

# **A Legal Review of Roasting Actions by Comedians from the Perspective of Positive Law on Reputation Protection in Indonesia**

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## **Abstract**

This study examines the legal implications of roasting in stand-up comedy from the perspective of Indonesian positive law, particularly in relation to the protection of reputation, dignity, and honor. Roasting, as a comedic technique involving satirical criticism often directed at public figures, raises legal concerns when it potentially infringes upon the personal rights

of those being criticized. This research employs a normative-dogmatic legal method using legislative and conceptual approaches to analyze the applicable legal framework, including the Criminal Code (KUHP), the Law on Information and Electronic Transactions (UU ITE), and the Personal Data Protection Law (UU PDP). The analysis is grounded in legal protection theory and the principle of legal utility, emphasizing that while freedom of expression constitutes a fundamental human right, it must be balanced against the rights to privacy and reputation. The findings indicate that defamation under Indonesian law constitutes a complaint-based offense, whereby legal proceedings may only be initiated upon a report by the injured party. Consequently, roasting conducted with the explicit consent of the subject, supported by a prior agreement regarding content and delivery, does not constitute an element of a criminal offense. This study proposes the use of written contracts between comedians and their subjects as a preventive legal mechanism to ensure legal certainty and minimize potential disputes. Ultimately, the study concludes that roasting, when appropriately regulated and based on mutual consent, can coexist with legal norms safeguarding individual dignity, thereby harmonizing freedom of expression with the right to reputation.

### **Keywords**

*Roasting; Defamation; Reputation; Freedom of Expression.*

## I. Introduction

Communication in human life can be carried out in various forms and for different purposes, one of which is for entertainment. Solo Comedy, or popularly known as Stand-Up Comedy, is a form of entertainment enjoyed by the public. Stand-Up differs from regular comedy shows. Stand-Up Comedy is a form of comedic performance art presented individually (monologue) by a comedian. A comedian, who performs solo comedy, has a different performance pattern from a communication perspective, distinct from that of regular comedy shows.<sup>1</sup> The Comedian will present the material through a monologue comedy performance with a humorous portrayal.<sup>2</sup>

In Stand-Up Comedy, a comedian must create material that can entertain the public. This material can be presented in various forms, such as content for joking, content for entertainment, or content to express societal concerns. Material that aims to express societal concerns can take the form of criticism or satire, ranging from light to intense, and can serve as social commentary or social critique directed at individuals.

Social critique is a form of public communication that serves as a tool for social control over the functioning of the government. Social critique can also be understood as an expression of the community's concern for certain social events and conditions occurring within society, whether they are positive or negative.<sup>3</sup> This social critique is delivered by comedians informally and orally through solo comedy performances. One example of social critique presented by a comedian in a stand-up comedy show is Pandji Pragiwaksono in the Pragiwaksono World Tour (2019), who incorporated several social critiques such as

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<sup>1</sup> Kharisma Putri Cahyani, Yudha Tria Ariansyah, and Achmad Abimubarak, "Gaya Bahasa Ironi Stand Up Comedy Mamat Al Katiri Dalam Konten Youtube Somasi," *Referen* 1, no. 2 (2022), <https://doi.org/10.22236/referen.v1i2.10246>. pg. 3

<sup>2</sup> Mustafid Mustafid, "Hukum Perbuatan Roasting Dalam Stand Up Comedy Ditinjau Berdasarkan Ketentuan Syari'at Islam," *Yurisprudentia: Jurnal Hukum Ekonomi* 7, no. 2 (2021), <https://doi.org/10.24952/yurisprudentia.v7i2.4691>. pg.1

<sup>3</sup> Dimas Prasetyo Sudjarmiko and Didik Hariyanto, "Satire Dan Kritik Sosial Dalam Stand-Up Roasting Mamat Alkatiri," *Journal of Library and Archival Science* 1, no. 1 (2024), <https://doi.org/10.47134/jip.v1i1.2744>. pg. 2

criticism of children's names, criticism of child YouTubers, criticism of the chairman of the PSSI, criticism regarding wildlife, and criticism of the characteristics of Indonesian citizens.<sup>4</sup> Not only Pandji, but comedians who frequently deliver social criticism, such as Coki Pardede, also present social critiques concerning religious intolerance, racism, and various other social issues in their stand-up comedy performances. Essentially, these social criticisms are conveyed through comedy, allowing the message to be easily understood by the audience.

The second type of criticism is Social Criticism aimed at individuals, commonly referred to in modern terms as Roasting. Roasting is a technique in Stand-Up Comedy intended to critique someone, delivered through comedy.<sup>5</sup> Roasting is carried out with the aim of providing criticism or feedback to someone but is done in a way that mocks or ridicules. Before performing a roast, the comedian studies the background of the person who will be roasted. It involves social critique regarding any social phenomena arising from the policies or actions of the person being roasted. Prior to performing a roast, the comedian must consult with and obtain approval from the Party (Subject) who will be roasted. Based on the consent (agreement) between the comedian and the Party (Subject) to be roasted, the comedian has the right to present the roast, even though the material presented by the comedian during the roast inevitably touches on the reputation or good name of the person being roasted, as typically, those roasted are public figures or officials.

Good name or reputation is one of the human rights, namely the right to privacy protected by law. Essentially, a good name is always attached to an individual. No one would appreciate having their good name or reputation tarnished or misused by others. According to McNamara, the relationship between reputation, privacy, and defamation is close and highly significant. For instance, violations of

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<sup>4</sup> Reynord Leonardo and Ahmad Junaidi, "Kritik Sosial Dalam Stand Up Comedy (Analisis Semiotika Show 'Pragiwaksono World Tour')," *Koneksi* 4, no. 2 (2020), <https://doi.org/10.24912/kn.v4i2.8077>. pg. 4

<sup>5</sup> Gusti Ayu Gde Sosiowati and Nanda Rusista, "Roasting Dalam Komedi," *Prosiding Seminar Nasional Bahasa Ibu (SNBI)* 1, no. 1 (2024), <https://ojs.unud.ac.id/index.php/snbi/article/view/DOI%3ASNBI.2023.101.p08>. pg. 2

privacy are very relevant to the recovery of damages arising from the disclosure of a person's sexual orientation without consent. This indicates a close relationship between an individual's self-esteem and their status in the eyes of society.<sup>6</sup>

Everyone has the right to have their reputation protected, as mandated by Article 12 of the Universal Declaration of Human Rights (UDHR), which states, "No one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence, nor to attacks upon his honor and reputation". The UDHR clearly and firmly stipulates that a person's honor and reputation must be fundamentally protected as human rights inherent to every individual.<sup>7</sup> Protection of a person's honor and reputation also includes safeguarding the good name of every individual.

Provisions regarding the Law on the Protection of Honor, Good Name, and Reputation are closely related to the act of Roasting carried out by comedians during Solo Comedy performances. Several cases of Roasting that resulted in offense include those carried out by comedian Mamat Alkatiri against Hillary Brigitta Lasut in 2022, where the Roasting led to a police report filed by Hillary Brigitta Lasut against Mamat Alkatiri.<sup>8</sup> The report against Hillary has been withdrawn due to a settlement reached through an apology from Mamat Alkatiri to Hillary Brigitta Lasut. In addition to Roasting Mamat Alkatiri, another comedian, Ridwan Remin, was also reported by Ruben Onsu to the Indonesian Child Protection Commission (KPAI) due to a roasting performed by Ridwan towards Child B, the child of Ruben Onsu. Ruben Onsu's report was also withdrawn following a settlement achieved through mediation conducted by both parties.

