


The Enforcement of Defamation Law Regarding the Creation of a “Meme” Sticker on WhatsApp

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Abstract

Creating meme stickers on WhatsApp using photos of others has become a common trend. However, often the individuals depicted in these memes feel offended and argue that such actions defame their reputation. The article on defamation is regulated in Article 27 A paragraph (1) of Law 1/2024 (amendment to Article 27 of Law 11/2008). This research employs normative juridical research methods and finds that the act of creating meme stickers on WhatsApp does not constitute the offense of defamation under Article 27 A paragraph (1) of Law 1/2024 as it does not meet the elements of accusation. However, creating Meme Stickers using other people's faces fulfills the criteria outlined in Article 32 paragraph (1) of Law 11/2008, which is the Prohibition of Changing other people's entities without permission. This research will also examine the role of the National Criminal Code which serves as the *Ius Constituendum* of Criminal Law. Under the National Criminal Code, meme sticker makers on WhatsApp could be subject to the provisions of the Article of Light Insult, specifically in Articles 436, 441 and 440.

Keywords

Defamation; Memes; Stickers; WhatsApp; ITE Law.



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Introduction

The digital life of society continues to advance rapidly. The Internet and its development consistently propel human life forward. In the realm of communication media, people has become acquainted with various social media platforms that enable interaction through textual, auditory, and visual means. Digital communication between individuals remains a form of human social life. Such communication activities will manifest as a culture, the patterns of which can be easily recognized through the form of Digital Communication. Ultimately, Digital Communication will establish a Digital Social System, incorporating values, social norms (laws), and behavioral standards that every individual must adhere to¹. In other words, the activities undertaken by an Indonesian citizen should align with the values, social norms, and behavioral standards as outlined by Pancasila and the 1945 Constitution of the Republic of Indonesia.

The technology employed by society to access the digital world is also continuously evolving. In particular, social media platforms are advancing rapidly. According to a report from We Are Social, the number of active social media users in Indonesia as of January 2023 was 167 million². The most widely used social media platforms among Indonesians aged 16 to 64 are WhatsApp (90.9%), followed by Instagram (85.3%), Facebook (81.6%), TikTok (73.5%), and Telegram (61.3%)³. WhatsApp ranks as the social media platform with the highest

¹ Ciek Julyati Hisyam, *Sistem Sosial Budaya Indonesia* (Jakarta Timur: Bumi Aksara, 2021). The social system in Indonesia is based on the values of Pancasila, which include Value Systems, Social Norms (Law), and Behavioral Standards. The Value System pertains to the values of personal or familial life, society, the nation, and the state, encompassing religious, moral, vital, and material values. Social Norms or Legal Norms must be founded on the 1945 Constitution and other legislation, complemented by ethical principles and noble moral ideals. Behavioral Standards are guided by religious norms, norms of decency and propriety, customary norms, local legal norms, and national legal norms.

² Monavia Ayu Rizaty, "Pengguna Media Sosial Di Indonesia Sentuh 212 Juta Pada 2023," *DataIndonesia.Id*, 2023, <https://dataindonesia.id/internet/detail/pengguna-internet-di-indonesia-sentuh-212-juta-pada-2023>.

³ Redaksi CNBC, "Raja Aplikasi Terbaru Di RI, Ternyata Bukan WhatsApp-Instagram," *CNBC Indonesia*, 2024.

number of users in Indonesia.

WhatsApp serves a multitude of functions as a social media platform and is widely used across Indonesian society. It allows users to send messages in various formats, including text, photos, videos, music, audio, and documents, either one-on-one or within groups referred to as a “Group”. As indicated in the survey mentioned earlier, WhatsApp users span all age groups, from young to old, largely due to the platform's ease of use and accessibility⁴. Additionally, it provides a Sticker feature, which is frequently used to express various situations⁵.

The use of stickers on WhatsApp often incorporates elements of humor and is commonly referred to as “memes.” These meme stickers are created using various images, to which humorous text or additional graphics are added. Meme stickers are employed to break the atmosphere in textual form, engage in playful banter, express emotions, offer motivation, and more⁶. Creating meme stickers is also quite simple. WhatsApp users can either use third-party sticker creation apps or make them directly within WhatsApp. Users simply need to take a photo or choose an image, then add it as a sticker and enhance it with text, whether humorous or motivational.

The creation of meme stickers can become problematic when the photos or images used contain the identities of other individuals, whether in a positive or negative context. Such identities often appear in the form of photos or small video snippets displaying someone's face. When

⁴ Yudianto Yudianto and Budi Murtiyasa, “Penggunaan Aplikasi Whatsapp Untuk Pembelajaran,” *Jurnal Sosial Teknologi* 1, no. 8 (2021): 830–39, <https://doi.org/10.59188/jurnalsostech.v1i8.169>. During the COVID-19 pandemic, WhatsApp was widely utilized as an online learning medium for students from elementary to high school. This usage highlights the platform's user-friendly interface.

⁵ Laura Putri Sindangsari et al., “Indonesian Generation Z's Perspective on Memes As a Representation of Their Communication on Media,” *Preprint OSF*, no. 23 (2020).

