

Impact of Constitutional Court Decision Number 78/PUU-XXI/2023 on Criminal Defamation or Insult in Indonesia

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Abstract

Freedom of opinion is the right of every individual from birth which has been guaranteed by the constitution, In interaction in society it is undeniable that there are always things that cause problems and one of them is insult or defamation. The regulation of defamation in the criminal law system in Indonesia has been regulated in Articles 310-320 of the Criminal Code. In Article 310 paragraph (1) and paragraph (2) a person will be considered guilty of committing a criminal offense of insult or defamation according to the Criminal Code, Law Number 1 of 1946 concerning the Regulation of Criminal Acts, and Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions, On September 4, 2023 the petitioner in this case Haris Azhar, Fatiah Maulidiyanti and the Indonesian Legal Aid Foundation (YLBHI) filed a lawsuit with the



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Constitutional Court to examine Law Number 1 of 1946 concerning Criminal Law Regulations, the Criminal Code, and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions to the Constitution of the Republic of Indonesia Year 1945, The impact of the Constitutional Court decision Number 78/PUU-XXI/2023 on the criminal act of insult or defamation in Indonesia finally 14 or article 15 of Law Number 1 of 1946 was declared unconstitutional and non-binding, then the regulation of defamation or insult all became absolute complaint offenses.

Keywords: Insult or Defamation, Criminal Offense, Constitutional Court Decision Number 78/PUU-XXI/2023

Abstrak

Kebebasan berpendapat merupakan hak setiap individu sejak dilahirkan yang telah dijamin oleh konstitusi, Dalam interaksi di dalam Masyarakat tidak dipungkiri selalu saja hal yang menimbulkan permasalahan dan salah satunya adalah penghinaan atau pencemaran nama baik. Pengaturan pencemaran nama baik dalam sistem hukum pidana di Indonesia telah diatur dalam KUHP Pasal 310-320. Di dalam Pasal 310 ayat (1) dan ayat (2) seseorang akan dianggap bersalah karena melakukan tindak pidana penghinaan atau pencemaran nama baik menurut KUHP, Undang-Undang Nomor 1 Tahun 1946 Tentang Peraturan Tindak Pidana, dan Undang-Undang Nomor 1 Tahun 2024 tentang Perubahan Kedua atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik, Pada tanggal 4 September 2023 pemohon dalam hal ini Haris Azhar, Fatiah Maulidiyanti dan Yayasan Lembaga Bantuan Hukum Indonesia (YLBHI) mengajukan gugatan ke Mahkamah Konstitusi untuk melakukan pengujian Undang-Undang Nomor 1 Tahun 1946 tentang Peraturan Hukum Pidana, Kitab Undang-Undang Hukum Pidana, dan Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik

terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Dampak putusan Mahkamah Konstitusi Nomor 78/PUU-XXI/2023 terhadap tindak pidana penghinaan atau pencemaran nama baik di Indonesia akhirnya 14 atau pasal 15 Undang-Undang Nomor 1 Tahun 1946 dinyatakan Inkonstitusional dan tidak mengikat maka pengaturan pencemaran nama baik atau penghinaan semuanya menjadi delik aduan absolut mutlak.

Keywords:

Penghinaan atau Pencemaran Nama Baik, Tindak Pidana, Putusan Mahkamah Konstitusi Nomor 78/PUU-XXI/2023

Introduction

As social creatures, humans need the help of others to meet the needs of life, and need others to meet the needs of life. The interaction that occurs between people in a community, society and even in a level that is outside the life of the state cannot be separated from the friction of interests between individuals which often cause conflicts.¹ Therefore the law becomes very important. Even when compared to other aspects, law is an important factor in regulating the order and order of people's lives.²

In interactions in society, it is undeniable that there are always things that cause problems and one of them is insulting or damaging reputation which is commonly called insult or defamation. In Indonesia, defamatory acts such as insulting, defamatory, or similar are very contrary to manners and must be criminalized because the culture upholds eastern cultural values and is contrary to the applicable legal rules.³

¹ Cahya Wulandari dan Ali Masyhar Mursyid, *Pembaharuan Hukum Pidana: Mediasi Penal dan Keadilan Restoratif di Indonesia*, Penerbit UNNES Press, Semarang, 2023, hlm 1.

