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# Criminalization of Consumers for Criticism Given to Companies Through Cyberspace in Theoretical Studies

*Kriminalisasi Konsumen Atas Kritik Yang  
Diberikan Kepada Perusahaan Melalui Dunia  
Maya Dalam Kajian Teoritis*

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## Abstract

The rapid maneuvering of technology has an impact on the trade sector. Social media is one of the communication mediums that is not uncommon to be used as a means of evaluating a product. However, not all product assessments circulating in the community have a positive impact on the company to be used as a means of product review, there are consumers who make an assessment of a product on social media in a way that is not good, causing harm to the company's image. Whereas the limitation of opinion in Indonesia is a juridical matter. The purpose of this paper is to be able to provide an analysis of the criminalization of consumers for criticism given to companies with criticism given through social media. The research method used in this research is normative juridical research



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method, conducted by studying and examining the application of legal norms. This study found that in the application of consumer criminalization of criticism given to companies through cyberspace, it can be done if he has fulfilled the elements as stated in the legislation. However, not a few perpetrators are let off by judges for several reasons related to the weak consumer protection regulations in Indonesia. So in this case, it is important for judges to be able to pay attention to expert theories in making decisions, such as Speech Act Theory and Injuria Sine Damno Theory.

**KEYWORDS:** *Criminalization, Consumer, Criticism, Company, Cyberspace*

Pesatnya perkembangan teknologi berdampak pada sektor perdagangan. Media sosial menjadi salah satu media komunikasi yang tidak jarang digunakan sebagai sarana untuk menilai suatu produk. Namun, tidak semua penilaian produk yang beredar di masyarakat memberikan dampak positif bagi perusahaan untuk dijadikan sarana review produk, ada konsumen yang melakukan penilaian terhadap suatu produk di media sosial dengan cara yang kurang baik sehingga merugikan citra perusahaan. Padahal pembatasan opini di Indonesia merupakan masalah yuridis. Tujuan dari penulisan ini adalah untuk dapat memberikan analisis mengenai pembedaan terhadap konsumen atas kritik yang diberikan kepada perusahaan dengan kritik yang diberikan melalui media sosial. Metode penelitian yang digunakan dalam penelitian ini adalah metode penelitian yuridis normatif, yang dilakukan dengan cara mempelajari dan mengkaji penerapan norma-norma hukum. Penelitian ini menemukan bahwa dalam penerapan pembedaan konsumen terhadap kritik yang diberikan kepada perusahaan melalui dunia maya, dapat dilakukan apabila telah memenuhi unsur-unsur sebagaimana yang tercantum dalam peraturan perundang-undangan. Namun, tidak sedikit pelaku yang dibebaskan oleh hakim karena beberapa alasan terkait lemahnya peraturan perlindungan konsumen di Indonesia. Maka dalam hal ini, penting bagi

hakim untuk dapat memperhatikan teori-teori ahli dalam mengambil keputusan, seperti Speech Act Theory dan Teori Injuria Sine Damno.

**KATA KUNCI:** *Kriminalisasi, Konsumen, Kritik, Perusahaan, Dunia Maya*

## Introduction

Domestic trade maneuvers are increasingly complex. As domestic data up to the third quarter of 2022, there are 2,987 Micro, Small and Medium Enterprises (MSMEs) and companies registered as vendors with 21,018 procurement transactions that have been completed with a transaction value of IDR 41.6 billion and will continue to grow.<sup>1</sup> This is one of the impacts of information digitization. Unlimited consumers with multiple strata cause producers to strive to market and distribute goods or services in the most efficient way. For this reason, all approaches are pursued so that they can cause various impacts, in order to get the maximum profit for the company. But keep in mind, in the context of producers, every production and distribution method chosen by producers will still have negative and positive impacts as a consequence of the option chosen. In each option, examples of negative impacts that can occur include those related to the quality or quality of goods, unclear information and even misleading in the public domain, counterfeiting and so on.<sup>2</sup> This information will have a domino effect on the company materially and non-materially.

Information that circulates can be in the form of various things, be it Online Customer Reviews or Online Customer Ratings as a form of

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<sup>1</sup> Muhammad Taufiq Hidayanto, "Saatnya UMKM Bangkit Bersama Digital Payment Marketplace," Cnbcindonesia.Com, 2022, <https://www.cnbcindonesia.com/opini/20221108092338-14-385932/saatnya-umkm-bangkit-bersama-digital-payment-marketplace>.

<sup>2</sup> Niru Anita Sinaga, "Pelaksanaan Perlindungan Konsumen Di Indonesia," *Jurnal Ilmiah Hukum Dirgantara* 5, no. 2 (2014): 72, <https://doi.org/10.35968/jh.v5i2.110>.

Electronic Word of Mouth (e-WOM).<sup>3</sup> Information circulating about a product can be one of the assessment indicators for a person to determine a purchase decision for that item.<sup>4</sup> Regarding information on a product circulating in the community, this has both positive and negative impacts on producers. Consumer behavior in the form of positive perceptions from consumers after using products with purchased brands can strengthen purchasing decision indicators and increase sales.<sup>5</sup> Vice versa, if there are negative perceptions from buyers expressed in e-WOM, it can weaken purchasing indicators for buyers and reduce sales figures. The purpose of e-WOM is to convey information, images, or ideas about a product in the form of goods or services. In this way, consumers consume and create product information.<sup>6</sup> This can have a positive or negative domino effect on the company, depending on the views of consumers who give these assessments which are then read publicly. With regard to this, basically every consumer has the right to be able to give his opinion regarding the products he consumes. In the context of freedom to give views, the current digital economy era makes consumers openly able to channel ideas, criticisms, and suggestions for reviews of business actors in the context of goods or services.<sup>7</sup>

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<sup>3</sup> Ahmad Farki, Imam Baihaqi, and Mulia Wibawa, "Pengaruh Online Customer Review Rating Terhadap Kepercayaan Place Di Indonesia" 5, no. 2 (2016): A615.