⁶ *Ibid.* Based on research conducted with 72 individuals born between 2001 and 2010, commonly referred to as Generation Z, they perceive memes as images or videos with humorous text that represent ideas, situations, behaviors, or expressions in response to specific events. In other words, memes can serve as an alternative means of communication, as the various expressions within memes can convey messages that people wish to communicate. Additionally, memes facilitate users in conveying their points without needing to elaborate further on the context of the meme.

portions of these photos are cropped and humorous text is added, it can lead to significant issues. Many people feel that their dignity is compromised when stickers featuring their faces are created and especially when such stickers are shared.

The research team has identified several cases resulting from the creation of WhatsApp stickers containing the identities of other individuals, including:

- a) In March 2024, a young man from Central Kalimantan, identified as MS, created a WhatsApp sticker featuring a photo of B's mother and subsequently shared it in a WhatsApp group⁷.
- b) In April 2023, the Mamuju Police Department in West Sulawesi investigated a case involving a partially nude photo of a female student that was turned into a WhatsApp sticker. The suspected creator of the sticker was believed to be the victim's ex-boyfriend⁸.
- c) In January 2021, a woman attacked her housemate for creating a meme sticker using a photo of the woman's father. The woman believed that her housemate had tarnished her father's reputation⁹.

In addition to the three cases mentioned above, the researchers also

⁷ Borneo News, "Buat Stiker Wajah Tanpa Izin, Pemuda Asal Muara Teweh Dibina Bidhumas Polda Kalteng," 2024, <https://www.borneonews.co.id/berita/334773-buat-stiker-wajah-tanpa-izin-pemuda-asal-muara-teweh-dibina-bidhumas-polda-kalteng>. This incident was handled by the Central Kalimantan Regional Police, and MS was sanctioned to apologize to B. The police explained that MS's actions violated Article 32, Paragraph (1) of the Electronic Information and Transactions Law (UU ITE). MS has since apologized to B and deleted the sticker he created, and the issue was resolved amicably.

⁸ Mochammad Rizki, "Foto Setengah Bugil Mahasiswi Sulbar Jadi Stiker WA, Pelaku Diduga Eks Pacar," Nusantarav.com, 2023, <https://nusantarav.com/news/foto-setengah-bugil-mahasiswi-sulbar-jadi-stiker-wa-pelaku-diduga-eks-pacar>. This case is still under investigation by the local police, with no further updates available. From this case, we can understand that photos we share with others can be turned into WhatsApp stickers.

⁹ Bhekti Suryani, "Gegara Bercanda Pakai Stiker WhatsApp, Anak Kos Dicekik Warga Sleman," Harian Jogja, 2021, <https://jogjapolitan.harianjogja.com/read/2021/01/12/512/1060628/negara-bercanda-pakai-stiker-whatsapp-anak-kos-dicekik-warga-sleman>. In this case, the perpetrator was charged with the crime of assault. From a causality perspective, it can be understood that creating WhatsApp stickers containing the personal identities of close family members can be considered behavior that tarnishes the family's reputation.

found previous studies addressing the phenomenon of creating WhatsApp stickers that led to criminal prosecution, including:

- a) Research conducted by Danang Arif Kurniawan in 2024, titled "Criminal Penalties for Individuals Who Create Stickers with Other People's Faces"¹⁰. This research differs significantly from the one we did as we will focus on exploring the key elements that define a person's reputation, and the conditions under which it can be tarnished. Furthermore, we aim to demonstrate that creating WhatsApp stickers indeed harm someone's reputation, though it does not meet the criteria for an offense of defamation (Article 27 A paragraph 1 Law 1/2024). The legal use of this journal also does not contain Law 1/2024 which is the second amendment to the ITE Law, while our article includes this updated legal framework.
- b) Research conducted by Gabriella Lidya in 2024, titled "The Phenomenon of Misuse of Personal Portraits as WhatsApp Stickers Among Generation Z in Digital Communication"¹¹. This research only examines how young people use stickers to express themselves in WhatsApp chats. It is very different for our research which wants to examine the elements of defamation in the creation of these stickers.
- c) Research conducted by Muhammad Hafizh Fakruddin and colleagues in 2023, titled "Law Enforcement Against the Misuse of Personal Photos as WhatsApp Stickers"¹². The legal basis used in this research still revolves around Article 27 paragraph (3) of Law 11/2008, where in our research there are new legal sources and discusses the *ius constituendum* of national criminal law through the National

¹⁰ Danang Arif Kurniawan, "Criminal Penalties for Individuals Who Create Stickers with Other People's Faces," *Gema Wiralodra* 15, no. 1 (2024): 145–50, <https://doi.org/10.31943/gw.v15i1.651>.

¹¹ Gabriella Lidya, "Fenomena Penyalahgunaan Potret Seseorang Sebagai Stiker Whatsapp Di Kalangan Generasi z Dalam Komunikasi Digital," *Busyro (Jurnal Dakwah Dan Komunikasi Islam)* 5, no. 1 (2024), <https://doi.org/https://doi.org/10.55352/kpi.v5i1.969>.