² Prof.Dr. Ali Masyhar Mursyid, *Hukum Pidana, Kajian Berdasar UU No.1 Tahun 2023*, Penerbit UNNES Press, Semarang, 2024, Hlm 1.

³ Zainuddin Ali, *Filsafat Hukum*, Sinar Grafika, Jakarta, 2014

Freedom of opinion itself is a right guaranteed by the constitution to every person from birth. As a result, the State of the Republic of Indonesia, as a legal and democratic state, has the authority to supervise and protect its implementation. The fourth amendment to the 1945 Constitution of the Republic of Indonesia, Article 28 E, Paragraph (3) states that everyone has the right to freedom of association, assembly, and voice their opinions. One of the most important rights in state life is freedom of expression, including freedom of opinion. According to Article 1 Paragraph (1) of Law Number 9 of 1998 concerning Freedom to Express Opinions, every citizen has the right to freely and responsibly express their thoughts orally, in writing, and so on in accordance with applicable laws and regulations.

Insult is another term for defamation, which is basically attacking someone's good name and honor without sexual purpose so that the person feels aggrieved. Crime is recognized as a reality that harms society, both in primitive and modern societies. Losses can be material or immaterial losses. Material losses include losses from victims of crime, damage or damage to property suffered by victims of crime, and increased costs that must be incurred to prevent them. Immaterial harm in this case includes losing public trust in law enforcement if the case is not prosecuted.

Petitioners Haris Azhar, Fatiah Maulidiyanti, and Yayasan Lembaga Bantuan Hukum Indonesia (YLBHI) filed a lawsuit with the Constitutional Court on September 4, 2023. for testing the Constitution of the Republic of Indonesia Year 1945 as a touchstone to Law Number 1 of 1946 concerning Criminal Law Regulations, Criminal Code, and Law Number 19 Year 2016 concerning Amendments to Law Number 11 Year 2008 concerning Information and Electronic Transactions. According to the Petitioners, Article 14 and Article 15 of Law 1 of 1946, Article 310 paragraph (1) of the Criminal Code, and Article 27 paragraph (3) juncto Article 45 paragraph (3) of Law 19 of 2016. These provisions violate the rights to guarantee, protection and legal certainty, as well as the right to equal treatment

before the law, and the right to security and freedom from fear to do what is their human right, in accordance with the mandate of Article 28D paragraph (1) and Article 28G paragraph (1) of the 1945 Constitution.

In its ruling, the Constitutional Court Number 78/PUU-XXI/2023 against articles of defamation or insult in the Criminal Code and Law Number 1 of 1946 concerning the Regulation of Criminal Law, the Constitutional Court gave a decision granting part of the lawsuit, one of which was that Articles 14 and 15 of Law Number 1 of 1946 concerning the Regulation of Criminal Law (State Gazette of the Republic of Indonesia II Number 9) had no binding legal force and contradicted the The Constitution of the Republic of Indonesia Year 1945, and that the lawsuit Article 27 paragraph (3) and Article 45 paragraph (3) Law 19 Year 2016 has lost its object in the lawsuit, and State that Article 310 paragraph (1) of the Criminal Code which states, contrary to the Constitution of the Republic of Indonesia Year 1945 or has no binding legal force as long as it is not interpreted, "Whoever deliberately attacks the honor or good name of a person by accusing something verbally, in this case it is limited to being done orally with the clear intention of making it public, shall be threatened with defamation with imprisonment for not more than nine months or a fine of not more than four thousand five hundred rupiah.

Therefore, the author wants to examine the impact of the ruling on criminal defamation or insult in Indonesia.

Taking into account the background and limitations of the above problem, the author formulates this research problem as follows:

1. What are the defamation or insult arrangements in Indonesia?
2. What is the impact of the Constitutional Court decision Number 78/PUU-XXI/2023 on the article of defamation or insult of Law Number 1 of 1946 concerning the Regulation of Criminal Law, the Criminal Code, and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions?