<sup>4</sup> E.-J. Lee and S.Y. Shin, "When Do Consumers Buy Online Product Reviews? Effects of Review Quality, Product Type, and Reviewer's Photo," *Computers in Human Behavior* 31 (2014): 356–366.

<sup>5</sup> Carmelia Cesariana, Fadlan Juliansyah, and Rohani Fitriyani, "Model Keputusan Pembelian Melalui Kepuasan Konsumen Pada Marketplace: Kualitas Produk Dan Kualitas Pelayanan (Literature Review Manajemen Pemasaran)," *Jurnal Manajemen Pendidikan Dan Ilmu Sosial* 3, no. 1 (2022): 213.

<sup>6</sup> A. R. Kanitra and A. Kusumawati, "Pengaruh Country Of Origin Dan Online Consumer Review Terhadap Trust Dan Keputusan Pembelian (Survei Pada Mahasiswa S1 Fakultas Ilmu Administrasi Universtas Brawijaya Angkatan 2015/2016 Dan 2016/2017 Tahun Akademik 2017/2018 Pembeli Produk Oppo Smartphon)," *Jurnal Administrasi Bisnis (JAB) Fakultas Ilmu Administrasi Universitas Brawijaya* 61, no. 1 (2018): 66.

<sup>7</sup> I Wayan Pertama Yasa, Ni Komang Arini Styawati Styawati, and Ni Made Puspasutari Ujianti, "Perlindungan Hukum Terhadap Ketentuan Me-Review Produk Dimedia Sosial," *Jurnal Interpretasi Hukum* 3, no. 1 (2022): 210–14.

Rules regarding consumer protection are an urgent matter for sellers as business actors, because it can be a guideline for companies to avoid bad behavior and can prevent losses for other buyers as consumers.<sup>8</sup> This consumer protection effort has 5 principles as stipulated in Article 2 of Law Number 8 Year 1999 which include the principle of benefits, the principle of justice, the principle of balance, the principle of consumer security and safety, and the principle of legal certainty.<sup>9</sup> Which in essence consumers and sellers have the right to receive benefits that do not harm one of the parties involved.<sup>10</sup> In this case, consumers can receive compensation, compensation, and / or replacement, if the goods and / or services received by consumers are not in accordance with the agreement that has been made and not as it should be.<sup>11</sup> According to Ida Siswanti, S.H., M.H. as Head of the Legal Counseling Section of the Legal Bureau of the Secretariat General of the Ministry of Defense of the Republic of Indonesia, explained that human rights are limited by the human rights of others. For this reason, everyone has the obligation to recognize and respect the human rights of others without exception, which also applies to any organization including the state and government.<sup>12</sup> This of course also applies to companies as *rechtspersoon* in the Indonesian legal system as legal subjects that carry legal rights and obligations. In the perspective of the company, the company is also entitled to protection.

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<sup>8</sup> Puteri Asyifa Octavia Apandy, Melawati, and Panji Adam, "Pentingnya Hukum Perlindungan Konsumen Dalam Jual Beli," *Jurnal Manajemen & Bisnis Jayakarta* 3, no. 1 (2021): 12–18, <https://doi.org/10.53825/jmbjayakarta.v3i1.85>.

<sup>9</sup> Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar* (Yogyakarta: Liberty, 1999).

<sup>10</sup> Apandy, Op. Cit., p.16.

<sup>11</sup> Wahyu Simon Tampubolon, "UPAYA PERLINDUNGAN HUKUM BAGI KONSUMEN DITINJAU DARI UNDANG UNDANG PERLINDUNGAN KONSUMEN," *Jurnal Ilmiah "Advokasi"* 4, no. 1 (2016): 53–61, <https://doi.org/10.1111/socf.12355>.

<sup>12</sup> Tim Publikasi, "HAM Adalah Hak Dasar Manusia Yang Harus Dilindungi Negara Dan Pemerintah," [Kemhan.go.id](https://www.kemhan.go.id), 2016, <https://www.kemhan.go.id/2016/05/18/ham-adalah-hak-dasar-manusia-yang-harus-dilindungi-negara-dan-p.html>.

The advent of social media has led to great developments in corporate communication media.<sup>13</sup> Social-media can be an efficient means of conveying a view or information to the general public. Given the extraordinary number of social media users reaching 1.49 billion for Facebook users and 304 billion for Twitter users, social media can be an efficient means of conveying views and information to the general public.<sup>14</sup> This does not include the number of users on other social media. In addition, the number of Instagram social media users globally reached 1.32 billion by January 2023 and will continue to grow.<sup>15</sup> In this case, social media can play a role as an effective means of communication that can generate an image for the company.<sup>16</sup> The role of social media for a company is like a knife with two eyes that can have positive and negative impacts. The positive impacts of social media for companies include expanding consumer reach, increasing two-way interaction, and building relationships with consumers.<sup>17</sup> Meanwhile, the negative impact of social media for companies is introducing inappropriate (fake) product information, spreading hoax news, and causing unhealthy competition. This can have a negative domino effect on the company.<sup>18</sup>

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<sup>13</sup> Rina Juwita, "Media Sosial Dan Perkembangan Komunikasi Korporat," *Jurnal Penelitian Komunikasi* 20, no. 1 (2017): 47–60, <https://doi.org/10.20422/jpk.v20i1.136>.

