JOURNAL OF SOCIAL SCIENCE
Printed ISSN: 2720-9938
Electronic ISSN: 2721-5202
jsss.co.id

Analysis of Imprisonment Implementation against the Perpetrators of the Cybercrimes

Syamsuddin Ishak, Faissal Malik, Suwarti*
Universitas Khairun, Ternate, Indonesia
Email: nocheramadina@gmail.com, faissalmalik10@gmail.com, warti730@gmail.com*

ARTICLE INFO

Date received: 2 Januari 2023
Date revised: 10 Februari 2023
Date accepted: 20 Maret 2023

Keywords:
Imprisonment; perpetrators of criminal acts; Mayantara; cybercrime

ABSTRACT

This study aims to analyze the application of criminal sanctions to Law Number 11 of 2008 Jo. Law Number 19 of 2016 in the criminal act of defamation or insult decision Number 30/Pid.Sus/2020/PN Tte, and what is the purpose of the threat of imprisonment in the criminal act of mayantara or cyber crime decision Number 30/Pid.Sus/2020/PN Tte about defamation. The research method used in this studyconduct research that is analytical descriptive by using normative legal research or normative juridical. Analytical descriptive legal research is a method that functions to describe or give an overview of the object under study through data or samples that have been collected as they are without conducting analysis and making general conclusions. In other words, analytical descriptive research takes problems or focuses attention on problems as they were when the research was carried out, the results of the research were then processed and analyzed to draw conclusions. The results of this study indicate thatApplication of criminal sanctions by the Panel of Judges for the criminal act of mayantara Decision Number 30/Pid.Sus/2020/PN Tte. regarding Defamation or insult on social media refers to Article 27 paragraph (3) in conjunction with Article 45 paragraph (3) of Law Number 11 of 2008 jo. Law number 19 of 2016 concerning ITE with the threat of imprisonment for 5 (five) years and 6 (six) months and a fine of Rp. 100,000,000.00 (one hundred million rupiah) if the fine cannot be paid by the Defendant, it is replaced by imprisonment for 3 (three) months. However, the Panel of Judges in its Consideration stated that the defendant alias Damrin was legally and convincingly guilty of also committing an act that had a charge that violated decency. The aim of imposing imprisonment on perpetrators of criminal defamation through electronic media is as retaliation for disgraceful acts, as a form of overcoming criminal acts to protect society and to create a deterrent effect on perpetrators. This goal is heavily influenced by criminal philosophies in criminal law.

INTRODUCTION

Nowadays, in the era of society, there are several things that cannot be separated from the life of an individual, one of which is information technology or known in English as information technology. The general term is used for any technology that assists humans in creating, modifying, storing, communicating, and/or disseminating information.

In this era, individuals who live in society are generally very dependent on information technology in their daily lives, because you can see the development of social media is getting faster and reaching all levels of society. This shows that information technology has become a vital part of human life. The greater the influence of information technology in human life, the greater the risk of misuse of information technology (Karami, 2003).

In reality, many bad things can happen through information technology. that many cases of ITE crimes have been handled and have been decided by courts with prison sentences throughout Indonesia and in the city of Ternate in particular. as an example of the following data. Whereas, it can be seen from a number of cases and decisions on cyber-crimes or crimes regarding information and electronic transactions. In general, from 2017 to 2021-September, 1,109 ITE cases were recorded in 524 District Courts in Indonesia and in the City of Ternate in 2017 to 2021-September, in particular, 10 ITE cases were recorded which had received sanctions with prison sentences. That is, there are things that really need to be considered in all online activities carried out on the internet. Don't let what is done in online communication become a thing that conflicts with the law in connection with the existence of Law no. 11 of 2008 Jo. Law Number 19 of 2016 Concerning Information and Electronic Transactions.

Cybercrime arises as a result of technological advances. In addition to bringing benefits or positive values, technology also contains content that is detrimental to the life of the nation (Wahid, 2005). In addition, the development of technology and information has created a borderless world and caused significant social change to take place so quickly. Information technology, if analogous to today, is a double-edged sword, meaning that in addition to contributing to increasing human welfare, progress and civilization, it is also an effective means of acting against the law (Ramli, 2010).As the consideration weighs in Law no. 11 of 2008 Jo. Law Number 19 of 2016 Concerning Information and Electronic Transactions, states that the rapid development and progress of Information Technology has led to changes in human life activities in various fields that directly affect the birth of new forms of legal actions.

Efforts to create various new opportunities in the activities of human life, information technology also at the same time give birth to new forms of legal action or create new opportunities for crime. In the virtual world or virtual world, people commit evil acts (crimes) that can be done in the real world and there are things that cannot be done in the real world. The crime was committed using a computer as a means of action.

Crime in the field of information technology is a negative side of technological progress which has a very broad impact on all areas of today's modern life. Several forms of mayantara crime that can be committed in the real world and cannot be committed in the real world, as stipulated inLaw Number 11 of 2008 Jo. Law Number 19 of 2016 concerning Electronic Transactions and Information, Chapter VII Prohibited Actions, among others: Violating decency;

Gambling; Insult and/or defamation; Extortion and/or threats; Spreading fake news; Without the right to disseminate information that causes hatred or hostility between individuals and/or groups;

Sending information that contains threats of violence or intimidation directed personally; Use of someone else's credit card; Banking transactions; Using someone else's secret code to withdraw cash from an ATM; Electronic engagement or contracts; Use of another person's domain that violates intellectual property rights; Create, provide, or transmit or delete computer data that results in disruption of system functions Create, provide, or send or delete electronic data that causes economic loss to others; and Accessing computer networks with the intention of stealing data (hackers).

From the classification of cybercrimes above, it can be concluded that the crimes committed are known crimes such as the use of other people's property without permission, forgery, theft,

and crimes of decency, but the execution of crimes is carried out using telecommunication services.

The development of computer and internet technology has significant implications for setting or establishing regulations in cyber space and cyber law as well as for the development of crime in cyberspace (cybercrimes) (Sitompul, 2012). In this regard, it is necessary to pay attention to security and legal certainty in the use of information, media and communication technology so that it can develop optimally.

Departing from what was stated earlier, that the application of sanctions has not been maximized and the threat of sanctions has not actually reached the law. Even though the size of the punishment has accommodated the minimum sentence and the maximum sentence. So the authors limit this research by examining the application of prison sanctions to perpetrators of cybercrimes and reviewing the purpose of imposing prison sentences on perpetrators of cybercrimes, decision Number 30/Pid.Sus/2020/PN Tte concerning criminal acts of defamation, that with the intention that the ITE Law in applying sanctions that have accommodated minimum and maximum punishment can be maximized in achieving a sense of justice and expediency. based on the description above, then the writer narrates in the following problem formulation. Based on the background of the problems above, this research formulates the problem as follow:

(1) How is the application of criminal sanctions Law Number 11 of 2008 Jo. Law Number 19 of 2016 in the criminal act of defamation or insult the decision Number 30/Pid.Sus/2020/PN Tte? And (2) What is the purpose of the threat of imprisonment in the cybercrimes decision Number 30/Pid.Sus/2020/PN Tte concerning defamation?

METHOD

Research Type

The method used in this study to achieve the above objectives, namely the authors conducted research that is descriptive analytical using normative legal research or normative juridical. Analytical descriptive legal research is a method that functions to describe or give an overview of the object under study through data or samples that have been collected as they are without conducting analysis and making general conclusions. In other words, analytical descriptive research takes problems or focuses attention on problems as they were when the research was carried out, the results of the research were then processed and analyzed to draw conclusions.

