



Juridical Analysis of Appeal Court Decision Number: 330/PDT/2023/PT BDG on Indemnification

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ABSTRACT

Globalization and the development of information technology, especially the internet, have changed many aspects of human life, which includes the way people connect with each other. Easy access to new information and social media usage, such as Facebook, create new legal challenges, especially when it comes to defamation. In Indonesia, the ITE Law regulates online behavior related to defamation, and Articles 1365 and 1372 of the Civil Code allow victims to claim damages, both physical and psychological, for losses suffered. This research aims to understand that defamation can be categorized as a violation of the law and punitive damages can be claimed. This normative juridical research uses primary legal materials, such as the Civil Code, Criminal Code, and Electronic Information Technology Law, as with secondary legal materials such as literature and journals. Articles 1365-1380 of the Civil Code regulate unlawful acts that can damage a person's reputation. For instance, the case of Iin Yuhinda v. Septiano Broery Hidayat shows that defamation is a tort if it fulfills the elements in Article 1365 of the Civil Code. In addition, Articles 1243-1252 of the Civil Code also regulate compensation in violation of law cases. The results of this research indicated that a person who is damaged by defamation has the right to file a claim for compensation because it violates the law. Article 1365 of the Civil Code states that any act that harms another person must be compensated, while Articles 1372-1380 regulate the manner of claiming compensation for defamation.

Keywords: *Compensation, Defamation, Law*

INTRODUCTION

Currently, the world is connected in real-time. The global internet network allows us to reduce time and distance barriers to communication. In Indonesia, people now feel that access to information has become easier. However, not all internet users enjoy or need information from the real world, and many internet users remain anonymous. One of the factors driving social change is the rise of the internet, where computer media plays a role in the increasingly widespread use of the internet. These changes encompass the way people interact and have influenced various aspects of human activity, creating new norms and values.

Internet technology enables fast, accurate and efficient information exchange. However, technological advances can also change human behavior, especially when selecting information becomes increasingly difficult. The rapid advancement of technology has also impacted the times and introduced new types and modes of crime, which has created legal and social problems as existing laws are often considered less relevant. One example that is emerging more frequently is the crime of defamation. Through the internet, people can insult or defame others without fear of legal action. Users of social media such as Facebook, Twitter, WhatsApp, YouTube and online petitions are often targeted by the Electronic Information and Transaction Law (UU ITE) when their content is deemed defamatory.

In order to be categorized as defamation, the identity of the victim must be clear, either through a photo, username, or publicly recognized curriculum vitae. The loss suffered by the victim is not only physical, but can also include the cost of mental recovery and loss of public trust, which can affect their income. These losses are both material and non-material, which are difficult to quantify in monetary terms. Although the state is supposed to protect its people, many victims of defamation find justice difficult to achieve. Restitution or compensation is one form of justice provided to compensate for the losses suffered by the victim due to the actions of the perpetrator, both physical losses and other rights.

Research gaps in this research could focus on the application of civil liability principles in defamation cases and how courts evaluate the cause of damage in legal claims for compensation. There is a need to examine how the ruling integrates with broader trends in compensatory damage principles, particularly in defamation cases, and whether it addresses inconsistencies or evolving standards of legal responsibility for damage caused by unlawful acts. Additionally, exploring the extent to which previous decisions in similar cases, such as those related to property disputes or breaches of contract, inform the current ruling could provide valuable insights into the practical implications of this decision (Artariana et al., 2016). This research is conducted to understand that defamation can be categorized as a violation of the law and punitive damages can be claimed.

LITERATURE REVIEW

The Definition of Civil Law

The term “Civil Law” can be divided into two major categories: “Substantive Civil Law” and “Procedural Civil Law.” Substantive Civil Law, commonly referred to simply as “Civil Law,” governs the substance of individuals’ rights and obligations in private relations. Meanwhile, Procedural Civil Law, or “Civil Procedure,” encompasses the processes and procedures for enforcing Civil Law, including the resolution of disputes in court.

In the context of Private Law, which regulates individual interests in civil relations, the term “Civil” is often used in contrast to “Criminal.” Additionally, some sources use “Civil Law” to refer specifically to Private Law. However, to avoid confusion with the term “Civil Law” as opposed to “Military Law,” it is preferable to use “Civil Law” to describe all legal rules governing private relations. In Indonesia, the Indonesian Civil Code is largely affected by the Dutch *Burgerlijk Wetboek* (BW), which in turn was influenced by the French *Code Civil* drafted during the Napoleonic era. According to Van Dunne, Civil Law regulates fundamental aspects of individual freedom, including individuals and their families, property rights, and obligations (Subekti & Tjitrosudibio, 1982).

