

# Compensation of defamation in Indonesia

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**Abstract-** The purpose of this study is to determine the claim for compensation due to defamation. To achieve these objectives, the author uses normative juridical research methods with secondary data collection techniques, namely studying the laws and jurisprudence relating to claims for compensation due to defamation, in addition the authors also collect literature and other regulations relating to research material, Then the data is arranged systematically, then the data obtained are analyzed with qualitative techniques and then presented descriptively, which explains, describes and illustrates in accordance with the problems that are closely related to this research. Conclusion: Everyone must be able to respect and respect one's self-esteem. In this life, there are consequences for all the actions we do, if we do not want to get bad consequences then we should avoid ourselves from bad actions. So respect others as we want to be respected. In life we must be able to humanize humans. Because of every deviant act there is a risk in the form of legal sanctions and social sanctions that must be borne by each perpetrator of an act. To be able to get compensation due to defamation, it is better to prove the existence of criminal defamation, if you already have legal force that is still new to file a claim for compensation, based on article 1365 of the Civil Code.

**Keywords-** *Compensation, Defamation, Civil Code*

## I. INTRODUCTION

Indonesia is a state of law that upholds the protection of human rights and the rule of law. This is very important because through the supremacy of the law will provide legal certainty, where individuals as legal subjects will feel protected in living the life of the nation and state in the community. The obligation of the state towards citizens basically provides welfare of life and physical security according to the democratic state system. Developments in democracies provide equal place regarding rights and obligations towards citizens so as to create responsible liberties protected by law. Human rights are the rights that are inherent since birth, these rights are owned by someone because he is human, these rights apply to every human being without regard to separating factors such as race, religion, color, ethnicity, gender and belief.

As a result of the protection of the rights of every individual, i.e. when a person feels himself is in violation of rights in the form of defamation, the party concerned can and has the right to file a claim in court in the form of a claim for compensation. Because defamation is one of the scope of human rights. The right to claim a claim for compensation is determined in civil law, whereas how to submit a claim is determined in the civil procedural law which in the civil procedural law contains how to

implement civil rights and obligations as stipulated in material civil law. Therefore, it is the civil law that regulates and determines that in social relations people can know and respect the rights and obligations of one person to another so that the interests of each person can be guaranteed and well maintained. Therefore, in social relations a human must be able to control themselves so that there is no conflict in using their rights without harming others in respect of one's dignity and where between one person and others must respect and respect each other.

Defamation is also known as insult, which is basically attacking one's reputation and honor. so that the person feels disadvantaged. Honor and good name have different meanings, but the two can be separated from one another, because attacking honor will result in honor and reputation being tarnished, likewise attacking good name will result in one's reputation and reputation being polluted. Therefore, attacking one of the honors and good name is enough to be used as an excuse to accuse someone of carrying out a marriage [1]. Oemar Seno Adji defines defamation as attacking honor / good name [2]. One form of defamation is "... defamation in writing and is done by alleging something ..."

Defamation is a legal crime that needs attention. Many defamation cases are currently developing widely as there are media, both print and electronic media. Defamation of someone or slander is the legal provision most often used against the mass media. Defamation that is spread in writing is known as libel, while what is said is called slander.

Defamation is usually a case of complaint offense. A person whose name is defamed can file a lawsuit in a civil court, and if he wins he can get compensation. In Indonesia, these humiliation Articles are still maintained. The reason, besides producing character assassination, defamation is also considered to be incompatible with the traditions of Indonesian people who still uphold eastern customs and culture. Therefore, defamation is a form of *rechtsdelicten* and not *wetdelicten*. That is, defamation is considered a form of injustice before it is stated in the Act because it violates the rules of courtesy. Even more than that, defamation is considered to violate religious norms if there is defamation in the substance of the defamation.

Regulations regarding defamation of defamation can be found in the Criminal Code and Laws outside the Criminal Code, namely Law No. 32 of 2002 concerning Broadcasting (Broadcasting Law) and Law No. 11 of

2008 concerning Information and Electronic Transactions (UU ITE). In the Criminal Code, defamation is regulated through Articles 310-320 of the Second Book (Crimes) Chapter XVI about Defamation. Based on the description above, the problem raised is: "How is the claim for compensation due to defamation?"

