



Juridical study of the criminal act of defamation article 310 paragraph (1) of the Indonesian criminal law code (KUHP)

M Yanto

Lamongan Islamic University
muhamadyanto622@unisla.ac.id

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ABSTRACT

The object of research as well as a problem in this research is the provision of criminal acts under Indonesian positive criminal law (KUHP), as well as the basis for judges deciding probation sentences against perpetrators of criminal offenses of Article 310 paragraph (1) of the Criminal Code.. Acts that offend honor in this sexual field do not include crime, decency or morality crimes referred to in Article 281 to Article 303 of the Criminal Code. The provisions of the defamation are stipulated in Chapter XVI concerning Insults, Book I specifically Articles 310, 311, 315, 317 and Article 318 of the Criminal Code. In addition to those stipulated in the Criminal Code, matters relating to "Defamation" are also regulated in Law Number 11 of 2008 concerning information and electronic transactions. therefore, on the basis of judicial legal considerations with this conditional criminal verdict, I am not in agreement because the defendant has been proven to violate the principle of legality and there is an element of error, defaming the victim witness. In addition, in my view, the Criminal Code is more likely to protect the rights of defendants than a sense of justice for victims of criminal acts. In examining and adjudicating cases of defamation (blasphemous crimes), the judge needs to consider the situation of the victim witness, with the aim of protecting the dignity and honor of the victim, so that the verdicts are met with a sense of justice. Although, giving a verdict is the authority of a judge, it must also consider the prosecutor's demands, also consider the main elements in the teachings of criminal liability,

1. Introduction

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) states that Indonesia is a state of law. "This means that the Republic of Indonesia is a democratic legal state based on Pancasila and the 1945 Constitution, not based on mere power. , upholding human rights and all citizens together with their position before the law and government ".

According to Sri Soemantri as quoted by Mien Rukmini, a constitutional state must fulfill several elements, namely:

1. The government in carrying out its duties and obligations must be based on laws or statutory regulations;
2. There is a guarantee of human rights (citizens);
3. There is a division of power within the state;
4. There is oversight from the judiciary.

The State of Indonesia as a rule of law also respects and protects those who are suspected of having committed a crime from the arbitrariness of law enforcement officials by granting them rights in an effort to prove whether the person concerned is really the perpetrator of a crime or not. Therefore, citizens, state administrators, state institutions and social institutions both at the central and regional levels must not abandon the appreciation, practice and implementation of human rights as well as the rights and obligations of citizens to uphold justice. as set forth in the opening paragraph of the fourth paragraph of the 1945 Constitution which reads:

In fact, the crime of defamation/defamation is not a new type of crime, and this criminal act of insult has found a place in the Criminal Code (hereinafter referred to as the Criminal Code), which is regulated in Book Two Chapter XVI on "Insult".

The crime of defamation/humiliation is regulated and formulated in Article 310 paragraph (1) of the Criminal Code, which reads:

Whoever deliberately damages a person's honor or reputation by accusing him of committing an act with the real intention of spreading the accusation, is punished for blasphemy, with a maximum imprisonment of nine months or a maximum fine of Rp. 4,500.

Article 310 paragraph (1) of the Criminal Code does not mention the word "blasphemy", but considering the formulation of the criminal act of defamation provided by the Criminal Code, the criminal act of defamation can be categorized as defamation or can also be referred to as an insult to honor and or reputation. someone in someone else's eyes. The provisions of Article 310 paragraph (1) of the Criminal Code can be grouped in the sense of insult. This is corroborated by the mention in Articles 311, 315, 317 and Article 318 of the Criminal Code.

The elements contained in Article 310 paragraph (1) of the Criminal Code are:

1. Whoever;
2. Deliberately;
3. Attacking someone's honor or reputation;
4. By accusing of doing a certain act;
5. With the real intention of making the accusation public.

"In Article 310 paragraph (1) of the Criminal Code, the criminal act of defamation of honor is more appropriately referred to as the criminal act of defamation, considering that if viewed from a teaching point of view or object delicti which is the intent or purpose of the article, namely to protect honor".

According to R. Soesilo, there are 6 types of insults in the Criminal Code, namely:

1. Menista (smaad);
2. Swearing with letters (smaadachrift);
3. Slander (laster);
4. Mild humiliation (eenvoudige belediging);
5. Complain defamatory (lasterlijke aanklacht);
6. Defamatory accusations (lasterajke verdarhtmaking).

The offense contained in Article 310 paragraph (1) of the Criminal Code includes complaint offenses, except that the person being insulted was an official at the time or because he was carrying out his legal duties as stated in Article 316 of the Criminal Code.

