

Implementation of SKB Number 229 of 2021, Number 154 of 2021, Number KB/2/VI/2021 against ITE Delik Article 27 Paragraph (3) of Law Number 11 of 2008

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ABSTRACT

Keywords:

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Defamation through social media is regulated in Article 27 Paragraph (3) of Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. In fact, the article seems to be a rubber article because it can easily be applied, especially to events that actually fall within the scope of ordinary disputes between individuals through social media or limited to reality stories that then make personal offenses that are considered an attack on honor / good name. This then became a polemic in itself in the community because of the application of articles that are multiinterpretive without paying attention to the scope of events. The problem examined in this study is how the criminal provisions according to Article 27 (3) of the ITE Law and the limitations of the application of article 27 paragraph (3) of the ITE Law. As a form of problem solving for the polemic that continues to occur, on June 23, 2021, the government issued a Joint Decree of Criteria Guidelines. Implementation of the Law on Information and Electronic Transactions (SKB UU ITE). This decree was signed by the Minister of Communication and Information, the Attorney General and the Chief of the National Police of the Republic of Indonesia, which is expected to be a law enforcement guideline so that there is no multiinterpretation of the implementation of the ITE Law which previously became a rubber article.



Introduction

The rapid development of the times, especially in the field of information technology, makes the Government need to issue regulations or legal rules so that the use of information technology is carried out safely to prevent its use by taking into account the religious and socio-cultural values of the community. Ensuring legal certainty, preventing crime and protecting the public users of information technology media

through the promulgation of Law Number 11 of 2008 (State Gazette of the Republic of Indonesia of 2008 Number 58) hereinafter referred to as the ITE Law Jo Law No. 19 of 2016 (State Gazette of the Republic of Indonesia of 2016 Number 251) hereinafter referred to as the Amendment of the ITE Law (Alyusi, 2019).

Electronic information here is as one or a set of electronic data, but not limited to writing. Which includes sounds, maps, images, designs, electronic data interchange or EDI, photos, electronic mail or email, telex, telegrams, letters, signs, symbols, access codes, or perforations that have been processed and have meaning and can be understood by people who can understand them. While electronic transactions are legal acts carried out using computers, computer networks, and also other electronic media (Chazawi & Ferdian, 2015).

The presence of the ITE Law is indeed needed in public life, especially with the rapid development of the times and technology. However, with all the functions and also the purpose of the promulgation of the ITE Law, there are still problems in its content. Since the ITE Law was promulgated, criminal cases of insults involving internet users have begun to increase, especially in Indonesia (Effendy, 2014).

But the problem is, Indonesia itself has geographical conditions that are one of its own challenges to improve access to justice for suspected perpetrators of internet abuse. Not only that, the availability of lawyers or advocates who understand about internet issues is also not so much. Especially lawyers who provide nuances of human rights in criminal cases (Ismu Gunadi & Efendi, 2011).

According to a report from the Institute for Criminal Justice Reform, there is a problem in article 27 paragraph 3 and article 45 paragraph 1 of the ITE Law. Because, some of the terms in the article, as well as about distribution and transmission, are some technical terms that in practice are not the same as those in the world of information technology or the real world. The model of the formulation of offenses in article 27 paragraph 3 and article 45 paragraph 1 of the ITE Law has its own consequences because in practice the court will also decide differently on the formulation of the offense (Ilyas & Mustamin, 2022). Meanwhile, according to the idea of the Southeast Asia Freedom of Expression Network, there are several problems in the ITE Law, namely in articles 27 to 29 of the ITE Law in the cyber crime chapter and also in articles 26, article 36, article 40, and article 45. The problems in the article include legal interpretation. Where the formulation of the articles in the ITE Law is not strict or rubber. And in it also creates legal uncertainty or multiinterpretation and inappropriate. The Constitutional Court (MK) recently rejected the judicial review of the provisions contained in Article 27 Paragraph (3) and Article 28 Paragraph (2) of the ITE Law (Ilyas & Pidana, 2012).

Article 27 Paragraph (3) regulates prohibited acts, namely:

"Any person intentionally and without rights distributes and/or transmits and/or makes accessible electronic information and/or electronic documents that have the content of defamation and/or defamation".

Meanwhile, Article 28 Paragraph (2) regulates the prohibition regarding:

"Everyone intentionally and without rights disseminates information aimed at causing hatred or hostility of individuals and / or certain groups of people based on ethnicity, religion, race, and intergroup (SARA)".

According to the Court, the article on insult and defamation in the ITE Law actually aims to create a balance between the freedom and protection of individuals with the freedom of others to speak. "The formulation of Article 27 Paragraph (3) of the ITE Law is to maintain a balance between the freedom and protection of individuals, family, honor,

and dignity, with the freedom of others to speak, express, express opinions and thoughts and seek, obtain, possess, store, process and convey information in a democratic society," said the consideration of the Constitutional Court Judges read in the court on Wednesday (20/7/2022).