Research Approach

The approach used in the preparation of legal research used by the author is normative research where according to Peter Mahmud Marzuki normative research has a link (Marzuki, 2016). Some of the approaches referred to above, used by the focused authors in writing this law are normative juridical approaches. This approach is based on the main legal material by examining the theories, concepts, legal principles and regulations related to this research.

Data Types and Sources

Types of research

The type of research used is normative legal research, namely legal research methods carried out by examining literature or secondary data (Anshori, 2018). Normative legal research is also known as library research. Normative research is a scientific research procedure to find the truth based on the scientific logic of law from its normative side (Johnny, 2010).

Scientific logic in normative legal research is built on scientific discipline and the workings of normative legal science, namely the science of law whose object is law itself. That is, the research methodology in the science of law has certain characteristics that are considered as special identities that can be distinguished from other sciences. In particular, a legal research can be distinguished according to the type, nature, and purpose into two methods, namely normative legal research and empirical legal research (Marzuki, 2016).

However, in the preparation of this thesis, the authors use normative or juridical normative research, namely research conducted to collect and analyze secondary data. As with other normative legal research, most of it only uses secondary data sources, namely books, diaries, statutory regulations, court decisions, legal theories and opinions of leading legal scholars (Marzuki, 2016).

Data source

As stated above in this type of research, the data used is secondary data. Secondary data is data obtained from official documents, books related to the object of research, research results in the form of reports, theses, theses, dissertations, and legal regulations (Ali, 2021). Secondary data materials can be divided into the following:

Primary Legal Materials

Primary legal material is legal material that is authoritative, meaning it has authority. Primary legal materials consist of statutes, official records or treatises on the making of statutes and judges' decisions (Marzuki, 2016). The primary legal materials used in this research are:

1) The 1945 Constitution of the Republic of Indonesia.
2) Law Number 1 of 1946 concerning the Criminal Code (KUHP).
3) Law Number 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions.
4) Constitutional Court Decision No. 2/PUU-VII/2009.
5) Entire statutory regulations relating to the writing of this thesis.

Secondary Legal Materials

Secondary legal material is legal material that provides an explanation of primary legal material, namely the work of legal experts in the form of books, opinions of scholars. The use of secondary legal material is to provide researchers with a kind of clue as to where the researcher is going (Marzuki, 2016).

Tertiary Legal Materials

Tertiary legal materials are legal materials that support primary legal materials and secondary legal materials, including:

1) Big Indonesian Dictionary (KBBI);
2) legal dictionary;
3) News;
4) Directory of court decisions;
5) Legal encyclopedia.

Data collection technique

The data collection technique used in this thesis was obtained by means of library research. Bibliographical data obtained through library research originating from legal regulations, books, official documents, publications and research results (Marzuki, 2016).

Data Analysis Techniques

The method of processing legal materials is carried out deductively, meaning drawing conclusions from a general problem. The analysis carried out in this study is a qualitative analysis, namely by first collecting primary, secondary and tertiary legal materials. A qualitative approach is an approach used to investigate, find, describe, and explain the content or meaning of legal rules which are used as references in resolving legal issues which are the object of study (Marzuki, 2016).

RESULTS AND DISCUSSION

Arrangements for Criminal Defamation or Defamation on Social Media

Genus delicti regarding criminal acts of defamation or insult in the Criminal Code contains 12 articles. It can be seen and regulated in Article 310 to Article 321 Chapter XVI Concerning Contempt, Book of the Criminal Code (KUHP), namely, the following are the qualifications for mentioning the elements in the article, not a quote, only a summary to simplify the meaning of the contents of the article.

Meanwhile, the regulation regarding the dissemination of information that causes defamation or insult is regulated in Law Number 11 of 2008 Jo. Law Number 19 of 2016 concerning Information and Electronic Transactions, Article 27 paragraph (3):

"Anyone who intentionally and without rights distributes and/or transmits and/or makes accessible electronic information and/or electronic documents containing insults and/or defamation."

Analysis I

Then, the question regarding the application of sanctions for criminal acts of defamation or insult in the ITE Law, can the perpetrators be charged with Article 27 paragraph (3) of the ITE Law? Ifreferring to the Genus delicti in the Criminal Code Articles 310 to 321 concerning Humiliation, to Article 27 paragraph (3) of the ITE Law concerning Defamation or Humiliation.
The applicability and interpretation of Article 27 paragraph (3) of the ITE Law cannot be separated from the main legal norms in Article 310 and Article 311 of the Criminal Code. As one of the considerations of the Constitutional Court in the decision on case No. 50/PUU-VI/2008 on the judicial review of Article 27 paragraph (3) of the ITE Law against the 1945 Constitution. The Constitutional Court concluded that a person's good name and honor should be protected by applicable law, so that Article 27 paragraph (3) of the ITE Law does not violate the values - democratic values, human rights, and the principles of the rule of law. Article 27 paragraph (3) of the ITE Law is Constitutional.

As opinion Moeljatno, the elements of a crime are; (a). Deeds; (b). What is prohibited (by law); (c). Criminal threats (for those who break the law (Lamintang & Lamintang, 2022).If you look closely at the contents of Article 27 paragraph (3) in conjunction with Article 45 paragraph (1) of the ITE Law, it seems simple when compared to the more detailed insult articles in the Criminal Code. Therefore, the interpretation of Article 27 paragraph (3) of the ITE Law must refer to the defamation articles in the Criminal Code. For example, in the ITE Law there is no definition of defamation. Referring to Article 310 paragraph (1) of the Criminal Code, defamation is defined as an act of attacking someone's honor or good name by accusing something with clear intentions so that it becomes public knowledge. That is, all the elements in the Article that are threatened, The perpetrator can be said to have committed a criminal act of defamation or humiliation as was threatened and decidedin amarDecision Number 30/Pid.Sus/2020/PN Tte.

Another question is, can officials, professions, and symbols and groups be considered objects of humiliation based on a juridical approach? The answer is, the elements of criminal acts in general contained in the Criminal Code can be broken down into two elements according to Lamintang's explanation, where the two elements are objective elements and subjective elements (Lamintang & Lamintang, 2022). The objective element has the meaning as the elements that have a relationship with a situation such as the circumstances in which an actor's action must be carried out. While the subjective elements are elements that are attached to the perpetrator and something related to the actor himself.

Thus, the scope of the criminal act of defamation in terms of legal aspects, the criminal act of insult in both the ITE Law and the Criminal Code, can simply be classified into 4 (four) forms, that is, seen from the method of doing it, seen from the object being insulted, seen from the content) the insult, and seen from the place (locus) it happened.

First, the form of humiliation when viewed from the way it is done consists of two parts, namely: it is done orally and it is done in writing. All types of insults in the Criminal Code Articles 310 to 321 allow it to be done verbally, and it is also possible to do it in writing.

Furthermore, in the ITE Law, the question then; Does an insult made using electronic means always have to be in writing? Of course not, because one of the elements in Article 27 paragraph (3) of the ITE Law is, "without the right to distribute and/or transmit and/or make electronic information and/or electronic documents accessible which contain insults and/or defamation". That is, looking at these elements, someone might record their voice, then share it on electronic media, for example on Youtube, Facebook and so on, this could allow the insult to be carried out verbally.

In certain cases, likeDecision Number 30/Pid.Sus/2020/PN Tte, regarding Defamation or Humiliation, using social media, such as Facebook actually allows humiliation of people (the insulted person), you can do this by using a Facebook device, namely by using a mobile phone (mobile phone), which is like recording (sound/image/photo/video). Second, the form of humiliation when viewed from the object being humiliated (the victim) consists of five parts, namely:

1) Individual;
2) Officials: civil servants, President, heads of friendly countries, the general government of the Republic of Indonesia;
3) Profession: religious officer;
4) Symbols: flags, national symbols, objects for religious purposes; And
5) Group; ethnicity, race, religion, and class.