To accuse someone of having committed insults or insults is not easy, because there must be evidence in court that is considered valid. A proof according to law is basically a process to determine the substance or nature of facts obtained through appropriate measures with a logical mind so that it becomes clear in relation to a criminal case.

The role of the judge in proving is actually not solely for the purposes of the court but to convince the victim's family that a crime has actually occurred and to convince the defendant, who for his actions, and if decided by the judge later can accept or reject / object by using efforts available laws, namely filing an appeal, cassation, and review.

For proving cases in criminal courts, there are theories that serve as the basis for evidence, including:

1. The basis of proof is bound by evidence according to law in a positive way, meaning that if in consideration of a decision the judge considers that an act has been proven in accordance with the evidence provided for in law without the need for conviction the judge can make a decision.
2. The basis of proof according to the conviction of the judge solely means: if in consideration of the decision the judge considers that an act has been proven in accordance with the conviction that arises from the conscience or the wise nature of a judge, then a decision can be issued.
3. In proving according to the conviction of the judge within certain limits on logical reasons. Proof based on beliefs that are limited by reasons according to proper logic can also be called evidence that gives freedom to use other means of evidence accompanied by reasons.
4. The basis of proof according to the conviction of the judge arising from the evidence in the law is negative. The theory of proof which is based on multiple ways of proving on beliefs and means of proof is actually a difficult job.

In accordance with the provisions of Article 184 of the Criminal Procedure Code (hereinafter referred to as the Criminal Procedure Code), what can be used as legal evidence are:

1. Witness statement;
2. Expert statement;
3. Letter ;
4. Instruction ;
5. Defendant's statement.

From the formulation of Article 184 of the Criminal Procedure Code above, it can be seen that there are 5 (five) pieces of evidence that can be used in proving a criminal case, especially in the trial process. As for the series of investigations and investigations, it is possible that evidence will also be considered, but only for the purposes of preparing the police investigation report (hereinafter referred to as the BAP) as investigators and/or investigators, while in the prosecutor's office, the role of evidence is only needed for the preparation of indictments. The role of evidence is very visible in court proceedings, because it is this institution that has the authority to examine, try and decide cases against perpetrators of crimes.

In addition, based on the provisions of Article 183 of the Criminal Procedure Code, that a judge may not impose a sentence on a person unless, with at least two valid pieces of evidence, he obtains confidence that a crime has actually occurred and it is the defendant who is guilty of committing it. From the formulation of Article 183 The Criminal Procedure Code can be understood, that in order to pass a verdict and decide on a criminal case, the judge must pay attention to 2 (two) things, namely whether the crime has been supported by at least 2 (two) valid evidence according to law, and whether with a minimum of 2 (two) valid pieces of evidence to convince the judge that a crime has actually been committed by the defendant.

If it is related to a case of criminal defamation, then with a minimum of 2 (two) valid pieces of evidence, then it is only a question of the judge's conviction who examines the case of criminal defamation who will determine whether the minimum of 2 (two) pieces of evidence gives confidence to the judge to decide that a crime of defamation had actually occurred and it was the defendant who was guilty of committing the crime.

In the process of settling criminal cases, especially trial examinations before the court, evidence is a very important part, which determines whether or not a person charged with committing a crime has taken into account valid evidence and is related to the crime committed. Completion of a criminal act as a criminal case is a series of processes, however, whether or not a criminal case is completed depends very much on the results of the judge's examination at the trial court.

Examples of cases related to the crime of defamation include the decision on the criminal case Number: 219/Pid.B/2008/PN.Lmg. In a criminal case related to this criminal act

of defamation using the provisions of Article 310 paragraph (1) of the Criminal Code, the panel of judges at the Lamongan District Court sentenced the defendant to 3 (three) months in prison and determined that the sentence would not be carried out unless later other orders in the judge's decision, because the defendant before the expiration of the 6 (six) month probationary period committed an act that could be punished.

It should be noted that "trial" criminal law is a technical understanding that has many facets or aspects. The difference with the meaning in general is that if the criminal law talks about "trial", then it is clear that the goal being pursued is not achieved.

In this regard, the issue that needs to be raised is whether the basis for the judge's consideration of deciding on a suspended sentence against the perpetrator of the crime of defamation who is prosecuted based on the provisions of Article 310 paragraph (1) of the Criminal Code, only imposes a prison sentence of 3 (three) months on the defendant, whereas in the Criminal Code the prison sentence maximum 9 (nine) months. sentence imposed on the defendant in the blasphemy case. The sentence of imprisonment for 3 (three) months for the defendant needs to be questioned, whether it has fulfilled a sense of justice, bearing in mind that in criminal acts of insulting honor that occur via the internet or through the media, both orally and in writing, for example, it can attack someone's honor or good name so that they are known. by the public.