The Court also disagreed with the petitioners who considered that Article 28 Paragraph (2) of the ITE Law caused arbitrariness. The Constitutional Court argues that if someone disseminates information with the intention of causing hatred or hostility of individuals and/or groups of people based on SARA, then it is contrary to respect for the rights and freedoms of others.

Hate speech based on SARA is also considered contrary to considerations of morals, religious values, security, and public order. "According to the Court, the provisions of Article 28 paragraph (2) of Law 11/2008 which the petitioner invoked for constitutional review are precisely in accordance with the protection, including the protection of the honor of the entire Indonesian nation," the Court's judgment read. Not once or twice the article on defamation and hate speech in the ITE Law is questioned. The judicial review of the article had also previously been submitted to the Constitutional Court and the results were nil. The provision has also repeatedly taken its toll. A number of civilians, academics, and politicians were forced to taste iron bars because they were entangled in this article (Rahardjo, 2013).

One of the cases that occurred in Indonesia was experienced by Prita Mulyasari. The legal trap of the ITE Law had shocked the public in 2008 because of a case that happened to a housewife from Tangerang, Prita Mulyasari. It started with Prita checking her health at Omni International Hospital, Tangerang. Not satisfied with the hospital service, Prita wrote her complaint through the mailing list. Prita's writing was spread until finally Omni Hospital sued her. Prita was charged with violating Article 27 Paragraph (3) of the ITE Law. A panel of judges at the Tangerang District Court was supposed to find Prita not guilty. However, the Public Prosecutor (JPU) filed a cassation and it was granted by the Supreme Court (MA) so Prita was found guilty in 2011. Upon the verdict, Prita filed a Judicial Review (PK) which was granted by the Supreme Court. Prita was officially free from criminal charges due to the ITE Law.

Freedom of opinion is one of the human rights guaranteed by the constitution. States are obliged to fulfil and protect such rights. Article 28 of the 1945 Constitution reads, "The freedom of association and assembly, expressing thoughts orally and in writing and so on shall be stipulated by law." In addition, there is also Article 28E Paragraph 3 which reads, "Everyone has the right to freedom of association, assembly, and expression." The guarantee and protection of freedom of opinion is affirmed in Law Number 39 of 1999 concerning Human Rights. Freedom of opinion is contained in Article 23 Paragraph 2 and Article 25 (Syahdeini, 2019).

The guarantee and protection of freedom of opinion is affirmed in Law Number 39 of 1999 concerning Human Rights. Freedom of opinion is contained in Article 23 Paragraph 2 and Article 25. According to Article 23 Paragraph 2, everyone is free to have, express and disseminate opinions according to his conscience, orally and / or in writing, through print and electronic media, taking into account religious values, decency, order, public interest, and the integrity of the nation. Meanwhile, Article 25 affirms that everyone has the right to express opinions in public, including the right to strike in accordance with the provisions of laws and regulations.

Not only that, freedom of opinion, especially in public, is specifically regulated in Law Number 9 of 1998 concerning Freedom to Express Opinions in Public. Referring to

this law, freedom to express opinions is the right of every citizen to express thoughts orally, in writing, and so on freely and responsibly in accordance with applicable regulations. Expressing opinions is a manifestation of the democratic rights and responsibilities of every citizen in the life of society, nation, and state.

The Law on Information and Electronic Transactions (UU ITE) No. 11 of 2008, which was originally created by the government to regulate transactions carried out electronically in order to obtain clear legal certainty, has recently been widely used as a tool to throw people in jail. This cannot be separated from the existence of rubber articles, especially in article 27 paragraph 3 concerning the distribution of insult and / or defamation content. The interpretation of this article is widely used by people to ensnare someone who is considered to have committed defamation, including by journalists. Therefore, there are urges from various parties for the rubber articles to be revised immediately. There is hope when the ITE Law No. 11 of 2008 is revised with Law No. 19 of 2016, but the revised points do not clearly regulate the criteria for the problem that became a controversy for the rubber article.

Thus, under more massive pressure from various groups regarding the importance of revising this rubber article, on June 23, 2021 the Government issued a Joint Decree on Guidelines for the Implementation Criteria of the Electronic Information and Transaction Law (SKB UU ITE) signed by the Minister of Communication and Information Technology, the Attorney General and the Chief of the National Police of the Republic of Indonesia. The presence of this decree is expected to be a guideline for law enforcement so that there is no multiinterpretation of the implementation of the ITE Law which previously became a rubber article.

Based on this description, the author is encouraged to conduct a research entitled Implementation of SKB Number 229 of 2021, Number 154 of 2021, Number KB/2/VI/2021 against ITE Delik Article 27 Paragraph (3) of Law Number 11 of 2008". Based on the formulation of the problem above, this study aims to find out how the determination of Article 27 Paragraph (3) of the ITE Law. The benefit of this research is that it is expected to contribute ideas to legal science in general and science about criminal law in particular related to the ITE Law.