The cases above demonstrate that although Roasting serves as Social Criticism that raises public social concerns through comedy, and

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<sup>6</sup> Lawrence McNamara, *Reputation And Defamation*, 1st ed. (New York: Oxford University Press, 2007). pg. 194.

<sup>7</sup> Joshua Evandeo Irawan and Claresta Devina Valencia, "The Enforcement of Defamation Law Regarding the Creation of a 'Meme' Sticker on WhatsApp," *Indonesian Journal of Criminal Law Studies* 9, no. 2 (2024), <https://doi.org/https://doi.org/10.15294/ijcls.v9i2>. pg. 292

<sup>8</sup> Tempo, "Mamat Alkatiri Dilaporkan Ke Polisi Setelah Stand Up Comedy, Apa Itu Roasting Dalam Komedi?," Tempo, 2022.

there is already an agreement between the Comedian and the Subject, it still frequently gives rise to problems. Essentially, even if Roasting is conducted based on an agreement, a person's Good Name, Reputation, and Honor remain fundamental human rights that are inherently subjective. Therefore, legal analysis must be conducted in addressing this phenomenon. The law must be present to provide certainty, justice, and legal benefits to ensure that Human Rights concerning freedom of association and expression remain protected, while at the same time upholding human rights, particularly in this case, the right to Privacy. In the writing of this research, the research team will endeavor to elaborate on the Roasting performed by Comedians during Stand-Up Comedy performances, in relation to the positive legal regulations that protect the Good Name and Honor of Indonesian citizens, namely the Criminal Code (KUHP), the Information and Electronic Transactions Law (UU ITE), and the Personal Data Protection Law (UU PDP).

Before this research was conducted, the research team found several previous studies related to Roasting Stand-Up Comedy, such as research article entitled “*Etika Roasting di Indonesia: Perspektif Hukum Islam*”.<sup>9</sup> This article was written by Ismail Jalili and colleagues in 2024. The final result of this study, from the perspective of Islamic law, is that communication ethics, including in the practice of roasting, must always be based on moral principles and religious teachings that emphasize goodness, honesty, and respect for others. Essentially, this study affirms that roasting is acceptable as long as it is conducted ethically and does not hurt others' feelings. The main differentiating element between the research conducted by the authors' team and previous studies is that previous research focused solely on ethics and Islamic legal guidelines, whereas the research team analyzed the practice of roasting more generally based on positive law that protects the good name, honor, and reputation of every Indonesian citizen.

Another Research that we found is the article entitled “*Hukum Perbuatan Roasting Dalam Stand Up Comedy Ditinjau Berdasarkan*

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<sup>9</sup> Ismail Jalili, Fadillah Ulfa, and Napisah, “Etika Roasting Di Indonesia: Perspektif Hukum Islam,” *Taqrib: Journal of Islamic Studies and Education* 2, no. 1 (2024), <https://doi.org/10.61994/taqrib.v2i1.626>. pg. 51

*Ketentuan Syari'at Islam*".<sup>10</sup> This article was written by Mustafid in 2021. The final result of the research conducted by Mustafid is that Roasting performed by comedians, which contains elements of mocking a certain group, society, or individual, is prohibited by Islamic law. The novelty brought by the Writing Team in responding to previous research is that the team in the latest study aims to explore the elements of Roasting and compare them with the Positive Law applicable nationally to all citizens of Indonesia, without reference to any religious law. The research team will attempt to determine which types of Roasting are permissible and which are not permissible or are contrary to the law.

In addition, we also found research on "*Penanganan Tindak Pidana Pencemaran nama Baik yang Dihubungkan dengan KUHP*".<sup>11</sup> This research was written by Gilang Rizky Ramadhan et al. in 2024. The final result of this study is that there are three (3) types of defamation crimes regulated under positive law in Indonesia, namely verbal/written defamation as stipulated in Article 310 of the Criminal Code, defamation carried out through electronic information and transactions regulated in the ITE Law, and other violations such as false accusations or minor insults regulated in Articles 315 and 317 of the Criminal Code. In response to previous research, the research team stated that the main distinction and novelty presented in this latest study is the focus on Roasting actions performed by comedians in stand-up comedy. The research team aims to determine whether Roasting can be considered a violation of criminal law provisions concerning defamation crimes, whether regulated under the Criminal Code, the ITE Law, or the PDP Law.

The Research Team did not find any previous studies related to the legal analysis of Roasting by comedians in stand-up comedy shows. The Research Team found many other studies regarding criminal acts of defamation in general, which do not specifically address Roasting.

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<sup>10</sup> Mustafid, "Hukum Perbuatan Roasting Dalam Stand Up Comedy Ditinjau Berdasarkan Ketentuan Syari'At Islam." pg. 1

<sup>11</sup> Gilang Rizky Ramadhan, Yosaphat Diaz, and Asmak Ul Hosnah, "Penanganan Tindak Pidana Pencemaran Nama Baik Yang Dihubungkan Dengan KUHP," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 2, no. 1 (2024), <https://doi.org/10.61104/alz.v2i1.208>. pg. 51

Therefore, this study can be said to be research with a unique novelty, as it examines Roasting actions from the perspective of positive law in Indonesia.

## II. Method

The type of research in this study uses Normative-Dogmatic Legal Research. Normative Legal Research is a process for discovering legal rules, legal principles, and legal doctrines in order to address the legal issues encountered.<sup>12</sup> The legal issue that the author seeks to explore in this study concerns the position of Roasting in relation to the criminal acts of Insult and Defamation. The researcher employs the theory of legal protection in the analysis, linked with the prevailing legal regulations, in order to normatively and dogmatically examine the position of Roasting. In this study, roasting is limited to the roasting activities carried out directly during stand-up comedy events, whether presented offline or online.

In this normative juridical study, several legal interpretations are applied, namely Grammatical and Systematic Interpretation. Grammatical Interpretation is the interpretation using a language dictionary or a linguist's explanation of a word.<sup>13</sup> In this study, the term that the Author aims to define is "Roasting," which is not authentically found in the law. Therefore, the author employs grammatical interpretations from several dictionaries and expert opinions regarding the phrase. Systematic Interpretation is an interpretation carried out by analyzing laws according to the existing legal system. In systematic interpretation, legislative regulations must always be considered in relation to other legislation. In this study, the author examines the relationship between laws in exploring the issue of roasting in stand-up comedy. Legislation that is interpreted systematically includes, among others, the ITE Law, the Human Rights Law, and the Indonesian

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<sup>12</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, 2010, pg. 35.

<sup>13</sup> Yudha Bhakti Ardhwiwisastra, *Penafsiran Dan Konstruksi Hukum*, 2nd ed. (Bandung: PT ALUMNI, 2008), pg 9.



Criminal Code, in analyzing roasting conducted by stand-up comedy both online and offline, which relates to human rights concerning personal dignity (reputation) and the right to seek redress for defamation.