¹² Muhamad Hafizh Fakruddin et al., "Penegakan Hukum Terhadap Penyalahgunaan Foto Seseorang Menjadi Stiker Whatsapp," *Jurnal Kajian Hukum Dan Pendidikan Kewarganegaraan* 2, no. 7 (2023): 1–6, <https://doi.org/https://doi.org/10.572349/civilia.v2i7.1541>.

Criminal Code.

- d) Research conducted by Gede Oka Shabhawa and colleagues in 2022, titled “Criminal Sanctions Against the Creator of WhatsApp Stickers Targeting an Individual”¹³. This research focuses on discussing whether these stickers have been distributed to the public but does not address stickers that are created but not distributed. Therefore, our new research includes an exploration of how the law applies to these undistributed sticker makers.
- e) Research conducted by Jawade Hafidz in 2021, titled “The Dissemination of WhatsApp Screenshots in Ethics and Criminal Law”¹⁴. This journal focuses on the ethics of creating stickers. The novelty in writing our research lies in discussing how the act of creating stickers can be considered a violation of the law.

From previous research, it is evident that the issue of creating WhatsApp stickers using other people's photos has become a frequently discussed concern. Many discussions have explored the potential for criminal prosecution or the application of articles within the Electronic Information and Transactions Law (UU ITE). The articles often cited by authors address how creating WhatsApp stickers with someone's face can infringe on that person's honor. However, a significant question for researchers is why the applicable legal articles do not include those concerning defamation or tarnishing someone's reputation, as outlined in the latest amendments to the ITE Law, specifically Article 27A of Law No. 1 of 2024 on the Second Amendment to Law No. 11 of 2008 on Electronic Information and Transactions (hereinafter referred to as Law 1/2024).

¹³ Gede Oka Swarbhawa, Anak Agung Sagung Laksmi Dewi, and Ni Made Sukaryati Karma, “Sanksi Pidana Terhadap Pembuat Stiker Whatsapp Yang Menyerang Personal Seseorang,” *Jurnal Preferensi Hukum* 3, no. 1 (2022): 149–54, <https://doi.org/10.22225/jph.3.1.4675.149-154>.

¹⁴ Jawade Hafidz, “Penyebaran Screenshot Whatsapp Dalam Perspektif Etika Dan Hukum Pidana,” *Jurnal Cakrawala Informasi* 1, no. 1 (2021): 58–73, <https://doi.org/10.54066/jci.v1i1.213>.

According to the principle of legality—where no act can be punished unless there is a law that explicitly prohibits it—the author argues that if we are to classify the creation of WhatsApp stickers using someone else's face as an act of "defamation," it is essential to thoroughly analyze the legal scope of defamation regulations. The elements of defamation in electronic media should be expanded, as Article 27A of Law 1/2024 states that creating meme stickers does not constitute defamation unless it is disseminated to the public. The research team aims to deepen the understanding of defamation and seeks to demonstrate that merely creating a meme sticker with someone else's photo or image can already be considered an act of defamation.

In this research, the research team will utilize the Progressive Law Theory proposed by Prof. Satjipto Rahardjo and the Legal Protection Theory advocated by Prof. Phillipus M. Hadjon and other scholars. These two theories will be linked to the terminology and scope of reputation, as well as the nature and elements of defamation as outlined in Law 1/2024.

Method

The type of research used in this study is Descriptive Analytical Research, conducted through Normative Legal Research. Normative Legal Research is a type of legal research aimed at examining and analyzing applicable legal norms and providing interpretations of them¹⁵.

According to Soerjono Soekanto, the primary objectives of normative legal research include examining legal principles, analyzing the systematics of law, investigating legal synchronization, and conducting legal comparisons. This study employs doctrinal legal research, which relies on legal materials and sources obtained from literature reviews.

¹⁵ Ani Purwati, *Metode Penelitian Hukum Teori Dan Praktek* (Surabaya: CV Jakad Media Publishing, 2020).

In this study, the research team aims to explore the definition and key elements of “reputation” in a literal sense. The concept of reputation must be examined authentically based on the applicable laws and positive legal frameworks in Indonesia. After establishing a clear definition of “reputation,” the team will delve deeper into situations in which such reputation might be tarnished. This will be achieved through a systematic legal analysis grounded in fundamental legal principles and relevant legal theories, which will then be applied to the positive legal regulations outlined in Law 1/2024.

Result and Discussion

A. Legal Progressive Theory and Legal Protection Theory

Legal Progressive Theory

The principle that “law is for society, not society for the law” is a foundational idea proposed by Prof. Satjipto Rahardjo, which gave rise to the Progressive Law Theory in Indonesia. This concept of Progressive Legal Theory in Indonesia is rooted in concerns about the low contribution of legal science in Indonesia, which has led to a crisis in the field of law¹⁶.

Until the 20th century, Positive Law Theory was highly esteemed by legal scholars. For example, H.L.A. Hart's book, “The Concept of Law”, is considered one of the most important works in the positivist tradition¹⁷. Hart consistently argued that law must be

¹⁶ 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. The concept of Progressive Legal Theory is based on the fact that law cannot be rigid. Law must evolve to meet the changing needs of society.