Humiliation, which is the object of humiliating individuals, is found in almost all of Chapter XVI of the Criminal Code starting from Article 310 to. Article 319, minus Article 316, Article 320 to. Article 321 insulting people who have died. Meanwhile, insults towards officials are spread in the Criminal Code, civil servants (Article 316), the President (Article 134, Article 136 bis, Article 137), heads of friendly countries (Article 142), the Government of the Republic of Indonesia (Article 154, Article 155), general authority (Article 207 and Article 208). Contempt for the profession is only in one form of the profession, namely religious officials (Article 117 point 1). Then on the contempt of symbols: flags and national symbols are found in Article 154 a of the Criminal Code, and Article 177 point 2 of the Criminal Code in objects for religious purposes. Finally, insults against groups that are also not part of chapter XVI (humiliation), namely ethnicity, race,

Based on the form of insult or classification above, it can actually be narrowed down to only two items, contempt of individuals and contempt of groups

Answer questions aboutcan officials, professions, symbols and groups be considered objects of humiliation based on a juridical approach? In essence, officials, professions, and symbols as intended, the legal interests they protect are the public interest. In contrast to humiliation of individuals, even though the pattern of criminal law protects the public interest, the interests of the state in terms of insulting groups are far greater than humiliation where the object of humiliation is an individual.

The state's interest is not to intervene more deeply, specifically in humiliating individuals, because this still concerns the privacy of victims and criminals. That is why contempt in Chapter XVI of the Criminal Code is dominantly qualified as a complaint offense, while insults to other objects are qualified as ordinary offences.

Third, a form of insult seen from its content, can be classified into 4 forms, namely:

1) Humiliation by being accused of committing acts, such as corruptors, prostitutes, thieves, adulterers;
2) Insult with accusations in the form of terms, such as dog, crazy, bastard, etc.;
3) What is alleged is true;
4) What is alleged is not true.

The form of insult above can also be an element in all types of insult contained in the Criminal Code. That is why sometimes insults such as insults to religion (Article 156 a), class (Article 156), always refer to Article 310 of the Criminal Code and Article 315 of the Criminal Code,

The question is then, is the accusation by the perpetrator in the content accusing by deed, or accusing in terms, as in the criminal case Decision Number 30/Pid.Sus/2020/PN Tte, is Defamation or Humiliation? In the Criminal Code, even though the content is in the form of insult in the case, it must be realized that it is not clearly explained in Articles 310 to Article 321 of the Criminal Code, but only the interpretation of criminal law experts (Chazawi, 2022; Marpaung, 1997; Prodjodikoro, 2012; Samosir & Lamintang, 1983; Soesilo, 1995).

*Fourth*or The classification of the last form of defamation, which is seen from the location of the incident, is only divided into two, namely: (1) in a real place, conventional insult; (2) on

the spot or in cyberspace (cyber), humiliation through ITE. Based on the criminal case Decision Number 30/Pid.Sus/2020/PN Tte, the terms of the elements of the offense have been met.

Defamation offenses based on the locus of events actually initiated the birth of insult crimes regulated in the ITE Law. The insult provisions in the ITE Law are intended to complement the insult provisions in the Criminal Code which basically only regulate conventional insults. Nevertheless, it should be realized that all types of insults contained in the Criminal Code, may occur through ITE.

Apart from the classification of insult offenses that have been put forward, there are also other classifications, as stated by previous criminal law experts, namely Leden Marpaung and Adami Chazawi. Leden Marpaung classifies the types of humiliation in two major parts (Marpaung, 1997):

1) Crimes against honor: defamation, slander, minor humiliation, slander by complaint, slander by deed, blasphemy against a deceased person;
2) Crimes against special honor (special insult): insulting the president/vice president, insulting heads of friendly countries, insulting the Indonesian government, insulting groups, insulting public power.

It is only natural then, that the classification put forward by Leden Marpaung has not accommodated the insults contained in the ITE Law, because his writings in the book "Crimes Against Honor" were published in 1997, long before the birth of the ITE Law. The only actual reference to contempt criminal law today can only be seen from Adami Chazawi's work "Positive Criminal Law of Contempt."

Adami Chazawi further classifies the forms of humiliation as follows (Chazawi, 2022):

1) Public humiliation: defamation, written defamation, slander, minor insults, slander complaints, making false assumptions, insulting people who have died;
2) Specific insult:

In KHUP: insulting the president/vice president, insulting heads of friendly countries and representatives of foreign countries in Indonesia, insulting the national flag and symbol of the Republic of Indonesia, insulting the national flag of a friendly country, insulting the Indonesian government, insulting certain groups of Indonesian residents , insulting things related to religion, insulting authorities or public bodies;

Outside the Criminal Code: insult through ITE which is regulated under Law Number 11 of 2008 concerning Information and Electronic Transactions.

In conclusion, the validity of the interpretation of Article 27 paragraph (3) of Law Number 11 of 2008 Jo. Law Number 19 of 2016 concerning Information and Electronic Transactions. It cannot be separated from the main legal norms in Chapter XVI of the Criminal Code concerning Humiliation. Because in the criminal case Decision Number 30/Pid.Sus/2020/PN Tte. If you look closely at the contents of Article 27 paragraph (3) of the ITE Law in conjunction with Article 45 paragraph (1) of the ITE Lawlooks simple when compared to the more detailed insult articles in the Criminal Code.

Therefore, the interpretation of Article 27 paragraph (3) of the ITE Law must refer to the defamation articles in the Criminal Code. For example, in the ITE Law there is no definition of defamation. Referring to Article 310 paragraph (1) of the Criminal Code, defamation is defined as an act of attacking someone's honor or good name by accusing something with clear intentions so that it becomes public knowledge.

Accountability for Criminal Sanctions for Defamation or Contempt of the ITE Law

The application of criminal sanctions to the ITE Law, it is necessary to understand the understanding of the criminal act of electronic transactions in Law Number 11 of 2008 Jo. Law Number 19 of 2016 concerning Information and Electronic Transactions. The idea of the ITE Law is of course one of the options in realizing an appropriate legal system in accordance with the principles of the rule of law. This is what should be created in the principle of every statutory regulation. However, what must be guided by if the legal regulations are valid, then there is no need for public rejection.

Laws and regulations must be obeyed by every layer of society in its efforts to guarantee legal certainty that is just. The option is if there is no agreement then through the constitutional

route. However, having a thorough understanding will make every legal product acceptable. The problem of applying the law that is applied is of course a different problem from the side of law enforcement.

This is in line with the doctrine that criminal law is part of the rule of law which is coercive and binding, so the consequences of its implementation arise in the form of criminal sanctions and action sanctions (maatregel).

The system of applying criminal sanctions adopted is a double track system, in which this system has a different conception of sentencing because there is a need for a separation between the different stages of sentencing. For example, regarding criminal threats in laws, prosecution processes, judicial processes, and in the implementation of crimes, there must be certain principles that are prioritized at each stage. In cases of serious crimes, the elements of retaliation and general deterrence can be prioritized, while light crimes are more focused on personal behavior and providing opportunities for perpetrators to be resocialized.

So that it can be concluded that the combined theory prioritizes the differential treatment between one criminal and another, including differentiating the nature of the offense committed. This is used as a basis for consideration in applying elements of retaliation and elements of prevention in order to achieve an orderly and peaceful society.

In criminal law, a criminal sanction is a type of sanction of a disgraceful nature that is threatened or imposed on an act or perpetrator of a criminal act or a criminal act that can disturb or endanger the public interest.

