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An Appraisal of Criminal Law Regulations on Defamation within a Justice-Based Framework

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ABSTRACT

The study investigates the persistent tension between protection of reputation and freedom of expression within Indonesia's defamation laws. Despite constitutional guarantees under Articles 28E and 28F of the 1945 Constitution, the continued criminalization of defamation particularly under the Criminal Code, Civil Code, and Electronic Information and Transactions (ITE) Law of 2008 has raised serious concerns about misuse, vagueness, and disproportionate sanctions that threaten democratic discourse and press freedom. The primary aim of this research is to critically appraise Indonesia's defamation framework through a justice-based lens, assessing whether current laws align with principles of fairness, proportionality, and human rights. The study also seeks to propose reforms that harmonize the protection of individual dignity with the constitutional right to free expression, both offline and online. Using a qualitative normative legal method, the study analyzes statutory provisions, court decisions, and academic literature to evaluate how defamation laws function in theory and practice. The research draws on a doctrinal and comparative approach, examining Indonesia's legal instruments alongside international human rights norms and best practices. The findings indicate that Indonesia's defamation regime remains punitive and outdated, heavily influenced by colonial-era legal traditions. The broad and ambiguous wording of defamation and insult provisions under the Criminal Code and ITE Law enables selective enforcement and potential political misuse. These structural weaknesses have produced a chilling effect on media freedom, public criticism, and civic engagement, revealing a legal imbalance between state control and citizen rights. The study concludes that Indonesia's defamation framework requires comprehensive reform to ensure justice-based compliance. Recommended measures include decriminalizing defamation, clarifying statutory definitions, limiting pretrial detention for speech-related offenses, and strengthening procedural safeguards to prevent abuse.

Keywords: Defamation, Freedom of Expression, Justice-Based Framework, Human Rights

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I. INTRODUCTION

In a democratic nation that upholds the rule of law, the right to freedom of expression is recognized as one of the most essential constitutional rights. The 1945 Constitution of the Republic of Indonesia explicitly safeguards this right in Article 28E paragraph (3) and Article 28F, which affirm every citizen's right to communicate, express their views, and access information. Nevertheless, the practice of this freedom inevitably faces legal limitations, especially in instances where speech may violate another person's dignity or reputation. This convergence of free expression and the safeguarding of honor constitutes the foundation of Indonesia's criminal laws regarding defamation (Ekatjahja, W. 2015).

Indonesia's defamation laws, historically rooted in the Criminal Code (*KUHP*) inherited from the Dutch colonial period and later extended through the Electronic Information and Transactions Law (*ITE Law*), have long sparked debate. While intended to safeguard personal reputation and public order, these provisions have frequently been criticized for their vague formulation, disproportionate penalties, and potential misuse to suppress dissent and criticism especially in the digital era (Voorhoof, 2017). The tension between protecting individual dignity and ensuring democratic freedom of speech reflects a deeper question of justice in Indonesia's legal framework.

From a justice-based perspective, criminal regulations should not only deter harmful conduct but also uphold fairness, proportionality, and the protection of constitutional rights. Yet, Indonesia's current defamation framework often prioritizes punitive control over restorative justice, creating imbalances between state power and citizen liberty. These challenges underscore the need for a normative and philosophical appraisal of defamation offenses within the context of Indonesia's evolving constitutional and human rights discourse (Hartoyo, Soekorini, & Handayati, 2023)

Accordingly, this study seeks to analyze the substantive, structural, and weaknesses of defamation regulation, both under the Criminal Code and the ITE Law, and to propose a justice-based reconstruction of criminal provisions that harmonizes protection of personal dignity with the constitutional guarantee of free expression.