Research Methods

The type of research used in this study is Normative where normative legal research is research that examines document studies, which uses various skunder data such as laws and regulations, court decisions, legal theories, and can be in the form of scholarly opinions. This normative research uses qualitative analysis, namely by explaining existing data with words or statements instead of numbers.

Normative legal research can also be referred to as doctrinal legal research. In this research, law is often conceptualized as what is written in laws and regulations (*law in book*) or law that is conceptualized as rules or norms that are a benchmark for community behavior towards what is conceptualized as rules or norms that are a benchmark for community behavior towards what is considered appropriate. But actually law can also be conceptualized as what is in action (*low in action*). *Law in books* is a law that should run as expected but the two are often different, meaning that the law in the book is often different from the law in people's lives (Efendi & Ibrahim, 2018).

For this normative research, the author will use a type of normative research, which is a study focused on examining positive hukum research, in this case written legal

material, especially related to legal protection of children as perpetrators of criminal acts whose identities are spread on social media.

The approach used in this study is the *Statute Approach* and the Analytical Approach. The statutory approach is an approach taken by reviewing all laws and regulations related to the legal issues handled (Marzuki, 2018). While the analytical approach is to conduct a conceptual examination of the meaning contained by the terms used in laws and regulations and how they are applied in practice and legal decisions (Efendi & Ibrahim, 2018). Search for primary, secondary or tertiary legal materials is carried out by accessing on Internet sites, at legal documentation and information centers or in libraries in related agencies. Where from the collected legal material will be studied and then will carry out legal interpretation of laws and regulations, with the collection of discussions contained in books related to the problem being researched to then cite important parts and continue to be compiled systematically. In each chapter and sub-chapter that has been arranged sequentially according to the subject matter for later analysis.

Results and Discussion

Criminal Provisions Article 27 Paragraph (3) according to the ITE Law.

Follow Criminal is the act of doing or not doing something that by law is declared a prohibited act and threatened with a crime.

Criminal Acts are behaviors that by the applicable criminal law (positive criminal law) have been criminalized and therefore can be subject to criminal sanctions for the perpetrators (Sutan Remy Sjahdeini, 2017). Criminal acts are actions prohibited by a rule of law, a prohibition which is accompanied by threats (sanctions) in the form of certain crimes for anyone who violates the prohibition (Ismu & Efendi, 2011). Criminal Acts are as an act in certain places, times, and circumstances that are prohibited (or required) and threatened with crime by law is unlawful, and with mistakes committed by someone (who is responsible) (Ilyas & Mustamin, 2022). Of the types of criminal acts in the Criminal Code, there are types of criminal acts that can only be prosecuted if there is a complaint from the aggrieved party, this is regulated in Chapter VII of the Criminal Code. Criminal about filing and withdrawing complaints in the case of crimes that are only prosecuted on complaint. One of the criminal offenses of the complaint is the criminal act of defamation. The size of an act that can be categorized as defamation of others is still unclear because many factors must be examined. In the case of defamation or insult to be protected it is the duty of everyone to respect others from the point of his honor and good name in the eyes of others.

The relationship between honor and good name in terms of defamation, it can be seen first the understanding of each. Honor is a person's feeling of honor in the eyes of society, where everyone has the right to be treated as an honorable member of society. To attack honor is to do an act according to judgment in general to attack one's honor. Respect and actions that fall into the category of attacking one's honor are determined according to the community environment in which the act is committed (Mudzakir, 2020).

A good name is a judgment of either a person's general perception of or personality from his moral standpoint. A person's good name is always seen from the point of view of others, namely good morals or personality, so the measure is determined based on general judgments in a particular society where the act is done and the context of the action.

Defamation is also known as insult, which is basically attacking the good name and honor of someone who is not in a sexual sense so that the person feels aggrieved. Honor and good name have different meanings, but they cannot be separated from each other, because attacking honor will result in honor and good name being tainted, likewise attacking good name will result in one's good name and honor can be tainted. Therefore, attacking one of the honors or good names is enough reason to accuse someone of insulting.

The definition of insult according to the legal dictionary is a deliberate attack on honor or name either orally or in writing with the intention of being known by the public (Simorangkir, Erwin, & Prasetyo, n.d.). The Criminal Code has various articles that will regulate matters regarding defamation. Quoted from a legal journal entitled Defamation in the Criminal Code and According to Law Number 11 of 2008 concerning Electronic Information and Transactions by Reydi Vridell Awawangi, the following is the article of defamation in the Criminal Code.

1. Article 310 Paragraph 1

This article regulates oral pollution. If a person has committed elements of oral pollution, it can be subject to this article. Article 310 paragraph 1 of the Criminal Code reads:

"Whoever deliberately attacks the honor or good name of a person by accusing something, which is clearly intended to make it public, shall be punished with defamation with imprisonment for not more than nine months or a fine of not more than four thousand five hundred rupiah."