The Concept of Positive Law

As an enacted, decided, or positive decree, positive law must be distinguished from the law that is ideally supposed to be made and desired. This separation is in accordance with Austin’s perspective, which states that the science of law (jurisprudence) is an independent theory of positive law and that law is the only basis of state authority (Kramer, 2021). According to Austin, positive law focuses on rules that are enforced by authorized institutions, without considering whether the rules are morally good or bad.

Furthermore, Jeremy Bentham introduced the concept of utilitarianism, which states that humans will act naturally to reduce their suffering and maximize their happiness or pleasure. Based on this principle, laws are designed to regulate human actions in order to achieve collective happiness. Bentham argued that a just law is one that produces the most positive impact on society as a whole (Schofield, 2021).

John Stuart Mill, a successor to Bentham’s utilitarianism, added that justice should be based on the principle of utility, but he also recognized that humans have an instinct to condemn and retaliate against actions that harm them. Mill emphasized that the concept of justice needs to include moral restrictions that truly support the overall human welfare. Therefore, Mill’s concept of justice must not only reflect social benefits but also respect individual rights (Wall, 2023).

Legal Concepts of Rights and Obligations

Rights and obligations are two concepts that are reflective of each other and closely related to each other (Lv, 2022). Every right a person has is generally accompanied by an obligation on the part of others to respect or not violate that right. In a social context, this relationship forms a structure of interdependence between individuals in society (Popovych, 2024). For example, a person's right to a good name and reputation is always balanced with the obligation of others not to defame it, as explained in various studies of human rights law. In Indonesia, this norm is also reflected in religious customs, traditions and courtesies that have long been respected and part of society's culture.

In Indonesia, the protection of the right to reputation is regulated by various legal provisions, including in the Civil Code and other laws and regulations (Badri et al., 2024). Article 1365 of the Civil Code, for example, regulates a person's responsibility for losses caused to other parties, including losses caused by defamation (Herlina, 2022). In addition, the concept of rights and duties is reinforced by values that encourage people to live in harmony and mutual respect in the context of customs and religion. Religious values and customs have an important role to make a collective consciousness of the importance of respecting the rights of others and the obligation to maintain the dignity of others (Muhajir & Syafiq, 2023).

Definition of Unlawful Acts

Unlawful acts in Civil Law or known as *onrechtmatige daad* are actions that harm others without any prior agreement or legal relationship. In accordance with Article 1365 of the Civil Code, any act that violates the law and causes harm to another party obliges the perpetrator to provide compensation (Yulistio et al., 2024). In this context, unlawful acts do not only include violations of the law, but can also be violations of other people's rights or contrary to the prevailing decency in society (Mantili, 2022).

The important elements of unlawful acts according to jurisprudence and legal doctrine include: (1) the existence of an act that violates another person's rights or the law, (2) the existence of fault (either intentional or negligent), and (3) the existence of actual damages to the victim. In addition, the perpetrator must be responsible for both active and negligent acts that cause negative impacts on others. Articles 1366 and 1367 of the Civil Code also expand the perpetrator's liability for the actions of persons or goods under his or her supervision (Albabana, 2020).

The development of tort interpretation in Indonesia has also been affected by Dutch law, especially since 1919 when Dutch courts expanded the concept of "unlawful" to incorporate offenses against social and moral norms, not just written laws.

The Concept of Compensation in Civil Law and its Purpose

Compensation in civil law is a recovery mechanism for parties who are damaged as a result of an unlawful act. According to Article 1365 of the Civil Code, an unlawful act (*onrechtmatige daad*) is an act that violates the rights of others or is contrary to the legal obligations of the perpetrator, which caused damages to other parties, so that the perpetrator is obliged to compensate (Cevitra & Djajaputra, 2023). This illegal act consists of actions that are contrary to written law, morality, or prevailing social norms, which, if they have harmed another party, lead to an obligation for the perpetrator to restore the situation to its original state or provide compensation.

The main purpose of compensation is to restore the injured party to the position it was in before the damages were incurred. It can be achieved through material compensation, such as the payment of a monetary sum, or immaterial compensation which includes compensation for psychological suffering or impaired reputation (Gegen, 2021). Compensation also has a preventive and educative function, preventing similar violations in the future and educating people on the importance of protecting the rights of others (Suryoutomo & Purwaningsih, 2020). In practice, the compensation is expected to repair the losses that have occurred in a fair and proportional manner. Appropriate court decisions in compensation cases also strengthen the principle of legal certainty and protect the rights of victims.