2. Method

Research purposes

Broadly speaking, the research objectives to be achieved in this writing are as an effort to seek and find answers to the questions contained in the problem formulation, namely:

1. To find out the provisions for the criminal act of defamation according to Indonesian positive criminal law.
2. To find out the basis for the judge's consideration of deciding on a suspended sentence against the perpetrator of the crime of defamation Article 310 paragraph (1) of the Criminal Code.

Research methods

Research is one of the main means of developing science and technology. "This is because research aims to reveal the truth in a systematic, methodological, and consistent manner."

According to Johnny Ibrahim, in the world of research, research is the application or application of predetermined methods with very strict requirements based on well-maintained scientific traditions so that the results of the research carried out have scientific value that is valued by the scientific community concerned (intersubjective).

According to Roni Hanitijo Soemitro, "basically legal research can be divided into normative legal research and sociological legal research". Normative legal research is carried out by examining library materials which are secondary data. Sociological or empirical legal research primarily examines primary data.

Meanwhile, Sutandyo Wignjosebroto said that in legal research, there are 2 (two) types of research, namely "doctrinal legal research and non-doctrinal legal research". Doctrinal legal research is legal research that is conceptualized and developed based on the doctrines adhered to by the drafter, while non-doctrinal research or sociolegal research is empirical studies to find theories about the process and working of law.

Peter Mahmud Marzuki, said that legal research is a process to find legal rules, legal principles, and legal doctrines to answer the legal issues at hand.

Because research is a scientific tool for the development of science and technology, the research methods applied must always be adapted to the science that is the parent. .

3. Analysis and Results

Criminal Acts and Criminal Liability

The term criminal offense in Dutch is better known as "strafbaarfeit" which after that was translated into Indonesian, namely:

- a. Actions that can/may be punished;

- b. Criminal events;
- c. Criminal act;
- d. Criminal act

In connection with the terms above, the word "act" (in criminal acts) is shorter than the word "deed" (in criminal acts), but the word act refers to something abstract such as an act, but only states a concrete situation. Action is behavior, behavior, gestures or physical attitude of a person, which is better known in behavior, action and acting and recently also often used to act. Meanwhile, crime is a term to describe an act that can be punished.

In addition to criminal acts, there are also other terms, namely criminal acts, as stated by Moeljatno which is formulated as "an act prohibited by the rule of law, which prohibition is accompanied by threats (sanctions) in the form of certain crimes, for anyone who violates the prohibition". He stated that according to their form or nature, these criminal acts were acts that were against the law. These actions are also detrimental to society, in the sense that they conflict with or hinder the implementation of social order in society which is considered good and fair.

From several opinions of scholars, it can be concluded that an act will become a crime if the act:

- a) Against the law;
- b) Detriment to society;
- c) Prohibited by criminal rules;
- d) The perpetrator is threatened with a criminal sentence.

Other terms used in criminal law other than those mentioned above are criminal incidents, as is the case in Article 14 paragraph (1) of the Provisional Constitution of 1950. A criminal event is a concrete meaning, which only refers to a certain incident, for example people die. This event alone can not be banned. Criminal law does not prohibit people from dying, but prohibits people from dying because of the actions of other people. If the person's death is due to natural circumstances, for example due to illness, old age, or being hit by a tree that was blown down by a whirlwind, then the incident is not important at all for the criminal law. It also doesn't matter if the person's death is due to the actions of an animal or animals. Only if the death has something to do with the behavior of other people,

Meanwhile Roeslan Saleh, stated, that "the use of the term criminal act is as an equivalent of what is usually called strafbaarfeit in legislation".

Regarding this terminology, in fact it is not that important to be questioned, because the only thing that matters is the mere name. The terms criminal acts, criminal acts and criminal events are all justified by criminal law, although there are differences in terms, they have the same meaning.

So to find out, whether an act is a crime or not, it must be seen in the provisions of existing and applicable criminal law (positive law). The current criminal law provisions are:

- 1) The Criminal Code (KUHP),
- 2) Other criminal law regulations are criminal law provisions outside the Criminal Code

The Criminal Act of Blasphemy According to the Criminal Code

In the Criminal Code, defamation is termed as insult/blasphemy against a person, the provisions of which are contained in Chapter XVI, Book I, in particular Articles 310, 311, 315, 317 and Article 318 of the Criminal Code.

Before explaining humiliation as referred to in this article, it must first be explained what is meant by insult? According to R. Soesilo, "to insult is to attack someone's honor and good name", those who are attacked usually feel ashamed. The honor that is attacked here is only about honor about good name, not honor in the sexual field, honor that can be dishonored by being offended by a member of the genitals in the sphere of sexual lust. Acts that offend honor in the sexual field do not include crimes, decency or crimes of decency as referred to in Articles 281 to 303 of the Criminal Code.