2. Article 310 Paragraph 2

This article will regulate defamation actions carried out in writing. A person who defames another person in writing may be subject to this article. Article 310 paragraph 3 reads:

"If it is done with writing or images broadcast, displayed or pasted in public, it is threatened with written defamation with a maximum imprisonment of one year and four months or a maximum fine of four thousand five hundred rupiah."

3. Article 311 paragraph 1

Article 311 of the Criminal Code regulates slanderous acts committed by a person. Libel acts that may defame others may be subject to this article. Article 311 paragraph 1 of the Penal Code reads: "Whoever commits the crime of blasphemy or blasphemy by writing, in case he is permitted to prove his accusation, if he is unable to prove it and if the accusation is committed while he knows to be untrue, shall be punished for false defamation with imprisonment for not more than four years."

4. Article 315.

Article 315 of the Criminal Code regulates minor insults committed by a person. Definitionally, if someone curses or curses with cheese words which in public opinion can be classified as insulting words, then it is classified as fulfilling the elements of article 315. Article 315 of the Criminal Code reads:

"Any deliberate insult of a non-defamatory or libelous nature committed against any person, whether in public by oral or written, or in the face of the person himself by oral or deed, or by a letter sent or received to him, shall be punished with a minor insult with imprisonment for not more than four months and two weeks or a fine of not more than four thousand five hundred rupiah."

5. Article 317.

Article 317 of the Criminal Code regulates defamation with complaints. What is meant by defamation with a complaint in article 317 of the Criminal Code in article 1 is:

"Whoever knowingly files a false complaint or notice to the authorities, either in writing or in writing, about a person so that his honor or good name is attacked, shall be punished with making a slanderous complaint, with imprisonment for not more than four years."

6. Article 320 paragraph 1

This article deals with defamation against a dead person. Such actions can be threatened by article 320 paragraph 1 of the Criminal Code. Article 320 paragraph 1 reads:

"Whoever commits an act which, if that person is still alive, shall constitute defamation or defamation, shall be punished with imprisonment for not more than four months and two weeks or a fine of not more than three hundred rupiah."

The Electronic Information and Transaction Law is a law that regulates Electronic Information and Electronic Transactions. Understanding Electronic Information is one or a set of electronic data, including but not limited to writing, sound, images, maps, designs, photographs, electronic data interchange (EDI), electronic mail, telegrams, telex, telecopy or the like, letters, signs, numbers, Processed Access Codes, symbols or perforations that have meaning or can be understood by people who are able to understand them (Muldani, 2022).

While Electronic Transactions are legal acts carried out using computers, computer networks, and/or other electronic media. This information and communication technology has also changed the behavior of society and human civilization globally (Ahmad: 2004). According to Mcquail (2011), along with the times, technology is also developing rapidly such as with the existence of mass media.

Mass media is communication arranged by formal organizations that are shown to a large audience through the media. In the mass media contains news or information that has been filtered and the dissemination of information is not limited by space. So that all news delivered through mass media will spread very quickly and can be consumed from any part of the world. One form of mass media today is the internet.

The development of information and communication technology causes world relations to become borderless and causes significant social, economic and cultural changes to take place very quickly, this turns out to give rise to new crimes. In the virtual world, people can commit various evil deeds (crimes) committed using electronic means of information, as a means of deeds. Due to the increasing prevalence of communication through the internet or mass media that is not controlled and many crimes occur, many countries respond by creating legal umbrellas.

In Indonesia itself, Law No. 11 of 2008 was born and updated with Law No. 19 of 2016 concerning changes to the ITE law. This law is predicted to be a solution to problems arising from transactions and electronic information, including electronic information that contains content that defames others. Before the birth of the ITE Law, the legal rules regarding defamation were regulated in Chapters II, VIII, and XVI of the Second Book of the Criminal Code.

In 2016, the ITE Law was amended by adding norms and explanations regarding criminal defamation in Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions. Defamation or insults using cyber media are regulated separately in the ITE Law because the impact caused is more global than defamation carried out conventionally.

Email can be sent to various corners of the world in just seconds, social media statuses can be transmitted and shared or forwarded easily and the resulting impact can be complex and complicated.

The ITE Law and its revisions regulate criminal defamation or through information communication technology media in Article 27 paragraph 3 with criminal threats regulated in Article 45 paragraph 3 of the ITE Law Amendment. The following is the content of Article 27 paragraph 3:

"Any Person intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have the content of defamation and/or defamation."

Legal Limitations on the Application of Article 27 Paragraph (3) of the ITE Law according to SKB Number 229 of 2021, Number 154 of 2021, Number KB/2/VI/2021.