RESEARCH METHODOLOGY

In normative legal research, the type of research is normative juridical. Normative legal research is also called doctrinal legal research, which is a process to form legal principles, legal principles, and doctrines to solve the legal problem being faced. The law is often defined as rules or norms that regulate the ways in which someone acts based on perceived truths. This law is written in law books. This normative legal research is based on primary and secondary legal materials. Secondary legal materials include books, articles, journals, research results, papers, and others related to the problem being studied. Primary legal materials are the main and authoritative legal sources, such as laws and regulations and official data containing legal provisions.

This research uses a statutory approach, which means examining the relevant laws and regulations. In this research, the regulations used are Articles 1365-1380 of the Civil Code and the High Court Decision in the case of Iin Yuhinda against Septiano Broery Hidayat in Decision Number 330/PDT/2023/PT BDG. In addition, the researcher also uses a case approach, by examining events that have been decided in jurisprudence for cases that are the subject of research.

RESULT AND DISCUSSION

Unlawful Act Analysis

Maintaining reputation and integrity is important in society. However, since the definition is often unclear, defamation cases are quite prevalent. Lack of strict instructions on the limits of offenses means that people usually depend on their personal feelings to be cautious in their actions. The judge has a big role in this matter. Judges must assess whether an act truly violates a person's integrity, with extensive considerations in each case. Defamation is often considered an insult, usually when someone is accused for the sake of sympathy or profit (Agung & Yudisial, 2012).

According to Articles 1366, 1370, and 1371 of the Civil Code, unlawful offenses include intentional acts. However, Article 1376 limits defamation liability, only to cases with specific intent (*oogmerk*) to insult, which is narrower than general intent (*opzet*). Deliberateness means that the act is committed with the awareness that the other person may feel insulted (Pratama et al., 2021). There are exceptions to defamation cases, such as when the action is in the public interest or self-defense, for example when someone accuses another person to clear his or her own name from accusations. Understanding the legal limits of defamation is crucial. It aims to maintain a balance between protecting reputations and the right to inform or defend oneself, and ensure the law is applied fairly in the context of the case.

Elements of Unlawful Acts

Article 1365 of the Indonesian Civil Code explains that unlawful acts are actions that damage another person and are committed intentionally or negligently. There are several important elements to determine whether an action is unlawful:

1. **Actions:** A criminal act can be either a deliberate active act or passive negligence (not doing something that should have been done).
2. **Fault:** Covers actions that may not be intentional, but indicate a failure to meet an expected standard of duty.
3. **Unlawful Act:** These actions are contrary to the rights of others, the legal obligations of the perpetrator, or social and ethical norms.
4. **Damages and Causality:** There must be damage that is directly caused by the act.
5. **Justification:** Certain reasons, such as self-defense or emergency, can remove the unlawfulness of an act.
6. **Absolute Liability (in Anglo-Saxon Law):** Some legal systems also recognize liability without the need to prove fault, to protect the injured party.

In general, it is considered unlawful if it has these elements, but in certain circumstances, such as situations of emergency or superior orders, the unlawfulness can be eliminated and the act becomes lawful.

Defamation in the Internet Under Law No. 19/2016 on Electronic Information and Transactions

Cyber crime is a crime that occurs on the internet and is regulated by the Electronic Information and Transaction Law (ITE Law) in Indonesia. Several articles in the ITE Law, particularly Articles 27 through 37, describe the types of cybercrimes and their sanctions. These crimes include defamation, false news, threats, interception, data destruction, and falsification of documents and digital identities. The followings are some of the important points of the ITE Law:

1. Defamation (Article 27): Prohibits the dissemination of content that insults or defames a person, with a prison sentence of up to 6 years and/or a fine of up to Rp1 billion.
2. Hoax (Article 28): Prohibits the dissemination of false or hateful news, with imprisonment of up to 6 years and/or a fine of up to Rp1 billion.
3. Threats of Violence (Article 29): Prohibits the dissemination of threats of violence, with imprisonment of up to 12 years and/or a fine of up to IDR2 billion.
4. Interception and Data Destruction (Articles 31-34): Regulates the prohibition of wiretapping and data tampering to protect electronic systems.
5. Falsification of Electronic Documents and Identities (Articles 35-37): Prohibits falsification of documents and digital identities to maintain trust in electronic transactions (Indonesia, 2024).