If these articles are examined, the criminal act of defamation can be classified as follows:

- 1. Menista (smaad) Article 310 paragraph (1).
- 2. Defamation by letter (smaadschrift) Article 310 paragraph (2)

3. Slander (laster) Article 311.
4. Mild humiliation (eenvoudige belediging) Article 315.
5. Complaining slander (lasterlijke aanklacht) Article 317.
6. Defamatory accusations (lasterlijke verdachtmaking)

"All types of criminal insults can only be prosecuted if there is a complaint from the person who is suffering (complaint offense), except if the criminal offense is committed against a civil servant while carrying out a legitimate job".

The object of the crime of defamation as mentioned above must be an individual human being, meaning not a government agency, administrator of an association, a group of residents, and others.

If the object is not an individual human being, then special articles will be imposed such as articles 134 and 137 (insulting the president or vice president), articles 142, 143, 144 (insulting a foreign head of state), articles 156 and 157 (insulting a group of population) , article 177 (insulting religious officials), article 183 (insulting people who do not want to duel), articles 207 and 208 (insulting power in Indonesia)

Regarding insults to Articles 134 and 137 of the Criminal Code, with the Constitutional Court Decision Number: 013-022/PUU-IV/2006, these two articles no longer have binding force as positive law.

Contempt according to Article 310 paragraphs (1) and (2) above can be excluded (cannot be punished) if the accusation or insult is made to defend the "public interest" or forced to "defend himself". Whether or not the public interest defense and self-defense submitted by the suspect is appropriate depends on the judge's consideration. For the crime of slander according to Article 311 of the Criminal Code, it does not need to be done in public, it is sufficient if it can be proven that there was intent to broadcast the accusation. If the insult is in the form of a complaint containing slander directed at a dignitary/official in authority, then it can be subject to punishment under Article 317 of the Criminal Code.

According to Muladi, those who can report defamation as stated in Articles 310 and 311 of the Criminal Code are those whose honor is attacked, their dignity is humiliated, so that their name becomes disgraceful in public. However, there is still a defense for the party accused of committing defamation when submitting information to the public. First, the delivery of information is intended for the public interest. Second, to defend yourself. Third, to reveal the truth. So that the person who conveys the information, orally or in writing, is given the opportunity to prove that his purpose is correct. If you can't prove the truth, it's called blasphemy or slander.

In order to be punished according to Article 310 paragraph (1) of the Criminal Code, the insult must be committed by accusing someone of having committed certain acts with the intention that the accusation will be publicized (known to many people).

The alleged act does not need an act that can be punished such as stealing, embezzlement, adultery, and so on, it is enough with ordinary actions, of course an act that is shameful, for example accusing that someone at a certain time has entered into prostitution in a house of prostitution, this is not an act that may be punished, but quite embarrassing for those who have an interest if it is announced.

Furthermore, regarding the crime of Article 310 paragraph (2) of the Criminal Code, it states: "If this is done with writing or pictures that are broadcast, shown in public or posted, then those who do it are punished for insulting writing with a maximum prison sentence of one year and four months or a maximum fine of Rp. 4,500.-".

If Article 310 paragraph (1) of the Criminal Code is compared with Article 310 paragraph (2) of the Criminal Code, then it can be distinguished that according to Article 310 paragraph (1) of the Criminal Code, the above accusations must be made orally, if made in writing (letters) or pictures, then this crime or crime is called blasphemy by letter and can be charged with Article 310 paragraph (2) of the Criminal Code.

Then the criminal act of defamation Article 311 of the Criminal Code states:

- (1) Whoever commits a crime of defamation or defamation in writing, in the event that he is permitted to prove his accusation, if he cannot prove it and if the accusation he has

committed is known to be untrue, shall be punished for false slander with a maximum imprisonment of four years.

- (2) The penalty for revocation of the rights referred to in Article 35 number 1 to 3 may be imposed.

Article 311 of the Criminal Code cannot be separated from the provisions of Article 310 of the Criminal Code, meaning that during the examination before the trial, in this case if the examination turns out that what the defendant was accused of was not true, then the defendant is not blamed for committing the crime of defamation, but subject to Article 311 of the Criminal Code.

According to R. Soesilo, "if the insult is committed by accusing someone of an act, then it is contained in Articles 310 or 311 of the Criminal Code. however, if in another way, for example by saying: dog, asu, sundel, bastard, etc., then it is regulated in Article 315 of the Criminal Code and can be called light insult (eenvoudige belediging).