Joint Decree on Guidelines for the Implementation of the Electronic Information and Transaction Law (SKB UU ITE) signed on June 23, 2021 by the Minister of Communication and Information (KOMINFO) Johnny G Plate, Attorney General ST Burhanuddin and the Chief of the Indonesian National Police Police General Listyo Sigit Prabowo at the Coordinating Ministry for Political, Legal and Security Affairs (Kemenko Polhukam) is a guideline for the implementation of several articles regulating acts threatened with crime in Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, which in its implementation still causes multiinterpretation and controversy in the community, so it is necessary to compile implementation guidelines for Law Enforcement Officers in carrying out their duties and authorities. Some articles of the ITE Law discussed in the SKB are Article 27 Paragraph (1), Article 27 Paragraph (2), Article 27 Paragraph (3), Article 27 Paragraph (4), Article 28 Paragraph (1), Article 28 Paragraph (2), Article 29, Article 36.

The purpose of the stipulation of this decree is to maintain a clean, healthy, ethical, productive, and fair Indonesian digital space that has been carried out a comprehensive review by ministries and institutions that carry out and / or have the task of formulating legal policies in the field of information and electronic transactions by involving elements of the public, academics, the House of Representatives, and the Press. One of the articles regulated by this decree is article 27 paragraph (3) concerning insult or defamation through electronic media.

Annex To Implementation Guidelines For Certain Articles In Law Number 11 Of 2008 Concerning Electronic Information And Transactions As Amended By Law Number 19 Of 2016 Concerning Amendments To Law Number 11 Of 2008 Concerning Electronic Information And Transactions.

ITE Law	IMPLEMENTATION GUIDELINES
1. Article 27 paragraph (1) Any Person intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have content that violates decency.	Article 27 paragraph (1) a. The phrase "content violates decency" in a narrow sense is interpreted as the content (content) of pornography regulated in Law Number 44 of 2008 concerning Pornography and / or offenses related to decency as stipulated in Article 281 and Article 282 of the Criminal Code.

ITE Law	IMPLEMENTATION GUIDELINES
	<p>b. "Content violates decency" in a broad sense can be interpreted as content (content) that contains something that the community considers to violate social rules agreed upon in a society, where the rules can be written or unwritten and have been agreed upon for a long time.</p> <p>c. Not all pornography or nudity violates decency. It must be seen the socio-cultural context and purpose of the content. Example: in medical education about anatomy, nudity images sent by a teacher to students in the context of college needs, do not violate decency. So it must be seen from the purpose and context.</p> <p>d. Content violating decency that is transmitted and/or distributed or disseminated can be done by means of a single transmission to individuals or to many people (shared, broadcast, uploaded, or posted).</p> <p>e. The focus on acts prohibited in this article is on the act of transmitting, distributing and/or making accessible Electronic Information and/or Electronic Documents containing moral violations, and not on the acts of decency itself.</p> <p>f. It is called committing the act of "making accessible" if the perpetrator deliberately makes the public able to see, store, or retransmit content violating decency. Examples of actions to make this accessible are uploading content in social media statuses, tweets, retweets, replying to comments, including the act of reopening access to links or content containing decency that has been cut off based on laws and regulations, but is reopened by perpetrators so that it becomes accessible to many people. So the act of "making accessible" is an active act deliberately done by the perpetrator.</p>
27 paragraph (2)	Article 27 paragraph (2)
Any person intentionally and without rights distributes and/or transmits and/or makes accessible Electronic	a. The emphasis of the application of article 27 paragraph (2) of the ITE Law is on the actions of someone

ITE Law	IMPLEMENTATION GUIDELINES
<p>Information and/or Electronic Documents that have gambling content.</p>	<p>"transmitting", "distributing", and "making accessible" electronically gambling content (content) that is prohibited or does not have permission based on laws and regulations.</p> <p>b. The type of gambling content (Electronic Information/Electronic Documents) can be in the form of applications, accounts, advertisements, sites, and/or the bookie operator's billing system.</p> <p>c. Forms of Electronic Information that have gambling content that is transmitted, distributed and/or accessible can be images, videos, sounds, and/or writing.</p> <p>d. The dissemination of gambling content can take the form of transmission from one device to another, distribution or dissemination from one device / user to many devices / users.</p>
<p>Article 27 paragraph (3)</p> <p>Any Person intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have derogatory content</p>	<p>Article 27 paragraph (3)</p> <p>a. In accordance with the basis of consideration in the Constitutional Court Decision Number 50 / PUU-VI / 2008 of 2008, and the Explanation of Article 27 paragraph (3) of the ITE Law, the definition of insult and/or defamation content refers to and cannot be separated from the provisions of Article 310 and Article 311 of the Criminal Code. Article 310 of the Criminal Code is an offense to attack the honor of a person by alleging something to be known to the public. While Article 311 of the Criminal Code relates to the act of accusing someone whose accusation is known to be untrue by the perpetrator.</p> <p>b. In consideration of the Constitutional Court Decision Number 50 / PUU-VI / 2008 of 2008, it can be concluded that it is not a criminal offense that violates Article 27 paragraph (3) of the ITE Law, if the content or content transmitted, distributed, and/or made accessible is in the form of insults whose categories are insults, ridicule, and/or inappropriate words. For such a dispute, you can use the</p>