Referring to the Parent of Punishment canseen in the Criminal Code, the types of criminal sanctions have been regulated in Article 10 of the Criminal Code (KUHP), namely punishment consisting of: Main crime (Death Penalty; Imprisonment; Criminal Cage; Criminal Fines) and additional penalties (Revocation of certain rights and Confiscation of certain goods)

If you look at Article 10, it regulates the system of criminal sanctions from the heaviest sanctions to the lightest sanctions. So, in imposing criminal sanctions, the perpetrator must be proven guilty by being proven guilty. In this case the error in question is about defamation or insult.

While the criminal sanctions regulated in the ITE Law are the Main Criminal Sanctions, namely Imprisonment and Fines. As in the criminal case Decision Number 30/Pid.Sus/2020/PN Tte. The criminal sanctions that are threatened are regulated in Law Number 11 of 2008 Jo. Law Number 19 of 2016 concerning Information and Electronic Transactions,in Article 45 to Article 52 which determines the penalty of the nine (9) delict articles previously mentioned in the Chapter above.

Sanctions in formulaThe formulation of Article 27 paragraph (3) in conjunction with Article 45 paragraph (1) of the ITE Law which looks simple when examined is inversely proportional to the criminal sanctions and fines which are heavier than the criminal sanctions and fines in the insulting articles of the Criminal Code.

As the article reads:

Article 45 UU ITE

(1) Everyone who fulfills the elements referred to in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be punished with imprisonment for a maximum of 6 (six) years and/or a fine of up to Rp. 1,000,000 000.00 (one billion rupiah).

Regarding the criminal law provisions in the ITE Law, it has been revised through Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. However, what is striking about the changes is only the provisions related to criminal responsibility, as emphasized in Article 45 paragraph (3):

"Anyone who intentionally and without rights distributes and/or transmits and/or makes accessible electronic information and/or electronic documents that contain insults and/or defamation as stipulated in Article 27 paragraph 3 shall be punished with imprisonment for a maximum of 4 (four) years and/or a maximum fine of Rp. 750,000,000 (seven hundred and fifty million rupiah).”

Still in the same article, namely in Article 45 paragraph 5 it is also emphasized that "the provisions referred to in paragraph 3 constitute a complaint offense." In several cases, as research

data (Table 1) often insults that occur through ITE facilities, in the elements of distributing, transmitting, and making accessible, the panel of court judges who are trying such cases, it is difficult to define these three elements. In fact, usually there is no unity of opinion among judges when handling cases of insult that occur through ITE.

Even so, the provisions on insult in the ITE Law have been amended several times, both due to judicial review by the Constitutional Court and through limited revisions by the DPR.

The meaning contained in the elements of the crime is still unclear, in fact there is one element that has a double meaning. Likewise, in terms of the nature of the offense, namely the complaint offense is not based solely on the essence of insult contained in the Criminal Code, in which there is also a classification of insult categorized as an ordinary offense. This also includes criminal responsibility, regardless of the philosophy of punishment, punish someone according to their actions (culpae poena paresto). There are many types of defamation offenses in the Criminal Code with different criminal responsibilities, but if it occurs through the means of ITE the criminal responsibility is equated as a whole.

As is known, that in Article 27 paragraph 3 does not mention the distribution of types of insults, as contained in the Criminal Code. If you only refer to Law Number 19 of 2016, it seems that insults can be charged through its provisions, namely only insults that qualify as blasphemy and slander.

Article 27 paragraph 3 junto Article 45 paragraph 3 UU ITE is very much different from all types of insults in the Criminal Code which pays close attention to the philosophy of punishment, between guilt and the responsibility of the offender. This can be observed in the types of insults contained in Chapter XVI, as follows:

1) Oral defamation is punishable by imprisonment for a maximum of 9 months or a fine of Rp. 4500;
2) Written blasphemy is punishable by imprisonment for 1 year and 4 months or a fine of up to Rp. 4500;
3) Defamation is punishable by imprisonment for 4 years and revocation of rights;
4) Minor blasphemy is punishable by imprisonment of 4 months and 2 weeks or a fine of Rp. 4500;
5) Insulting a civil servant is punishable by an additional one-third of the criminal penalty for the category of insult (oral defamation, written defamation, and mild defamation);
6) Defamation by complaint is punishable by 4 years imprisonment and revocation of rights;
7) Defamation by deed (false suspicion) is punishable by 4 years imprisonment and revocation of rights;
8) Insulting a person who has died by means of defamation through a letter is punishable by imprisonment of 4 months and 2 weeks;
9) Humiliating a person who has died by broadcasting, showing, posting writing, is punishable by 1 month and 2 weeks imprisonment.

Analysis II

The question that arises later in this study is whether the implementationDecision Number 30/Pid.Sus/2020/PN Tte is in accordance with the criminal law doctrine? As according to Moeljatno, he stated that criminal law is part of the overall law that applies in a country which provides the foundations and rules for:

1) Determine which actions may not be carried out, which are prohibited accompanied by threats or sanctions in the form of certain penalties for anyone who violates the prohibition;
2) Determine when and in what cases those who have violated these prohibitions can be imposed or sentenced to punishment as has been threatened; And
3) Determine in what way the imposition of the penalty can be carried out if there are people who are suspected of having violated the prohibition.

In line with Moeljatno's opinion, that judges have carried out what has been regulated by the state, regarding determining actions that are prohibited or disgraceful by law; and about determining when judges impose sanctions on subjects who have violated the law or what is regulated by law; as well as about how the imposition of criminal sanctions.

That is, that the implementation of the duties of a judge is in line with what is also meant, with what was conveyed by Roeslan Saleh, regarding the meaning of the crime, namely as a reaction to the offense and this is in the form of a misery that the state intentionally inflicts on the perpetrator of the offense (Muladi & Arief, 2005).

Furthermore, the following question, in applying sanctions, we need to see whether the person who committed the act was subsequently also punished, as was threatened? This is because accountability in criminal law is known as the principle of "no crime without fault" (Gren straf zonder schuld). In other words, error in terms of criminal law means the ability of a person to be responsible for the actions he has committed.

In the doctrine of criminal law, criminal responsibility is essentially a mechanism built by criminal law to react to violations of a criminal act (Huda, 2004). That is, a criminal act or criminal act only indicates the prohibition and threat of an act or action which by social and legal values is a disgraceful act with a crime or sanction/misery.

In other words, if someone commits an offense, the offense committed can be accounted for and there is no basis for abolishing the crime, then the perpetrator will be subject to sanctions in the form of a crime and this is in line with Decision Number 30/Pid.Sus/2020/PN. That there is no basis for criminal elimination of the perpetrator because of what he did. So, the actions or offenses committed by Sipelaku can be held accountable and subject to criminal sanctions.

Analysis III

Furthermore, in the second analysis, there is the most fundamental question, namely whether the application of criminal sanctions to Law number 11 of 2008 jo. Law number 19 of 2016 concerning ITE, in Decision Number 30/Pid.Sus/2020/PN Tte, is it appropriate as the offense committed by Sipelaku?