Methods

The research method is an explanation of the type of research approach including (qualitative, quantitative, or a combination of qualitative and quantitative), the type of research (doctrinal or non-doctrinal law), along with the reasons that refer to what the content of the problem formulation and title formulation in the research, data sources, data collection tools, research locations, informants, data validity, and data analysis techniques. The content of this research method is substantial so that it can be understood and continued for researchers in the future.⁴

This paper is written with The type of research method used is normative legal research. Normative legal research is the process of finding legal principles, rules, and theories to solve the legal problem under study.⁵ Normative legal research studies are conducted to generate new theories, concepts, or arguments to solve problems.⁶

Result

1. Regulation of criminal defamation or insult in Indonesia

According to Oemar Seno Adji, defamation or insult is an act that attacks the honor or good name of a person (*aanranding of goede naam*). One type of defamation is defamation committed.⁷

Very often, defamation is interpreted as defamation. If defamation is done orally, it is called calumny, vilification, or slander. In some countries,

⁴ Universitas Negeri Semarang, *Pedoman Penulisan Tesis Magister Ilmu Hukum (MIH)*, *S2 Fakultas Hukum UNNES*, Fakultas Hukum Universitas Negeri Semarang, 2021, Hlm 15

⁵ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2008), hlm 35.

⁶ Yulianto Achmad dan Mukti Fajar, *Dualisme Penelitian Hukum Normatif & Empiris*, (Yogyakarta: Pustaka Pelajar, 2010), hlm 48.

⁷ Oemar Seno Adji. *Perkembangan Delik Pers di Indonesia*. Jakarta: Erlangga, 1990, hal. 3

these three terms are used as a criminal offense of oral defamation. While defamation in writing is called libel.

Indonesia's criminal law system regulates defamation in Articles 310–320. According to Article 310 paragraphs (1) and (2), a person is considered guilty of committing a criminal act of insult or defamation. A person can only be prosecuted based on the complaint of the person who suffered or experienced the crime, according to the Criminal Code, so this offense is an absolute complaint offense.

According to Article 433 of Law 1 of 2023, defamation or insult is any person who verbally attacks the honor or good name of another person by alleging something with the intention of making it public.⁸

R. Soesilo in the book he wrote, namely the Criminal Code (KUHP) and its Complete Commentaries Article by Article said that there are 6 kinds of insults, namely:⁹

1. Defamation (Article 310 verse (1) KUHP)

R. Soesilo argued that insults should be done by "accusing someone of having committed a certain act" in order to make the accusation spread (known to the public). There is no need for the alleged offense to be legally regulated such as stealing, embezzlement, adultery, etc., but it is enough with ordinary offenses, which is obviously shameful.

2. Defamation by letter (Article 310 paragraph (2) of the Criminal Code)

According to R. Soesilo, as explained in the explanation of Article 310 of the Criminal Code, accusations or insults made with letters or pictures are considered as "blasphemy with letters".

⁸ Undang Hukum Pidana Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana.

⁹ R. Soesilo, *Kitab Undang-Undang Hukum Pidana*, Penerbit Politeia, Bogor, 1995, Hlm 225-230.

Therefore, a person may be prosecuted pursuant to this article if the accusation or insult is made with a letter or picture.

3. Slander (Article 311 of the Criminal Code)

According to R. Soesilo's explanation in Article 310 of the Criminal Code, the acts mentioned in paragraphs (1) and (2) do not include blasphemy or blasphemy with writing (cannot be punished), unless the accusation is made in the public interest or forced to defend oneself. If the defendant requests an examination, the new judge will examine whether the insult was actually committed by the defendant because he was motivated to defend the public interest or self-defense (Article 312 of the Criminal Code).

If the defense is inadmissible to the judge and the results of the examination show that the defendant's allegations are untrue, the defendant is no longer considered *menista*. Instead, he was charged with Article

4. Minor insults (Article 315 of the Criminal Code)

This kind of insult is done in a public place and done with derogatory words. According to R Soesilo's explanation of Article 315 of the Criminal Code, insults committed in a different way from "accusing an act", such as by saying "dog", "asu", "sundel", "bastard", and so on, fall into Article 315 of the Criminal Code and are called "minor insults".