ITE Law	IMPLEMENTATION GUIDELINES
	<p>qualification of minor insult offenses as referred to Article 315 of the Criminal Code which, according to the Explanation of Law Number 19 of 2008 and the Constitutional Court Decision, does not include references in Article 27 paragraph (3) of the ITE Law.</p> <p>c. It is not an offense related to the content of insult and / or defamation in Article 27 paragraph (3) of the ITE Law, if the content or content that is transmimicized, distributed, and / or made accessible is in the form of an assessment, opinion, evaluation result or a reality.</p> <p>d. In the event that the alleged facts are acts that are in the legal process, the facts must first be proven to be true before Law Enforcement Officers process complaints for insulting and/or defamation offenses of the ITE Law.</p> <p>e. Article 27 paragraph (3) of the ITE Law is an absolute complaint offense as referred to in the provisions of Article 45 paragraph (5) of the ITE Law. As an absolute complaint offense, the victim must complain to Law Enforcement Officials, except in the event that the victim is a minor or under guardianship.</p> <p>f. The victim as a whistleblower must be an individual with a specific identity, and not an institute, corporation, profession or position.</p> <p>g. The focus of the punishment of Article 27 paragraph (3) of the ITE Law is not focused on the feelings of the victim, but on the perpetrator's actions carried out intentionally (dolus) with the intention of distributing/transmitting/making accessible information whose content attacks someone's honor by alleging something to be known to the public (Article 310 of the Criminal Code)</p> <p>h. The element "In order to be publicly known" (in the context of transmission, distribution, and/or making accessible) as must be</p>

ITE Law	IMPLEMENTATION GUIDELINES
	<p>fulfilled in the main element (klacht delict) of Article 310 and Article 311 of the Criminal Code which is a reference to Article 27 paragraph (3) of the ITE Law which must be fulfilled.</p> <ul style="list-style-type: none"> i. The criterion "to be publicly known" can be likened to "to be known to the public". Public or public itself is interpreted as a collection of people who mostly do not know each other. j. The criteria of "publicly known" can be uploaded on social media accounts with publicly accessible settings, k. Upload content or broadcast something on a conversation group application with an open group sufat where anyone can join the conversation group, and the traffic of content or information no one controls, anyone can upload and share (share) out, or in other words without any moderation (open group). l. It is not an offense of defamation and/or defamation in the event that the content is disseminated through closed or limited conversation group means, such as family conversation groups, close friend groups, professional groups, office groups, campus groups or educational institutions. m. For news on the internet carried out by the Press institution, which is journalistic work in accordance with the provisions of Law Number 40 of 1999 concerning the Press, a mechanism is applied in accordance with Law Number 40 of 1999 concerning the Press as <i>lex specialis</i>, not Article 27 paragraph (3) of the ITE Law. For cases related to the Press it is necessary to involve the Press Council. But if journalists personally upload their personal writings on the media or internet, then the ITE Law still applies including Article 27 paragraph (3).
4. Article 27 paragraph (4)	Article 27 paragraph (4)

ITE Law	IMPLEMENTATION GUIDELINES
<p>Any Person intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have the content of blackmail and/or threats.</p>	<p>a. The emphasis of the application of Article 27 paragraph (4) of the ITE Law is on the act of transmitting, "distributing", and "making accessible" electronically the content (content) of extortion and/or threats carried out by a person or organization or legal entity.</p> <p>b. The act of extortion as referred to in Article 27 paragraph (4) of the ITE Law is in the form of coercion with the aim of benefiting oneself or others unlawfully. The content coerces a person, family and/or group of people, by force or threats of violence to give away goods, in order to create debts or write off receivables, which wholly or partly belong to that person.</p> <p>c. Included in the criminal act of Article 27 paragraph (4) of the ITE Law, the act of threatening to reveal secrets, threatening to disseminate personal data, personal photos, and/or personal videos.</p> <p>d. Threats and/or blackmail may be made openly or privately.</p> <p>e. In committing acts of extortion and/or threats, it must be proven that there is an economic profit motive that committed by the perpetrator.</p> <p>f. The criminal norm of Article 27 paragraph (4) of the ITE Law refers to the criminal norm of Article 368 Criminal Code.</p>
<p>5. Article 28 paragraph (1)</p> <p>Any Person intentionally and without rights disseminates false and misleading news that results in consumer losses in Electronic Transactions.</p>	<p>Article 28 paragraph (1)</p> <p>a. The criminal offense in Article 28 paragraph (1) of the ITE Law is not a criminal offense for spreading fake news (hoax) in general, but rather the act of spreading fake news in the context of electronic transactions such as online trading transactions.</p> <p>b. False news or information is sent or uploaded through messaging application services, online broadcasting, sites / social media, market places, advertisements, and/or other transaction services through Electronic Systems.</p>