The problem approach in this research uses a statute approach and a conceptual approach. The statute approach is “an approach that involves examining all laws and regulations related to the legal issue being addressed”.<sup>14</sup> Meanwhile, the conceptual approach refers to an approach to problems based on the opinions of scholars as a supporting foundation.<sup>15</sup>

The sources of legal materials used by the author in this research are as follows:

- a. Primary legal materials in the form of:
  1. The Constitution of the Republic of Indonesia of 1945
  2. The Universal Declaration of Human Rights
  3. International Covenant on Civil and Political Rights
  4. Indonesian Civil Code
  5. Law No. 1 of 1946 concerning the Regulation of Criminal Law (Criminal Code)
  6. Law No. 39 of 1999 concerning Human Rights
  7. Law No. 11 of 2008 concerning Information and Electronic Transactions
  8. Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions
  9. Law No. 1 of 2023 concerning the Criminal Code
  10. Law No. 1 of 2024 concerning the Second Amendment to Law No. 11 of 2008 concerning Information and Electronic Transactions
- b. Secondary legal materials in the form of various reference books and expert opinions terkait dengan Roasting oleh standup comedy. The reference books in question are those related to defamation, as well as the protection of human dignity and honor. The opinions of experts in this study are used to define what Roasting is, the procedures for preparing roasting, and the concept of roasting

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<sup>14</sup> *Ibid.*, pg. 93.

<sup>15</sup> *Ibid.*, pg. 95.

agreements so that roasting can be conducted in accordance with proper guidelines.

### III. The Theory of Legal Protection

Indonesia is a state based on law where the law aims to provide order and security for society. The law must position itself as a regulator and guardian of order; therefore, the law appears in various forms, namely commands, appeals, or prohibitions<sup>16</sup>. Law is also referred to as a normative institution, where law represents the concrete form of norms that exist within society.

The discussion regarding Legal Protection is closely related to one of the Objectives of Law, namely the Usefulness of Law, which was conveyed by a legal philosopher and a law scholar from Germany, Gustav Radbruch. Gustav Radbruch was a German legal expert and legal philosopher with various written works, one of which is titled “einführung in die rechtswissenschaften” published in 1952. Gustav Radbruch stated that there are three (3) fundamental values of law, namely Legal Justice (*Gerechtigkeit*), Usefulness of Law (*Zweckmassigkeit*), and Legal Certainty (*Rechtssicherheit*).<sup>17</sup>. Gustav Radbruch's writing actually fulfills three needs of legal thought as follows:

1. “The natural law tradition that is oriented towards the principle of legal justice (the value of legal justice);
2. The Utilitarianism of thought, which holds the belief that the law must be beneficial (the usefulness of the law) ;
3. The Legal Positivism, where the law must be oriented towards legal certainty (legal certainty)”.

Referring to the law, it must be beneficial, where here the law is a set of formulated knowledge established to regulate behavior in society

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<sup>16</sup> Dino Rizka Afdhali and Taufiqurrohman Syahuri, “Idealitas Penegakkan Hukum Ditinjau Dari Perspektif Teori Tujuan Hukum,” *Collegium Studiosum Journal* 6, no. 2 (2023), <https://doi.org/10.56301/csj.v6i2.1078>. pg. 58

<sup>17</sup> Gustav Radbruch sebagaimana dikutip oleh Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2012). pg. 19

to prevent chaos within the community. The usefulness of a law can be interpreted as whether the law has its own purpose and whether it can regulate human life. The objective of the law can be seen from its function in protecting human interests, meaning that the law has targets it aims to achieve.

Law must be directed towards something useful or beneficial. This theory of the Utility of Law is also upheld by the Utilitarian school pioneered by Jeremy Bentham, who argued that “Law aims to ensure the greatest happiness for humans in the largest possible number (the greatest good of the greatest number)<sup>18</sup>”. Beneficence means that the law must provide benefits for every member of society who needs it, whether for those who feel aggrieved or for those who do not. Both parties should be able to derive benefits from every legal decision.

The doctrine of the usefulness of law has its own weaknesses because, fundamentally, the law cannot satisfy all parties. If the interests of the “majority” are regarded as the primary interests that must be fulfilled, then a small portion of society (the minority) remains unfulfilled. The law must still be useful in protecting and providing justice for minority groups. This aligns with the opinion of O. Notohamidjojo, who stated, “The primary aim of law is to achieve justice; where this is impossible, the law pursues utility or *doelmatigheid*”, further asserting that “legal certainty should be placed as one of the most important facets compared to utility/benefit.”.

The usefulness of law is often measured by the extent to which it can protect society, commonly referred to as Legal Protection. Legal Protection originates from two words, namely protection and law. According to Notohamidjojo, law is defined as “The entirety of written and unwritten regulations that are generally coercive in nature to regulate human behavior within society, the state, and between states, oriented towards two principles: justice and effectiveness, for the sake of

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<sup>18</sup> Satjipto Rahardjo, “Hukum Progresif Sebagai Dasar Pembangunan Ilmu Hukum Indonesia,” in *Menggagas Hukum Progresif Indonesia*, ed. Ahmad Gunawan and Mu’amar Rahmadan, 2nd ed. (Semarang: Pustaka Pelajar IAIN Walisongo Semarang, dan Program Doktor Ilmu Hukum Universitas Diponegoro, 2006), 1–18. pg. 8-9

order and peace in society<sup>19</sup>". According to Teguh Prasetyo, the law exists to regulate relations among members of society and between individuals and the state<sup>20</sup>.

Meanwhile, the word "Protection" according to the Great Dictionary of the Indonesian Language (KBBI) is "a place of shelter, an act of providing protection"<sup>21</sup>. The word "protection" originates from the word "lindung", which means to prevent, defend, safeguard, and shield. Protection can be interpreted as the care given to someone who is weaker. When relating protection to law, it can be grammatically understood that legal protection is an act of safeguarding that utilizes the means of legal institutions.

Referring to several expert opinions regarding the Definition of Legal Protection, among others :

- a. Setiono: "Legal protection is an action or effort to safeguard the community from arbitrary acts by authorities that are not in accordance with legal regulations, in order to achieve order and tranquility, thereby allowing individuals to enjoy their dignity as human beings"<sup>22</sup>.
- b. Satjipto Rahardjo: "Legal protection is an effort to safeguard human rights that are infringed upon by others, and such protection is provided to society with the aim of enabling them to enjoy all the rights granted by law"<sup>23</sup>.
- c. C.S.T. Kansil : "Legal Protection is all legal measures provided by law enforcement officers to give a sense of security to the public, both physically and mentally, from threats and disturbances from any party"<sup>24</sup>.

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<sup>19</sup> Syamsul Arifin, *Pengantar Hukum Indonesia* (Medan: Medan Area University Press, 2012). pg. 5-6

<sup>20</sup> Teguh Prasetyo, *Pengantar Hukum Indonesia*, ed. Yayat Sri Hayati, 1st ed. (Depok: PT RajaGrafindo Persada, 2022), <https://doi.org/9786232315600>, pg. 12

<sup>21</sup> KBBI, "Arti Kata 'Perlindungan' - Kamus Besar Bahasa Indonesia Online," n.d.