Deeds can also commit this mild insult. R. Soesilo stated that insults were committed through acts such as spitting in his face, holding the head of Indonesians, and encouraging the removal of Indonesian *peci* or headbands. Similarly, thrusts, thrusts, shoves, and shoving, although they are actually persecution, can lead to humiliation as well.

5. False complaint or slanderous complaint (Article 317 of the Criminal Code)

According to R. Sugandhi, S.H., in his book entitled "The Criminal Code and Its Explanation" (p. 337) in article 317 of the Penal Code is a person who knowingly: a. submits a false complaint letter about a person to a state authority; or b. request to write a false complaint letter about a person to a state authority so that that the honor or good name of that person is damaged.

6. Defamation (Article 318 of the Criminal Code)\

According to R. Sugandhi, S.H., regarding Article 318 of the Criminal Code, as abstracted, people who intentionally commit an act that causes others to be inadvertently involved in a criminal act are threatened with punishment in this article. For example, a person who secretly places evidence of a crime inside someone else's home, with the intention that that person is accused of a crime, faces punishment.

In addition to the Criminal Code, defamation is also contained in Law Number 1 of 1946 concerning Different Criminal Law Regulations and is not a complaint offense and is a pure criminal offense without a complaint from a person who feels that he has been defamed by his name for fake news, the perpetrator can be prosecuted for his crime, following the article in Law Number 1 of 1946 concerning Criminal Law Regulations; Article 14:

- 1) *Whoever, by broadcasting false news or notices, intentionally publishes disorder among the people, shall be punished with imprisonment of not more than ten years;*
- 2) *Whoever publishes a news or issues a notice, which can publish a disturbance among the people, while he should be able to suspect*

that the news or notice is a lie, shall be punished with imprisonment of not more than three years.

Article 15:

Whoever publishes uncertain news or excessive or incomplete news, while he understands at least reasonably to be able to suspect, that such news will or can easily publish disorder among the people, shall be punished with imprisonment of not more than two years.

Apart from that, when insult or defamation is carried out using electronic media, it is a criminal offense regulated in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions in Article 27 paragraph (3) and Article 45 paragraph (3) of the author will include the latest rules because of the issuance of Law Number 1 of 2024 concerning the second amendment to the Law Number 11 of 2008 concerning Electronic Information and Transactions which amends articles 27 and 45 to the following:

Article 27A :

"Everyone deliberately attacks the honor or good name of others by accusing something, with the intention that it is publicly known in the form of Electronic Information and / or Electronic Documents carried out through Electronic Systems"

Article 45 paragraph (4) :

Any person who intentionally attacks the honor or good name of others by accusing something, with the intention that the has is publicly known in the form of Electronic Information and/or Electronic Documents carried out through Electronic Systems as referred to in Article 27A shall be punished with a maximum

imprisonment of 2 (two) years and/or a maximum fine of Rp. 400,000,000, 00 (four hundred million rupiah).

As law enforcement in the field develops, its implementation still causes many interpretations and controversies in the community. As a result, the Minister of Communication and Information Technology of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Chief of the National Police of the Republic of Indonesia made a joint decree Number 229 of 2001 concerning implementation guidelines for certain articles relating to law enforcement in the field, the guidelines for implementing article 27 paragraph 3 are:

- a. As law enforcement in the field develops, its implementation still causes many interpretations and controversies in the community. As a result, the Minister of Communication and Information Technology of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Chief of the National Police of the Republic of Indonesia made a joint decree Number 229 of 2001 concerning implementation guidelines for certain articles relating to law enforcement in the field, the guidelines for implementing article 27 paragraph 3 are:
- b. In consideration of the decision of the Constitutional Court Number 50 / PUU-VI / 2008 of 2008 it can be concluded, it is not a criminal offense that violates Article 27 paragraph (3) of the ITE Law, if the content or content transmitted, distributed, and/or made accessible is in the form of insults whose categories are insults, ridicule, and/or inappropriate words. for actions that can use the qualification of minor insult offenses as referred to Article 315 of the Criminal Code according to explanation of the ITE Law and the decision of the Constitutional Court, not included in reference in Article 27 paragraph (3) of the ITE Law;