## II. RESEARCH METHOD

This research type is normative juridical research methods with secondary data collection techniques namely studying the laws and jurisprudence relating to claims for compensation due to defamation, in addition the authors also collect literature and other regulations relating to research material, then the data are arranged systematically. Furthermore, the data obtained were analyzed using qualitative techniques and then presented descriptively, namely explaining, describing and describing in accordance with the problems that are closely related to this research.

## III. FINDINGS AND DISCUSSION

Compensation is a form of compensation suffered by someone caused by the attitude or actions of others. The claim for compensation for violating the law is based on the provisions of article 1365 of the Civil Code, explained that:

"Every act that violates the law brings a loss to another person, obliging the person who because of his mistake to issue the loss, compensates for the loss."

R. Subekti formulates that:

"Compensation is compensation for the loss suffered by someone who commits an unlawful act required to compensate for the loss caused by the victim's mistake". [3]

Regarding this compensation is a basic principle that guarantees protection of human rights listed in Article 9 of Law Number 4 of 2012, which is determined as follows: 1) A person who is arrested, detained, prosecuted or without reason based on the law or because of an error regarding the person or the law applied, has the right to demand compensation and rehabilitation; 2) Officials who intentionally commit acts referred to in paragraph (1) may be sentenced; 3) Provisions regarding the procedure for the prosecution of compensation, rehabilitation and compensation are stipulated in the law.

From the provisions of Article 1365 of the Civil Code, compensation can only be used if the act is unlawful. Defamation is a special form of tort. Some of the terms that are used in relation to this unlawful act say defamation, but some say it is an insult. Actually, the measurement of an action can be categorized as defamation of others is still unclear because many factors

must be studied. In the case of defamation or contempt to be protected, it is the duty of every person to respect others from the point of view of his honor and good name in the eyes of others, so to impose a crime against someone suspected of committing a crime must meet the requirements or conditions of punishment as regulated in the Act in this case criminal law.

In the case of defamation or contempt to be protected, it is the duty of everyone to respect others from the point of view of his honor and his good name in the eyes of others even if that person has committed a serious crime. Honor is someone's sense of honor in the eyes of the community, where everyone has the right to be treated as an honored member of the community. Attacking honor means carrying out acts according to judgment in general attacking one's honor. Respect and deeds which fall into the category of attacking someone's honor are determined according to the community environment in which the act was committed [4]. While a good name is a good judgment according to general assumptions about a person's behavior or personality from a moral standpoint. A person's good name is always seen from the point of view of others, namely good morals or personalities, so that the measure is determined based on general judgment in a particular society where the action was carried out and the context of the action [5].

Insult is a criminal act of humiliation (beleediging) formed by the legislators, both general and specific in nature and intended to provide protection for the legal interests of such feelings. The law does not provide any information about the term insult (beleediging) as a qualification for crime in Chapter XVI Book II. Likewise the two legal objects of crime, namely *eer* (honor) and *goeden naam* (good name). The form of crime in Chapter XVI should indeed be called an insult, because this term is broader than the term honor, although the term honor is often used by some of our jurists. Because honor is only one of the objects of contempt. Regarding criminal acts of defamation (defamation), there is a general insult and there is a special insult regulated in the Criminal Code.

Outside the Criminal Code, there are also special insults. Specific insults in this latter sense are different from special insults in the Criminal Code. Specific humiliation in the Criminal Code is an insult that is regulated outside Chapter XVI of the Criminal Code. These particular insults are scattered within certain types of criminal acts. While special insults outside of the Criminal Code which are now contained in our legislation, are special insults (defamation) in Law No. 11 of 2008 concerning Electronic Information and Transactions. In ITE Law No. 11 of 2008 there are 19 forms of criminal acts in Articles 27 to 37. One of them is a criminal offense specifically, contained in Article 27 paragraph (3) which states that:

"everyone intentionally and without rights distributing and / or transmitting and / or making accessible

electronic information and / or documents that have the content of defamation and / or defamation”.

The offense is specifically insulted in Article 27 paragraph (3) if specified there are the following elements. Objective elements: (1) Actions: a. distribute; b. transmit; c. make it accessible. (2) Unlawful: without rights; and (3) The object: a. Electronic and / or information; b. electronic documents that have a content of defamation and / or defamation.