II. THE LEGAL CONCEPT AND CLASSIFICATIONS OF DEFAMATION

Prior to the 14th century, defamation was mainly addressed in ecclesiastical (Church) courts, since it was viewed as a moral or spiritual offense rather than a civil injury. The secular or royal courts of that era were hesitant to admit claims based solely on spoken words, as common law

typically concentrated on physical damage and concrete actions such as assault, theft, or homicide. (Colin R. 1962). It was not until subsequent centuries that the King's courts started to accept lawsuits for defamatory remarks, indicating a notable transition from moral judgment to the legal acknowledgment of reputational harm as a civil offense (Colin R. 1962).

In Roman law, defamation was categorized under the wider notion of *iniuria*, which included actions that infringed upon an individual's dignity, honor, or reputation. Those whose reputations were unjustly damaged had the right to pursue civil remedies as a means of seeking redress. although the punishments for defamation in modern times are generally less severe than those imposed during the Roman era, the repercussions remain significant (Zimmermann, 1991).

The evolution of defamation law was traced from the case law of *Ashby v. White (1703)* to *New York Times Co. v. Sullivan (1964)*, illustrating a historical shift in the legal understanding of individual rights and freedom of expression. In *Ashby v. White*, the English court recognized that denying a citizen's right to vote constituted an actionable wrong, establishing an early principle that harm to one's civil rights or reputation warrants legal protection and redress (Rubinstein, 1964).

Centuries later, *New York Times Co. v. Sullivan* reshaped defamation law in the modern democratic context by introducing the "actual malice" standard, requiring public officials to prove that defamatory statements were made knowingly or with reckless disregard for the truth. This landmark ruling balanced the protection of individual reputation with the constitutional right to free speech and press freedom, marking the transition from personal protection under early English law to the broader democratic values enshrined in American jurisprudence (Rubinstein, 1964).

A. Historical Background of Defamation Law in Indonesia

The evolution of defamation law in Indonesia can be traced to the colonial era, as the existing criminal and civil defamation regulations are primarily based on the Dutch legal framework established during colonial governance. After Indonesia gained independence, numerous provisions from this framework were preserved and integrated into the national Criminal and Civil Codes (Nurhayati et.al., 2022). As a result, Indonesia's defamation framework reflects the legacy of the old Dutch system, which emphasized the protection of individual honor and reputation through both criminal and civil liability.

This colonial inheritance has continued to shape Indonesia's legal approach to defamation, embedding restrictive provisions that reflect older notions of protecting personal honor and state

authority. As a result, despite growing calls to align national laws with international human rights standards on freedom of expression, these inherited frameworks still influence the way defamation is prosecuted and perceived (Aqimuddin, 2024).

The defamation laws in Indonesia and similar jurisdictions persist in creating a ‘chilling effect’ wherein the fear of imprisonment or severe penalties deters open public dialogue, restricts journalistic inquiry, and stifles valid criticism or dissent, highlighting the ongoing conflict between colonial-era legal traditions and contemporary democratic ideals (Gligorijevic, 2021).

In 2008, Indonesia implemented the Electronic Information and Transactions (ITE) Law, which was subsequently reinforced by the 2022 Criminal Code to incorporate criminal penalties for defamation directed at public officials. These regulations have been vigorously enforced by governmental and judicial bodies, leading to the prosecution of journalists, activists, and citizens who express dissent regarding state policies (*Rights and Security International*, 2023).

This year of 2025, Indonesia continues to face significant challenges in safeguarding freedom of expression, as the inconsistent enforcement of defamation laws and the rapid growth of digital platforms have blurred the line between legitimate personal expression and punishable defamation. As a result, many individuals have faced prosecution for sharing opinions online, fueling an ongoing national debate about the scope, fairness, and democratic implications of Indonesia’s defamation regime (Perdana, R. B. (2025).

The definition and interpretation of behaviors deemed to harm a person's honor or reputation have broadminded through court practice in response to these difficulties. Indonesian courts have gradually clarified the elements and boundaries of defamation and offence statutes through a number of decisions, which has affected how they are actually applied for instance, the Supreme Court's Decision No. 5712 K/Pid.Sus/2024 jo. No. 202/Pid.Sus/2023/PN.JKT.Tim and Decision No. 1293 K/Pid.Sus/2015 jo. 351/Pid/2014/PT.BDG jo. 211/Pid.B/2014/PN.Bks are noteworthy.