¹⁷ H.L.A Hart, *Concept of Law* (London: Oxford University Press, 1961). In this book, H.L.A. Hart elaborates on his thoughts about what constitutes law. While Hart adheres to the Positivist School of Thought throughout his writing, he acknowledges towards the end of the book, as also cited by Satjipto Rahardjo, that no single piece of literature can fully define what law is. Hart himself questions, “What is law?” This inquiry by Hart serves as a foundational idea for Progressive Legal Theory, suggesting that law cannot be defined concretely and rigidly but must be adapted to the society living within a country.

concrete, and thus, it requires someone to write it down¹⁸. Hart also posited that “Law has the sovereignty of the state or territory within which a legal system operates”. In other words, law is a set of rules that applies within the jurisdiction of a particular state or legal system¹⁹. This jurisdiction not only refers to a physical location but also encompasses the time during which the law is in effect.

In simple terms, the Positivist School of Thought asserts that law is a product issued by the government in the form of legislation. A regulation is considered valid within the legal jurisdiction and legal system established by the government for its citizens. Consequently, law is perceived as rigid and unchanging, being regarded merely as written rules and a product of authority. This rigidity in law creates problems from a positivist perspective, especially when new types of criminal conduct or new methods of committing offenses arise that are not covered by existing positive law; such conduct might be considered “not a crime” under the current legal framework.

This gave rise to Progressive Legal Theory, which asserts that law must adapt to the needs of society. Laws should be formulated based on and consider the aspects present within the community, while still adhering to the fundamental principles of a country's constitution. In the context of Indonesian law, it is reasonable for Progressive Legal Theory to advocate for the development of laws that naturally align with Indonesia's national spirit, moving away from the colonial Dutch legacy that influences the current legal system²⁰.

¹⁸ Faissal Malik, “Tinjauan Terhadap Teori Positivisme Hukum Dalam Sistem Peradilan Pidana Indonesia,” *Jurnal Pendidikan Kewarganegaraan Undiksha* 9, no. 1 (2021): 188–96, <https://ejournal.undiksha.ac.id/index.php/JJPP/article/view/31488>.

¹⁹ Muhammad Rusydi, “Hukum Dan Moral: Mengulik Ulang Perdebatan Positivisme Hukum Dan Teori Hukum Kodrat H.L.a Hart & Lon F. Fuller,” *AL WASATH Jurnal Ilmu Hukum* 2, no. 1 (2021): 1–8, <https://doi.org/10.47776/alwasath.v2i1.134>.

²⁰ Eman Suparman, “Asal Usul Serta Landasan Pengembangan Ilmu Hukum Indonesia : Kekuatan Moral Hukum Progresif Sebagai Das Sollen,” in *Menggagas Hukum Progresif Di Indonesia*, 2nd ed. (Semarang: Pustaka Pelajar IAIN Walisongo Semarang, dan Program Doktor Ilmu Hukum Universitas Diponegoro, 2012), 75–111. Continuing to use Dutch colonial law means that the mindset applied in

Legal Protection Theory

Several experts have expressed their views on legal protection. Satjipto Rahardjo defines legal protection as the protection of human rights, ensuring that individual or society are defended when harmed by others. The legal protection aims to ensure that the individual or society can fully enjoy their rights under the law²¹. Muchsin argues that legal protection is an activity aimed at safeguarding individuals by harmonizing or aligning the values or norms prevalent in societal attitudes and actions. This process serves to establish order in interactions among people²².

In formulating legal protection for the people of Indonesia, Pancasila must serve as the foundational ideology and guiding principle. The principle of Pancasila's rule of law, as proposed by Philipus M. Hadjon, provides a crucial starting point for structuring legal protection. These principles include:

- a. There is a legal relationship between the government and the people based on the principle of harmony.
- b. There is a proportional functional relationship between the state powers (state organizations/institutions).
- c. Dispute resolution should primarily be through deliberation, with judicial processes as a last resort.
- d. There must be a balance between rights and obligations²³.

Hadjon further categorizes legal protection into two main forms: Preventive Legal Protection and Repressive Legal Protection.

law enforcement remains rooted in the individualistic principles of Dutch colonialism. This approach is not aligned with the Indonesian mindset, which values collectivism and prioritizes the common good over individual interests.

²¹ Satjipto Rahardjo, *Ilmu Hukum*, V (Bandung: Citra Aditya Bakti, 2000), hlm. 53.

²² Muchsin, *Perlindungan Dan Kepastian Hukum Bagi Investor Di Indonesia* (Surakarta: Magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret, 2003), hlm. 14.

²³ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia* (Surabaya: Bima Ilmu, 1987).

Preventive Legal Protection provides the legal community an opportunity to express their views before a government decision becomes definitive, aiming to prevent potential issues or disputes. In contrast, Repressive Legal Protection focuses on resolving disputes through the courts, whether state or administrative, in Indonesia. The principle of legal protection against governmental actions is rooted in the recognition and safeguarding of human rights. Additionally, the principle of the rule of law underpins legal protection against governmental actions. It emphasizes that the acknowledgment and protection of human rights are fundamental and align with the objectives of a legal state.