In order to be punished for criminal acts of insult both orally and in writing, the insult must be carried out in a public place (the person being insulted does not need to be there).

If the insult is not committed in a public place, then the punishment can include:

- a. By word or deed, the person who is insulted must be there to see and hear for himself;
- b. If by letter (writing), then the letter must be addressed (delivered) to the insulted person.

Insults committed by acts such as spitting in their face, holding an Indonesian's head, pushing off an Indonesian cap or headband. Likewise, a poke, punch, slap, shove which is actually abuse, but if done not too hard, can also cause humiliation.

Juridical study of case decision number: 219/pid.b/2008/pn.lmg

Before examining the basis for the judge's consideration of deciding the probation sentence for the perpetrator of the crime of defamation, in order to obtain a concrete picture, it is necessary to present a case example, in case Number: 219/Pid.B/2008/PN.Lmg.

Based on the indictment of the Public Prosecutor No.Reg.Perk: PDM-201/LAMON/06/2008, dated 23 June 2008, an overview of the circumstances of the criminal defamation case was obtained as follows: "That the defendant Witono Bin Suroto on Sunday 6 April 2008 at around 19.00 WIB or at least at some point in 2008, located in a stall in Kembangan Village, Sekaran District, Lamongan Regency or at least located in a place that is still included in the jurisdiction of the Lamongan District Court, has deliberately attacked the honor or someone's good name, by accusing something, the intention of which is clear so that it is publicly known.

The actions of the defendant were carried out in the following ways:

- a. Whereas, the Defendant at the time and place as mentioned above, met with witness Masluhah, then witness Masluhah who had previously heard the news that his reputation had been defamed asked the truth of the Defendant's words;
- b. That, subsequently there was a war of words between the witness Masluhah and the Defendant, then Masykuri came into the shop with the aim of interfering but the Defendant instead uttered words in a loud voice and pointed the Defendant's finger in Masluhah's face by saying "Opo Sampean lali ta nak wis never won't walik nang rowo Miru" (have you forgotten that you have never had sex/fucked on rowo Miru);

As a result of the actions of the Defendant, the witness Masluhah felt that his pride had been humiliated and abused. The actions of the Defendant as stipulated and punishable by punishment in Article 310 paragraph (1) of the Criminal Code.

Based on the facts revealed in the trial at the Lamongan District Court, the defendant Witono Bin Suroto, has been proven legally and convincingly according to law to have committed a criminal offense according to the provisions regulated and threatened with the article as indicted by the Public Prosecutor.

Given the provisions of Article 310 paragraph (1) of the Criminal Code, the provisions of the Criminal Procedure Code, and other relevant provisions, the Lamongan District Court will hear and decide the case as follows:

JUDGE:

1. Declare the defendant Witono Bin Suroto according to the identity mentioned above, has been proven legally and convincingly guilty of committing the crime of "Defamatory";
2. Punish the Defendant therefore with imprisonment for 3 (three) months;
3. Determining that the sentence will not be carried out, unless in the future there is another order in the judge's decision because the Defendant before the expiration of the 6 (six) month probationary period has committed an act that can be punished;
4. Charged court fees to the Defendant of Rp. 5,000, - (five thousand rupiah).

Study of the elements of the offense.

In relation to the case examples as stated above, for clarity, the elements of the offense in Article 310 paragraph (1) of the Criminal Code will be examined. However, first it is necessary to put forward the formulation of Article 310 paragraph (1) of the Criminal Code, which reads: "Whoever deliberately damages a person's honor or reputation, by accusing him of committing an act with the real intention of spreading the accusation, is punished for insulting, by imprisonment for a maximum of nine months or a maximum fine of Rp. 4,500, -

The elements of the delict of Article 310 paragraph (1) of the Criminal Code are as follows:

- a. The "Whoever" element.

The definition of "whoever" in the concept of the Criminal Code or "everyone" in various concepts of laws and regulations in Indonesia, for example in the Law on the Eradication of Corruption Crimes Number 31 of 1999 in conjunction with Law Number 20 of 2001, apparently does not provide an official explanation about what is meant by whoever or every person. Some experts argue that "whoever" or "everyone" is a human being, but it is necessary to describe who and how many people. So the identity of "whoever" or "everyone" must be clear.

If you pay attention to the opinions of these legal experts, then the word whoever or every person can be interpreted as a legal subject, which can be in the form of *natuurlijke* person (private body) or *rechtsperson* (legal entity). Soenawar Sukowati as quoted by Chidir Ali, formulates a legal subject as a human being with legal personality and everything that is based on the demands of the needs of the community is recognized by law as a supporter of rights and obligations.