<sup>22</sup> Setiono, "Rule of Law" (Universitas Sebelas Maret, 2004). pg. 3

<sup>23</sup> Satjipto Rahardjo, *Ilmu Hukum*, IV (Bandung: Citra Aditya Bakti, 2000), pg. 54.

<sup>24</sup> C.S.T Kansil, *Pengantar Ilmu Hukum Dan Tata Hukum Indonesia* (Jakarta: Balai Pustaka, 2003), <https://doi.org/9794072311>, pg.54.

According to Phillipus M. Hadjon, Legal Protection is divided into two types: Repressive Legal Protection and Preventive Legal Protection<sup>25</sup> :

- a. Preventive Legal Protection: Its main objective is to prevent disputes from occurring by granting the people the right to file objections (*inspraak*) before government decisions take a definitive form. These objections from the public hold central significance for the government, which is based on the freedom of action, as the government must act cautiously when making decisions based on personal discretion.
- b. Repressive Legal Protection: Its primary goal is to resolve disputes in a broad sense, including the provision of legal protection for the people by the judiciary in Indonesia.

## IV. The Concept of Good Name, Reputation, and Dignity in Human Rights

Human Rights are universal rights that apply everywhere and to everyone, and cannot be taken away by anyone. Indonesia itself upholds human rights and strives to remain dynamic in the evolution of life within the state, nation, and society, including matters primarily concerning the freedom of expression. This is also articulated in Article 23, paragraph (2) of Law No. 39 of 1999 concerning Human Rights (the Human Rights Law), which states that “everyone is free to possess, express, and disseminate opinions according to their conscience, verbally or in writing through print or electronic media, in consideration of religious values, decency, order, public interest, and national integrity”. This freedom is also reinforced through Article 19 of the Universal Declaration of Human Rights, which states that “Everyone has the right to freedom of opinion; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media regardless of

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<sup>25</sup> Phillipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia* (Surabaya: Bima Ilmu, 1987). pg. 2-3

frontiers”, and also through Article 19, paragraph (2) of the International Covenant on Civil and Political Rights, which states that “Everyone shall have the right to freedom of expression; this right shall include the freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”.

This freedom must also go hand in hand with the guarantee of individual rights to good name, reputation, and honor. According to Wirjono Prodjodikoro, the understanding of honor is different from that of a good name, although they share similar characteristics<sup>26</sup>. The understanding of self-honor is the feeling of self-respect concerning honor (*eer*) as well as the feeling of self-respect regarding a good name (*goeden naam*). R. Soesilo argues that the intended honor is not in terms of morality but rather in the other good manners of human social interactions (*adab*). Meanwhile, the understanding of a good name is a sense of self-respect or dignity based on the positive views or assessments of society towards an individual in social interactions within the community. These two aspects are closely related, as honor is also influenced by the perceptions or evaluations of society, thereby strongly associating it with an individual's good name. According to human rights literature, the assurance of an individual's protection of a good name, reputation, and honor falls within privacy rights<sup>27</sup>. The right to privacy arises to protect human dignity and serves as a boundary to safeguard oneself from unwanted disturbances, thus the right to privacy is a right inherent to every individual to maintain and control information related to themselves and their family from parties who have no relationship with the individual<sup>28</sup>. This is, of course, closely

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<sup>26</sup> Joshua Evandeo Irawan, “Tinjauan Yuridis Tentang Kepastian Hukum Kewenangan Perusahaan Dalam Pengeledahan Ponsel Pribadi Karyawan,” *KRTHA BHAYANGKARA* 17, no. 1 (April 4, 2023), <https://doi.org/10.31599/krtha.v17i1.2045>. pg. 110

<sup>27</sup> Joshua Evandeo Irawan, Andrian Nathaniel, and Steven Jonathan, “Juridical Analysis About Cyberbullying Cases by Child Perpetrators Against Child Victims,” *Jurnal Penelitian Hukum De Jure* 22, no. 1 (2022), <https://doi.org/10.30641/dejure.2022.v22.17-32>. pg.20

<sup>28</sup> Irawan and Valencia, “The Enforcement of Defamation Law Regarding the Creation of a ‘Meme’ Sticker on WhatsApp.” pg. 13

related to the good name, reputation, and also the honor of each individual, as these attributes are deeply embedded in society's life, and when an individual loses these attributes, it is tantamount to stripping away their dignity and personal boundaries. It is even explicitly stated in Article 17, paragraph (1) of the International Covenant on Civil and Political Rights, which declares, "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home, or correspondence, nor to unlawful attacks on his honor and reputation", and paragraph (2) states, "Everyone has the right to the protection of the law against such interference or attacks". It is not surprising that good name and honor play a vital role and will remain integral to societal life, thus they must be protected to safeguard human rights.

The Constitution of the Republic of Indonesia in Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) states, "Every person has the right to personal protection, family, honor, dignity, and property under his control, as well as the right to feel secure and be protected from threats of fear to act or not act in accordance with his human rights," and paragraph (2) further emphasizes that "Everyone has the right to be free from torture or cruel, inhuman, or degrading treatment and has the right to seek political asylum from another country". Even in Article 21 of the Human Rights Law, it has once again affirmed that "Everyone has the right to the integrity of their person, both spiritually and physically; therefore, no one shall become an object of research without their consent" The term "becoming an object of research" refers to comments or opinions related to personal life, personal data, including recorded images or sounds<sup>29</sup>. Indonesian positive law already provides extensive regulation regarding rights related to reputation, dignity, and honor, classifying them as privacy rights recognized by the state.

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<sup>29</sup> Dece Wanda Sari, "Kajian Pelanggaran Privasi Oleh Media Elektronik Melalui Siaran Televisi" (Universitas Indonesia, 2011). pg. 14-15

## V. The Concept of Roasting by Comedians in Stand-Up Comedy in Indonesia

Within the realm of law and regulation, legal theorists have recognized Humor (Comedy) is a complex psychological and social phenomenon that involves human cognitive, emotional, and interpersonal processes. As a phenomenon, humor is often understood as a state of being amused or a state of entertainment that makes a person feel happy, even though it is sometimes not expressed in the form of laughter<sup>30</sup>. Humor or comedy can make a person feel happy, entertained, and relieved from stress.

Humor is one form of entertainment in human life. Sosiowati explains that humor in Indonesia often presents amusement by mocking fellow participants<sup>31</sup>. Humor that is carried out by belittling others involves several techniques, namely Riffing and Roasting. Riffing is an improvisation technique used by comedians in solo comedy by inviting the audience to interact, usually by making the audience or spectators the object of the joke<sup>32</sup>. Mamat Alkatiri, in his statement during an interview with CNN following the issue with Hillary Brigitta Lasut, stated that the riffing technique is one of the techniques in stand-up comedy that is usually performed spontaneously, meaning it is unscripted by a comedian on stage. Mamat explained that riffing material is drawn from the surrounding environment or events occurring at that moment<sup>33</sup>. A distinctive feature of Riffing is the interaction with the audience with the aim of finding new material (jokes) beyond the material that has already been written.

