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Selective Enforcement In The Enforcement Of Defamation Laws In The Digital Space Between The Bibi Kelingi And Baiq Nuril Cases

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Abstract

The expansion of digital communication has transformed the way information is shared while increasing legal disputes related to online defamation. In Indonesia, the defamation provisions of the Electronic Information and Transactions Law (ITE Law) have been applied not only to defamatory expressions but also to individuals reporting alleged criminal acts or recounting personal experiences connected with the public interest. This study analyzes the application of the ITE Law in the Bibi Kelinci and Baiq Nuril cases and evaluates whether the criminalization of the aggrieved parties is compatible with the objectives of the ITE Law and the principle of victim protection. Using a normative juridical method, this research adopts statutory, conceptual, and case approaches. Legal materials were collected through library research and examined qualitatively. The analysis demonstrates differing law enforcement patterns between the two cases. Baiq Nuril, although positioned as a victim, was convicted under the ITE Law, whereas the Bibi Kelinci dispute was resolved through restorative justice. These contrasting outcomes indicate inconsistent legal enforcement and insufficient implementation of equality before the law and victim protection. Accordingly, enforcement of online defamation provisions should prioritize proportionality, contextual assessment, public interest, and legal certainty

Keywords Electronic Information and Transactions Law; online defamation; selective enforcement; victim protection; social media

INTRODUCTION

The development of information technology has transformed the way society obtains, conveys, and disseminates information. The presence of social media provides a broad platform for individuals to express opinions, personal experiences, and information regarding alleged events deemed of public interest. On the one hand, this development strengthens the right to freedom of expression, a constitutional right of citizens. On the other hand, the dissemination of information through digital media also raises various legal issues, particularly related to allegations of defamation, as regulated in Law Number 11 of 2008 concerning Information and Electronic Transactions, as most recently amended by Law Number 1 of 2024.

The establishment of the Information and Electronic Transactions Law was essentially intended to provide legal certainty for public activities in the digital space, protect the legal interests of electronic system users, and foster responsible use of information technology. However, in practice, the provisions regarding defamation continue to generate considerable debate. Numerous cases have shown that the article has been used against individuals sharing personal experiences or disclosing alleged unlawful acts, raising questions about the boundary between protecting a person's reputation and protecting freedom of expression.

This debate has become increasingly prominent when law enforcement shows different outcomes in cases with similar characteristics. This situation gives rise to the perception that the application of criminal provisions has not been fully consistent and proportional. Differences in case handling approaches not only impact legal certainty but also affect public trust in the criminal justice system, particularly in cases related to the dissemination of information in the digital space.

This phenomenon is reflected in the Bibi Kelinci and Baiq Nuril cases. Both cases began with the dissemination of information deemed detrimental to another party, but resulted in different law enforcement processes. In Bibi Kelinci's case, the dispute arising from the dissemination of information via social media was ultimately resolved through restorative justice mechanisms, with the parties withdrawing the complaint. Conversely, in Baiq Nuril's case, the party initially positioned as the victim was instead prosecuted as the perpetrator of a crime under the provisions of the ITE Law. These differences demonstrate that the application of legal norms is influenced not only by legal elements, but also by how law enforcement officials interpret the purpose of the law and the factual context underlying a case.

From a modern criminal law perspective, law enforcement is not merely oriented toward the formal application of norms; it must also consider the values of justice, expediency, and protection of human rights. The principle of equality before the law requires everyone to receive equal legal treatment without discrimination, while the principle of victim protection requires law enforcement officials to consider the status of individuals who suffer harm as a result of an act. Therefore, the application of defamation provisions cannot be separated from an analysis of the public interest, good faith, the purpose of conveying information, and the proportionality of the use of criminal law as a last resort (ultimum remedium).