- b. The element of "damaging someone's honor or good name by accusing him of committing an act".

Regarding the elements of this offense, R. Soesilo argues:

Insulting is attacking someone's honor and good name, those who are attacked usually feel ashamed. The honor that is attacked here is only about the honor of a good name, not honor in the sexual field, honor that can be tarnished because the genitals are in the environment of sexual lust. Actions that offend in this sexual field are not included in the crime of contempt, but are included in the crime of decency or the crime of decency as referred to in Articles 281 to 303.

In relation to case Number: 219/Pid.B/2008/PN.Lmg the Public Prosecutor, is of the opinion that a good name is meant in general to have a broad good judgment about a person from a moral point of view, while honor is a demand for treatment as an honorable citizen in social life. as a result of that assessment, honor can be directly violated without touching good name, while violation against good name will also affect honor.

The opinion of the Public Prosecutor was based on the testimony of witnesses Maslulah and Masykuri during the trial which revealed the fact that on Sunday April 6 2008 at the Siti Maryati stall, the defendant and Maslulah were involved in an argument and during the argument the Defendant said: "You have never *wolak walik nang rowo Miru*", which means more or less "Did you forget that I had sex/I had intercourse with Rowo Miru".

- c. The element "With real intent will spread the accusation".
 Related to this element, R. Soesilo stated: "in order to be punished, the insult must be carried out by accusing someone of having committed certain actions with the intention that the accusation will be publicized (known to many people)".
 So, the act being accused does not need to be an act that can be punished such as stealing, embezzlement, adultery, and so on, it is enough with ordinary actions, of course an act that is shameful, for example accusing someone at a certain time has entered into prostitution in a house of prostitution, this is not an act that can be punished, but it is quite embarrassing for those concerned if it is announced.
 The alleged act was stated clearly, both in place and time. This method of defamation is carried out by accusing other people of committing certain acts. A certain act must be an act that is specified precisely or precisely and unequivocally in such a way that it is not only expressly stated the type of action but must also state the specific type of action from the group of types intended.
 That particular act must have been accused. The accusation is fulfilled if logically a conclusion can be drawn from the words. That what is meant is notification of an act that appears to have been committed by an accused person. Statements or notifications in the form of questions or indirect forms do not rule out the possibility of accusations.
 In connection with the case number: 219/Pid.B/2008/PN.Lmg., the facts revealed in the trial from the testimony of witnesses Maslulah, Masykuri and Siti Maryati, that the defendant told Maslulah the sentence: "You have never had Wis Lali not want Wali Nang Rowo Miru." These words were uttered by the defendant (Witono Bin Suroto) at the shop owned by Siti Maryati in Kembangan Village, Sekaran District, Lamongan Regency, heard by shop owners Siti Maryati and Mayskuri.

- d. Element "Intentionally".
 In an effort to prove the element of the offense "intentionally", the public prosecutor is of the opinion that what is meant by the element of "intentionally" is that the Defendant knew and wanted his actions with all the consequences.
 The facts revealed at trial, the Defendant (Witono Bin Suroto) was aware of what he was saying and could be aware of the place where he was speaking, because the defendant's words were made in an open shop, the defendant should have been aware that his words could be heard by other people, who can make the witness Masluha feel embarrassed.

In connection with the opinion of the Public Prosecutor and related to the theory of "deliberately", then "intentional" can arise in 3 (three) forms, namely:

1. "Opzet als oogmerk" (a person acts with the intention of causing a certain result or a certain condition).
2. "Opzet zekerheidsbewustzijn" or "nood zekerheidsbewustzijn" (a person does because he knows that his actions will result in a certain result or condition).
3. "Mogelijkdsbewustzinjn seed opzet" or "dolus eventualis" or "woorwaardelijke opzet" (a person acts with the awareness that certain consequences or circumstances may occur).

Thus, the indictment of the public prosecutor in the criminal case of defamation Article 310 paragraph (1) of the Criminal Code, has taken these three "intentional" forms, because the Defendant can realize that his actions (what he said) resulted in a certain condition, namely the witness Maslulah felt embarrassed.

Legal considerations of judges in deciding cases

Before discussing further about the legal considerations of judges in deciding criminal cases Number: 219/Pid.B/2008/PN.Lmg., I first need to express the opinion of Peter Mahmud Marzuki as follows:

In using the case approach, what the researcher needs to understand is the ratio decidendi, namely the legal reasons used by judges to reach their decision. Ratio decidendi can be found by paying attention to material facts. These facts are in the form of person, place, time,

and everything that accompanies them, as long as they are not proven otherwise. It is necessary to pay attention to these material facts because both the judge and the parties will seek appropriate legal rules to apply to these facts.