ITE Law	IMPLEMENTATION GUIDELINES
	<p>c. The form of electronic transactions can be in the form of an engagement between business actors / sellers with consumers or buyers.</p> <p>d. Article 28 paragraph (1) of the ITE Law cannot be imposed on parties who default and/or experience <i>force majeure</i>.</p> <p>e. Article 28 paragraph (1) of the ITE Law is a material offense, so consumer losses as a result of fake news must be calculated and determined in value. The definition of "consumer" in Article 28 paragraph (1) of the ITE Law refers to Law Number 8 of 1999 concerning Consumer Protection.</p>
<p>6. Article 28 paragraph (2)</p> <p>Everyone intentionally and without rights disseminates information aimed at causing hatred or hostility of individuals and / or certain groups of people based on ethnicity, religion, race, and intergroup (SARA).</p>	<p>Article 28 paragraph (2)</p> <p>a. The main offense of Article 28 paragraph (2) of the ITE Law is the act of disseminating information that causes hatred or hostility towards individuals or community groups based on Ethnicity, Religion, Race, and Intergroup (SARA).</p> <p>b. The form of information disseminated can be in the form of images, videos, sounds, or writings that mean to invite, or broadcast to others to participate in having hatred and / or hostility towards individuals or community groups based on the issue of sentiment towards SARA.</p> <p>c. The criteria for "disseminating" can be likened to being "publicly known" can be in the form of uploading on social media accounts with publicly accessible settings, or posting something on a conversation group application with an open nature where anyone can join a conversation group, traffic content or information no one controls, anyone can upload and share (share) out, or in other words without any moderation (open group).</p> <p>d. Actions prohibited in this article have the motive to arouse hatred and / or hostility on the basis of SARA. Law Enforcement Officers must prove motive arousing which is characterized by the content of inviting, influencing, mobilizing the community,</p>

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	<p>inciting/pitting with the aim of causing hatred, and/or hostility.</p> <p>e. The phrase "intergroup" is an entity of people's groups outside of Ethnicity, Religion, and Race as the definition between groups refers to Constitutional Court Decision Number 76/PUU-XV/2017.</p> <p>f. Expressing opinions, statements of disapproval or dislike to individuals or groups of people is not considered prohibited acts, unless what is disseminated can be proven that there is an attempt to solicit, influence, and / or move the community, incite / pit to cause hatred or hostility based on the issue of racial difference sentiment.</p>
<p>7. Article 29</p> <p>Any Person intentionally and without rights sends Electronic Information and/or Electronic Documents containing personally directed threats of violence or intimidation.</p>	<p>Article 29</p> <p>a. Article 29 of the ITE Law focuses on the act of sending information containing threats of violence or frightening through electronic means intended personally.</p> <p>b. Threats may take the form of messages, electronic mail, images, sounds, videos, writing, and/or other forms of Electronic Information and/or Electronic Documents.</p> <p>c. Electronic Information and/or Electronic Documents sent in the form of threats of violence, namely stating or showing the intention to harm victims by committing physical or psychological violence.</p> <p>d. The threat has the potential to be realized, even though it is only sent 1 (one) time.</p> <p>e. The target of the threat or victim must be specific, personal or life-threatening, not threatening to damage buildings or property.</p> <p>f. Fear can occur to individuals, groups, families and groups.</p> <p>g. The impact of fear must be proven tangibly, among others, changes in behavior.</p> <p>h. There must be witnesses to point to the fact that the victim is experiencing fear or psychic distress.</p>

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	Article 29 of the ITE Law is a general offense, and not a complaint offense. It doesn't have to be the victim himself who reports.
<p>8. Article 36</p> <p>Everyone intentionally and without rights or against the Law commits acts as referred to in Articles 27 to Article 34 that result in losses for Others.</p>	<p>Article 36</p> <p>a. Article 36 of the ITE Law can be used in the event that victims of crimes who violate Articles 27 to Article 34 of the ITE Law experience real material losses.</p> <p>b. The loss is only for direct losses for actions committed, not indirect losses, not in the form of potential losses, and not non-material losses.</p> <p>c. Material losses occur to victims, both victims of individuals and legal entities.</p> <p>d. As a material offense, the loss must be calculated and determined in value.</p> <p>i. The value of material losses refers to Supreme Court Regulation Number 2 of 2012 concerning the Adjustment of the Limitation of Minor Crimes and the Amount of Fines in the Criminal Code of more than Rp2,500,000.- (two million five hundred thousand rupiah).</p>

The ITE Law and its revisions regulate criminal defamation or through information communication technology media in Article 27 paragraph 3 with criminal threats regulated in Article 45 paragraph 3 of the ITE Law Amendment. The following is the content of Article 27 paragraph 3:

"Any Person intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have the content of defamation and/or defamation.