- c. Not an offense related to the content of insult and / or defamation in Article 27 paragraph (3) of the ITE Law, if the content or content transmitted, distributed, and/or made accessible is in the form of an assessment, opinion, evaluation result or a reality;
- d. In the event that the alleged facts are acts that are in legal process, the facts must first be proven to be true before law enforcement officials process complaints for insult and/or defamation offenses of the ITE Law;
- e. Criminal offense Pasal 27 paragraph (3) of the ITE Law is an absolute complaint offense as referred to in the provisions of Article 455 paragraph (5) of the ITE Law, as an absolute complaint offense, it must be the victim of the complaint to law enforcement officials, except in the event that the victim is a minor or in guardianship;
- f. The victim as a whistleblower must be a natural person with a specific identity, and not an institution, corporation, profession or position;
- g. The focus of Article 27 paragraph (3) of the ITE Law is not focused on the feelings of the victim, but on the actions of the perpetrator who is carried out intentionally (*dolus*) with the intention of distributing/transmitting/making accessible information whose content attacks someone's honor by alleging something to be known to the public (Article 310 of the Criminal Code);
- h. The element "to be publicly known" (in the context of transmission, distribution, and/or making accessible) must be fulfilled in the main element (*klacht delict*) of Article 310 and Article 311 of the Criminal Code which is a reference to Article 27 paragraph (3) of the ITE Law which must be fulfilled;
- i. The criterion "to be publicly known" can be likened to "to be known to the public". Public or public itself is interpreted as a collection of people who mostly do not know each other;

- j. The criteria for "public knowledge" are uploads on social media accounts with publicly accessible settings, uploading content or broadcasting something on a conversation group application with an open group nature Where anyone can join a conversation group, and the traffic of content or information no one controls, anyone can upload and share out, or in other words without any particular moderation (open group);
- k. It is not an offense of defamation or defamation in terms of content disseminated through closed or restricted group means, such as family conversation groups, close friend groups, professional groups, office groups, campus groups or educational institutions;
- l. For news on the internet carried out by the Press institution, which is journalistic work in accordance with the provisions of Law Number 40 of 1999 concerning the Press, a mechanism is applied in accordance with the Press Law as *lex specialis*, not Article 27 paragraph (3) of the ITE Law. For cases related to the Press it is necessary to involve the Press Council. But if journalists personally upload their personal writings on social media or the internet, then the ITE Law still applies including Article 27 paragraph (3).

Following main headings should be provided in the manuscript while preparing. Tables and Figures are presented center and cited in the manuscript. The figures should be clearly readable and at least have a resolution of 300 DPI (Dots Per Inch) for good printing quality. Table made with the open model (without the vertical lines) as shown below:

2. What is the impact of the Constitutional Court decision Number 78/PUU-XXI/2023 on the article of defamation or insult of Law Number 1 of 1946 concerning the Regulation of Criminal Law, the Criminal Code, and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions

Before analyzing the impact of the Constitutional Court decision Number 78/PUU-XXI/2023 on the article of insult or defamation against the applicable regulations in Indonesia, the researcher wants to explain the elements of Defamation, while the elements of defamation are divided into 2 elements, subjective elements and objective elements. Objective elements include the following:¹⁰

1. Acts of Attack

The act of attacking in Dutch legal terms is interpreted as *aanrandem* which emphasizes attacks that are not physical, but what is attacked is a sense of honor and fame. Wirjono Prodjodikoro, the standard of criminal defamation is individual self-respect. Offensive actions are actions in the form of verbal actions. In the way he commits offensive deeds, that is, by accusing something or deed.