In connection with the case of the criminal act of defamation as in the criminal case Number: 219/Pid.B/2008/PN.Lmg., the facts were stated, which were used by the public prosecutor to prove his indictment as follows:

1) Witness evidence

In the trial for the criminal act of defamation in case Number: 219/Pid.B/2008/PN.Lmg., the witnesses presented by the public prosecutor were as follows:

1. Witness Maslulah bint Umar (victim witness).
2. Witness Masykuri bin Sofyan.
3. Witness Siti Maryati bint Irawan.
4. Witness Ribut Suwignyo bin Harjo Mustar.
5. Witness Komariyah bint Kamijo.

The witnesses mentioned above, have given testimony under oath in court (the complete statements of the witnesses are as in the attachment to this thesis). Pursuant to Article 185 paragraph (1) of the Criminal Procedure Code, witness testimony as evidence is what the witness states at trial. Furthermore, Article 184 paragraph (7) of the Criminal Procedure Code states that the testimony of a witness who is not sworn in, even if it is in accordance with the others, is not evidence, but if the statement is in accordance with the testimony of a witness who is sworn in, it can be used as additional legal evidence.

From the provisions mentioned above, it can be concluded that witnesses must be sworn in giving testimony before the trial, so that they can be used as legal evidence according to law. In the case of the crime of defamation Article 310 paragraph (1) of the Criminal Code, the witnesses testified under oath. Thus, the information given by the witnesses is valid evidence.

2) Defendant's statement

The defendant (Witono Bin Suroto) also gave testimony during the trial. Article 189 paragraph (1) of the Criminal Procedure Code states that the defendant's statement is what the defendant stated in court about the actions he committed or which he himself knew or experienced.

In the case of criminal case Number: 219/Pid.B/2008/PN.Lmg., the panel of judges was of the opinion that based on the testimony of the witnesses related to the testimony of the defendant, the following facts were found: That, on Sunday April 6 2008, approx. at around 19.00 WIB, at a shop owned by the witness Siti Maryati, in Kembangan Village, Sekaran District, Lamongan Regency, the witness Maslulah and the defendant were involved in a clarification conversation from Maslulah regarding words that the defendant had said which, according to Maslulah, did not please his heart; That, from the conversation that sounded like a fight, the defendant told Maslulah: "Pancene turukmu itchy" (Your genitals itch) and "Opo Sampeyan Wis Lali never walik Wali Nang Rowo Miru", which means more or less "Did you forget that I had sex/I had intercourse with Rowo Miru". Whereas, these words were spoken in a high tone (emotional) by the defendant at the shop owned by Siti Maryati and were heard by Siti Maryati and Masykuri; Whereas, these words made the witness Maslulah feel defamed;

That the public prosecutor charged the defendant with a single indictment as stipulated and threatened with Article 310 paragraph (1) of the Criminal Code, with the following elements:

1. Whoever.
2. Damaging someone's honor or good name by accusing him of doing something.
3. With the real intention of spreading the accusation.
4. Deliberately.

Based on the testimony of the witnesses and the defendant, that the defendant Witono Bin Suroto was the perpetrator of the crime in this case, so that the element of "whosoever" was declared proven.

Furthermore, based on the testimony of witnesses Maslulah, Siti Maryati, the Defendant, and Masykuri, it was found that on Sunday April 6 2008 at the Siti Maryati stall, the defendant

and Maslulah were involved in an argument in which the defendant said the words "Sampeyan opo wis lali never walik walik nang rowo Miru", which means more or less "Did you forget that I had sex/I had intercourse with rowo Miru".

Based on Maslulah's statement, because the defendant's words were said by the defendant and heard by other people, namely Masykuri and Siti Maryati, the witness Maslulah felt that his good name had been tarnished by the defendant.

Based on these facts, the panel of judges concluded that the defendant had uttered a sentence as if the witness Maslulah had had intercourse with the defendant while other people had heard the sentence so that Maslulah was embarrassed. Given this fact, the element of "damaging someone's honor or good name by accusing him of committing an act", has been declared proven.

The element of "intentionally", in the case of the crime of defamation Article 310 paragraph (1) of the Criminal Code, what is meant intentionally is that the defendant knows and wants his actions with all the consequences. The facts revealed during the trial were that the defendant was aware of what he was saying and was aware of the place where he was speaking. Because the defendant's words were made in an open shop, the defendant should have realized that his words could be heard by other people which could embarrass the witness Maslulah. With these facts the panel was of the opinion that the defendant's actions fulfilled the element of "intentional".

In relation to this case, in the pledoi by the defendant's legal advisers, the opinion was that the element was deliberately not proven, but the panel of judges rejected the pledoi by the defendant's legal advisers.