<sup>14</sup> *Ibid.*

<sup>15</sup> Cindy Mutia Annur, "Jumlah Pengguna Instagram Indonesia Terbanyak Ke-4 Di Dunia," *Katadata.co.id*, 2023, <https://databoks.katadata.co.id/datapublish/2023/05/04/jumlah-pengguna-instagram-indonesia-terbanyak-ke-4-di-dunia#:~:text=Menurut laporan We Are Social,32 miliar per Januari 2023>.

<sup>16</sup> Rangga Putra Perssela, Rajab Mahendra, and Winda Rahmadiani, "Pemanfaatan Media Sosial Untuk Efektivitas Komunikasi," *Jurnal Ilmiah Mahasiswa Kuliah Kerja Nyata (JIMAKUKERTA)* 2, no. 3 (2022): 650–56, <https://doi.org/10.36085/jimakukerta.v2i3.4525>.

<sup>17</sup> Ilham Salim Siregar, Nur Leli, and Ridha Tri Handayani, "Pemanfaatan Media Sosial Sebagai Alat Komunikasi Massa Dalam Memperluas Jangkauan Dan Meningkatkan Interaksi" 8, no. 2 (2023): 436–44.

<sup>18</sup> Tim Publikasi, "Dampak Penggunaan Media Sosial Dan Manfaat Untuk Bisnis," Biro Administrasi Kemahasiswaan Alumni dan Informasi (BAKAI) Universitas Medan Area, 2022, <https://bakai.uma.ac.id/2022/05/31/dampak-penggunaan-media-sosial-dan-manfaat-untuk-bisnis/>.



An example of a case related to consumer opinion on a product in a company and quite viral in Indonesia is the case of criticizing a tea consumer through social media twitter. In this case, the consumer's tweet complained about one of the products of the beverage company PT Esteh Indonesia Makmur. Through his tweet, the account called the Chizu Red Velvet beverage product owned by PT Esteh Makmur like 3 Kg of sugar, this tweet was also accompanied by a number of harsh words that were not good.<sup>19</sup> This then has implications for the birth of a subpoena issued by the beverage company to its consumers. This has a bad impact on the company's image due to the bad actions that have been carried out by one of its consumers. Based on the series of information as the author has described above, the author feels it is necessary to analyze the criminalization of consumer behavior against the company for criticism given publicly.

Similar previous research has been conducted by Syarifuddin, this research aims to describe the form of netizen hate speech in the Twitter account @esteh\_indonesia which can be categorized as a violation of the law. The results show that the results of the study prove that there are five forms of netizen hate speech in the comments of the @esteh.indonesia Twitter account, namely 1) insult, 2) defamation, 3) blasphemy, 4) provoking, and 5) spreading false news. The results of this study can increase public awareness about the existence of hate speech on social media platforms.<sup>20</sup> Other research that has been conducted is research conducted by Yasa showing that consumer legal protection against the provisions of reviewing products and / or services on social media allocated to consumer rights in expressing opinions when reviewing the use of a product / service on social media is regulated in the Consumer Protection Law, namely the right to obtain information that is in accordance with the facts, clear, and correct regarding the condition and guarantee of goods /

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<sup>19</sup> Huyogo Simbolon, "Kronologi Konsumen Kritik Soal Kadar Gula Berujung Somasi Es Teh Indonesia," *Liputan6.com*, 2022, <https://www.liputan6.com/regional/read/5079750/kronologi-konsumen-kritik-soal-kadar-gula-berujung-somasi-es-teh-indonesia>.

<sup>20</sup> Syafruddin, Aziz Thaba, and Refisa Ananda, "Ujaran Kebencian Netizen Indonesia Pada Akun Twitter Es Teh: Tinjauan Linguistik Forensik," *Semantik* 13, no. 1 (2024): 15–28, <https://doi.org/10.22460/semantik.v13i1.p15-28>.

services. From this review activity, the distribution of information to other communities is the main thing.<sup>21</sup> The above research discusses the legal review of consumer comments on a product. However, none of the research above discusses the criminalization of consumers for the criticism given. So that the author is interested in raising the title Criminalization of Consumers for Criticism Given to Companies Through Cyberspace in Theoretical Studies. Based on the background as stated above, the research questions of this study include: (1) What are Impact & Problems of Consumer Criticism to Companies Through Cyberspace? (2) How is the Juridical Analysis of Criminalization of Consumers for Criticism Given to Companies Through Cyberspace?

## **Methods**

The research method that the author implements in this research is the normative juridical research method, which is research conducted by examining and applying legal norms.<sup>22</sup> The data collection method employed in this research is a literature review, where relevant data is gathered through searching pertinent data sources. Specifically, legal materials are collected through an inventory and identification of relevant laws and regulations, journal articles, as well as a systematic classification of legal materials based on their relevance to the research questions under investigation.