B. Classifications of Defamation

The Indonesian Criminal Code, which contains a number of clauses intended to protect an individual's honor and reputation, has authority over defamation in Indonesia. Within this framework, defamation is divided into several categories, distinguished by factors such as the nature of the conduct, the method of communication, and whether the act was carried out with deliberate or malicious intent (Butt, S. 2023).

According to **Article 310 of the Indonesian Criminal Code**, defamation refers to any act that harms another person’s reputation by making an accusation intended to be publicly disclosed.

This may include statements expressed through writing, images, or other media that are distributed, displayed, or published in public. The regulation of defamation is further reinforced not only under the Criminal Code but also through **Law No. 11 of 2008 on Electronic Information and Transactions (ITE Law)**, which extends criminal liability to defamatory acts committed in digital or online spaces (*Human Rights Watch, 2010*).

The Principal Types of Defamation Recognized in the Criminal Code are Outlined Below:

The Indonesian Criminal Code, defamation is divided into four unique categories, each representing varying levels of severity, intent, and methods of expression. These classifications are designed to safeguard individual dignity while delineating the limits of acceptable speech in both public and private settings.

1. Slander

Slander represents the most serious form of defamation under the Criminal Code. As stipulated in Article 311, it involves making false or malicious accusations against another person, typically under the pretext of defending public interest or personal rights. When a court determines that the accusation is baseless and was made with intent to harm another's reputation, the act is reclassified as slander and carries heavier criminal penalties. This provision underscores the state's intention to hold individuals accountable for the deliberate misuse of speech that damages another's integrity or public standing with a punishment of nine months in jail or a greatest fine (*Muhamad Ali & Faisal Santiago, 2022*).

2. Simple or Mild Insult

Verbal or physical acts that publicly degrade another person, such as using derogatory language or making humiliating gestures, are considered mild insults **under Article 315**. Even though these offenses are not as serious as slander or defamation, they are nevertheless illegal under the Criminal Code in order to protect people's dignity when they are in public (*Dewa Ayu, 2022*). Beyond ordinary insults, the Criminal Code also provides heightened protection for state authorities under **Articles 134, 136, and 137**, which criminalize expressions or actions that offend the President and Vice President. These provisions, carrying penalties of up to six years' imprisonment, reflect the state's broader interest in safeguarding the symbolic integrity of its highest offices. Together, these articles demonstrate the layered approach of Indonesian law in regulating insults distinguishing between offenses against private individuals and those directed at the head of state (*Dewa Ayu, 2022*).

3. Libel

Libel refers to defamation in written, printed, or recorded form, including publications, online posts, or visual images. Unlike slander, libel is considered more permanent and therefore more serious, since written statements can be widely circulated and preserved over time. In most legal systems, including Indonesia under *Article 310(2) of the Criminal Code*, libel attracts heavier penalties because of its lasting impact on a person's reputation (Armstrong, 2018).

4. False Accusation or Report

Article 317 addresses the offense of intentionally providing or directing others to provide false information or complaints to law enforcement or public officials, resulting in damage to another person's reputation or dignity. The provision encompasses both direct acts of filing deceitful reports and indirect involvement, such as instructing someone to prepare falsified documents with the intent to defame. It underscores the principle that the legal system must not be misused to harm others through fabricated accusations or malicious reporting (Bennett, T. D. 2023).