Analysis study of Decision Number 30/Pid.Sus/2020/PN Tte. Against the perpetrators of ITE crimes. Annotation of the Ternate District Court Judge's Decision on the ITE criminal case with the defendant SuDamrin Tomangoko alias Damrin alias Dam, we can read and examine in the case position below, namely:

Position Case

1) Decision of the Ternate District Court Number 30/Pid.Sus/2020/PN Tte which was pronounced in a hearing open to the public on Monday April 27 2020 in a case with the defendant SuDamrin Tomangoko alias Damrin alias Dam for alleged acts of violating decency and insulting or defaming his name Good.
2) That initially the Defendant Sudamrin M. Tomangoko alias Damrin knew the victim Nurul Aini Hi. M. Nur alias Nurul alias NU in November 2019 when he joined the LMND-DN Organization (National Democracy Student League–National Council), then started a dating relationship;
3) That initially the victim Nurul Aini Hi. M. Nur alias Nurul alias NU did not want to date, he only wanted to be friends, but because the Defendant was always chasing him, the victim was Nurul Aini Hi. M. Nur alias Nurul alias NU accepted the Defendant as his girlfriend;
4) That the defendant was in a dating relationship with the victim Nurul Aini Hi. M. Nur alias Nurul alias NU arrived in December 2019, so we were dating for about 1 month;
5) That within 1 month of having a courtship relationship with the victim, the Defendant and the victim often met 7 (seven) times and during these 7 (seven) meetings, they had intercourse like husband and wife 3 (three) times in a boarding house No. 3 in Army Mes at Ex. Akehuda Kec. North Ternate Ternate City;
6) That after the Defendant and the victim had intercourse like husband and wife for the second time, the Defendant then took a photo of the victim who was still in the boarding house 2 (two) times, at that time the victim only wore a long-sleeved top and wore hijab and only use underwear;
7) Whereas when the Defendant took a photo of the victim, the victim did not know and the Defendant did not inform the victim, after the Defendant took the photo the Defendant showed the photo to the victim and the victim asked the Defendant to delete the photo but the Defendant did not delete the photo;

8) That the Defendant did/took a photo of the victim while not wearing clothes that covered the victim's lower body with the intention that the victim would follow the Defendant's wishes;
9) That after the Defendant took a photo of the victim who was only wearing a top and only wearing underwear, the Defendant borrowed the victim's mobile phone and opened a Facebook account "Nurul Him Nur" and the Defendant opened an account on the Defendant's cellphone and automatically entered the Defendant's cell phone, then The defendant opened a chat/chat contact belonging to the victim's older brother named "Zaeynudin" then the defendant sent 2 (two) photos of the victim accompanied by a message that read "See kk see nni p ade p ade p tte tte thu eee he went to college as long as he did this thu (see that my brother and sister have characteristics/behavior in Ternate, they don't go to college, but this is their nature);
10) That the Defendant sent the photo to the massenger account belonging to the victim's brother, without the knowledge of the victim and the Defendant did not notify the victim;
11) That the Defendant sent the victim's photo to the victim's sister because the victim did not want to follow the Defendant's wishes;
12) Whereas when having intimate intercourse like husband and wife between the Defendant and the victim there was no coercion from the Defendant but it was consensual;
13) Whereas initially the victim refused but in the end the victim also wanted to have this sexual relationship;
14) Whereas apart from the victim not wanting to follow the Defendant's will, the Defendant was also jealous because the victim was close to other men on campus;
15) Whereas the Defendant only sent photos of the victim to the victim's sister through the victim's sister's messenger account, the Defendant never sent these photos through other social media applications;
16) That the Defendant knew what the Defendant had done was wrong and the Defendant had apologized from the victim's brother;
17) That as a result of the actions of the Defendant, the victim Nurul Aini Hi. M. Nur alias Nurul alias NU and his family were embarrassed;
18) That the Defendant regretted his actions and promised not to repeat them again;
19) That the Witnesses and the Defendant confirmed the evidence shown at trial;

Analysis IV

Based on the above legal facts, the Defendant alias Damrin can be declared to have committed a crime. The defendant alias Damrin in this case took photos of the victim who was still in the boarding house 2 (two) times, at which time the victim only wore a long-sleeved top and wore a headscarf and only wore underwear. The Defendant took a photo of the victim, the victim did not know and the Defendant did not notify the victim, after the Defendant took the photo the Defendant showed the photo to the victim and the victim asked the Defendant to delete the photo but the Defendant did not delete the photo. Taking a photo of the victim with the intention that all of the Defendant alias Damrin's requests would be followed by the victim or the Defendant's wishes would be followed.

The actions of the Defendant alias Damrin are suspected of having immoral content and insults or defamation. As well as the tools used are Xiaomi brand cellphones via internet media with a Facebook social media account. So that this action falls within the scope of the ITE Law. This means that the legal provisions or the ITE Law in conjunction with the Amendments to the ITE Law or the Articles of Contempt in the Criminal Code are used for this alleged act. Related to the use of the article on humiliation or defamation in the Criminal Code, according to the researcher, it is not possible considering the principle of lex specialis deorogate legi generali, the Criminal Code is a general law that has received special regulations regarding acts of insult or defamation by using internet media in the ITE Law. The problem now is which of these two laws is the most appropriate to be imposed on the actions of the defendant alias Damrin. Remmelink as quoted by Eddy OS Hiariej explained that in a situation like this it is necessary to use the systematic lex specialis principle, which is based on objects that are regulated more fully than the applicable legal provisions. When compared to the two (ITE and Criminal Code) laws, the Criminal

Code does not explain the crime or delict committed by the defendant alias Damrin using internet media, but in the ITE Law in the narrative of the article that the object used is internet media. This means that the ITE Law explains more in detail the elements of the actions of the accused alias Damrin through the electronic system.

Regarding the actions of the accused alias Damrin, it can actually be reviewed for the upload with the intention that was carried out. Upload with the intention, First; "The defendant alias Damrin took a photo of the victim without the victim's permission, which at that time the victim was only wearing a hijab and not wearing her pants. Second; "The defendant alias Damrin with the photo intends that all the wishes of the defendant be obeyed if the photo is not to be disseminated. Third; the defendant sent the photo to the victim's brother or sister via the internet (FB) by saying (in essence, saying all the actions that were done by his sister and brother were like this while in college). At first glance, the actions of the defendant alias Damrin are not included in defamation or insult in the ITE Law and the Criminal Code.

Based on the actions committed by the defendant alias Damrin uploaded on social media with the intention of embarrassing the victim. Then the elements of Article 27 paragraph (3) joArticle 45 paragraph (1) of the ITE Law.Explicitly in Article 27 paragraph (3) in conjunction with Article 45 paragraph (3) of the ITE Law. Elements of criminal acts or offenses in Article 27 paragraph (3) in conjunction with Article 45 paragraph (3) of the ITE Law are as follows:

1) Subjective Elements:
   Deliberately; The element of error required in this legal provision is intentional. This means that the actions of the accused in the form of intention can be implemented (intentional as intention, intentional as certainty and intentional as or possibility). The perpetrator must want his actions to be carried out in order to realize the goals he wants. The perpetrator wanted to take a photo of the victim with the intentionthe victim complied with all of the defendant's requests, if not the photo of the defendant would be shared so that the victim would be embarrassed.
2) Objective Elements:
   a) Without rights: elements without rights here are juxtaposed with subjective elements (intentionally). This means that both must be proven by the public prosecutor in court. The meaning of 'without rights' can be understood as there is no basis for rights or authority to do that act. The perpetrator did this precisely to attack the rights of other people for the purpose of achieving hatred, shame or embarrassment or degrading honor on the basis of defaming the name of another person (the victim).
   b) Disseminating information is intended to create a sense of humiliating the victim's honor, this act refers to the ITE Law using an electronic system or internet network connectivity. The condition required is the dissemination of the information. The question arises, when did the information become widespread? When perpetrators upload electronic information that is prohibited, the information has actually been widely disseminated. Regarding how many people have witnessed or seen or read this information, it really doesn't matter. The measure of demeaning people's honor should be placed when the perpetrator makes information easily accessible to anyone.
   c) The target or object of the actions of Article 28 paragraph (2) of the ITE Law can actually be anyone, he is a certain person and/or community group.
   d) The Panel of Judges in their decision is in accordance with what the Public Prosecutor demands. The Panel of Judges in their decision against the defendant Damrin is sentenced to imprisonment for 5 (five) years and 6 (six) months and a fine of Rp. 100,000,000.00 (one hundred million rupiah) if the fine cannot be paid by the Defendant, then it is replaced by imprisonment for 3 (three) three months. However, the Panel of Judges in its Consideration stated that the defendant alias Damrin was legally and convincingly guilty of also committing an act that had a charge that violated decency.