## **Result and Discussion**

### **A. Impact and Problems of Consumer Criticism to Companies Through Cyberspace**

According to George Dickie, criticism is a judgment that depends on knowledge, experience, authority and critical culture. Terminologically, criticism boils down to two main functions, namely; first, judgment which means giving a view on something with good and bad values. And second,

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<sup>21</sup> I Wayan Pertama Yasa, Styawati, and Ujianti, "Perlindungan Hukum Terhadap Ketentuan Me-Review Produk Dimedia Sosial."

<sup>22</sup> Bambang Sunggono, *Metodologi Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2007). p.113.



interpretation or analysis. Criticism aims to improve or make corrections to something in it and provide an assessment that is objective, structured, and scientific.<sup>23</sup> For a company, giving opinions by consumers is expected to use good, correct and polite language in accordance with applicable norms so that there are no problems and multiple interpretations of views between people.<sup>24</sup>

Basically, facilities or containers for receiving various complaints in the form of criticism, input and suggestions are urgent in processing or handling complaints for evaluation.<sup>25</sup> Customer complaints are generally caused by problems such as weak accountability, lack of help provided by company staff, product availability, company regulations, and service improvements. This is certainly very much needed for a company that has a relationship with consumers to be able to improve company performance. By obtaining information and understanding the needs of customers, the company can fulfill the value intended by customers.<sup>26</sup>

Post-purchase customer online reviews are an important stage in the customer journey.<sup>27</sup> Feedback on products can take the form of criticism and suggestions submitted to the company. This is done to escalate the efficiency of customer relationship management. Responses submitted by a consumer can trigger efforts to develop and improve products or services

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<sup>23</sup> Cicin Yulianti, "Kritik: Pengertian, Ciri, Kaidah, Tujuan, Dan Contohnya," Detik.com, 2022, <https://www.detik.com/edu/detikpedia/d-6369946/kritik-pengertian-ciri-kaidah-tujuan-dan-contohnya>. <accessed 25/10/2023>.

<sup>24</sup> Made Emy Andayani Citra, Ni Komang Sutrisni, and Chandra Dwi Dewantara, "Perlindungan Hukum Terhadap Pelaku Usaha Dalam Transaksi Elektronik (E-Commerce) Atas Penilaian Buruk Konsumen Yang Ditimbulkan Dari Kesalahan Konsumen Sendiri," *Jurnal Hukum Saraswati (JHS)* 5, no. 1 (2023): 382.

<sup>25</sup> V. Tumuber, W Rumpas, and J Pombengi, "Penanganan Keluhan Masyarakat Pada Pelayanan Kesehatan Di Puskesmas Kecamatan Pasan Kabupaten Minahasa Tenggara," *Jurnal Administrasi Publik* 4, no. 58 (2018): 4.

<sup>26</sup> Feti Fatimah Maulyan et al., "Pengaruh Service Excellent Terhadap Citra Perusahaan Dan Loyalitas Pelanggan: Theoretical Review," *Jurnal Sains Manajemen* 4, no. 1 (2022):15.

<sup>27</sup> A Akyüz, "Determinant Factors Influencing EWOM," *Mediterranean Journal of Social Sciences* 4, no. 11 (2013): 159.

marketed by the company.<sup>28</sup> Consumer criticism can have a positive effect on Customer Loyalty. With increased customer satisfaction, the potential to create customer loyalty can be realized.

Social media plays an important role in increasing consumer engagement. The more time consumers spend interacting on social media platforms, the greater the expectation of interactions based on common interests, political views, or specific activities such as travel, food, tourism, and other services.<sup>29</sup>

In the variable regression test variable research conducted by Putri, social media is able to significantly influence the purchasing decision-making process. The analysis results show that the significance value of the purchase interest variable is 0.003, which is below the significance limit value (0.05), indicating that purchase interest plays an important role in significantly influencing purchasing decisions. Specifically, the direct effect of social media on purchasing decisions is 61.5%, while purchase intention contributes 38.5% to purchasing decisions, indicating that other factors also play a role in making purchasing decisions. The results of this study are also reinforced by previous research conducted by Balakrishnan, the results of electronic word of mouth, online communities, and online advertising on social media which are positive have a significant positive effect on purchase intention and vice versa.<sup>30</sup>

Social media has managed to attract attention from various sectors, including the business world.<sup>31</sup> The use of virtual media as a social tool

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<sup>28</sup> Jhony Putra Satria Arianto, "Pengaruh Customer Satisfaction, Brand Trust, Dan Customer Feedback Terhadap Customer Loyalty Pada Perusahaan Mobil Suzuki," *Jurnal Al-Qardh* 1, no. 1 (2017): 50–60.

<sup>29</sup> R.A. VanMeter and D.B. Grisaffe, "Of 'Likes' and 'Pins': Measuring Consumers' Emotional Attachment to Social Media," *Society for Marketing Advances Proceedings* 25, no. 1 (2013): 209.

<sup>30</sup> Balakrishnan et al., "The Impact of Social Media Marketing Medium Toward Purchase Intention and Brand Loyalty Among Generation Y," *Journal of Social and Behavioral Sciences* 148, no. 23 (2014): 177.