B. Reputation and Honor

When discussing reputation, it is crucial to understand the fundamental norms that underpin the respect for reputation. In essence, the protection of honor and reputation is an ineradicable fundamental human right. Honor and reputation are inherently subjective and attached to each individual. According to Article 12 of the Universal Declaration of Human Rights (UDHR), it states: “No one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.”

Leden Marpaung cites a question and opinion from Professor Satochid Kartanegara, which states: “Does a person of immoral character still possess honor and reputation? Even if the individual no longer feels any regard for their own honor, every person still has the right to have their honor respected and not violated”²⁴. Professor Satochid Kartanegara’s opinion can be understood to imply that honor and

²⁴ Leden Marpaung, *Tindak Pidana Terhadap Kehormatan*, 1st ed. (Jakarta: PT RajaGrafindo Persada, 1997).

reputation are inherently subjective and tied to an individual's character. Character, or its synonym "personality," is an inherent aspect of each person, shaping their personality. The nature of each individual's personality is highly subjective, with each person possessing a distinct character.

When discussing personality, it is essential to refer to personality theories, with Sigmund Freud's theory being one of the most frequently discussed²⁵. Sigmund Freud divided personality into three systems or structures: the Id (*Das Es*), the Ego (*Das Ich*), and the Super Ego (*Das Über-Ich*)²⁶. The Id represents the innate characteristics present from birth and is the original system within human personality. It can be identified through basic biological drives inherent in all humans from birth, such as eating, drinking, eliminating waste, and avoiding pain. The Ego emerges from the Id through its interaction with the external world, meaning it is shaped by interactions with the environment. The activities of the Ego can be experienced consciously, pre-consciously, or unconsciously²⁷. An example of the conscious aspect of the Ego is the outward perception when someone sees something. The pre-conscious Ego appears in internal perceptions, such as feeling sadness. The unconscious Ego manifests when someone is unaware of having a unique thought pattern or perspective compared to others (a different paradigm of thinking). In contrast, the Superego represents the moral and ethical dimension of personality, consisting of the conscience and the ideal ego.

²⁵ Khairunnas Rajab, *Psikologi Agama*, ed. Fitra Wati (Yogyakarta: Aswaja Pressindo, 2012). Sigmund Freud is one of the western psychological figures of Germany, who was born in 1856. Sigmund Freud is a physician who treats patients with mental disorders who are clarified as psychoneurosis individuals.

²⁶ Syaiful Hamali, "KEPRIBADIAN DALAM TEORI SIGMOUND FREUD DAN NAFSIOLOGI DALAM ISLAM Syaiful Hamali UIN Raden Intan Lampung A . Pendahuluan Dalam Psikologi Dikatakan Bahwa Kepribadian Adalah Organisasi Yang Selalu Bergerak Dalam Diri Individu Yang Terdiri Atas Berbagai Sist," *Al-Adyan Jurnal* 13, no. 2 (2018): 285–302, <https://doi.org/https://doi.org/10.24042/ajsla.v13i2.3844>.

²⁷ Ishom Fuadi Fikri et al., "Struktur Kepribadian Manusia Dalam Psikoanalisis Sigmund Freud: Perspektif Filsafat Pendidikan Islam," *Edupedia : Jurnal Studi Pendidikan Dan Pedagogi Islam* 8, no. 1 (2023): 71–88, <https://doi.org/10.35316/edupedia.v8i1.2787>.

The conscience develops through interactions and teachings from one's environment—such as learning honesty from parents, which shapes the understanding of honesty in the conscience. The ideal ego reflects personal ideal aspirations, based on their interactions. For example, when a child excels in school, it is natural for them to expect parental appreciation as part of their ideal outcome²⁸. The Superego plays a key role in shaping a person's character or disposition. When the Superego is influenced by a sincere conscience, it can compel the individual to reject bribery if confronted with such a situation. For example, a person with a strong moral conscience might feel compelled by their Superego to refuse a bribe. However, the influence of the ideal ego also comes into play. For instance, if the individual urgently has an urgent need for money, their conscience might come into conflict with their ideal ego. Ultimately, the decision to accept or reject the bribe will thus contribute to defining the person's personality or character.

Linking Sigmund Freud's theory of personality with the concept of Honor (Reputation) as articulated by Professor Satochid Kartanegara, it becomes clear that a person's Honor or Reputation is closely tied to their Personality. Personality refers to an individual's personal identity, which can be immediately identified when we see or hear their name. For instance, when the name “Ryan Jagal Jombang” is mentioned, we consciously associate him with a tarnished reputation due to his involvement in criminal acts like murder and mutilation. In contrast, the mention of “Joko Widodo” evokes a positive perception of honor or reputation positively, given that he is the President of the Republic of Indonesia and is respected for his achievements.