The differences in the handling of these two cases demonstrate the importance of evaluating the implementation of the ITE Law. The analysis should not only focus on fulfilling the elements of the crime, but also on the appropriateness of the application of the law to the objectives of the law's formation, the protection of victims, and the guarantee of freedom of expression in a democratic state governed by the rule of law. Such a study is expected to provide insight into the extent to which law enforcement practices reflect fair legal certainty while avoiding selective application.

Based on the above description, this study focuses on analyzing the application of the Electronic Information and Transactions Law to parties who disclose alleged criminal acts or personal experiences through social media using a comparative study between the Bibi Kelinci and Baiq Nuril cases. Furthermore, this study also examines the appropriateness of designating the injured party as a suspect in light of the objectives of the ITE Law and the principle of victim protection. The results of this study are expected to provide academic contributions to the development of cyber law in Indonesia and serve as evaluation material for law enforcement officials in realizing just, proportional, and citizen-oriented law enforcement.

METHODS

This research uses a normative juridical legal research method supported by a case study approach to analyze the application of defamation provisions in the Electronic Information and Transactions Law to the Bibi Kelinci and Baiq Nuril cases. The normative approach was chosen because the research focuses on analyzing legal norms, legal principles, doctrines, and regulations governing the protection of honor, freedom of expression, and law enforcement in the digital space. Meanwhile, the case study approach is used to compare the application of legal norms to two cases that share similar characteristics but exhibit different law enforcement dynamics.

The research approaches include a statute approach, a conceptual approach, and a case approach. The statute approach is conducted through an analysis of the 1945 Constitution of the Republic of Indonesia, the Criminal Code, Law Number 11 of 2008 concerning Electronic Information and Transactions and its amendments, and various regulations related to the protection of human rights and freedom of expression. The conceptual approach is used to examine the theory of the rule of law, equality before the law, selective enforcement, legal protection, and law enforcement theory as the basis for the analysis. The case approach focuses on examining the legal facts, law enforcement processes, and legal arguments in the two cases under study.

The legal materials used consist of primary legal materials, namely laws and regulations, court decisions, and legal documents related to the cases under study;

secondary legal materials, in the form of books, scientific articles, legal journals, previous research results, and expert opinions; and tertiary legal materials, such as legal dictionaries, the Great Indonesian Dictionary, legal encyclopedias, and other relevant scientific sources. All legal materials were obtained through library research and systematically analyzed to gain a comprehensive understanding of the legal issues under study.

Data analysis was conducted qualitatively using prescriptive legal analysis techniques. All legal materials were classified based on the research issues and then interpreted through grammatical, systematic, and teleological interpretations to assess the suitability of law enforcement practices with the objectives of the ITE Law, the principles of victim protection, the principle of ultimum remedium, and the principle of equality before the law. The analysis results were then compiled argumentatively to identify any indications of selective enforcement in the application of defamation provisions to the two cases studied. Using this method, the research not only describes applicable legal norms but also provides a critical evaluation of the consistency of their application in law enforcement practices in Indonesia.

FINDINGS AND DISCUSSION

Application of the Electronic Information and Transactions Law to Parties Disclosing Alleged Criminal Acts or Personal Experiences on Social Media in the Case of Bibi Kelinci and Baiq Nuril

Developments in information technology have expanded the space for the public to express opinions, criticisms, and personal experiences through social media. On the one hand, this represents an implementation of the right to freedom of expression guaranteed by Article 28E paragraph (3) and Article 28F of the 1945 Constitution of the Republic of Indonesia. On the other hand, the dissemination of information through electronic media also has the potential to give rise to legal disputes, particularly regarding allegations of defamation as regulated in the Electronic Information and Transactions Law (UU ITE).

The establishment of the ITE Law is essentially aimed at providing legal certainty in the use of information technology, not restricting the public's freedom of expression. Therefore, the application of provisions regarding defamation must be carried out proportionally, considering the balance between protecting an individual's reputation and the public's right to obtain and convey information. This right is not absolute, as Article 28J of the 1945 Constitution permits restrictions as long as they are based on law to protect the rights of others and maintain public order.