<sup>31</sup> Fenny Marietza and Natalia Kristiani Simbolon, "Pengaruh Inovasi Produk Dan Sosial Media Terhadap Kinerja Keuangan Perusahaan," *EKOMBIS REVIEW: Jurnal Ilmiah Ekonomi Dan Bisnis* 9, no. 2 (2021): 283–98, <https://jurnal.unived.ac.id/index.php/er/article/view/1388%0Ahttps://doi.org/10.37676/ekombis.v9i2.1388>. <accessed 25/10/2023>.

does not rule out the possibility of social conflict. Anyone has the freedom to express publicly their opinions, opinions, ideas and others, but excessive freedom in the absence of control often leads to potential polemics that ultimately lead to a misunderstanding.<sup>32</sup> This potential problem also applies to social interactions for companies and consumers online. Opinions channeled through a series of texts have the potential for readers to misunderstand the sentiments conveyed by the author.<sup>33</sup>

In Indonesia, there are many problems with consumer criticism given to companies through virtual media. The first problem with consumer criticism given to companies through virtual media is consumer criticism with inappropriate speech. The case related to this is the case between a youtuber with the initials RV and PT Garuda Indonesia, Tbk. PT Garuda Indonesia, Tbk reported youtuber RV to the police for alleged defamation. On the same day, Garuda Indonesia reported RV to Soekarno-Hatta Airport Police on charges of violating the Electronic Information and Transaction (ITE) Law related to defamation. RV was reported after posting a photo of a business class meal menu card handwritten by the airline and uploaded on RV's personal Instagram account Instastory on Saturday, July 13, 2019.<sup>34</sup> In his upload, RV wrote "the menu is still in the printing process sir" with a disappointed emoji.<sup>35</sup> The Youtuber was charged with Article 27 Paragraph 3 jo Article 45 Paragraph 3 and/or Article 28 Paragraph 1 jo Article 45A Paragraph 1 of Law Number 19 of 2016 on the Amendment to Law Number 11 of 2008 on ITE and/or

<sup>32</sup> A Rafiq, "DAMPAK MEDIA SOSIAL TERHADAP PERUBAHAN SOSIAL SUATU MASYARAKAT," *Jurnal Ilmu Sosial Dan Ilmu Politik* 3, no. 1 (2020): 18.

<sup>33</sup> Sherly Christina, "Sarcasm in Sentiment Analysis of Indonesian Text: A Literature Review," *Jurnal Teknologi Informasi Jurnal Keilmuan Dan Aplikasi Bidang Teknik Informatika* 13, no. 2 (2019): 58.

<sup>34</sup> Christiyaningsih, "Garuda Polisikan Youtuber Atas Dugaan Pencemaran Nama Baik," *News.Republika.co.id*, 2019, <https://news.republika.co.id/berita/puqdbm459/garuda-polisikan-youtuber-atas-dugaan-pencemaran-nama-baik>. <accessed 25/10/2023>.

<sup>35</sup> Nafiysul Qodar, "Dilaporkan Garuda Indonesia, Youtuber Rius: Tak Ada Maksud Cemarkan Nama Baik," *Liputan6.com*, 2019, <https://www.liputan6.com/news/read/4014187/dilaporkan-garuda-indonesia-youtuber-rius-tak-ada-maksud-cemarkan-nama-baik?page=3>. <accessed 25/10/2023>.

Article 310 and/or Article 311 of the Criminal Code, for allegedly defaming Garuda Indonesia.<sup>36</sup> But in the end, in a press conference held at Da Vinci Hotel, Sudirman, Central Jakarta, on Thursday (July 18, 2019), RV admitted that he had met with representatives from Garuda Indonesia. Rius stated that he and Garuda Indonesia had reached an agreement to settle the case amicably.<sup>37</sup> In addition, there is also a case of criticism made by consumers with inappropriate speech by a social media user with the initials G to the company PT Esteh Indonesia Makmur.

A social media user with the initials G mentioned that one of the product variants of Es Teh Indonesia is too sweet that he said it can cause diabetes.<sup>38</sup> This led to a subpoena given by PT Esteh Indonesia Makmur to G, which in essence conveyed that G's statement could potentially cause the dissemination of false and/or misleading information among consumers and the general public. In addition, the use of words that refer to animals and inappropriate terms, which are addressed to us as brand owners and creators of these beverage products, results in feeling insulted and contaminating our good name and hurting the feelings of the entire ES TEH INDONESIA family.<sup>39</sup>

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<sup>36</sup> Damar Juniarto, "Hentikan Kasus Pengunggah Foto Menu Makanan Garuda," Kumparan.com, 2019, <https://kumparan.com/damar-juniarto/hentikan-kasus-pengunggah-foto-menu-makanan-garuda-1rU31dd3xdH/1>. <accessed 25/10/2023>.

<sup>37</sup> Irfan Maullana, "Empat Fakta Terbaru Kasus Rius Vernandes, Trauma Hingga Penyelesaian Secara Kekeluargaan," Kompas.com, 2019, <https://megapolitan.kompas.com/read/2019/07/19/08174031/empat-fakta-terbaru-kasus-rius-vernandes-trauma-hingga-penyelesaian>. <accessed 25/10/2023>.

<sup>38</sup> Karta Raharja Ucu, "Viral, Es Teh Indonesia Somasi Pelanggan Yang Kritik Produk Minumannya Terlalu Manis," News.Republika.co.id, 2022, <https://news.republika.co.id/berita/rirp51282/viral-es-teh-indonesia-somasi-pelanggan-yang-kritik-produk-minumannya-terlalu-manis>. <accessed 25/10/2023>.