5. False Allegation or Fabricated Evidence

According to *Article 318 of the Indonesian Criminal Code*, false allegations or fabricated proof constitute the last type of defamation. This clause punishes anyone who willfully fabricate evidence or manipulate circumstances in order to falsely accuse someone else of committing a crime. Such behavior goes beyond simple false reporting since it entails a deliberate effort to mislead the public and authorities by fabricating or arranging evidence to support a person's guilt. Being the most severe type of defamation, it can result in unfair prosecution, loss of freedom, and harm to the victim's reputation. Therefore, by guaranteeing that allegations are based on the truth rather than dishonest fabrication, Article 318 acts as a vital safeguard against the willful abuse of the legal system (Jaffe, Caron, Walsh, & Bierer, 2025).

III. LITERATURE REVIEW

Chhetri (2021) examines the concept of defamation in the digital era, emphasizing how cyber defamation has emerged as a complex legal and social issue in the twenty-first century. The authors define defamation in its modern context and argues that, in practice, it is increasingly used as a tool to limit freedom of expression rather than merely protect reputation (Shweta, 2021).

Saxena and Shadwal (2016) analyze the constitutional validity of criminal defamation through judicial interpretations, situating their discussion within the context of media and communication studies. Their research highlights how public sentiment and discourse trends

evolve over time, particularly in social media campaigns such as those advocating for net neutrality. The study observes that influential public figures can significantly shape online debates, illustrating how digital opinion clusters and collective attitudes shift across political, commercial, and social movements on platforms like X (Muddaraju, 2021)

Dubey (2020) provides a comprehensive overview of the law of defamation, discussing its social function in maintaining individual reputation and public trust. He asserts that reputation is an essential aspect of social existence, as it shapes how individuals are perceived and treated within their communities. According to Dubey, damage to one's reputation represents a profound personal and social harm, justifying the need for legal mechanisms to prevent or remedy false and injurious statements (Chaturvedi, 2022).

Within a justice-based framework, the regulation of criminal defamation presents an enduring challenge in balancing the protection of personal reputation with the fundamental right to freedom of expression. Scholars widely recognize that defamation, when criminalized, can have significant implications for justice, as it not only safeguards human dignity but may also restrict democratic participation and public accountability (*Cavico & Mujtaba, 2018*). The proportionality of punishment and the fairness of enforcement therefore become central concerns. Comparative experiences across jurisdictions reveal inconsistencies in how defamation laws are applied sometimes leading to excessive sanctions that discourage free speech, while in other cases failing to adequately protect individuals from reputational harm. This tension underscores the need for a justice-oriented reevaluation of defamation laws to ensure they operate within principles of fairness, necessity, and human rights protection (Svantesson, 2023).

The effectiveness of criminal defamation laws also depends on broader legal, institutional, and social factors. As Chen (2005) observes, the legislative structure and judicial interpretation of defamation provisions vary between legal systems, shaping how justice is perceived and delivered. Similarly, Lidsky (2000) emphasize that the power dynamics between the accuser and the accused often influence outcomes, raising concerns about access to justice and equality before the law. Wealthier or politically connected individuals may be able to use defamation law as a tool of intimidation, while marginalized voices face greater risk of criminal liability (*Priyanka, R. 2025*) This imbalance highlights the importance of embedding justice-based safeguards such as fair trial standards, evidentiary scrutiny, and judicial independence into the legal framework governing defamation (Fatos Selita, 2019).

In the digital era, the application of criminal defamation law has become even more complex.

Johnson and Gelb (2002) note that the rapid spread of information through online platforms has blurred the line between legitimate criticism and defamatory speech. The internet's global reach makes it easier for statements to cause reputational harm but also amplifies the risk of over-criminalization. A justice-based approach requires that states adapt their legal frameworks to uphold freedom of expression, while ensuring that protection against defamation is not used to suppress public discourse or political criticism. Thus, an appraisal of criminal defamation within a justice-based framework must aim to harmonize individual rights and societal interests protecting reputation without undermining justice, equality, and democratic accountability (Khan, & Yadav, S. 2024).