It should be noted that the panel examining and adjudicating this case is of the view that basically punishment is given to the perpetrators of criminal acts so that those concerned can improve their behavior. At trial, both the defendant and the witnesses, especially the victim-witness, stated that the defendant and the victim-witness had known each other for a long time and had forgiven each other at trial, so that the assembly was of the opinion that it would be more appropriate if a conditional sentence was imposed against the defendant.

Basic Analysis of Judge Considerations in Decisions on Criminal Cases Number: 219/Pid.B/2008/PN.Lmg

In the decision on the criminal case Number: 219/Pid.B/2008/PN.Lmg, the panel of judges at the Lamongan District Court sentenced the defendant (Witono Bin Suroto) to a conditional sentence (trial) for 3 (three) months, and determined the sentence will not be carried out, unless in the future there is another order in the judge's decision because the Defendant before the expiration of the 6 (six) month probationary period has committed an act that can be punished.

The consideration of the judge who imposed a conditional sentence for 3 (three) months with a probationary period of 6 (six) months, if viewed from the point of view of the judge's authority does not violate the provisions, because the legal threat in Article 310 paragraph (1) of the Criminal Code is imprisonment for life nine months.

According to Mohammad Indarto, the basis for the judge's consideration of deciding on a suspended sentence includes:

First, the judge looks at the consequences of the incident or what can be called the case, then looks at the background of the incident, then looks at the examination of witnesses.

Second, the judge made peace or mediated between the defendant and the victim and after the reconciliation was successful, the judge sentenced the defendant to a suspended sentence and with a suspended sentence the defendant was not held in detention but was outside detention.

Third, if the defendant has the intention to defame someone, then the sentence imposed on the defendant is not another suspended sentence, but corporal punishment/prison.

I disagree with the panel's decision to impose a conditional sentence in the case of the criminal act of defamation Article 310 paragraph (1) of the Criminal Code. because the problem of criminal imposition or application of punishment for perpetrators of criminal acts is very

closely related to criminal responsibility. Therefore, it is necessary to examine whether in imposing a conditional sentence for 3 months to a defendant who has committed a crime, the main elements of criminal responsibility have been considered, namely the principles of legality and guilt. In addition, it is also necessary to consider what is described in the claim.

This is based on the following arguments:

1. Legality principle

The provisions of this legality principle are contained in Article 1 paragraph (1) of the Criminal Code which states that an act cannot be punished unless it is based on existing criminal laws and regulations.

The main definitions contained in the principle of legality are as follows:

There is no action that is prohibited and punishable by criminal if it was not stated explicitly in a statutory provision.

- b. To determine the existence of a crime, analogies should not be used.
- c. Provisions of criminal law cannot be retroactive.

Someone who commits a crime cannot always be punished. In other words, a person's sentence is not enough only if that person has committed an act that is against the law or is against the law.

"So, even though his actions fulfill the formulation of an offense in the law and are not justified (an objective breach of a penal provision), this does not yet meet the requirements for criminal imposition".

Thus, this depends on whether the person in committing the crime has made a mistake or not. Because in order to impose a sentence on someone it is not enough to have just committed a crime, but it must also fulfill the condition that the person who committed the act has a fault or is guilty. In other words, the person can be held accountable for his actions.

4. Conclusion

The crime of defamation is regulated in Chapter XVI on Humiliation, Book I, in particular Articles 310, 311, 315, 317 and Article 318 of the Criminal Code. Insulting is "attacking someone's honor and good name", those who are attacked usually feel ashamed. The honor that is attacked here only concerns honor regarding good name, not honor in the sexual field, honor that can be tarnished by being offended by a member of the genitals in the sphere of sexual lust. In connection with the case of blasphemy Article 310 paragraph (1) of the Criminal Code, then the act must fulfill Requirements for elements of delict: Related to the criminal act of insulting Article 310 paragraph (1) of the Criminal Code, an example of a case is presented in the Case Decision Number: 219/Pid.B/2008/PN.Lmg., where the defendant (Witono Bin Suroto) by the panel of judges who examined and tried this case stated that the defendant was proven guilty of committing the crime of "insulting", and was sentenced to conditional imprisonment for 3 (three) months. The conditional criminal sentence was based on the judge's legal considerations that although the defendant was found guilty of committing the crime of "insulting", but the panel of judges was of the opinion that the defendant and the victim-witness (Masluhah) had known each other for a long time and forgave each other which was revealed in the trial. Regarding the basis of the judge's legal considerations with this conditional criminal sentence, I disagree because the defendant has been proven to have violated the principle of legality and there was an element of error, defaming the victim's witness. Besides that,

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