The amendment to the ITE Law through Law Number 1 of 2024 demonstrates an effort by lawmakers to clarify the elements of criminal acts and reduce the potential for criminalization due to overly broad interpretations. Furthermore, the government, along with the Police and the Prosecutor's Office, also issued Guidelines for the Implementation of the ITE Law, which emphasize that law enforcement must consider the context of information dissemination, good faith, and public interest. Therefore, law enforcement officials must not merely prove the distribution of electronic information; they must also assess the purpose of the dissemination, the veracity of the facts, and the presence or absence of elements that attack a person's honor.

From a modern criminal law perspective, criticism, complaints, or personal experiences based on facts cannot automatically be classified as defamation. Law enforcement must adhere to the principles of legality, proportionality, equality before the law, and protection of victims. This approach is crucial to avoid criminalizing individuals who are attempting to protect their legal interests or convey information of public interest.

Case Analysis of the Bibi Kelinci

The Bibi Kelinci case began with a dispute between a customer and the restaurant regarding service and payment transactions, which escalated through the dissemination of CCTV footage and information on social media. As a result of the distribution, each party felt aggrieved and filed a complaint against the other, alleging violations of the Electronic Information and Transactions (ITE) Law.

Legally, this case demonstrates that not every dispute that develops through social media must be resolved through criminal law. The dispute primarily reflects the legal relationship between businesses and consumers. Therefore, law enforcement officials must first assess whether the information conveyed truly meets the elements of defamation or is simply a form of conveying personal experiences and criticism of services.

In this case, law enforcement officials chose a restorative justice approach through mediation, resulting in the parties agreeing to withdraw their respective reports. This resolution demonstrates the application of the principle of ultimum remedium, which states that criminal law is used as a last resort when other resolution mechanisms are no longer effective. In addition to providing legal certainty, this approach also successfully restored the relationship between the parties without incurring long-term criminal consequences.

According to the author, a resolution through restorative justice is more in line with the objectives of the ITE Law because it considers the interests of the parties, the nature of the offense in question, and the protection of freedom of expression. Criticism or personal experiences conveyed honestly and in good faith should not be immediately viewed as a criminal act, but should be assessed based on the context and purpose of the conveyance.

Baiq Nuril Case Analysis

Unlike the Bibi Kelinci case, Baiq Nuril's case demonstrates a more formalistic approach to law enforcement. The case began when Baiq Nuril recorded a sexually charged conversation with her superior as a form of self-protection against alleged sexual harassment. The recording was then circulated through another party, resulting in Baiq Nuril being prosecuted as a perpetrator of a crime under the Electronic Information and Transactions (ITE) Law.

At the first instance, the Mataram District Court acquitted Baiq Nuril because it was deemed not to have actively disseminated the recording. However, the Supreme Court, through an appeal, overturned the verdict and found Baiq Nuril guilty. Although she ultimately received presidential amnesty, the legal process she underwent demonstrates that someone who initially assumed the position of victim can become a defendant due to an interpretation solely oriented toward fulfilling the formal elements of a crime.

When analyzed normatively, the application of the ITE Law in Baiq Nuril's case raises several issues. First, the element of "distributing" or "transmitting" electronic information should be proven based on who actually disseminated the information to the public. Second, the purpose of the recording should be understood as a form of self-protection, not as an attempt to attack another person's honor. Third, law enforcement should consider the principle of victim protection and the constitutional right of every individual to defend their legal interests.

According to the author, the Baiq Nuril case demonstrates that the application of the ITE Law does not fully reflect substantive justice. Interpretations that place too much emphasis on formal elements without considering the social context and relationships between the parties have the potential to result in the criminalization of individuals who actually need legal protection. Therefore, law enforcement must consider the motives, good faith, and purpose of using electronic information to align with the principles of proportionality and human rights protection.

Comparison of the Two Cases

The Bibi Kelinci and Baiq Nuril cases share similarities in that they both began with the delivery of information based on personal experiences, which then escalated into legal issues via electronic media. However, the two cases resulted in different approaches to law enforcement.