Based on the table and analysis above, it can be seen that the application of immoral criminal sanctions containing defamation or insults on social media is in Decision Number 30/Pid.Sus/2020/PN Tte. In line with Article 27 paragraph (3) in conjunction with Article 45 paragraph (3) of the ITE Law.

Purpose of Threatening Imprisonment in Mayantara Crime or Cyber Crime Decision Number 30/Pid.Sus/2020/PN Tte Regarding Defamation.

Related to the purpose of imposing a sentence in the perspective of criminal law, there are various opinions by experts regarding the purpose of imposing a sentence itself. Some of the opinions of experts regarding the purpose of criminal imposition are as follows:

1) According to JE Sahetapy: Whereas punishment aimed at exonerating criminals must be able to free the perpetrator from the wrong way or path he has taken. The meaning of liberating requires that the doer must not only be freed from wrong evil thoughts, but he must also be freed from the social reality in which he is shackled.
2) According to van Bemmelen: That the purpose of imposing this sentence is not to increase suffering, but solely for the protection of society and treatment, improvement and education for perpetrators of law violations (Ekaputra & Kahir, 2010).
3) Various paradigms regarding the purpose of imposing a sentence are certainly influenced by social developments at a time. In this context the dynamics of society are always developing in a better and more civilized direction. Therefore, criminal law as a norm that applies in society also experiences development in accordance with the development of that society.

In order to better understand the shift in the sentencing paradigm, it is necessary to understand the various streams in criminal law which are the background to the shift, namely:

1) Classical Flow

   This flow developed around the 18th century. This flow is a stream that is very thick with the nuances of legism because this flow develops when the flow of legism becomes a paradigm in society. This flow is also a response to the arbitrariness of the authorities. This flow requires that everyone obtain legal certainty, especially in criminal law. In accordance with the underlying paradigm, namely the legal school, the classical school requires a balanced punishment. Punishment must be imposed according to the crime committed. In the context of sentencing, a certain formula is also applied. In the classical school of criminal law which is formulated in a definite sentence. Punishment must be in accordance with what is formulated in the law (Purwadiyanto, 2015).

   This means that the weight of the crime has been determined in the law and the judge does not have the authority to impose other penalties other than those specified in the law. This flow requires a criminal law that is systematically arranged and focuses on actions and not on people who commit crimes. By being oriented towards the actions committed by the defendant in Decision Number 30/Pid.Sus/2020/PN Tte. This flow requires that the sentence imposed is balanced with the act. In an extreme way, it can be said that the classical school in the provision of punishment is more backward-looking, namely only oriented towards the actions that have been committed by the perpetrator. Because of this, criminal law that is developing at this time is often known as criminal law which is only oriented towards the perpetrator (daderstrafrecht).
2) Modern Flow

   It turns out that the journey of the classical school in the criminal law discourse has received responses from various figures who are not in line with the paradigm of the classical school. This school arose in the 19th century with the view that criminal imposition was only oriented towards the problem of actions that were considered unable to provide justice. In this context adherents of the modern school expressed their opinion, so that the sentence is not based on the perpetrator of the crime (daderstrafrecht). Sentence must be based on the characteristics and personal circumstances of the offender. Compare this with the classical school of thought which requires criminal imposition to be based on deed (daadstrafrecht) which is often said to be only backward looking (Purwadiyanto, 2015).

   The modern school is also called a positive school, because in searching for the causes of crime it is based on natural science. In addition, this flow intends to approach the perpetrators of crime in a positive way, meaning to influence the perpetrators of crime in a more positive direction as long as it is still possible (Rasjidi, 2012).

With such a paradigm, this flow is often regarded as a forward-looking stream. The modern school also rejects the view that punishment must be imposed according to the crime committed. This rejection is based on the modern understanding that humans do not have free will. Thus, criminal responsibility based on the subjective guilt of the perpetrators must be replaced by the dangerous nature of the perpetrators of crimes. Even if the term criminal is used, the sentence imposed must be based on and oriented towards the characteristics of the offender himself.

3) Neo-classical flow

Neo-classical flow is a flow that emerged as a reaction to the classical flow. As a reaction to the classical school, this school basically also comes from the classical school. Like the classical school, the neo-classical school also departs from the notion of free will or the view of indeternism. Even so, this school seeks to provide corrections to the classical school which is considered less humane (Sianturi & Panggabean, 1996). Criticism of the neo-classical school, seen in his view of the punishment imposed by the classical school. According to the neo-classical school, the punishment imposed/produced by the classical school is very heavy. In an effort to overcome the existing penal system, the neo-classical school tries to offer a more humane penal system. For this need, the neo-classical school formulates punishment with a minimum and maximum criminal system. In addition to the existence of a minimum and maximum system in sentencing, this school also recognizes the principle of extenuating circumstances (Purwadiyanto, 2015).

Thus, it appears here that the neo-classical school begins to consider things that are individual in relation to criminal imposition. This means that punishment is not only imposed based on the act, but also based on the individual considerations of the offender. One thing that is very visible from the shift in views, among others, the classical school and the neo-classical school, in this case, is the abandonment of the definite sentence formulation system. Instead put forward a criminal system that is formulated indefinitely. By the definite sentence system, we mean a criminal system that has been formulated with certainty. In this system, a judge cannot impose a sentence on someone who is charged with committing a crime outside of what has (definitely) been formulated in the Criminal Code. The judge may not impose another sentence, both its type and severity. Meanwhile, in the criminal indefinite sentence system, what is formulated in law is only the minimum and maximum limits. The judge has the freedom to impose a sentence on a defendant within the minimum and maximum limits. In this case, it appears that the role of the judge has begun in resolving cases that occur in society. Judges are not only mouthpieces for laws, but have the authority to interpret laws.

Then, with regard to the purpose of imposing a prison sentence, it is inseparable from the theory of the purpose of punishment. In a criminal case, such as the case in this study, the question arises; "why a crime or violation or disgraceful act or delict or defamation or insultDecision Number 30/Pid.Sus/2020/PN Tte in this thesis research, subject to a crime?

The development of thinking about the nature of the purpose of sentencing has developed from time to time trying to justify the actions of the state. To answer this question the author tries to analyze using sentencing theories that develop in criminal law are Retribution Theory and Relative Theory

Analysis I

Imprisonment as Recompense for Disgraceful Acts

The view is that the purpose of imposing imprisonment on violations by perpetrators of ITE crimes or mayantara crimes is as recompense for disgraceful acts.

The retributive theory in terms of sentencing is based on the reason that punishment is "morally justified" because the perpetrators of crimes can be said to be worthy of receiving it for their crimes. An important assumption about the justification for punishing as a response to a crime because the perpetrator of a crime has violated certain moral norms that underlie the rule of law which he did intentionally and consciously and this is a form of moral responsibility and legal guilt of the perpetrator (Prakoso, 2019).