Ultimately, we can see that Reputation or Honor is intrinsic to an individual's personal identity, shaped by the interaction between their personality and behavioral outcomes. Professor Satochid Kartanegara's

²⁸ Sigmund Freud, *Totem & Taboo*, ed. Kurniawan Adi Saputro (Yogyakarta: Jendela, 2002), https://opac.isi.ac.id/index.php?p=show_detail&id=43735&keywords=#gsc.tab=0.

statement, “Does a person of low character still have honor and reputation? Even if the person no longer cares about their own honor, everyone has the right to have their honor protected” suggests that the right to honor and reputation is always attached to an individual and is a fundamental right that must be ensured for everyone. However, this right should be preserved and upheld through an individual's conduct within society.

C. Criminal Offenses Against Honour and Reputation

A criminal offense is a behavior that violates criminal law regulations. It represents a breach of norms within criminal law, encompassing not only positive criminal law (KUHP) but also various other legal provisions that regulate prohibitions against certain actions. When these prohibitions are violated, it is considered that the individual has committed a criminal offense. Criminal offenses inherently possess the characteristic of unlawfulness (*wederrechtelijkheid* or *onrechtmatigheid*), and it can ultimately be stated that no criminal offense exists without the element of unlawfulness²⁹.

In his book “Certain Criminal Offenses in Indonesia”, Prof. Wirjono Prodjodikoro categorizes offenses against honor into twelve types of crimes and violations, including:

1. Misappropriation of Position
2. False Acknowledgment of Parenthood
3. Entering into Invalid Marriages due to Prior Existing Marriages
4. Violation of Civil Status
5. Insult
6. Defamation
7. Slander
8. False Reporting

²⁹ Wirjono Prodjodikoro, *Tindak-Tindakan Pidana Tertentu Di Indonesia*, 4th ed. (Bandung: PT Refika Aditama, 2012).

9. Defamation of Deceased Individuals
10. Insulting the National Flag of Indonesia
11. Disclosure of Confidential Information
12. Keeping Confidential Information for Journalists³⁰.

In this research, the research team will focus on the crime of defamation, which is closely related to the offense of tarnishing one's reputation. The fundamental regulation for the crime of defamation is outlined in Article 310 KUHP, which states: "Intentionally attacking the honor or reputation of a person by accusing them of committing a certain act with the clear intention of disseminating the accusation to the public."

With the development of criminal law as reflected in Law No. 1 of 2023 (hereinafter referred to as National Criminal Code), Article 433, paragraph (1) stipulates: "Anyone who verbally attacks the honor or reputation of another person by accusing them of something, with the intent that such accusation becomes known to the public, shall be punished for defamation with imprisonment for a maximum of 9 (nine) months or a fine of the highest category II." Furthermore, if the offense is committed through writing or images that are published, displayed, or posted in public places, the penalty is for written defamation with imprisonment for up to 1 year and 6 months or a fine of category III (Article 433, paragraph (2) of the National Criminal Code).

Additionally, if the offense is conducted through writing or images that are published, displayed, or posted in public, the act qualifies as written defamation, punishable by up to one year and six months of imprisonment or a fine of category III, as specified in Article 433, paragraph (2) of the National Criminal Code.

Based on the criminal law regulations concerning defamation,

³⁰ *Ibid.* Related Insults are divided into several forms such as Modest Insults, Public Insults, and Insults in Front of the Person.

labeled as “defamation” by the KUHP, its elements can be classified as follows:

1. The act of attacking another person's honor or reputation
2. By accusing something
3. The allegations are public knowledge
4. Both verbal and written

To classify an act as "defaming" another person's reputation, there must be a public accusation that directly harms the individual's reputation. Such accusations can be identified through the onset of offended feelings from the person whose honor is under attack³¹.

In addition to insults by accusation classified as defamation, there are also insults that do not qualify as defamatory. These are regulated under Article 315 KUHP with the following provisions: “Every intentional insult that is neither obscene nor written defamation, committed against a person—whether publicly through spoken or written means, or directly to the individual through words or actions, or by letter sent to or received by them, is threatened for a minor insult with a maximum prison sentence of four months and two weeks or a fine of up to four thousand five hundred rupiah”. Article 315 KUHP is regulated more recently in Article 436 National Criminal Code under the name “Mild Insult”, as follows: “An insult that is neither defamatory nor written defamation, committed publicly against another person—whether by spoken or written means, directly to the insulted person verbally or by action, or by a written message sent to or received by them—convicted of minor insult with a maximum prison sentence of 6 months or a maximum fine of category II”. This type of Mild Insult is therefore recognized as a non-defamatory insult.

³¹ *Ibid.* According to Wirjono, self-esteem is a subjective human trait that has different benchmarks. In assessing whether an act constitutes an insult, one should ask oneself what it would be like to be attacked in this way.

In its development, Insult or Defamation has increasingly occurred through Social Media, or in this case involving electronic devices. The Positive Legal Regulation of Defamation through social media or electronically was first regulated in Article 27 paragraph (3) of Law No. 11/2008 on Information and Electronic Transactions (ITE Law). In Law No. 19 of 2016, which amends the ITE Law, the explanation of Article 27 paragraph (3), specifies that the main element of Defamation in question is that it must refer to the provisions of insult in the Indonesian Penal Code (KUHP), which must be linked to Article 310 of the KUHP. This means that the elements of the defamation outlined in Article 310 of the KUHP when carried out through electronic media, therefore meet Article 27 paragraph (3) of Law 11/2008.