Roasting is a technique in stand-up comedy aimed at criticizing someone and delivered with a comedic nuance. Roasting is an attempt

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<sup>30</sup> Anne Libera, "The Science of Comedy," *AMA Journal of Ethics* 22, no. 7 (2020), <https://doi.org/10.1001/amajethics.2020.602>. pg. 602-607

<sup>31</sup> Sosiowati and Rusista, "Roasting Dalam Komedi." pg. 67

<sup>32</sup> Ade Satria Tanjung, "Analisis Teknik Riffing Public Speaking Komika Ramos Ambarita Dalam Menarik Minat Audiens Untuk Menonton Stand up Comedy," 2023. pg. 46-48

<sup>33</sup> CNN Indonesia, "Mengenal Beda Roasting Dan Riffing Yang Disebut Mamat Alkatiri," CNN Indonesia, 2022.



to disparage or ridicule others, provided it remains within the bounds of comedy or mere joking<sup>34</sup>. The roasting technique is performed by openly and frankly mocking someone in public. This technique is usually used to mock celebrities or well-known figures in society. Over time, roasting has evolved to not only mock someone but also to confer the highest recognition to a person, even if it is done through sarcasm or mockery.<sup>35</sup>

In preparing Roasting material, there are several things that a comedian needs to do:<sup>36</sup>

1. Properly Recognize the Target. Recognizing the target or the person who will be roasted is very important in preparing the material. Comedians must gather information containing facts about the target that can be used as material for roasting.
2. Knowledge from the Target that they will be Roasted. The target or a person who is about to be Roasted must be aware that they will be mocked in public.
3. Approval from the Target regarding the content. The Comedian must obtain the Target's consent concerning the roasting material that will be presented by the Comedian. The Comedian should first consult with the Target about what aspects can be roasted and what aspects cannot be roasted. This requires attention because, although the intent is to jest and provide humor, it is still necessary to respect the Target.
4. Short duration. The duration of the roasting must be limited and should not be too long. This is necessary to avoid misstatements or delivering material beyond what has been approved by the target.
5. The material is created in writing. Roasting material should preferably be made in writing and shown to the target to obtain approval. This needs to be done to ensure that the material delivered remains in accordance with the agreement or arrangement with the target.

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<sup>34</sup> Tanjung, "Analisis Teknik Riffing Public Speaking Komika Ramos Ambarita Dalam Menarik Minat Audiens Untuk Menonton Stand up Comedy." pg. 31

<sup>35</sup> Sosiowati and Rusista, "Roasting Dalam Komedi." pg. 67

<sup>36</sup> Gifari Zakawali, "Mengenal Roasting Dalam Stand Up Comedy, Begini Caranya!," Orami, 2024.

The main difference between Roasting and Riffing lies in the preparation aspect. Riffing is characterized by spontaneity and the comedian's creativity, whereas Roasting must be conducted with thorough preparation, involving an agreement between the comedian and the target regarding the material to be presented. This agreement between the comedian and the target reflects a mutual consent concerning the content, whereby if the target approves of the roasting material to be performed by the comedian, it means the comedian is permitted to deliver the roasting material, which essentially involves mocking (from a comedic perspective) aspects related to the target, such as policies, behavior, reputation, honor, or the target's personal name. A target who has given their consent is considered “willing” to be roasted.

Roasting must be carried out in accordance with the preparations made. The agreement between the Comedian and the target serves as the basis for the execution of the roasting. If the roasting is conducted in a manner that deviates from the initial agreement or understanding, it is likely to cause offense to the target. Roasting that results in offense may lead to legal claims or an obligation for the Comedian to apologize to the target. Therefore, it is crucial for the Comedian to observe existing boundaries and ensure that the roasting is performed with the purpose of entertaining without hurting others' feelings.

## VI. Legal Review of the Crime of Defamation in the Criminal Code and the Electronic Information and Transactions Law

The discussion regarding the Crime of Defamation must begin with the understanding of the crime itself. Utrecht opines that a crime is “the existence of an unlawful act, with an individual responsible for their actions (fault),” in the sense of the word “responsible” (*strafbaarheid van de dader*).<sup>37</sup> The conception of the criminal act of defamation means that there is a person who unlawfully defames another and must be held accountable for their actions.

Criminal acts of defamation can be carried out through insulting actions, commonly referred to as Defamation. Defamation refers to acts that degrade a person's dignity through words, writings, or behaviors that damage the victim's image<sup>38</sup>. The criminal law provisions concerning offenses against reputation or honor are regulated in the Penal Code (Law No. 1/1946) in the following Articles:

a. Article 310 of the Criminal Code:

- (1) “Anyone who intentionally attacks the honor or reputation of another person by accusing them of something, with the clear intention of making it publicly known, shall be liable for defamation and subject to a maximum imprisonment of nine months or a maximum fine of four thousand five hundred rupiahs”
- (2) “If this act is carried out through writing or imagery that is broadcasted, exhibited, or displayed publicly, it is punishable as written defamation with a maximum imprisonment of one year and four months or a maximum fine of four thousand five hundred rupiahs.”

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<sup>37</sup> E. Utrecht, *Rangkaian Sari Kuliah Hukum Pidana I*, Pustaka Tinta Mas, Surabaya, 1994, pg. 260

<sup>38</sup> Anisa Susilowati and Muhammad Khutub, “Tindak Pidana Pencemaran Nama Baik Di Muka Umum Terhadap Pejabat Negara (Studi Putusan Nomor:52/Pid.B/2020/PN Mjn),” *Unes Law Review* 6, no. 2 (2023), <https://review-unes.com/https://creativecommons.org/licenses/by/4.0/>. pg. 6759

- b. Article 311 paragraph (1) of the Criminal Code: “If a person commits the crime of defamation or written defamation, they are allowed to prove that the allegation is true; if they fail to prove it and the accusation is made contrary to what is known, they shall be punished for slander with imprisonment for a maximum of four years”.
- c. Article 315 of the Criminal Code: “Every intentional insult that is not an act of defamation or written defamation committed against a person, whether publicly through speech or writing, or directly to the person through words or actions, or through a letter sent or delivered to them, is punishable as a minor insult with imprisonment for a maximum of four months and two weeks or a fine of up to four thousand five hundred rupiahs”.
- d. Article 317 of the Criminal Code: “Anyone who intentionally submits a false complaint or report to authorities, whether in writing or to be recorded in writing, regarding a person, thereby attacking their honor or good name, shall be threatened with prosecution for making a slanderous complaint, with a maximum imprisonment of four years”.
- e. Article 318 of the Criminal Code: “Anyone who, through a deliberate act, falsely creates the suspicion against someone that they have committed a criminal act, shall be punished for causing false suspicion with a maximum imprisonment of four years”.