2. Object : Honor and Good Name

The object of attack is a feeling or sense of self-worth in relation to honor (*eer*) and a feeling or sense of self-worth towards the good name of the person (*goeden naam*). Self-esteem is a trait of

¹⁰ Caesar Almunir Putra Semedi Edi Mulyadi, Hanna Fitri Raziah, “*Penegakan Hukum Terhadap Tindak Pidana Penghinaan Dalam Sosial Media Platform Tiktok*,” *Rechten* 4, no. 1 (2022): hal 22

the subject of defamation which according to Wirjono Prodjodikoro is used as a measure of defamation. Self-esteem in defamation is a feeling of self-worth in the field of honor that is different from self-esteem in the field of fame, although there are similarities between the two.

3. The trick: by alleging certain actions

Accusing with certain charges of defamation in the criminal act of defamation is intended as an attempt to attack honor and self-esteem by accusing a certain act (*telastlegging van een bepaald feit*). In this context, accusations against other persons or parties must be accusations whose nature leads to certain acts that are unlawful or unlawful. This includes actions whose orientation is in the form of an element of reproach in society where a person's good name becomes tainted or disturbed. This actually confirms that an accusation against someone is considered a criminal defamation offense if the accusation is an accusation with a certain orientation of action, and not an "expletive" that does not contain certain aspects of actions such as "lazy", "stupid", and so on.

This confirms that, even if there is a swear word or profanity hurled from one person to another, it does not necessarily qualify as an act of defamation. This is because defamation must be specific to the accusation of a particular act. This means, even if there are disrespectful words, swearing, or expressions, it is not always considered a criminal offense in this case defamation; Because it must be proven elements of accusations that are in the nature of committing certain acts. In criminal law, intentionality is referred to as *opzettelijk* criminal defamation must be done intentionally and clearly who is being attacked (must not be ambiguous). In its concept, defamation is based on narrow intentionality which in criminal law is known as intentionality as will or *laizm* known as

opzet als oogmerk only. This means that this must be done intentionally because the accusation is intentional or there is a desire to degrade the dignity or honor of the person. It is also important to note that intentionality must also specifically accuse certain parties firmly and clearly.

Second, the purpose of Terang In order to be publicly known, intention in criminal law is commonly known as *doel* which in the context of defamation must be interpreted narrowly in the aspect of the existence of reasons for carrying out a purpose and the action has at least been judged based on reasonable reasoning that can be achieved or carried out. Intent in criminal defamation is defined as "close target" meaning the intention so that the honor of a particular person or party can be publicly known.

In this case also all elements, deliberate and intention are finally limited by a joint decree between the Ministry of Communication and Information, the Attorney General, and the Police which the author has explained in the discussion of the problem of regulating the criminal act of insult or defamation above.

On September 4, 2023, the petitioner in this case Haris Azhar, Fatiah Maulidiyanti and the Indonesian Legal Aid Foundation (YLBHI) filed a lawsuit with the Constitutional Court to examine Law Number 1 of 1946 concerning Criminal Law Regulations, the Criminal Code, and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions against the Constitution of the Republic of Indonesia In 1945. In the lawsuit according to the Petitioners, the provisions of Article 14 and Article 15 of Law 1 of 1946, Article 310 paragraph (1) of the Criminal Code, and Article 27 paragraph (3) juncto Article 45 paragraph (3) of Law 19 of 2016 violate the right to guarantee, protection and legal certainty as well as equal treatment before the law and the right to security and freedom from fear to do which

is their human right so that it is contrary to Article 28D paragraph (1) and Article 28G paragraph (1) The 1945 Constitution, in essence, the Mahkamah Constitution decides as follows;¹¹