<sup>39</sup> Muhammad Renald Shiftanto, "Es Teh Indonesia Layangkan Somasi Pada Pelanggan Karena Kritik Soal Kadar Gula," Tribunnews.com, 2022, <https://www.tribunnews.com/bisnis/2022/09/25/es-teh-indonesia-layangkan-somasi-pada-pelanggan-karena-kritik-soal-kadar-gula?page=2>. <accessed 25/10/2023>.

The second problem with consumer criticism given to companies through cyberspace is criticism that brings down the company's reputation. The case related to this is the case between PM and Omni International Alam Sutera, which has officially changed its name to EMC Healthcare.<sup>40</sup> PM's story began when she was admitted to the emergency department of Omni International Hospital on August 7, 2008. While undergoing treatment, PM was dissatisfied with the services provided. She then conveyed this dissatisfaction through an electronic letter that she distributed to several parties. The hospital considered that Prita had defamed the hospital and a number of doctors.<sup>41</sup>

Over the course of five long years, PM experienced a complex legal journey. Finally, Prita found peace at the end of this journey. The final verdict of the Supreme Court (MA) stated unequivocally that PM was completely innocent in the defamation case against Omni International Hospital, Tangerang.<sup>42</sup> Basically, patients in their capacity as consumers of health services have the right to voice opinions and complaints regarding the health services they have received. This right is guaranteed by the provisions contained in Article 4 paragraph (4) of the Consumer Protection Law.<sup>43</sup> It should be noted that the Constitutional Court

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<sup>40</sup> Agustina Melani, "Sarana Meditama Metropolitan Ganti Nama RS OMNI Jadi EMC Hospitals," *Liputan6.com*, 2021, <https://www.liputan6.com/saham/read/4711858/sarana-meditama-metropolitan-ganti-nama-rs-omni-jadi-emc-hospitals?page=2>. <accessed 26/10/2023>.

<sup>41</sup> Tim Publikasi, "Inilah Curhat Yang Membawa Prita Ke Penjara," *Nasional.Kompas.com*, 2009, <https://nasional.kompas.com/read/2009/06/03/1112056/inilah.curhat.yang.mem.bawa.prita.ke.penjara?page=all>. <accessed 26/10/2023>.

<sup>42</sup> Tim Publikasi, "Ini Dia Kronologi Prita Mencari Keadilan," *News.Detik.com*, 2012, <https://news.detik.com/berita/d-2023887/ini-dia-kronologi-prita-mencari-keadilan#:~:text=Setelah lama di tengah samudera,bai RS Omni Internasional%2C Tangerang.&text=Prita memeriksakan kesehatan di Rumah Sakit Omni Internasional Tangerang%2C Banten>. <accessed 26/10/2023>.

<sup>43</sup> Wahyu Andrianto, "Pasien, Konsumen Yang Unik Oleh Wahyu Andrianto, S.H., M.H.," *Law.UI.ac.id*, 2022, <https://law.ui.ac.id/pasien-konsumen-yang-unik-oleh-wahyu-andrianto-s-h-m-h/#:~:text=Pasien sebagai konsumen jasa pelayanan kesehatan mempunyai hak untuk didengar,pelayanan kesehatan yang telah dipergunakannya>. <accessed 26/10/2023>.

Decision No. 50/PUU-VI/2008 provides an interpretation that insult and/or defamation cannot be separated from the elements set out in Article 310 and Article 311 of the Criminal Code. If we review the formulation of the elements of the criminal offense as contained in Article 310 of the Criminal Code, the elements include intentionality, acts committed without rights, with the aim of damaging good name or honor, and to make the information known to the general public.<sup>44</sup>

The third problem with consumer criticism given to companies through virtual media is consumer criticism that contains lies. The case related to this is the case of the circulation of fake news that happened to PT Ajinomoto Indonesia in 2019. In this case, fake news circulated that Ajinomoto seasoning products tested positive for pork. Deputy Director of Socialization and Information of the Indonesian Ulema Council (LPPOM MUI) Food, Drug, and Cosmetics Assessment Institute (LPPOM MUI), Osmena confirmed that the message was certainly untrue news.<sup>45</sup> The spread of fake news that spread in chains through the WhatsApp application certainly had an impact on the sales of PT Ajinomoto Indonesia's products. In addition, in 2020, there was also the spread of fake news that befell PT Ajinomoto, PT Sasa Inti, and PT Indofood Sukses Makmur Tbk. through social media. A Facebook social media user with the account name Cindy Cimouts spread a list that included spices containing pork.<sup>46</sup> This fake news can certainly have a bad impact on the company itself. This circulating news can have an effect on

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<sup>44</sup> Nanda Wijayanto and Nynda Fatmawati Octarina, "Perlindungan Konsumen Dari Jerat Kriminalisasi Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik: Studi Kasus Putusan Nomor 658/Pid. Sus/2021/Pn Sby," *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 3, no. 1 (2023): hlm. 1079.

<sup>45</sup> Gita Amanda, "Beredar Pesan Ajinomoto Mengandung Babi, MUI: Itu Hoaks." *Republika Online*. *Republika Online*, July 24, 2019. Last Modified July 24, 2019. Accessed October 27, 2023., "News.Republika.co.id, 2019, <https://news.republika.co.id/berita/pv4kyc423/beredar-pesan-ajinomoto-mengandung-babi-mui-itu-hoaks>. <accessed 27/10/2023>.