Based on the implementation guidelines of the article above, related to the application of Article 27 paragraph (3) are as follows:

- a. In accordance with the basis of consideration in the Constitutional Court Decision Number 50 / PUU-VI / 2008 of 2008, and the Explanation of Article 27 paragraph (3) of the ITE Law, the definition of insult and/or defamation content refers to and cannot be separated from the provisions of Article 310 and Article 311 of the Criminal Code. Article 310 of the Criminal Code is an offense to attack the honor of a person by alleging something to be known to the public. While Article 311 of the Criminal Code relates to the act of accusing someone whose accusation is known to be untrue by the perpetrator.
- b. In consideration of the Constitutional Court Decision Number 50 / PUU-VI / 2008 of 2008, it can be concluded that it is not a criminal offense that violates Article 27 paragraph (3) of the ITE Law, if the content or content transmitted, distributed, and/or made accessible is in the form of insults whose categories are insults, ridicule, and/or

- inappropriate words. For such a dispute, you can use the qualification of minor insult offenses as referred to Article 315 of the Criminal Code which, according to the Explanation of Law Number 19 of 2008 and the Constitutional Court Decision, does not include references in Article 27 paragraph (3) of the ITE Law.
- c. It is not an offense related to the content of insult and / or defamation in Article 27 paragraph (3) of the ITE Law, if the content or content that is transmimicized, distributed, and / or made accessible is in the form of an assessment, opinion, evaluation result or a reality.
 - d. In the event that the alleged facts are acts that are in the legal process, the facts must first be proven to be true before Law Enforcement Officers process complaints for insulting and/or defamation offenses of the ITE Law.
 - e. Article 27 paragraph (3) of the ITE Law is an absolute complaint offense as referred to in the provisions of Article 45 paragraph (5) of the ITE Law. As an absolute complaint offense, the victim must complain to Law Enforcement Officials, except in the event that the victim is a minor or under guardianship.
 - f. The victim as a whistleblower must be an individual with a specific identity, and not an institute, corporation, profession or position.
 - g. The focus of the punishment of Article 27 paragraph (3) of the ITE Law is not focused on the feelings of the victim, but on the perpetrator's actions carried out intentionally (*dolus*) with the intention of distributing/transmitting/making accessible information whose content attacks someone's honor by alleging something to be known to the public (Article 310 of the Criminal Code)
 - h. The element "In order to be publicly known" (in the context of transmission, distribution, and/or making accessible) as must be fulfilled in the main element (*klacht delict*) of Article 310 and Article 311 of the Criminal Code which is a reference to Article 27 paragraph (3) of the ITE Law which must be fulfilled.
 - i. The criterion "to be publicly known" can be likened to "to be known to the public". Public or public itself is interpreted as a collection of people who mostly do not know each other.
 - j. The criteria of "publicly known" can be uploads on social media accounts with publicly accessible settings, uploading content or broadcasting something on a conversation group application with an open group *sufat* where anyone can join the conversation group, and content or information traffic no one controls, anyone can *upload* and share (*share*) out, or in other words without any moderation (*open group*).
 - k. It is not an offense of defamation and/or defamation in the event that the content is disseminated through closed or limited conversation group means, such as family conversation groups, close friend groups, professional groups, office groups, campus groups or educational institutions.
 - l. For news on the internet carried out by the Press institution, which is journalistic work in accordance with the provisions of Law Number 40 of 1999 concerning the Press, a mechanism is applied in accordance with Law Number 40 of 1999 concerning the Press as *lex specialis*, not Article 27 paragraph (3) of the ITE Law. For cases related to the Press it is necessary to involve the Press Council. But if journalists personally upload their personal writings on the media or internet, then the ITE Law still applies including Article 27 paragraph (3).

Conclusion

Criminal determination of Article 27 Paragraph 3 of the ITE Law, in accordance with the considerations in the Constitutional Court Decision Number 50 / PUU-VI / 2008 of 2008 and the Explanation of Article 27 paragraph (3) of the ITE Law, the definition of insult and / or defamation charges refers to and cannot be separated from the provisions of Article 310 and Article 311 of the Criminal Code. Article 310 of the Criminal Code is an offense to attack the honor of a person by alleging something to be known to the public. While Article 311 of the Criminal Code relates to the act of accusing someone whose accusation is known to be untrue by the perpetrator and it is an absolute complaint offense which means the victim himself who complains unless he is a minor or in guardianship.

The SKB is a guideline for law enforcement to handle cases under Article 27 (3) of the ITE Law as well as limits the application of the article so that it does not have multiple interpretations. It is not an offense related to the content of insult and / or defamation in Article 27 paragraph (3) of the ITE Law, if the content or content that is transmimic, distributed, and / or made accessible is in the form of an assessment, opinion, evaluation result or a reality. The victim as a whistleblower must be an individual with a specific identity, and not an institute, corporation, profession or position.

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