The reform of the Indonesian Criminal Code in Law No. 1 of 2023 concerning the Criminal Code (Law 1/2023), which will come into effect at the beginning of 2026, also includes provisions regarding crimes against reputation as follows:

- a. Insult to the Government or State Institutions: Articles 240 and 241 of Law 1/2023
- b. Insult to the Population: Articles 242 and 243 of Law 1/2023
- c. Defamation: Article 433 of Law 1/2023
- d. Defamation and Defamation Complaints: Articles 434, 435, and 437 of Law 1/2023
- e. Minor Insult: Article 436 of Law 1/2023
- f. Defamation of the Deceased: Article 439 of Law 1/2023

As for criminal offenses concerning Insults, both under the old Criminal Code (Law No. 1/1946) and the new Criminal Code that will come into effect in 2026 (Law No. 1/2023), they both still adhere to the requirement of a Complaint from the victim of such criminal insults. Referring to Article 440 of Law No. 1/2023, it states that "Criminal offenses as referred to in Articles 433, 434, and 466 up to Article 438 are not prosecuted if there is no complaint from the victim of the criminal offense." Meanwhile, Article 319 of the old Criminal Code (Law No. 1/1946) states that "Insults punishable under this chapter are not prosecuted if there is no complaint from the person affected by the offense, except as provided in Article 316." The provision regarding the requirement of a Complaint from the Victim of the Criminal Offense, who is essentially the person or party who feels aggrieved by the insult, becomes crucial in the enforcement of laws concerning criminal acts of insult and/or defamation.

In accordance with the provisions of the Criminal Code, Law No. 11 of 2008 on "Electronic Information and Transactions" (Law 11/2008), Law No. 19 of 2016 on "Amendments to Law No. 11 of 2008 on Electronic Information and Transactions" (Law 19/2016), and Law No. 1 of 2024 on "Second Amendments to Law No. 11 of 2008 on Electronic Information and Transactions" (Law 1/2024), there are also regulations concerning Privacy and Defamation conducted through the digital realm. The use of another person's information on social media must be carried out with the consent of the individual concerned. This is regulated in Article 26 paragraph (1) of Law 19/2016. The explanation of Article 26 paragraph (1) of Law 19/2016 states that the protection of personal data or personal information is part of the personal rights (privacy rights), which are guaranteed protection under the law.

Referring to the latest provisions concerning the article on defamation on social media, specifically Article 27A of Law No. 1/2024, it is stated that: "Any person who deliberately attacks the honor or reputation of another person by attributing an act, with the intent for it to be publicly known through electronic information and/or electronic documents conducted via an electronic system," followed by Article 45 paragraph (4) of Law No. 1/2024: "... shall be subject to imprisonment for a maximum of 2 (two) years and/or a fine of up to IDR 400,000,000

(four hundred million rupiah)". The definition of attacking honor or reputation is further explained in the Explanatory Section of Article 27A of Law No. 1/2024, which states: "Attacking honor or reputation refers to actions that demean or damage the good name or dignity of another person, thereby causing harm to that person, including insulting and/or slandering."

The provisions of Article 27A in conjunction with Article 45 paragraph (4) of Law No. 1/2024 clearly and explicitly prohibit and impose sanctions on any person who engages in acts that demean or damage the reputation or dignity of others, thereby causing harm to the affected person. Law No. 1/2024 emphasizes that acts of "demeaning" or "damaging" another person's reputation must involve an element of "harm" to the person being demeaned. The concept of self-loss according to Andrew Kenyon in his writing in the Monash University Law Review can be categorized as follows:<sup>39</sup>

1. Ordinary Compensatory Damages

This type of loss includes Personal Distress (emotional pain, embarrassment, and emotional stress resulting from defamation), General Reputation Loss (the victim's reputation is damaged due to the publication of defamation), and Specific Economic Loss (which may cause the victim to lose employment, contracts, or business opportunities). Accountability for this type of loss can be carried out by providing emotional consolation to the victim or by restoring the victim's reputation in the public eye to rehabilitate their good standing.

2. Aggravated Damages

This type of loss includes damages resulting from defamation carried out with malice, in a manner intended to embarrass and accompanied by widespread dissemination, with no apology from the offender or, in fact, exacerbating the situation. Such damages can only be remedied through compensation from the perpetrator.

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<sup>39</sup> A Kenyon, "Problems with Defamation Damages?," *Monash University Law Review* 1996 (1998). pg. 72-73

### 3. Exemplary of Punitive Damages

This type of loss is not compensatory in nature, but rather punitive. Such losses can only be addressed by punishing the offender for defamation and preventing them from repeating similar actions.

Furthermore, in terms of assessing the extent of damages suffered by victims of defamation, Charles T. McCormick, in his work "The Measure of Damages for Defamation" in 1934, outlined several principles for measuring the losses of victims, including:<sup>40</sup>

1. Presumption of Damage: In cases of written defamation and serious slander (such as criminal accusations), damage is presumed to occur automatically. The jury may award compensation without direct evidence against the perpetrator.
2. Pecuniary Loss Requirement: For ordinary defamation (oral statements not classified as severe), the accusation/claim must be accompanied by evidence of actual economic loss.

McCormick also explained that the factors that must be considered in the above assessment are :

1. The social status and profession of the victim
2. The number and extent of the dissemination
3. Public reaction to the slander/defamation
4. Behavior of the perpetrator, whether there is an apology from the perpetrator or if the situation is aggravated
5. The motive of the perpetrator<sup>41</sup>

Considering the two expert opinions above, the assessment of damages suffered by victims of defamation should also be regulated within the legal framework in Indonesia. However, in practice, both Law No. 11 of 2008, Law No. 19 of 2016, and Law No. 1 of 2024, collectively referred to as the Electronic Information and Transactions Law (ITE Law), only include provisions in Article 26 paragraph (2) of Law No. 19 of 2016, which states, "Any person whose rights are violated

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<sup>40</sup> Charles McCormick, "The Measure of Damages for Defamation," *North Carolina Law Review* 12, no. 2 (1934): pg.120.

<sup>41</sup> *Ibid*

as referred to in paragraph (1) may file a lawsuit for the damages incurred based on this Law”.

The term “lawsuit” refers to a Compensation Claim in civil law. A defamation lawsuit is based on Article 1365 of the Civil Code, which states, “any act that violates the law and causes harm to another person obliges the person who, through their fault, caused the harm to compensate for it.” Furthermore, Article 1372 of the Civil Code states, “civil claims regarding insults aim to obtain compensation as well as the restoration and protection of one's good name.” In practice, these two articles cannot be combined in a single lawsuit<sup>42</sup>. In the author's view, if one wishes to file a claim for damages for defamation, Article 1372 should serve as the basis, in conjunction with Article 26 paragraph (2) of Law No. 19 of 2016 as amended by Article 27A of Law No. 1 of 2024.

In the Indonesian criminal law system before Law No. 1/2023 came into effect, the presence or absence of consent or confirmation from the victim did not actually eliminate the element of illegality, especially if it concerned public interests or matters that were publicly disclosed. However, to apply Article 310 of the Criminal Code, a complaint from the victim is required because, in essence, defamation and insult are complaint offenses.

If the victim does not file a complaint, the matter cannot be prosecuted, even though the nature of the criminal act is unlawful. The same applies to online defamation as regulated in Article 27A of Law No. 1/2024; from a criminal perspective, if someone does not file a complaint (in conjunction with the Criminal Code), the act cannot be prosecuted criminally. From a civil perspective, if a person does not feel harmed, their right to sue under Article 26 of Law No. 19/2016 will be lost.

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<sup>42</sup> Hukumonline, “Hakim: Pasal 1365 Dan 1372 KUH Perdata Tidak Bisa Digabungkan,” Hukumonline.com, 2004.