<sup>46</sup> Gloria Natalia Dolorosa, "[HOAKS] Bumbu Masakan Sejumlah Merek Mengandung Babi," *Kompas.com*, 2020, <https://www.kompas.com/tren/read/2020/12/17/111000565/-hoaks-bumbu-masakan-sejumlah-merek-mengandung-babi?page=all>. <accessed 27/10/2023>.



many people by damaging an image and credibility of the company.<sup>47</sup> Not only that, social media is also a concise and easy means to channel negative opinions, and is difficult to monitor or control by the authorities.<sup>48</sup>

## **B. Juridical Analysis of Consumer Criminalization for Criticism Given to Companies Through Cyberspace**

Based on Article 4 letter d in the Consumer Protection Law, it is stated that one of the rights that consumers have is the right to voice their opinions and complaints regarding the goods and/or services they use. From the perspective of business actors, Article 7 letter e in the Consumer Protection Law stipulates that business actors have an obligation to provide opportunities for consumers to test, try, and provide guarantees and/or warranties for the goods they produce and/or trade.

Defamation carried out on social media is specifically bound by Article 27 paragraph (3) of the Information and Electronic Transactions Law as follows:

*“Any Person intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents which contain insulting and/or defamatory content.”*

Article 27 paragraph (3) of the ITE Law does not apply if the content someone uploads via social media is in the form of an assessment, opinion, evaluation result or statement. Therefore, based on the Joint Decree of the Minister of Communication and Information, the Attorney General, and

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<sup>47</sup> Aulia Afriza and Julio Adisantoso, “Metode Klasifikasi Rocchio Untuk Analisis Hoax Rocchio Classification Method for Hoax Analysis,” *Jurnal Ilmu Komputer Agri-Informatika* 5, no. 1 (2018): 1–10, <http://journal.ipb.ac.id/index.php/jika>. <accessed 26/10/2023>.

<sup>48</sup> Roida Pakpahan, “Analisis Fenomena Hoax Diberbagai Media Sosial Dan Cara Menanggulangi Hoax,” *Konferensi Nasional Ilmu Sosial & Teknologi (KNiST)* 1, no. 1 (2017): 479–84, <http://seminar.bsi.ac.id/knist/index.php/UnivBSI/article/view/184>. <accessed 26/10/2023>.

the National Police Chief Number 229 of 2021, 154 of 2021, and KB/2/VI/2021 of 2021, it is explained that criminal acts violate Article 27 paragraph (3) of the Law ITE only applies if the content that is transmitted, distributed, or created and made publicly accessible is insulting in the form of insults, ridicule, or harsh words. In such cases, the action can be charged as a minor insult offense as regulated in Article 315 of the Criminal Code, in accordance with the explanation in Law Number 19 of 2016, and is not included in Article 27 paragraph (3) of the ITE Law.

Insults and/or defamation refer to provisions that cannot be separated from Article 310 and Article 311 of the Criminal Code. However, if the content falls into the category of insulting by swearing, ridiculing, or using inappropriate words, then it can more precisely be classified as a mild insult offense under Article 315 of the Criminal Code.

Criticism expressed by consumers regarding goods or services from social media should not be taken lightly. Consumers have the right to express ideas or provide comments on a product in various media, provided that such expressions must be carried out with good ethics and within the applicable legal framework.<sup>49</sup>

Basically, there are limitations that are constructed due to the rights and interests of other parties which should be respected.<sup>50</sup> When presenting goods or services through reviews, it is very important to pay attention to good grammar, speak politely, behave politely, and dress modestly. Even though it seems like simple things, it is very important to take care of it so as not to hurt the subjective feelings of the other party.<sup>51</sup>

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<sup>49</sup> W Wagiman, "Nilai, Asas, Norma, Dan Fakta Hukum: Upaya Menjelaskan Dan Menjernihkan Pemahamannya.," *Jurnal Filsafat Hukum* 1, no. 1 (2016): 53.

<sup>50</sup> Nur Yusriyyah Bakhtiar, La Ode Husen, and Muhammad Rinaldy Bima, "Pemenuhan Hak Kebebasan Berpendapat Berdasarkan UU Nomor 9 Tahun 1999 Tentang Kemerdekaan Berpendapat Di Muka Umum," *Journal of Lex Theory (JLT)* 1, no. 1 (2020): 44.

<sup>51</sup> Putu Sari Devi dan Suatra Putrawan Carina, "Perlindungan Hukum Konsumen Yang Melakukan Review Produk Barang Atau Jasa Di Media Sosial," *Kertha Semaya* 6, no. 2 (2018): 7, <https://www.liputan6.com/news/read/4015321/4-hal-kasus-rius-vernandes->. <accessed 26/10/2023>.

