

Defamation of Citizen Journalist Included in Private Law Area

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Abstract

This study discusses on the defamation conducted by citizen journalist, focusing on the main problem or the problem formula: Why do defamation conducted by Citizen Journalist include in the private law. The method is normative legal research. The research purpose covers to analyze the reason of defamation conducted by Citizen Journalist include in the Private Law. The research showed four reasons that the country eliminated the regulation of criminal law in the case of defamation including: informational freedom become the fundamental of democracy, has role in play againts the corruption, promotes accountability and transparency and empowers the society in obtaining justice. Moreover, the case of defamation refers to problem among the individuals, the executor and the victim. There is no public interest being broken thus the country no needs to involve. The one who being defamed may apply claim for compansation to the one who results in the loss.

Keywords: Defamation, Citizen Journalist, Private Law

A. Introduction

The reason or legislative rational of defamation by citizen journalist referring to private area would be because the citizan journalist in conducting his journalist duty is based on the Act 19 of the General Declaratiom of the Human Right (DUHAM), stating that to find, obtain, keep, manage and spread information are every citizen right. In the Act 28 F of the Indonesian Constitution of 1945 becoming the constitutional guarantee has guarantee the freedom of every citizen to obtain and spread the information.

Other reason refers to that citizen journalist in Democatic country such as Indonesia, belongs to four pillars after Legislative, Judicial, and Executive. The reason would be because recently in Indonesian Republic, mainstream media, or tradional media has shift its role. In the prior, it became the bridge of people aspiration, however today it becomes socialization tools or massanger from the government to the people or public.

Based on the above reasons, the appearance of citizen journalist becomes balancing power, evenmore today it becomes necessary in the time controvertial media becomes the tools of authority and politic as well as the investor interest. In the future, if the citizen journalist has not obtained legal protection side with the right of giving information, it doubtly will threat the democracy and result in authoriter government without any control from the society.

If there is no legal certainty arranging and protecting the citizen who gives criticism, opinion, and information, the legal apparatus does not have certainty to do an action. Such as the case of two Judicial Commission Commissioners, Suparman Marzuki and Taufiqurrahman Syahuri, they have been decided as the suspect of defamation againts the judge Sarpin Rizaldi because they gave comment on the decision of pre court on Budi Gunawan. Other case of defamation was applied by the administrative legal expert, Romly Atmasasmita, who reported the Vice Coordinator of the Indonesia Corruption Watch (ICW) Emerson Yuntho, Coordinator ICW Adnan Topan Husodo, and prior advisor of KPK, Said Zainal Abidin.

B. Problem Statement

The problem statement of the study covers: Why defamation conducted by citizen journalist included in private legal.

C. Discussion

The informational transparency becomes one of society claims in the country following the democracy fundamental, especially when it faces the high development of informational and communicational technologies through internet. The technology advances marked by internet appearance that can be operated using electronic media such as computer, considers as one of the reasons of social changing in the society, that change their behavior in having interaction with othet people, and keep spreading to other sides of human life, thus it appears new norms, values and other things.¹ Via internet, the informational rechange may happen fast, precise and cheap.

Internet then becomes one of media that makes people easy to do any kinds of criminal deeds based on informational technology (*cybercrime*) such as, the criminal deed of defamation, pornography, gambling,

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

account break-ins, and many others. Lately, many cases of accusation defamation by some parties appear. The reasons prove vary, from writing in *mailing list* (milis), *forwarding* email, reporting corruption, sharing event in media, revealing research finding, to series of other conducts.

Taken a look from its formulation, the offense of defamation stated in the Criminal Code and the Law outside the Criminal Code, refers to formal offense that no need effect of the deed being conducted. In this offense, someone may be condemned if the criminal elements have been completed without giving any certain effect. For example, in the Act 310 of the Criminal Code, someone may be condemned if only he is proven consciously conducts action of attacking someone else dignity or good image by accusing something in order to be known publicly. Thus, it does not need any effect resulted from the conduct.

The formal formulation on the offense of defamation according to several parties considers to be susceptible of misuse, to certain motive. Because the conduct criteria consisting the defamation based on subjective perception the person target. In Indonesia, the divisions of legal fields cover 2, the Material law and the Formal Law. The Material law consists of Public Law and Private Law. The Private Law refers to law where focus on life arrangement/personal interest and between the individual directly and indirectly and also arrange the life of public interest as the collective of personal interests and the Case of defamation belongs to the private law, therefore it is quite reasonable that this case has been eliminated from the public law.

The regulation related to action against the law as the result of defamation and the compensation and rehabilitation has been arranged in Acts 1372 to 1380 of the Civic Code. The definition of defamation stated in the Civic Code is the same as definition stated in the Criminal Code.

Based on the legal protection theory, the formulation of act defamation is outside the Criminal Code, or becomes civic case that arranged in the Civic Code, such as in the United States, as the concrete form of legal protection. For the law has function to give protection to legal subject in order the subject's right and duty can run well. The right that needs to be protected in the case of defamation is the right of citizen journalist to search information, manage and spread the information to public. Therefore, the citizen journalist in conducting his activity to find, package and spread the information to the society obtain protection and will not suffer criminalization because of the elimination of criminal Act and give chance the victim to apply claim in civic way.

Pieter Hoefnagel as quoted by Dr. Yenti Ganarsih gives focus on the important of considering various factors to do criminalization in order to keep the *ultimum propositum remedium* and there is no over criminalisation, such as¹: do not use criminal law emotionally, do not use criminal law to condemn conducts with uncertain victim and its loss, do not use criminal law if the loss resulted of its punishment bigger than loss of criminal action being formulated, do not use criminal law if it is not supported by strong society and do not use criminal law if its usage is not effective. The case of defamation if it is processed in criminal way, the cost is bigger than the victim's loss. Moreover, the application of criminal law in this case tends to be emotional.