## **VII. Legal Review Regarding Roasting Actions by Comedians from the Perspective of Positive Law on Defamation Protection in Indonesia**

The right to freedom of expression is indeed a fundamental human right regulated and protected by law. According to Article 19 of the UDHR, it states that “Everyone has the right to freedom of opinion; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media, regardless of frontiers”. Furthermore, Article 19, paragraph (2) of the ICCPR states that “Everyone has the right to freedom of expression; this right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other media of their choice”. Nationally, within the Constitution of the Unitary State of the Republic of Indonesia, Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia states, “Everyone has the right to freedom of association, assembly, and expressing opinions”, and Article 28F of the 1945 Constitution of the Republic of Indonesia states, “Everyone has the right to communicate and obtain information to develop themselves and their social environment, as well as the right to seek, obtain, possess, store, process, and convey information using all available channels”.

Essentially, expressing an opinion is a human right. However, even though it is a fundamental right, it does not mean that everyone can freely express their opinions indiscriminately; there are rules or limitations in expressing opinions, especially when it concerns the reputation of an individual<sup>43</sup>. These rules are set forth in regulations concerning prohibitions and sanctions as stipulated in the Criminal Code as well as in more specific laws.

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<sup>43</sup> Susilowati and Khutub, “Tindak Pidana Pencemaran Nama Baik Di Muka Umum Terhadap Pejabat Negara (Studi Putusan Nomor:52/Pid.B/2020/PN Mjn).” pg. 11

Stand-Up Comedy is one way for an individual to express their opinions, presented in the form of humor. The content of Stand-Up Comedy often includes social criticism. Social criticism is a form of public communication that functions as a tool for social control over the conduct of government. Social criticism can also be interpreted as a manifestation of public concern for certain social events and conditions occurring in society, whether positive or negative<sup>44</sup>. In delivering such social criticism, there are several techniques employed by comedians, such as riffing or roasting.

Riffing is an improvisational technique used by comedians in stand-up comedy by inviting audience interaction, typically by making the audience or spectators the subject of the jokes<sup>45</sup>. Meanwhile, Roasting is a Stand-Up Comedy technique carried out by openly and directly mocking someone in front of the public. This technique is usually used to ridicule celebrities or well-known figures in society<sup>46</sup>.

In understanding Roasting, it is essential first to comprehend the boundaries or distinctions between legitimate Social Criticism (not against the law) and Insult in relation to Roasting. These two forms of expression (criticism and insult) share a commonality in conveying opinions and/or aspirations regarding a shortcoming. According to Reda Manthovani, as reported by hukumonline, criticism is essentially understood as a series of efforts to improve a person's opinion or behavior, not based on hatred towards the person being criticized. Criticism can be delivered using words that are non-offensive, polite, and wise, without diminishing the essence of the critique<sup>47</sup>. According to Strasbourg Observers, the European Court of Human Rights

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<sup>44</sup> Sudjatmiko and Hariyanto, "Satire Dan Kritik Sosial Dalam Stand-Up Roasting Mamat Alkatiri." pg. 2

<sup>45</sup> Tanjung, "Analisis Teknik Riffing Public Speaking Komika Ramos Ambarita Dalam Menarik Minat Audiens Untuk Menonton Stand up Comedy." pg. 97

<sup>46</sup> CNN Indonesia, "Mengenal Beda Roasting Dan Riffing Yang Disebut Mamat Alkatiri."

<sup>47</sup> Reda Mantovani, "Meluruskan Istilah Kritik, Fitnah Dan Ujaran Kebencian," Hukumonline.com (Hukumonline, 2019).

(ECtHR) stated that criticism is permissible as long as it is based on facts and undermines public trust in institutions<sup>48</sup>.

Mantovani argues that an essential element of Insult involves a narrative that is offensive, hurts feelings, is impolite, unwise, and is not intended to improve someone's opinion or behavior<sup>49</sup>. The European Court of Human Rights (ECtHR), as reported by Strasbourg Observers, also states that insult is speech that is not based on facts, targets a person's character or integrity (demeaning someone), and as a result, undermines the right to protection of freedom of expression<sup>50</sup>.

Looking at the two comparisons above, of course, criticism that is delivered correctly, in accordance with proper principles, based on data and facts, and within the applicable norms, without breaking the law, is legitimate criticism, not an insult. The purpose of criticism is to improve, not to destroy or demean someone. Meanwhile, an insult clearly contains elements of belittling or intentionally targeting a person's character. This is what must be clearly distinguished first before discussing roasting in more depth.

Roasting, as explained in Subsection 3.3, is a form of social criticism expressed through comedy. Before performing roasting, there are several steps that comedians must undertake, as explained by Gifari and documented by the author in the previous chapter, including<sup>51</sup> :

1. Properly recognize the target
2. Obtain the target's consent that they will be roasted
3. Obtain the target's approval regarding the material that can be roasted
4. Create material with a short duration
5. Prepare the material in written form Know the target well

Every stage in preparing for roasting is crucial and must be carried out with utmost diligence. For instance, in understanding the target

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<sup>48</sup> Dimitrios Kagiros, "Backović v. Serbia (No. 2): Blurring the Line between Legitimate Criticism and Unacceptable Insults by Lawyers in Court Proceedings," Strasbourg Observers, 2025.

<sup>49</sup> Mantovani, "Meluruskan Istilah Kritik, Fitnah Dan Ujaran Kebencian."

<sup>50</sup> Kagiros, "Backović v. Serbia (No. 2): Blurring the Line between Legitimate Criticism and Unacceptable Insults by Lawyers in Court Proceedings."

<sup>51</sup> Zakawali, "Mengenal Roasting Dalam Stand Up Comedy, Begini Caranya!"

thoroughly, a comedian must conduct in-depth research about the target to avoid inappropriate material when performing the roast. Secondly, obtaining the target's consent that they will be roasted is essential. This consent is particularly important considering that roasting material tends to consist of sarcasm or satirical critique directed at the target.

Therefore, the third part is very important and crucial, which is obtaining the target's approval regarding the material that can be roasted. Not all material is allowed to be roasted; some are permissible, while others are not. Whether the material can be used or not depends entirely on the target, whether the target approves of the material or not. The comedian and the target must review the material to be presented together. All points of the material must be approved by the target, and this must be strictly upheld by the comedian. The comedian must not perform any roasting outside of the material that has been approved by the target. Therefore, it is clear that roasting, if done with the right preparation and carried out in the right way, is not an insult, but rather a form of conveying social criticism.

So, will obtaining this target's consent prevent the comedian from legal repercussions for defamation? Certainly, it can. The type of offense under Articles 310 – 318 of the Criminal Code regarding defamation is a Complaint Offense, meaning that this offense can only be prosecuted if there is a complaint from the victim (an individual or party who feels their reputation has been defamed)<sup>52</sup>. In line with the author's analysis, Article 319 of the old Criminal Code (Law 1/1946) states that “Insults punishable under this chapter are not prosecuted unless there is a complaint from the person affected by the offense, except based on Article 316”. Observing the provisions of the new Criminal Code (Law 1/2023), it remains the same. According to Article 440 of Law 1/2023, “Criminal acts as referred to in Articles 433, 434, and 436 to 438 are not prosecuted if there is no complaint from the victim of the criminal act”. This means that the crucial point of a criminal act of defamation

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<sup>52</sup> Andin Dwi Safitri and Khalimatuz Zuhriyah, “Pengertian Tindak Pidana Dan Unsur-Unsur Tindak Pidana,” *Judiciary Jurnal Hukum Dan Keadilan* 14, no. 1 (2025), <https://doi.org/https://doi.org/10.55499/judiciary.v14i1.310>. pg. 6

or insult is whether there is a complaint from the victim; if there is none, it does not constitute a criminal offense.