The second amendment to Law 11/2008, introduced through Law No. 1 of 2024, including new and current regulations related to Defamation through Social Media. Article 27 A of Law 1/2024 states that “Anyone who deliberately attacks the honor or reputation of another person by making an accusation intended for public dissemination in the form of Electronic Information and/or Electronic Documents via the Electronic System”. The Explanation of Article 27 A of Law 1/2024 further clarifies that attacking someone’s honor or reputation refers to “An act that degrades or damages the reputation or self-esteem of another person, causing harm, and includes blasphemy and/or slander”. The threat of criminal sanctions for violating Article 27 A, as specified in Article 45 paragraph (3) of Law 1/2024 include up to 2 years of imprisonment and/or a fine of Rp. 400,000,000 (four hundred million rupiah).

Both defamation and non-defamatory insult offenses are considered complaint-based offenses, meaning they can only be prosecuted if the victim files a complaint. The provisions of Article 319 of the Indonesian Penal Code (KUHP) states that “Insults threatened with a crime according to this Chapter shall not be prosecuted unless there is a

complaint from the person affected by the crime, except based on 316”, meaning that every person who violates article 310 of the KUHP, can only be prosecuted if there is a complaint from the victim. In the amendment of the KUHP to the National Criminal Code, based on Article 440, it is stipulated that “Criminal acts as referred to in Article 433, Article 434, Article 436, up to Article 438 shall not be prosecuted if there is no complaint from the Victim of Criminal Acts”. This means that the Insult and Defamation Regulation in the National Criminal Code is also a Complaint Offense, where there must be a complaint from the victim so that the perpetrator can be prosecuted. There is a 1/3 penalty in Article 441 of the National Criminal Code if the criminal act of Articles 433-439 of the National Criminal Code is carried out by means of information technology. This, of course, must be linked and adjusted to the Criminal Provisions in Article 27 A jo Article 45 paragraphs (4) and (5) of Law 1/2024.

D. The Enforcement of Defamation Law Regarding the Creation of a “meme” Sticker on WhatsApp

Returning to the main topic of discussion in this study which focuses on the creation of meme stickers on WhatsApp in relation to defamation, it is essential to first examine the act itself and then consider the relevant legal provisions. The creation of Meme Stickers on WhatsApp, as outlined in the introduction, refers to the production of the Making of WhatsApp Stickers containing Photos or Images of other people accompanied by captions that, from the victim's perspective, are perceived as an insult to their honor. Such acts can still meet the definition of "defamation" (attacking a person's reputation)" as outlined in the Explanation of Article 27 A of Law 1/2024 in which elements of this explanation in Article 27A of Law No. 1/2024 can be broken down as follows:

- a. Explanation of Article 27 A of Law 1/2024: “Acts that degrade or

damage the reputation or self-esteem of another person so as to harm that person, including blasphemy and/or slander”.

- b. Analysis: Creating a WhatsApp sticker using someone's photo without their permission can be considered as an act that diminishes the person's self-esteem. Therefore, if the concept of "attacking honor" is interpreted as an act of degrading someone's self-esteem, then the creation of WhatsApp stickers using others' photos can indeed be considered a form of honor violation in this context.

Then is it easy for a victim whose photo was used as a WhatsApp Sticker to complain to the perpetrator on the basis of Article 27 A of Law 1/2024? The author argues that it can't. This is because the main element of Article 27 A of Law 1/2024 is “by accusing something”, so if you have just made a WhatsApp sticker and the victim sues the perpetrator with Article 27 A of Law 1/2024, it raises the question of where the element of accusation originates.

This is the cause of many previous studies stating that using other people's photos for WhatsApp stickers can be subject to Article 32 paragraph (1) of Law 11/2008, which is applicable when creating WhatsApp stickers with others' photos without permission. Therefore, researchers can conclude that the creation of Meme Stickers on WhatsApp using other people's face photos does not legally constitute defamation as stipulated in Article 27 A of Law 1/2024. Instead, it meets the criteria for the offense of using another person's identity without permission as defined in Article 32 paragraph (1) of Law 11/2008.

Legally, under positive or *ius constitutum*, a Meme Sticker Maker on WhatsApp with someone else's face can only be prosecuted under Article 32 paragraph (1) of Law 11/2008. However, this perspective warrants criticism from researchers as many victims of such stickers pursue legal action against the perpetrators on the grounds of defamation. Referring to the Progressive Law Theory, which posits that the law is

made for humans, not humans for the law, it become clear that there is a need for a broader legal framework concerning defamation.

As discussed in Sub-Chapter B regarding honor and reputation, the concept of honor and good reputation is intrinsically linked to each individual. Each person is unique, shaped by the formation of their disposition or personality, as described in Sigmund Freud's theory. Therefore, we can understand that a person's honor and reputation are integral to their identity. A photo of an individual inherently contains elements of that person's Honor and Reputation. Is it valid to assert that a photo of Mr. Joko Widodo does not embody his honor? Clearly, it is not. Therefore, we can definitively say that a person's photo unequivocally contains their honor and reputation.

