head on *Hate Speech*. However, in some cases, the investigator directly applied act of defamation in the Criminal Code or the Statute of ITE.

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