In Bibi Kelinci's case, the resolution was achieved through restorative justice, resulting in a settlement. In contrast, in Baiq Nuril's case, the legal process continued through cassation and judicial review, despite the fact that she was initially the injured party. These differences demonstrate that the application of the ITE Law is still influenced by differing interpretations of the facts and elements of the crime by law enforcement officials.

From the perspective of the purpose of the ITE Law, the resolution of Bibi Kelinci's case reflects a balance between legal certainty, expediency, and justice. Conversely, Baiq Nuril's case has drawn criticism because law enforcement is more oriented toward fulfilling formal requirements than protecting victims. This situation raises questions about the consistency of the application of the principle of equality before the law in law enforcement practices in Indonesia.

Based on this analysis, the author argues that the application of the ITE Law to parties who disclose alleged criminal acts or personal experiences cannot be done solely on a textual basis. Law enforcement officials must consider the context of information delivery, good faith, public interest, the parties' positions, and the possibility of resolution through restorative justice. This approach is more in line with the objectives of the ITE Law, namely to ensure legal certainty, justice, benefit, and protection of human rights in the use of digital space.

The Appropriateness of the Victim's Name as a Suspect in the Bibi Kelinci and Baiq Nuril Cases in Light of the Purpose of the ITE Law and the Principles of Victim Protection

Determining someone as a suspect is a legal action that must be based on sufficient evidence, the application of appropriate legal norms, and respect for human rights. In cases related to the Electronic Information and Transactions Law (ITE Law), this process becomes even more crucial because the use of electronic media is often related to the exercise of the right to freedom of expression. Therefore, law enforcement officials are not only required to prove the formal elements of a crime but also to understand the context of the incident, the position of the parties, the motives for conveying the information, and the purpose of the ITE Law.

In essence, the ITE Law was created to provide legal certainty in the use of information technology while striking a balance between protecting individual dignity and freedom of expression. Therefore, the criminal provisions in the ITE Law are not intended to criminalize any form of criticism, complaint, or personal experience conveyed in good faith. Rather, its application must be directed toward protecting the rights of the public without neglecting the principles of justice, proportionality, and legal expediency.

From a modern criminal law perspective, a victim is a party who experiences physical, psychological, or economic harm, or a violation of their rights as a result of an act. Protection for victims is not only achieved through granting rights during the judicial process, but also through law enforcement policies that prevent criminalization. Therefore, before declaring someone a suspect, law enforcement officials are obliged to objectively identify who is truly a victim and who fulfills the criteria for a criminal offense.

In the Bibi Kelinci case, the dispute began with a legal relationship between a business owner and a consumer, which escalated through the dissemination of information on social media. Each party felt aggrieved and filed a police report. However, after mediation, the case was resolved through restorative justice mechanisms, with both parties withdrawing the complaint. This resolution demonstrates that law enforcement officials considered the nature of the offense, the interests of the parties, and the possibility of resolving the case outside the criminal justice process. This approach reflects the application of the principle of ultimum remedium, which states that criminal law is used as a last resort when other remedies are inadequate.

In contrast, the Baiq Nuril case presents a different situation. Baiq Nuril initially claimed to have experienced sexual harassment by her superior and recorded the conversation as a form of self-protection. However, the legal process instead named her a defendant under the ITE Law. Although the Mataram District Court acquitted her, the Supreme Court overturned the verdict on appeal, declaring Baiq Nuril guilty. This situation subsequently sparked widespread criticism, as the alleged victim was instead criminalized. Although she was ultimately granted amnesty by the President, the criminal proceedings demonstrated that victim protection has not been a primary consideration in the application of the ITE Law.

There are differences in law enforcement approaches to cases that both stem from the sharing of personal experiences through electronic media. In the Bibi Kelinci case, law enforcement officials prioritized a peaceful resolution, preventing criminal proceedings. Conversely, in the Baiq Nuril case, the criminal process continued until all legal remedies were exhausted. These differences indicate that the implementation of the ITE Law does not fully reflect consistent legal application to cases with similar characteristics.