IV. SCHOLARLY PERSPECTIVES AND RESEARCH GAPS ON CRIMINAL DEFAMATION IN A JUSTICE-BASED FRAMEWORK

The existing literature reveals that criminal defamation laws still make it difficult to strike a balance between the right to free speech and reputation preservation. Its constitutional and digital aspects have been studied by scholars including Chhetri (2021), Dubey (2020), and Saxena and Shadwal (2016), while Cavico and Mujtaba (2018) and Svantesson (2023) highlight the continuous conflict between free expression and human dignity. The majority of recent research, however, is descriptive in nature and provides no insight into how criminal defamation can be reconciled with the concepts of justice, equity, and proportionality. Furthermore, research by Chen (2005) and Lidsky (2000) brings to light differences in power and enforcement, but little attention is paid to how these discrepancies function within changing legal frameworks. This gap necessitates more investigation into reorganizing defamation laws into a framework based on justice, one that guarantees fair reputation protection without compromising democratic engagement or the right to free speech.

V. RESEARCH METHODOLOGY

In order to evaluate and critically analyze legislation, court rulings, and academic publications pertaining to criminal defamation, this study uses a qualitative legal research technique based on a normative and doctrinal approach. In order to assess how closely current defamation laws, conform to justice-based principles, such as fairness, proportionality, and the protection of human rights, the study mainly looks at the Indonesian Criminal Code of 2023, the 1945 Constitution of the Republic of Indonesia, Law No. 11/2008 Regarding Electronic Information and Transactions, Penal Code of Indonesia of 1999 and the Indonesian Civil Code which was promulgated on April 30, 1847, through the State Gazette (Staatsblad) No. 23 of 1847, and it entered into force on January 1, 1848.among others.

In addition to the primary sources, secondary sources such as books, scholarly journals, and institutional reports were used. To provide a thorough grasp of the normative contradictions in the current defamation laws, analytical focus is given on the qualitative assessment of legislative intent, judicial reasoning, and doctrinal growth.

VI. DISCUSSIONS

The Regulation of Defamation under Indonesia's Criminal Law Framework: A Justice-Based Appraisal

A. Criminal Code

Defamation is covered by both criminal and civil law in Indonesia; the primary provisions are found in *Chapter XVI of the Criminal Code and Articles 1372–1380 of the Civil Code* respectively. According to the criminal laws, the severity of the defamatory act determines the penalty, which can range from several months to up to six years in prison. Although the Civil Code does not specifically define defamation, it does offer a framework for pursuing tort claims to recover damages to one's reputation. When combined, these laws show Indonesia's harsh yet broad approach to defamation, which aims to protect individual honor while also igniting ongoing discussions about justice, proportionality, and the conflict between freedom of expression and reputation protection in a legal system focused on justice (*Simbolon & Partners Law Firm. (n.d.)*)

The statute of limitations for defamation claims varies between civil and criminal procedures under Indonesian law. According to *Article 1380 of the Indonesian Civil Code*, a person must bring a defamation lawsuit in civil proceedings within a year after the act's commission and the plaintiff's acknowledgement of it. Defamation is typically considered a complaint offense in criminal prosecutions, which means that the offended person must file a complaint before prosecution can begin (Reni, 2021).

Under Indonesia's Criminal Code, state organizations and public officials are given extra protection in matters involving defamation. According to Article 316, if the person accused of defamation is a public official and the comment pertains to their official duties, the penalty for defamation may be enhanced by one-third. Additionally, the introduction of specific insult prohibitions in Articles 207 and 208 makes it illegal to intentionally insult or openly exhibit items that disparage public officials or other authorities. The maximum penalty for these infractions is one year and six months, highlighting the state's efforts to shield its institutions

and officials from criticism or harm to their reputation (*Indonesia Criminal Code, 2023*).

B. Electronic Information and Transactions of 2008

In 2008, Indonesia promulgated the Electronic Information and Transactions Law (ITE Law), which imposed criminal punishments for online defamation and insult. This law significantly expands defamation charges into the digital realm by imposing a maximum penalty of six years in prison and a fine of one billion rupiah (about US\$106,000) on anybody accused of publishing defamatory words online (*Arifin, Maskintama, & Pratama, 2020*).