The ITE Law aims to protect internet users, provide legal certainty, and maintain order in the digital world. However, its implementation faces challenges, such as cross-border cooperation. To assess whether a defamation case violates the ITE Law, law enforcement officials can also use Article 311 of the Criminal Code as an additional reference.

Defamation Acts Can Be Indemnified

Compensation in Civil Law is broader than Criminal Law because the aim is to restore the plaintiff to the condition before suffering the loss caused by the defendant, as explained in Article 1365 of the Civil Code.

Types of Loss

1. Material Loss: Loss that can be calculated in money, such as loss of wealth, fear, injury, or physical disability.
2. Immaterial or Moral Loss: Losses that are difficult to quantify in monetary terms.

Types of Compensation in Civil Law:

1. **Nominal Damages:** Awarded for intentional tortious acts that do not result in actual damages, the amount is determined based on a sense of justice.
2. **Compensatory Damages:** Compensates the victim for actual losses, such as out-of-pocket expenses, loss of wealth, or lost profits.
3. **Punitive Damages:** To punish the perpetrator who committed the offense intentionally or cruelly, the amount exceeds the actual loss.

Categories of Compensation Under the Civil Code:

1. **General Indemnity:** Applies to all civil cases, covering costs, damages, and interest, both direct and indirect.
2. **Special Indemnity:** Governs special situations such as the liability of animal owners, collapsed buildings, families of murder victims, bodily injury or disability, and defamation.

Conditions for Claiming Indemnity Under the Civil Code:

1. There is a component of loss (costs, damages, interest).
2. Calculation begins when the loss can be identified.
3. Not caused by events beyond control (*force majeure*).
4. The loss is actually experienced.
5. The loss is suspected to be the result of an unlawful act.

Case Position according to Decision Number 330/PDT/2023/PT BDG

The defamation case between Septiano Broery Hidayat (plaintiff) and Iin Yuhinda (defendant) involved legal issues related to material and immaterial damages. The decision of the Bekasi District Court initially required the defendant to pay material damages of IDR 117,800,045 for the plaintiff's wife's medical expenses and house rent, and immaterial damages of IDR 10,000,000,000 as compensation for defamation. The defendant then appealed to the Bandung High Court. At the appeal level, the court ruled that there was insufficient evidence to link the miscarriage of the plaintiff's wife and the cost of rent to the defendant's actions, thus rejecting the material damages. In addition, the amount of immaterial damages of IDR 10,000,000,000 was deemed unreasonable and reduced to IDR 200,000,000. In its final decision, the Bandung High Court also required the defendant to apologize in writing and post it on Facebook to restore the plaintiff's reputation, pay immaterial damages of IDR 200,000,000, and appeal court costs of IDR 150,000. This decision reflects the court's efforts to provide fair compensation based on the evidence and the impact, with the amount deemed proportional.

Case Analysis

In the defamation case between Septiano Broery Hidayat (Plaintiff) and Iin Yuhinda (Defendant), several important points can be summarized. First, the Defendant violated the law by intentionally insulting the Plaintiff through a Facebook post using harsh words such as *binatang*, *tikus got*, and *preman kampung*. This action was considered wrongful because the Defendant should have realized the impact of his post on the Plaintiff's good name. Furthermore, in relation to damages, the Plaintiff claimed material damages, but the evidence provided was deemed insufficient, so the Bandung High Court annulled this compensation. However, immaterial losses due to defamation were recognized, and the initially large amount of damages was reduced by the appellate court to IDR 200,000,000.

The Defendant's postings were deemed to have damaged the Plaintiff's reputation and good name as an entrepreneur, which could reduce public and business environment trust in him. In its decision, the Bekasi District Court ordered the Defendant to pay material damages of IDR 117,800,045.00 and immaterial damages of IDR 10,000,000,000.00, and a written apology. However, in the appeal decision, the material damages were removed and the immaterial damages were reduced to IDR 200,000,000.00, but the Defendant was still required to apologize in writing and post an apology on Facebook. This court decision emphasizes the importance of the protection of goodwill, fair compensation for losses suffered, and the application of the law in accordance with the principles of justice.

CONCLUSION

If someone is harmed by defamation, they have the right to sue for damages as this is a violation of the law. Article 1365 of the Civil Code states that: "Every act that is unlawful and causes damage to another person, obliges the perpetrator to compensate for the damage."

Articles 1372-1380 of the Civil Code regulate various aspects of defamation and slander, as well as how to claim damages for such offenses. Therefore, under the provisions of the Criminal Code, a person has the right to claim compensation from the perpetrator if he/she suffers loss due to defamation.

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