The next limit is not to cross the line of politeness norms. Basically, consumers have limitations regarding this when providing opinions on a product/service purchased from social media. The norm of politeness is one of the things that is urgent to pay attention to if you want to convey a review of your views.<sup>52</sup>

Apart from the limitations as stated above, it is also important for consumers to pay attention to business ethics. Business ethics has meaning as an idea of morality related to economic and business activities.<sup>53</sup> Within the framework of business ethics, consumers who provide reviews about a product or service are expected to reveal the true facts. This is important because it can encourage business actors to have more accountability and support the creation of good competition in the business world.<sup>54</sup>

Basically, criticism conveyed is prohibited for violating ethics. If the criticism given violates ethics or is unethical, the behavior violates and is not in line with ethical norms.<sup>55</sup> In accordance with Article 28J of the 1945 Constitution of the Republic of Indonesia, there is a goal to ensure legal protection for opinions. This aims to create peace in social life and ensure justice in guaranteeing human rights, so that these rights are not abused or used as a tool to provoke hostility.<sup>56</sup>

There are several theories that can be implemented in terms of analyzing the limits of criticism, the first theory is Speech Act Theory by John Langshaw Austin and John Searle. This theory discusses how someone achieves what they want to achieve using words and identifies what is needed to make a successful statement. This theory assesses that a person's words are seen more in terms of the meaning of the speech.<sup>57</sup> For example, when making a promise, someone is communicating the

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<sup>52</sup> Agung Gumelar and Rabiah Z Harahap, "Perlindungan Hukum Konsumen Dari Delik Pencemaran Nama Baik Suatu Produk Di Media Sosial Abstrak B. Pembahasan Hukum Perlindungan Konsumen Dalam Kasus Pencemaran Nama Baik Di Media Sosial" 2 (2023): 40.

<sup>53</sup> Muslim. M, "Urgensi Etika Bisnis Di Era Global," *Jurnal Esensi Institut Bisnis Nusantara* 20, no. 2 (2017): 150.

<sup>54</sup> Carina, *loc.cit.*

<sup>55</sup> Bakhtiar, *loc.cit.*

<sup>56</sup> Permatasari, *loc.cit.*

<sup>57</sup> Abdul Chaer, *Sosiolinguistik : Perkenalan Awal* (Jakarta: Rinneka Cipta, 2004). p.16

intention or intent to do something in the future. Basically, speech acts with elements of hatred on social media can lead to actions and reactions that are detrimental to social harmony.<sup>58</sup>

In executing this theory, you can use judgment through Perlocutionary Act. Perlocutionary Act has the meaning of a speech act that makes the speech partner do, feel, or do something. If someone is accused of defaming someone, then he must be able to prove that the speech act he performed did not have the intention of defaming the victim or in this case influencing the person he was speaking to to do something. If he cannot prove this, he can be punished by the court.

Perlocutionary Act relates to the reaction or effect obtained by the listener as a result of the speaker's words. Apart from that, you can apply a deeper assessment using analysis of the concept of Illocutionary Act, which is a speech act to do something with the intention conveyed by the speaker. Illocutionary Act is concerned with what speakers do through language to achieve communicative goals. In the example above, the Perlocutionary Act is the result achieved from the request, such as making the listener feel happy or willing to help after being asked, while the Illocutionary Act is the speaker's action in asking for help.

The next theory that can be implemented is the *Injuria Sine Damno* Theory which was coined by Sir William Searle Holdsworth. This theory focuses on the idea that in cases of slander (slander or libel), legal action can be taken based on the principle that the action is an act that is detrimental to a person's reputation, without having to prove any concrete financial losses (damages) resulting from the defamatory statement. This term comes from Latin, meaning, "injury without damage", that is, an absolute violation of personal rights, without actual damage or loss. Whenever a legal right is violated, the person who has that right has the right to file a lawsuit, to recover damages.<sup>59</sup>

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<sup>58</sup> Rika Astari et al., "Tindak Tutur Curahan Hati Istri Pertama Pada Konflik Keluarga Poligami Muslim Di Indonesia," *KEMBARA: Jurnal Keilmuan Bahasa, Sastra, Dan Pengajarannya* 9, no. 1 (2023): 135–46, <http://ejournal.umm.ac.id/index.php/kembara>.

<sup>59</sup> Akhya, "Damnum Sine Injuria and Injuria Sine Damnum in Law of Torts," *Black N' White Journal*, 2020, <https://bnwjournall.com/2020/05/23/damnum-sine->

In this context, "*injuria*" refers to harm to one's reputation, while "*sine damno*" means without concrete financial loss. In other words, if someone has suffered insult or defamation due to a defamatory statement, they can bring legal action without having to prove that they suffered actual financial loss as a direct result of the statement. This theory can be used as a basis for judgment for judges to decide on consumer criminal actions for criticism given to companies via cyberspace. In this law enforcement process, personal data belonging to consumers will be collected for the sake of the law enforcement process as mandated by Article 8 and Article 15 paragraph 1 letter b of Law Number 27 of 2022 concerning Personal Data Protection.

## Conclusion

Consumer criticism is an important forum for companies to be evaluated, this also applies to criticism made on social media. Consumer criticism given to companies on social media actually has protection through Law Number 8 Year 1999. Consumers have the right to criticize the company for what they have experienced. However, it is important for a consumer to be able to know the limits in giving criticism, namely not giving insults that are categorized as diatribes, ridicule, and / or inappropriate words. In addition, there are business ethics that consumers must also understand. Criminalization can be given to consumers who violate the mandate of the law. In the application of consumer criminalization for criticism given to companies through cyberspace, it can be done if it has fulfilled the elements as stated in the legislation. However, not a few perpetrators are let off by judges for several reasons related to the weak consumer protection regulations in Indonesia. So in this case, it is important for judges to be able to pay attention to expert theories in making decisions, such as Speech Act Theory and *Injuria Sine Damno* Theory.

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