Pretrial detention is only allowed under Indonesian law for crimes carrying a minimum sentence of five years in jail. As a result, anyone accused of defamation under the Criminal Code cannot be held in custody until a conviction. However, if detectives or prosecutors think there is a chance the suspect will run away, destroy evidence, or commit the same crime again, they may detain them for up to 50 days before their trial under the Electronic Information and Transactions (ITE) Law. This difference emphasizes how the ITE Law has more severe procedural ramifications than conventional defamation laws (*Arifin, Maskintama, & Pratama, 2020*).

Indonesia's principal political parties collectively supported the enactment of the Electronic Information and Transactions (ITE) Law during parliamentary deliberations. The legislation was reportedly passed without consultation from press regulators, and lawmakers were believed to have intentionally included stricter defamation provisions within its text. Analysts observed that segments of the government and parliament continued to show resistance toward press freedom, underscoring the persistent tension between regulation and free expression in Indonesia's legal framework (the Human Right Watch, 2010).

C. Content Removal and Access Termination under MOCI Regulation No. 5 of 2020

In accordance with MOCI Regulation No. 5 of 2020 on Private Scope Electronic System Providers, which was modified by MOCI Regulation No. 10 of 2021, individuals who believe they have been defamed online may request the Ministry of Communication and Informatics (MOCI) to restrict or remove defamatory digital content. This administrative measure can be pursued before initiating legal proceedings to prevent further reputational or economic harm (*Reni, Purnamawati, 2021*).

VII. CONCLUSION AND RECOMMENDATIONS

Indonesia's defamation laws indicate long-standing conflicts within the nation's legal system and illustrate the intricate relationship between upholding constitutional liberties and preserving

individual dignity. A complex legal framework that criminalizes and governs defamatory behavior in both traditional and digital contexts is made up of the Criminal Code, Civil Code, Electronic Information and Transactions (ITE) Law, and MOCI Regulations. Although the objective of these rules is to protect public order and individual honor, their heavy penalties, overlapping powers, and broad definitions have led to inconsistent enforcement and prompted major issues about proportionality, fairness, and the repression of free speech. Criminalizing speech, especially through the ITE Law, is increasingly seen as a control technique rather than a safeguard, frequently employed to frighten human rights advocates, journalists, and regular citizens who express criticism.

From a justice-based perspective, the framework for defamation in Indonesia shows that normative realignment and institutional transformation are required. Based on the concepts of necessity, fairness, and human rights, justice should not only be punitive but also provide a balance between the speaker's rights and reputational protection. The decriminalization of defamation should be the top priority of reforms, with a focus on civil remedies like compensation and public retraction rather than incarceration. Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which guarantees freedom of expression subject only to necessary and reasonable restrictions, is one example of how such a change would bring Indonesian legislation into compliance with international human rights norms.

Furthermore, even though the ITE Law has been in effect since 2008, rigorous reform is still required for its application and enforcement in order to avoid abuse and overreach. The vague language used in the statute, especially when defining concepts like 'defamation' and 'insult, has resulted in inconsistent interpretation and capricious prosecution. Therefore, to guarantee that its provisions are strictly executed within the bounds of the constitution, a clearer legislative framework is required. Legality and proportionality considerations must also serve as a guide for judicial and prosecutorial discretion in order to prevent the application of the law from undermining public accountability or democratic participation.

To sum up, a justice-based rebuilding of Indonesia's defamation law must prioritize balancing human rights and legal protection. To make sure that defamation laws fulfill their legal purpose without compromising public debate, the state should fortify institutional safeguards like independent monitoring agencies, court review procedures, and media self-regulation. In the end, Indonesia's dedication to a democratic society run according to the law will be evaluated by its capacity to protect freedom of speech and human dignity, making sure that justice is not only carried out but also perceived to be carried out in all areas of its legal system.

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