The retributive theory legitimizes punishment as a means of retaliation for crimes that have been committed by someone. Crime is seen as an immoral and immoral act in society, therefore the perpetrators of crime must be repaid by imposing a sentence. The purpose of punishment is released from any purpose, so that punishment has only one goal, namely retaliation (Eddy & Hiarriej, 2016). This retributive theory is then divided into 5 parts (Andrisman, 2009):

1) Absolute retaliation from ethical demands, meaning that punishment in the form of imprisonment is an absolute demand from ethics against an offender who harms others.
2) Retaliation in return; This theory was put forward by Hegel who stated that law is an embodiment of freedom while crime is a challenge to law and justice. That is, to maintain the law which is the embodiment of freedom and justice, crimes absolutely must be eliminated by giving punishment to criminals.
3) Retaliation for beauty and satisfaction; The purpose of this theory is that retaliation is an absolute demand from the feelings of community dissatisfaction, as a result of a crime, to punish criminals, so that community dissatisfaction is restored.
4) Revenge according to God's teachings; as stated by Stahl that crime is a violation of God's justice and must be abolished. Therefore, it is absolutely necessary to give suffering to criminals in order to maintain God's justice. The way to defend God's justice is through the power given by God to the rulers of the State.
5) Vengeance as a human will; it means that this theory bases punishment also as a manifestation of human will. According to this teaching, it is a natural requirement that anyone who does evil will receive something evil.

Against the theory of retaliation mentioned above, it is also emphasized with criticism that this theory does not show practical goals, which, among other things, have no intention to correct criminals. This can be seen when a problem occurs, in this case a crime of mayantara or other issues that grab the public's attention, often when journalists interview family, friends or people who sympathize with the incident, expressing their hopes in this case by saying "hopefully he (the suspect) punished as severely as possible by the judge" without thinking about rehabilitation or the goals of today's modern punishment. Then, the judges still consider that with careful consideration, imprisonment can still be used as an adequate means of overcoming crime. Prison sentences were imposed because they were threatened in criminal law. Prison sentences were imposed because they were reliable in dealing with crime in Indonesia.

Imprisonment as a form of handling criminal acts to protect the public

The view is that the purpose of imposing imprisonment on violations by perpetrators of ITE crimes or mayantara crimes is as a form of overcoming criminal acts to protect society. This view is heavily influenced by deterrence theory, especially special prevention theory. Cessare Beccaria emphasized that the purpose of punishment is to prevent someone from committing a crime, and not as a means of revenge for society (Prakoso, 2019).

Furthermore, the purpose of punishment as a deterrence effect is divided into two, namely general deterrence and special deterrence. The purpose of punishment for general prevention is expected to give a warning to the public so they don't commit crimes. This general prevention according to van Veen has three functions, namely enforcing government authority, enforcing norms and forming norms. Special prevention means that with the punishment imposed, it gives a deterrence effect to the perpetrator so that he does not repeat his actions again. Meanwhile, the function of protection for the community allows that with the punishment of revocation of freedom for some time, the community will avoid crimes that might be committed by the perpetrators (Prakoso, 2019).

In line with this, in order to carry out its function as social control law as social control, the law can serve 3 (three) sectors, namely (Kusumaatmadja, 2006):

1) Law as an instrument of order (ordering); Within the framework of this order, law can create a framework for decision-making and resolution of problems/disputes that may arise through a good procedural law. It can also lay the legal basis (legitimacy) for the use of power.
2) Law as a means of maintaining balance (balancing); The function of law is to maintain balance and harmony between state interests/public interests and individual interests.

3) Law as a catalyst; As a legal catalyst, it can help to facilitate the process of change through law reform with the help of staff in the legal profession.

If it is associated with the imposition of criminal offenses against perpetrators of criminal acts of defamation through electronic media, the goal to be achieved based on this theory is to deal with victims of crime by placing ITE criminals or perpetrators of mayantara crimes in prisons/prisons so that perpetrators cannot to act in the public interest in general. In other words, by imposing a prison sentence on the perpetrator of the mayantara crime for a while the perpetrator will not commit the same crime or other crimes. In accordance with this deterrence theory which states that retaliation has no value, but only as a means to protect the interests of society.

Imprisonment to Provide a Deterrent Effect on Offenders

The aim of imposing imprisonment on perpetrators of criminal acts of defamation is to give a deterrent effect to perpetrators. In the development of finding the basis for justification for a crime, it is known as the concept of deterrence maker or the theory of deterring people, which aims to deter all citizens from committing crimes.

This is in line with the opinion of Stahl who said that with a punishment can achieve three things, namely to protect the rule of law, to prevent people from committing crimes, and to make people deterred from committing crimes (Lamintang & Lamintang, 2022).

That is, the threat of punishment must be able to prevent people's intentions to commit crimes, in the sense that people realize that committing a crime will definitely be punished, for that they will abandon the intention to commit a crime. So, according to this objective, a prison sentence is imposed so that the perpetrator does not want to do the act again.

Description of the Threat of Imprisonment at the Case Level Through Electronic Media

The development of social media is getting faster and reaching all levels of society. Social media combines elements of information and communication through several features for the needs of its users. Some information through status uploads, sharing news links, communication via chat, audio/visual communication and others are the superior features of social media. Use of internet-based social media that is not wise, as data on criminal cases or world cases, including:

Table 1. List of Cases in The World of Cybercrimes

Search Results in the Ruling Directory of the Supreme Court of the Republic of Indonesia				
Year	**National at First Level Process**	**Note**	**Local Ternate City District Court**	**Note**
2021-Sept.	191 registered ITE cases, at the first level of the process. 109 District Courts spread across the Indonesian Territory.	Ammar: 191 Others: 191	2 registered cases of ITE, at the first level of the process.	Ammar: 2 Others: 2
2020	383 registered ITE cases, at the first level of the process. 149 District Courts scattered in Indonesian Territory.	Ammar: 383 Others: 383	3 registered ITE cases, at the first level of the process.	Ammar: 3 Others: 3
2019	287 registered ITE cases, at the first level of the process. 116 District Courts spread across the Indonesian Territory.	Ammar: 287 Others: 285 Free: 1 Release: 1	1 registered ITE case, at first level process.	Ammar: 1 Others: 1
2018	179 registered cases of ITE, at the first level of the process. 104 District Courts scattered in Indonesian Territory.	Ammar: 179 Others: 177 Free: 2	2 registered cases of ITE, at the first level of the process.	Ammar: 2 Others: 2
2017	69 registered ITE cases, at the first level of the process.	Ammar: 69	2 registered cases of ITE, at the first level of the process.	Ammar: 2 Others: 2

	46 District Courts spread across the Indonesian Territory.	Others: 67 Free: 1 Release: 1		
Number of Courts in Indonesia Handling and Deciding ITE Cases with Imprisonment				
Amount	2017 to 2021-Sept : 1,109 ITE Cases. in 524 District Courts in Indonesia.	2017 to 2021-Sept: 1,103 (sanctions)	2017 to 2021-Sept: 10 ITE cases	2017 to 2021-Sept: 10 cases that received sanctions (ITE)

Source: Directory of Decisions of the Supreme Court of the Republic of Indonesia

Then, the data found by researchers, that Indonesian Facebook users are ranked 4th after the USA, Brazil and India. There are around 65 million active Facebook users and as many as 33 million active users per day but "April 2017 data shows a significant increase in the number of active Facebook users in Indonesia, namely as many as 111 million users.

Legal cases that have been rife lately as shown in the data and table 5 above are related to technology, namely the Internet and social media, including cases of defamation through internet social media. It can even be said that almost every day similar cases actually occur, which is due to the increasing freedom of the public in expressing their opinions via the internet, in this case social media. One case that very often occurs is a case of insult or defamation through internet social media.

The large number of Facebook users are used by a number of parties to commit various criminal acts in the form of fraud, falsification, showing pornography, including the intentional act of causing insult/defamation. As defamation via Facebook in Decision Number 30/Pid.Sus/2020/PN Tte.