The requirement for complaints from victims is also stipulated in Article 45 paragraph (5) of Law 1/2024, which states that the provisions referred to in paragraph (4)—namely articles concerning criminal acts of attacking the honor or reputation of others electronically or through electronic systems—are criminal acts that can only be prosecuted upon the complaint of the victim or the person affected by the crime, and not by a legal entity. This aligns with the provisions of Article 26 paragraph (2) of Law 19/2016, which states that anyone whose rights are violated under paragraph (1)—namely the use of any information through electronic media concerning a person's personal data—must be done with the consent of the concerned person. Therefore, anyone who feels that their rights have been violated may file a lawsuit for damages caused by the perpetrator's actions.

The legal conception of criminal acts of defamation and libel clearly and explicitly stipulates that such crimes are complaint-based, requiring a complaint from the victim. If the victim does not file a complaint, there will be no prosecution of the crime. This must be made clear and emphasized when the Comedian consults about the material with the Target. The Target must provide clear boundaries, specifying what can be roasted, what is allowed, and what is not allowed. If the Target states that content A is not allowed, the Comedian must comply. If the Target states that content B is allowed, the Comedian should note this and may present that content in their stand-up material later, provided it has been explicitly approved by the Target.

Furthermore, according to the Legal Utility Theory and the Preventive Legal Protection Theory, the law must be beneficial in protecting the parties involved in roasting practices. The law has clearly granted the right to freedom of expression, yet it also unequivocally provides protection for each person's good name. This means that stand-up comedy is neither wrong nor illegal. Social criticism delivered satirically through roasting techniques is also a means of expressing oneself and voicing opinions. However, it must still adhere to proper standards and not harm someone's reputation. Therefore, before performing roasting, each comedian must obtain the consent of the

roasting target. With this consent, the content or material presented will inherently not damage the Target's good name.

After thorough and proper preparation has been carried out, and the consent of the target has been obtained, the subsequent execution of the Roasting must be ensured to remain in accordance with what was agreed upon. This is intended to ensure that the target truly does not feel that their reputation is tarnished, and that no losses are incurred by the target, since the target has already approved the matter. The comedian must also carefully monitor the words related to the material delivered, ensuring that emotions or the atmosphere do not lead to improvisations beyond what was agreed with the target.

The author argues that due to the importance of obtaining consent between the target and the comedian in roasting to avoid harming all parties, an agreement must be properly established before conducting a roast. To ensure legal certainty, a roasting agreement between the comedian and the target can serve as a concrete form of the target's consent to the material created by the comedian.

The author recognizes that the fourth requirement for the validity of an agreement, as stipulated in Article 1320 of the Civil Code, is a 'lawful cause,' whereby agreements made must not conflict with the law, prevailing norms, and public morality<sup>53</sup>. Incorrectly conducted roasting is susceptible to resulting in charges of defamation; however, roasting that is properly conducted (from preparation to execution, in accordance with the target's consent) does not constitute defamation, since defamation or insult remains a complaint-based offense. Therefore, in fulfilling Article 1320 of the Civil Code, particularly the fourth requirement, a roasting agreement actually provides assurance that the agreed cause does not contravene applicable laws, specifically concerning the criminal act of defamation. The agreement must include in writing the following matters:

1. Identities of the parties (comedian and target)
2. Intent and objectives
3. Scope of the Agreement (specifically for which event)

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<sup>53</sup> Ayesha Haiqa Nurlette, Sufirman Rahman, and Ahyuni Yunus, "Keabsahan Perjanjian Jual Beli Kosmetik Secara Online," *Journal of Lex Generalis (JLS)* 2, no. 3 (2021). pg. 1526

4. Points of roasting material
5. Duration of the roasting session
6. Boundaries that must not be crossed
7. Agreement regarding posting content on social media (if the target does not agree, this section should state the opposite, namely “condition not to be posted on social media”)
8. Responsibilities of the parties
9. Agreement on dispute resolution, prioritizing deliberation for consensus first
10. Agreement on dispute resolution if deliberation fails
11. Signatures of the parties
12. Signatures of witnesses

With the 12 points above, it is expected that Roasting can proceed as it should and not result in defamation claims. Fair and dignified law is the law that humanizes humans<sup>54</sup>. The existence of this roasting agreement serves as a law that humanizes individuals to ensure the rights to speak, express opinions, and engage in expression are exercised in accordance with established norms and do not violate or tarnish the reputation of others who are the target.

## VIII. Conclusion

The right to freedom of opinion is a component of human rights guaranteed by international legal instruments such as the Universal Declaration of Human Rights (Article 19 UDHR) and the International Covenant on Civil and Political Rights (Article 19 ICCPR), and is also nationally protected under Article 28E paragraph (3) and Article 28F of the 1945 Constitution of the Republic of Indonesia. However, the exercise of this right is not absolute, but is limited by legal norms aimed at protecting the rights and dignity of others, including in the context of defamation.

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<sup>54</sup> Teguh Prasetyo, *Keadilan Bermartabat Perspektif Teori Hukum* (Bandung: Penerbit Nusa Media, 2021), pg. 6.

In the practice of Stand-Up Comedy, particularly roasting techniques, there exists the potential for violations of a person's honor or reputation. Therefore, it is crucial for the performer (comedian) to obtain explicit consent from the target. This consent includes identifying the material that may and may not be conveyed, as well as the form and duration of its delivery.

From a legal perspective, the criminal act of defamation is considered a complaint offense as regulated in Articles 310–318 of the old Criminal Code (KUHP) and Article 440 of Law No. 1 of 2023 concerning the new Criminal Code. This means that legal proceedings against the perpetrator can only be initiated if there is a complaint from the victim. This is reinforced by the provisions in Article 45 paragraph (5) of Law No. 1 of 2024 and Article 26 paragraph (2) of Law No. 19 of 2016 concerning Information and Electronic Transactions (ITE), which emphasize the importance of consent in the use of personal information.

To ensure legal certainty and prevent violations, it is recommended to create a written agreement between the comedian and the roast target. The agreement must meet the validity requirements as stipulated in Article 1320 of the Civil Code, particularly regarding a lawful causa, meaning it must not conflict with laws, norms, and morality. Thus, the agreement serves as a preventive legal instrument that protects both parties and ensures that the expressions conveyed do not violate the law.

Overall, the practice of roasting in Stand-Up Comedy can remain within the bounds of the law if conducted with thorough preparation, clear consent, and execution in accordance with the agreement. The law should function not only as a repressive tool but also as a means of protecting and empowering the constitutional rights of citizens.



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The author(s) affirm that the present study is an entirely original undertaking. It has not appeared in print, online, or in any other medium, nor is it currently submitted to any journal for review. Every source noted in the reference list conforms to accepted protocols of academic citation.

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