One of the criminal acts that often invites debate in the community is defamation. In Indonesian laws and regulations, defamation (contempt) is regulated and formulated in Article 310 of the Indonesian Criminal Code, which consists of: a) Oral insults (*smaad*) - Article 310 paragraph (1); (b) Defamation with a letter (*smaadschrift*) - Article 310 paragraph (2);

Whereas prohibited acts are acts that are carried out "intentionally" to violate the honor or attack the honor or reputation of others. Thus, the elements of Defamation or contempt (according to Article 310 of the Criminal Code) are: 1) Deliberately; 2) Attacking honor or good name; 3) Accusing of doing something; 4) Broadcast accusations to make it public.

If the elements of insult or defamation are only pronounced (verbally abused), then the act is classified in Article 310 paragraph (1) of the Criminal Code. However, if the aforementioned elements are carried out with letters or pictures that are broadcast, displayed or posted (insulting with the letter), then the perpetrators can be charged or subject to legal sanctions Article 310 paragraph (2) of the Criminal Code.

The things that make a person cannot be punished by the article Defamation or Humiliation are: 1) Submission of information intended for the public interest; 2) To defend oneself; 3) To reveal the truth. Thus, people who convey information, verbally or in writing are given the opportunity to prove that the purpose is true. If you can't prove the truth, it's called defamation. Based on the formulation of the article above it can be stated that defamation can be prosecuted by Article 310 paragraph (1) of the Criminal Code, if the act must be carried out in such a way, so that in the act the accusations are tucked, as if the person who was defamed (insulted) had committed certain actions, with the intention that the accusation will spread (known by many people). The alleged acts do not need acts involving criminal acts (cheating, embezzling, adultery, etc.), but rather by ordinary actions such as prostitution in prostitution houses. Although the act of prostitution is not a criminal offense, it is quite embarrassing to the person concerned if it is announced. The accusation must be done verbally, because if it is done by writing or drawing, then the act is classified as written defamation and subject to Article 310 paragraph (2) of the Criminal Code. The crime of defamation also does not need to be done in public,

enough if it can be proven that the defendant has the intention to broadcast the accusation. Defamation (defamation) is actually part of the form of insults stipulated in Chapter XVI of the Criminal Code. The notion of "insult" can be traced from the word "insult" which means "to attack one's honor and good name". Victims of humiliation usually feel ashamed, while honor here only concerns the good name and not honor in terms of sexuality. Acts pertaining to the realm of sexuality include the crime of decency in Articles 281-303.

Criminal law regulates insults in the Criminal Code in Chapter XVI, Articles 310 through Article 321, insults in this chapter include 6 types of insults, namely:

- a) Article 310 paragraph (1) concerning defamation
- b) Article 310 paragraph (2) concerning defamation with a letter
- c) Article 311 regarding defamation: "If the person committing crime of defamation or written defamation, in the event that it is permissible to prove that what is alleged is true, does not prove it and the accusation is carried out contrary to what is known, then he is threatened because he is slandering with the most imprisonment four years old".
- d) Article 315 regarding mild insults: "any deliberate insult that is not of a defamation or written defamation, which is committed against a person, either publicly orally or in writing, or in advance of the person himself orally with deeds or deeds, or with a letter written sent or received.
- e) Article 317 regarding defamation: "Who intentionally submits a false complaint or notification to the authorities, verbally or in writing, about a person so that his honor or reputation is attacked because of defamation.
- f) Article 318 regarding accusations that are defamatory: "anyone who commits an act that falsely suspects a person that he has committed a criminal offense is threatened with causing false accusation.

Meanwhile, those outside the Criminal Code include Article 27 paragraph (3) of Law Number 11 Year 2008 Regarding Information and Electronic Transactions, which reads:

"Everyone intentionally and without the right to distribute and / or transmit and / or make accessible Electronic Information and / or Electronic Documents that have content of defamation and / or defamation".

All these insults can only be prosecuted if there is a complaint from a person or victim, known as a complaint offense, except if this insult is committed against a civil servant when he is carrying out his duties legally. And the Criminal Code is formal offense and material offense, whereas the Information and Electronic Transaction Law (ITE Law) is only material offense.

#### IV. CONCLUSION

Everyone must be able to respect and respect one's self-esteem. In this life, there are consequences for all the actions we do, if we do not want to get bad consequences then we should avoid ourselves from bad actions. So respect others as we want to be respected. In life we must be able to humanize humans. Because of every deviant act there is a risk in the form of legal sanctions and social sanctions that must be borne by each perpetrator of an act. To be able to get compensation due to defamation, it is better to prove the existence of criminal defamation, if you already have legal force that is still new to file a claim for compensation, based on article 1365 of the Civil Code.

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