Everyone has private right that must be respected. The right refers to image and prestige as human being. The right to keep image and prestige becomes responsibility of each individual. Related to this fact, country must appear to protect the guarantee to fulfill this right. One of the country's efforts to protect the dignity and image of someone is to put the item in arrangement of criminal law. However, for the right to keep reputation and image belong to private area and the responsibility of each individual then the country should include this right in public area and let it be private matters.

According to Sudikno Mertokusumo, the function of Legal Protection refers to protection of human interest². The law subject being violated his right must obtained legal protection. In order to protect the interest of legal subject, the law must be conducted and kept run well. Moreover, Philipus M. Hadjon divides legal protection into two, preventive and repressive ones.³

The theory of preventive legal protection has regulations and specific characteristics in its application. In this theory, the legal subject has a chance to apply for objection and his opinion before the government gives the final decision. This legal protection is included in the regulation consisting signs and limitation in conducting something. The government gives this protection to prevent a violation and lawsuit before they happen. Because the characteristic tends to give more pressure to prevention, the government tends to have freedom to act and be more careful to apply it. In line with the citizen journalist, the acts in the Criminal Code arranging on the case of defamation must be eliminated and put it into private area in the Civic Code.

Meanwhile, based on the theory of Human Right, the writer believes that in line with the agreement in Act 19 of the General Declaration of Human Right (DUHAM), that to give information to the public, using any kind of medias is one of human right, as stated in the Act 9 of DUHAM, as follow: "Everyone has freedom to give opinion, follow idea".⁴ The human right also guarantees the individual right of honour or reputation. In the

¹ Yenti Garnasih, *Kriminalisasi Pencucian Uang*, Universitas Indonesia, Fakultas Hukum, Jakarta, 2003, hlm.59

² Sudikno Mertokusumo, *Bab-bab tentang Penemuan Hukum*, Jakarta, Citra Aditya Bakti, 1993, Hlm. 41

³ Philipus M. Hadjon, *Perlindungan Hukum bagi Rakyat di Indonesia*, Surabaya Bina Ilmu, 1987, hlm. 19

⁴ Pasal 19 Declaration Umum Hak Azasi Manusia

literature, the human right of honour or reputation belongs to private rights, as part of private right then this right must be protected the same way as other private rights. When the honour or reputation becomes attribute emmbeding on each individual, without it someone will lose his dignity as human being, thus this right is folmulated negatively.

The country has responsibility to guarantee and protect the private rights, or known as the *state responsibility*. One of state protection forms toward the right of honour refers to include it in national criminal law. In line with the responsibility, the country may conduct derogation (the country right to eliminate human right because of serious and force condition). However, when the country is not in the imergency and force situation, it is enough in the form of limitation or reduction of the two rights, for both belong to *non derogation rights*.

The country may not act as it likes that put the right essence in danger. The regulation of derogation is limited by regulation of covenant stating that the party countries must control themselves from conducting rights violation stated in the covenant. The certain limitation must be appropriate to the regulations in the covenant. As the country that has ratified the Covenant of civil rights and politic through the law number 12 of 2005, as the consequencey, Indonesia must follow the specific order of the United Nations that the country of Covenant members immediately eliminated the criminal sanction for the conductor of defamation, and in Indonesia, it has existed civic law arranging defamation.

D. Summary

There are four reasons in order that the criminal law regulation eliminated from the case of defamation; The freedom of give information is the basic of democracy, The freedom of give information has role in eradication corruption, The freedom of give information promote accountability and transparancy as well as The freedom of give information will empower the society in obtaining the justice. The case of defamation becomes the matter between the individuals, the doer and the victim. There is no public interest being violated, thus the country no need to influnce. The party being violated his reputation is enough to apply for compensation to the party who has caused the loss. In Indonesia, the case of defamation is arranged in the civil law in Acts 1372 to 1380 of the Civic Code.

E. Suggestion/Recomendation

The researcher gives recomendations as follow:

1. The government needs to immediately issue firm regulation in the form of Law related to the citizen journalist. The law must content the definition, and limitations of the citizen journalist's activities that appropriate to legal norm applied by giving consideration the perspective of Human Right. The function is to limit the informational absorbtion related to Tribe, Religion, and Ethnic that may result in social conflict and threat the national integrity, also blocked the development of Pancasila democracy. The citizen journalist needs to get education in order to follow the rule or ethics such as professional journalist when giving the informnation.
2. It needs new policy that arranges the act of defamation, toward the citizen journalist who conduct the journalist activity wit dedication. The policy related to the elimination of the act of defamation in the Criminal Code and the Law Number 11 of 2008 on the Electronic Information and Transaction (ITE) needs to created immediately. The case of defamation is quite enough put in the civic law available that is acts 1372 to 1380 of the Civic Code.
3. A Circular Paper of the Indonesian Police Chief on *Hate Speech* can be reference material in solving the case of defamation, by conducting penal mediation. If the case of Hate Speech manage to be solved outside the court using peace mechanism between the parties, it proves that the case of defamation belongs to matter among the individuals, or the doer and the victim, there is no state interest.
4. In the future, the arrangement of defamation in the Criminal Code, Act 310, and in Act 27 verse 3 jo Act 45 of the Law Number 19 of 2016 on the Changing of the Law Number 11 of 2008 on the Electronic Information and Transacttion must be eliminated, because defamation is arranged in the Civic Code.

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