1. Declaring the petition of the Petitioners in connection with Article 27 paragraph (3) and Article 45 paragraph (3) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions inadmissible, in consideration of the test of the article, on January 2, 2024, the President was found to have ratified and promulgated Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions (State Gazette of the Republic of Indonesia of 2024 Number 1, hereinafter referred to as Law 1 of 2024. Therefore, with the promulgation of Law 1 of 2024, some of the norm material in Law 11 of 2008 and Law 19 of 2016 have been amended and some norms are declared no longer valid, including changes to the articles requested for review by the Petitioners. Thus, since the articles invoked for review by the Petitioners, namely the articles contained in Law 11 of 2008 and Law 19 of 2016 which were the objects of application by the Petitioners in the a quo application have changed as contained in Law 1 of 2024, the object of the application filed by the Petitioners according to the Court no longer exists, so that the Court is of the opinion that the petition of the Petitioners has lost its object. Since the Petitioners' application for the examination of Article 27 paragraph (3) and Article 45 paragraph (3) of Law 19/2016 has lost its object, the Petitioners' application for the examination of the article was not further considered by the Constitutional Court;
2. Declaring Article 14 and Article 15 of Law Number 1 of 1946 concerning the Regulation of Criminal Law (State Gazette of the

¹¹ In the Constitutional Court Decision and Consideration Number 78/PUU-XXI/2023

Republic of Indonesia II Number 9) contrary to the Constitution of the Republic of Indonesia of 1945 and has no binding legal force;

3. Stating Article 310 paragraph (1) of the Criminal Code which states, "Whoever deliberately attacks the honor or good name of a person by accusing something, which has the clear intention of making it public, shall be threatened with defamation with a maximum imprisonment of nine months or a maximum fine of four thousand five hundred rupiah", contrary to the Constitution of the Republic of Indonesia Year 1945 and has no binding legal force as long as not to be interpreted, "Whoever deliberately attacks the honor or good name of a person by accusing something verbally, which means clearly so that it is publicly known, shall be threatened with defamation with imprisonment for not more than nine months or a fine of not more than four thousand five hundred rupiah"

Based on the above, there has been a major change in the regulation of criminal acts of insult or defamation in Indonesia, as a result of the Constitutional Court decision is the first article of insult or defamation in article 14 and article 15 of Law Number 1 of 1946 concerning Criminal Regulations in the form of broadcasting false news or notifications, Uncertain news or excessive or incomplete news that causes trouble among the people which is a pure offense and not a complaint offense is no longer valid, because it is contrary to Article 28D paragraph (1) of the 1945 Constitution which does not provide recognition, guarantee, protection, and legal certainty that is fair and equal treatment before the law for every citizen.

Second, the impact of the Constitutional Court's decision on the regulation of criminal acts of insult or defamation is the norm of insult or defamation in Article 310 paragraph (1) of the Criminal Code and has no binding legal force as long as it is not interpreted, whoever deliberately attacks the honor or good name of a person by alleging something verbally,

which means clearly so that it is known to the public, Based on this, the norm in Article 310 paragraph (1) is limited to being charged if it is done orally, this is in line with the regulations in the latest Indonesian Criminal Code Number 1 of 2023 explaining that defamation is any person who verbally attacks the honor or good name of another person by accusing something, with the intention of making it known.

So that the impact after this Constitutional Court decision if in the past insult or defamation can still be a pure offense if charged if investigators and public prosecutors use Article 14 or Article 15 of Law Number 1 of 1946 but after the Constitutional Court decision, the arrangement of defamation or insult all becomes an absolute complaint offense, and the complaint is limited by a joint decree between the Ministry of Communication and Information, the Attorney General, and the Police that the victim as a whistleblower must be an individual with a specific identity, and not an institution, corporation, profession or position.

Conclusion

The regulation of defamation in the criminal law system in Indonesia has been regulated in Articles 310-320 of the Criminal Code. In Article 310 paragraph (1) and paragraph (2) a person will be considered guilty of committing a criminal offense of insult or defamation according to the Criminal Code, Law Number 1 of 1946 Concerning Criminal Regulations, and Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions.

The article of insult or defamation in the form of broadcasting false news or notices, uncertain news or excessive or incomplete news that causes trouble among the people which is a pure offense and not a complaint offense is no longer valid, because it is contrary to Article 28D paragraph (1) of the 1945 Constitution, the regulation of Article 310

paragraph (1) of the Criminal Code and has no binding legal force as long as it is not interpreted orally, and since Article 14 or Article 15 of Law No. 1 of 1946 is declared unconstitutional and non-binding, the regulation of defamation or insult all becomes an absolute complaint offense..

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