Based on the judge's considerations with regard to the public prosecutor's indictments, the judge stated that the public prosecutor's indictments were fulfilled. However, the subsidiary indictment of Article 45 paragraph (3) of the ITE Law was not proven to have been committed by the perpetrator so that he was sentenced to a decency crime. In this case the ITE Law has a new perspective in the formulation of criminal offenses compared to the views in the Criminal Code (KUHP) which tend to be seen as conventional.

The applicability and interpretation of Article 27 paragraph (3) of the ITE Law cannot be separated from the main legal norms in Article 310 and Article 311 of the Criminal Code. That was one of the considerations of the Constitutional Court in the decision on case No. 50/PUU-VI/2008 on the judicial review of Article 27 paragraph (3) of the ITE Law against the 1945 Constitution. The Constitutional Court concluded that a person's good name and honor should be protected by applicable law, so that Article 27 paragraph (3) of the ITE Law does not violate the values -democratic values, human rights, and the principles of the rule of law. Article 27 paragraph (3) of the ITE Law is Constitutional.

If you look closely at the contents of Article 27 paragraph (3) in conjunction with Article 45 paragraph (1) of the ITE Law, it seems simple when compared to the more detailed insult articles in the Criminal Code. Therefore, in interpreting Article 27 paragraph (3) of the ITE Law, judges must refer to the defamation articles in the Criminal Code. For example, in the ITE Law there is no definition of defamation. Referring to Article 310 paragraph (1) of the Criminal Code, defamation is defined as an act of attacking someone's honor or good name by accusing something with clear intentions so that it becomes public knowledge.

Then from another point of view, among the goodness contained in the law, there is one article that is a bit worrying, not only for the accused in this case but also for all of us, namely article 27 paragraph (3). This article is a threat to someone who deliberately insults and/or defames another person by using access to electronic information or electronic documents.

So if analyzed based on Article 310 paragraph (2) of the Criminal Code regarding defamation or humiliation. If this is done in writing or with a picture that is broadcast, shown or posted in public, then the threat due to written defamation is punishable by imprisonment for a maximum of one year and four months or a maximum fine of four thousand five hundred rupiahs (Saleh, 2013).

Because the panel of judges held the view that based on the facts revealed in court about the crime committed by the Defendant alias Damrin legally against the law, guilty and punished. Which is then in line with the objective of sentencing that the imposition of a sentence is not solely as retaliation for the actions of the Defendant but aims to achieve peace in society and also to foster and educate so that the Defendant realizes his mistakes so that he becomes a good member of society in the future, then based on considerations According to the Panel of Judges, it is proper and fair for the Defendant to apply probation as stipulated in Article 14 (a) of the Criminal Code.

In line with the above, the focus is on sentencing; The emphasis is not on the feelings of the victim, but on the actions of the perpetrator which were carried out intentionally (dolus) with the intention of distributing or transmitting or making accessible information whose contents attack someone's honor by accusing something of making it public.

Based on the explanation above it can be concluded that defamation was carried out through social media based on Decision Number 30/Pid.Sus/2020/PN Tte. becomes an illustration that criminal acts of defamation or insult do not only exist in the Criminal Code but are also regulated in Law number 11 of 2008 jo. Law number 19 of 2016 concerning ITE. Then, be wiser in using social media.

CONCLUSION

Application of criminal sanctions by the Panel of Judges for the criminal act of mayantara Decision Number 30/Pid.Sus/2020/PN Tte. regarding Defamation or insult on social media refers to Article 27 paragraph (3) in conjunction with Article 45 paragraph (3) of Law Number 11 of 2008 jo. Law number 19 of 2016 concerning ITE with the threat of imprisonment for 5 (five) years and 6 (six) months and a fine of Rp. 100,000,000.00 (one hundred million rupiah) if the fine cannot be paid by the Defendant, it is replaced by imprisonment for 3 (three) months. However, the Panel of Judges in its Consideration stated that the defendant alias Damrin was legally and convincingly guilty of also committing an act that had a charge that violated decency.

The aim of imposing imprisonment on perpetrators of criminal defamation through electronic media is as retaliation for disgraceful acts, as a form of overcoming criminal acts to protect society and to create a deterrent effect on perpetrators. This goal is heavily influenced by criminal philosophies in criminal law.

REFERENCES

Ali, Zainuddin. (2021). *Metode penelitian hukum*. Sinar Grafika.

Andrisman, Tri. (2009). *Hukum Pidana: asas-asas dan dasar aturan umum hukum pidana Indonesia*. Penerbit Universitas Lampung.

Anshori, Abdul Ghofur. (2018). *Filsafat hukum*. Ugm Press.

Chazawi, Adami. (2022). *Hukum Pidana Positif Penghinaan*. Media Nusa Creative (MNC Publishing).

Eddy, O. S. Hiariej, & Hiarriej, S. (2016). Prinsip-prinsip hukum pidana. *Yogyakarta: Cahaya Atma Pustaka*.

Ekaputra, Muhammad, & Kahir, Abdul. (2010). *Sistem Pidana di dalam KUHP dan pengaturannya menurut Konsep KUHP Baru*. USUpress.

Huda, Chairul. (2004). *Kesalahan dan Pertanggungjawaban Pidana*. Jakarta: Program Pascasarjana UI.

Jhonny, Ibrahim. (2010). *Teori dan Metodologi Penelitian Hukum Normatif, Malang: PT*. Bayu Media Publishing.

Karami, M. R. (2003). Pour's suitable training with information age. *The Growth of Educational Technology*, (20.45).

Kusumaatmadja, Mochtar. (2006). Hukum, masyarakat, dan pembangunan. *Bandung: Binacipta*.
Lamintang, P. A. F., & Lamintang, Franciscus Theojunior. (2022). *Dasar-dasar hukum pidana di Indonesia*. Sinar Grafika.
Marpaung, Leden. (1997). *Tindak pidana terhadap kehormatan: pengertian dan penerapannya: dilengkapi dengan putusan-putusan Mahkamah Agung RI*. RajaGrafindo Persada.
Marzuki, Peter Mahmud. (2016). Penelitian Hukum, Edisi Revisi, Cetakan Ke-12. *Jakarta: Kencana*.
Muladi, Bassiouni, & Arief, Barda Nawawi. (2005). Teori-teori dan kebijakan Pidana. *Alumni, Bandung: Hlm*, *90*.
Prakoso, Abintoro. (2019). *Hukum penitensier*.
Prodjodikoro, Wirjono. (2012). Tindak-tindak Pidana Tertentu di Indonesia, ed. 3 cet. 4. *Refika Aditama, Bandung*, *1*.
Purwadiyanto, Taufan. (2015). Analisis Pidana Kerja Sosial Dalam Hukum Positif Di Indonesia. *Lex Administratum*, *3*(8).
Ramli, Ahmad M. (2010). *Cyber law dan haki: dalam sistem hukum Indonesia*.
Rasjidi, H. Lili. (2012). *Pengantar filsafat hukum*.
Saleh, Roeslan. (2013). *Pikiran-Pikiran tentang Pertanggung Jawaban Pidana*. Cetak an Pertama, Jakarta: Ghalia Indonesia.
Samosir, C. Djisman, & Lamintang, P. A. F. (1983). Hukum Pidana Indonesia. *Bandung: Sinar Baru*.
Sianturi, S. R., & Panggabean, Mompang L. (1996). Hukum Penitensia di Indonesia. *Cetakan Pertama, Alumni Ahaem-Petehaem, Jakarta*.
Sitompul, Josua. (2012). *Cyberspace, cybercrimes, cyberlaw: tinjauan aspek hukum pidana*. PT Tatanusa.
Soesilo, Raden. (1995). *Kitab Undang-Undang Hukum Pidana (KUHP): Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal*.
Wahid, Abdul. (2005). *Kejahatan Mayantara (cyber crime)*.