Furthermore, when examining the provisions of the initial articles regarding defamation in the Lex Generali-KUHP, it is essential to recognize that the existence of Article 310 of the KUHP serves as the forerunner for the existence of Article 27 A of Law 1/2024. However, it is necessary to consider the provisions of Article 315 of the KUHP alongside the corresponding changes in Article 436 of the National Criminal Code concerning Minor Insults, which the key elements of these provisions are as follows:

- a. Insults that are neither defamatory nor written defamation: This type of insult does not fall under Article 433 of the National Criminal Code. Unlike defamation, which involves "accusing something," these insults specifically insult or degrade a person's reputation.
- b. Performed against others either in public or orally or in writing: provisions in public still exist both orally and in writing.
- c. In front of the insulted person orally or by deeds or by writing sent or received to him: here there is a difference with Article 433 of the National Criminal Code where Article 433 of the National Criminal Code only accommodates the provision "in public". This element of Article 436 of the National Criminal Code opens up the opportunity

for the insult to be carried out in front of the victim, either orally or in writing sent or received to him.

- d. Convicted of minor insult with a maximum prison sentence of 6 months or a maximum fine of category II.

Examining the breakdown of the elements of article 436 of the National Criminal Code, we can conclude that if an insult occurs personally, with only the insulter and the victim aware of it the victim can file a complaint and sue the perpetrator based on Article 436 of the National Criminal Code (Minor Insult). If the insult is committed through an electronic system, Article 441 of the National Criminal Code stipulates an additional penalty of one-third.

The regulation of Article 436 and Article 441 of the National Criminal Code, which will come into effect on January 1, 2026, indicate that the criminal law framework—currently *ius constituendum*—which will evolve into *ius constitutum* (positive law). This new legal structure can accommodate the need for a legal framework regarding the creation of Meme Stickers on WhatsApp which may be perceived as a form of defamation in which this defamation should be interpreted as a mild insult.

Regarding whether it can be considered an insult or defamation if the sticker is not distributed but the victim is aware that the perpetrator has created the sticker, this situation is still covered under the element of "in front of the insulted person, orally or by deeds, or by writing sent or received by them." This indicates that the victim has directly learned about the creation of the sticker. Given the provisions concerning insults being complaint-based, it follows that the victim must be aware of the sticker's creation to file a complaint. The researcher contends that the victim's knowledge is crucial to the process of complaint. Therefore, if the victim is aware that the sticker has been made, it can be stated that this constitutes an insult occurring in front of the victim through the act

of creating a meme sticker on WhatsApp featuring their photo.

Ultimately, it should be understood that the Maker of Meme Stickers on WhatsApp using a person's photo can be subject to criminal sanctions under Article 436, Article 441 jo Article 440 of the National Criminal Code. However, it is important to note that the National Criminal Code will only come into effect on January 2, 2026, which is three years after its promulgation. This means that until that time, the enforcement of the mild insult provision can only be addressed through Article 315 of the Criminal Code. Additionally, the provisions of Article 315 of the Criminal Code require additional articles in the ITE Law (both in Law 11/2008, Law 19/2016, and Law 1/2024). Unfortunately, there is currently no legal framework addressing this issue, which leaves Article 32 paragraph (1) of Law 11/2008 as the applicable legal basis for prosecuting offenders. However, it is crucial to clarify that this article pertains to the use of another person's identity without permission, rather than defamation or insult.

Once again, the author wishes to return to the theory of progressive law, which asserts that the law is made for the community, rather than the community being made for the law. Additionally, referring to the theory of preventive legal protection, which emphasizes that law-making must involve the community to safeguard its interests, it is clear that a legal framework must be established to broaden the definition of defamation. This should not only encompass criminal acts committed through accusation but also address minor insults committed through electronic system. There is a pressing need for legal arrangements that accommodate these expanded definitions.

Conclusion

In conclusion, it can be asserted that honor and reputation are inherently linked to a person, including their photograph. However, under the positive law of ITE in Indonesia, specifically Article 27 A paragraph (1) of Law 1/2024, a key element of defamation is that there is an accusation that is conveyed to the general public. When someone just

creates a meme sticker, it does not constitute an accusation, even if it is shared publicly but the elements of the accusation cannot be fulfilled, it cannot be classified as an act of defamation. Instead, such an action may be more accurately described as a violation of Article 32 paragraph (1) of Law 11/2008 as it regulates the prohibition on using another person's identity without permission.

Therefore, creating Meme Stickers on WhatsApp that use other people's photos cannot currently be classified as defamation. However, when considering the *Ius Constituendum* of the National Criminal Code, such actions may be viewed as defamation under the category of Minor Insults which is governed by Article 436, Article 441 in conjunction with Article 440 of the National Criminal Code. It is important to note that the legal framework provided by the National Criminal Code remains in a status of future law (*ius constituendum*) since it will not come into effect until January 2, 2026.

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