Judging from the objectives of the ITE Law, the resolution of the Bibi Kelinci Restaurant case reflects a balance between legal certainty, justice, and expediency. Conversely, the determination of Baiq Nuril as a defendant raises questions about the appropriateness of the ITE Law's application to the goal of protecting public rights in the digital space. Law enforcement that focuses solely on fulfilling the formal elements of a crime has the potential to ignore the social context, the relationships between the parties, and the interests of the victim, resulting in decisions that lack a sense of justice.

This situation also needs to be analyzed based on the principle of equality before the law, namely the principle that everyone should receive equal treatment before the law without discrimination. Equality before the law not only means everyone has an equal opportunity to undergo legal proceedings but also demands consistency from law enforcement in applying norms to cases with comparable characteristics. Different approaches that are not based on objective legal grounds have the potential to create a perception of legal uncertainty and undermine public trust in the criminal justice system.

Furthermore, developments in criminal law policy indicate that resolving cases through restorative justice is increasingly viewed as a more effective alternative in certain cases, particularly complaint-based offenses that do not cause widespread harm to society. This approach is more oriented toward restoring relationships between the parties rather than solely imposing criminal penalties. Therefore, the application of this mechanism needs to be expanded to qualifying cases so that criminal law truly becomes the ultimum remedium, not the first option, in resolving every dispute in the digital space.

According to the author's analysis, naming a victim as a suspect can only be justified if all elements of the crime are clearly proven and there are no justifications or excuses that would eliminate criminal responsibility. In cases involving the sharing of personal experiences or the disclosure of alleged violations of the law, law enforcement officials must first assess the good faith of the information provider, the public interest being protected, and the legal standing of each party. This approach will reduce the risk of criminalization while providing optimal protection for victims.

Based on this overall analysis, the author argues that the determination of victims as suspects in cases related to the ITE Law must be carried out very carefully and only based on a comprehensive legal assessment. A comparison between the Bibi Kelinci and Baiq Nuril cases shows that the quality of law enforcement is not only measured by the ability to apply criminal norms, but also by the ability of law enforcement officials to realize substantive justice, protect victims' rights, maintain equality before the law, and consistently apply the principles of restorative justice and ultimum remedium. Therefore, reform of the enforcement of the ITE Law needs to be directed at strengthening human rights protection, increasing the consistency of law application, and establishing a justice system that is more responsive to developments in the digital society.

CONCLUSION

Based on the research findings, it can be concluded that the application of the Electronic Information and Transactions Law (ITE Law) to parties who disclose alleged criminal acts or personal experiences on social media still demonstrates a difference in law enforcement approaches. In the Bibi Kelinci case, the case was resolved through a restorative justice mechanism, prioritizing peace and withdrawal of the report, thus achieving the legal objectives of certainty, benefit, and restoration of relationships between the parties without criminal proceedings. Conversely, in the Baiq Nuril case, law enforcement focused more on fulfilling the formal elements of the crime, resulting in the party initially positioned as the victim being prosecuted as the perpetrator. These differences indicate that the application of the ITE Law has not been fully proportional, taking into account the context of information delivery, good faith, public interest, and the legal standing of the parties.

Furthermore, the designation of victims as suspects in cases related to the ITE Law does not fully align with the objectives of the law's formation or the principle of victim protection. This research demonstrates that victim protection, the principle of equality before the law, and the application of the principles of ultimum remedium and restorative justice have not been consistently applied in every case. Therefore, law enforcement officials need to prioritize a more comprehensive interpretation, taking into account the facts, motives, purpose of conveying information, and protected legal interests before naming someone as a suspect. Thus, law enforcement in the digital space not only provides legal certainty but also achieves substantive justice, protects human rights, and prevents selective enforcement in the application of defamation provisions under the ITE Law.

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