

## RESTORATIVE JUSTICE AS A MEANS TO ACHIEVE JUSTICE AND LEGAL CERTAINTY IN DEFAMATION CASES

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### **ABSTRACT**

*Restorative justice is an alternative approach to resolving legal conflicts, including defamation cases, which emphasizes peaceful settlement outside the court. This process involves cooperation among the perpetrator, victim, families, and the community to find a fair solution. This research highlights the importance of implementing restorative justice in handling defamation cases, which often cause psychological harm to victims, especially in the digital era where the internet and information technology facilitate the unlimited dissemination of information. Currently, the enforcement of laws, particularly regarding defamation offenses, is frequently criticized for failing to provide full justice, especially when imprisonment is imposed. Authorities often use articles related to defamation and insults in the Indonesian Criminal Code (KUHP), such as Articles 310 and 311, along with Law No. 11 of 2008 on Electronic Information and Transactions (ITE), as the basis for legal action. However, this approach neglects the aspects of recovery for victims and rehabilitation for offenders. This study aims to understand how restorative justice can be applied to defamation cases via social media, focusing on mediation aimed at achieving peace among the involved parties. The methodology employed is normative juridical research, with an analysis of relevant legislation. The findings indicate that a restorative approach can offer a fairer and more humane solution to defamation, particularly in the digital era. The implications of this research highlight the need to integrate restorative justice within the criminal justice framework, especially regarding cybercrimes.*

**Keywords:** *Criminal law enforcement, defamation via social media, electronic information technology, restorative justice.*

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### **INTRODUCTION**

Law enforcement against defamation is indeed crucial in the digital age, where the potential for harm is significant. Defamation, whether in the form of libel or slander, can cause significant psychological harm to victims, affecting their mental health, reputation, and social standing. There are many ways to engage in social interaction with others, one of which is through the use of technology. Along with the rapid development of science and technology, there has been

significant progress in the field of information technology.<sup>1</sup> However, while the advancement of telecommunications and information technology brings many positive impacts, it also has negative effects. For instance, numerous crimes involve internet applications, such as defamation and the creation of fake social media accounts.<sup>2</sup>

Technology has transformed how people communicate and interact. Platforms like social media, messaging apps, video conferencing, and email allow individuals to stay connected across distances, making interaction more accessible than ever. However, while technology offers incredible opportunities for social interaction, its misuse or overuse can lead to a decline in public awareness and social engagement.

The widespread use of social media increases the risk of defamation because of the ease of publishing and sharing information. This can lead to serious legal consequences for those who are involved in spreading false information or engaging in harmful online behavior. Legal systems typically address defamation through civil law suit and criminal penalties. However, these legal avenues often emphasize punishment and financial compensation, which may not fully address the emotional harm or restore relationships. Restorative justice provides a valuable alternative to traditional legal proceedings in defamation cases, especially when the goal is to repair the harm caused by false statements rather than simply seeking punishment.

Restorative justice refers to the process of reconciling conflicting parties by addressing the needs of individuals or groups affected by the conflict, whether communities, religious organizations, or individuals, with a willingness to work together in finding a solution through conflict resolution by applying the law.<sup>3</sup> Restorative justice offers a more holistic approach by prioritizing healing, accountability, and reconciliation, benefiting both the victim and the defamer.

The criminal justice system in Indonesia, like many others, tends to rely heavily on imprisonment as a primary form of punishment. While imprisonment serves to remove offenders from society and theoretically protects the public, it doesn't always address the root causes of crime or offer rehabilitative solutions. Restorative justice is offered as a means of resolving problems by addressing inconsistencies on social media. The aim of this alternative legal resolution is to provide equity for local communities. This is why every legal issue is resolved using restorative justice, which eliminates the need for further legal action.<sup>4</sup>

However, restorative justice upholds mutual respect between both parties by assisting the legal defense team and reducing the threshold for judicial errors. This form of restorative justice emphasizes the comprehensive importance of morality, ethics, legality, and interpersonal relationships to achieve peace.<sup>5</sup>

The criminal justice system in Indonesia consistently faces several issues related to the use of social media on a daily basis, including website hacking, data transfer from third parties, fraud, online gambling, and defamation. The government has enacted "Law Number 11 of 2008 in conjunction with Law Number 19 of 2016" concerning Information and Electronic Transactions (ITE).<sup>6</sup> This regulation serves as a reference to safeguard and enhance Indonesia's economic interests while ensuring public compliance with the law when conducting electronic transactions. Furthermore, it also aims to prevent crimes involving social media, so that the general public, as users of these platforms, can be protected.

Legislative measures are necessary to provide security for the public, considering the rise in crimes involving social media. All related parties are responsible for any legal sanctions arising from the use of social media, in accordance with the ITE Law (Information and Electronic Transactions). Article 27, paragraph (3) of the law states, "It is prohibited for anyone to intentionally and unlawfully distribute and/or transmit and/or make accessible electronic information and/or electronic documents that contain insults and/or defamation."

Anyone who intentionally disseminates, transmits, or makes documents or information accessible that result in defamation or insult as referred to in “Article 27, paragraph (3)” through electronic means can be punished with imprisonment of up to four years and/or a maximum fine of IDR 750,000,000 (seven hundred fifty million rupiah), in accordance with Article 45, paragraph (3) of the regulation. Article 28E, paragraph (3) of the 1945 Constitution and Article 28F guarantee the right to freedom of thought and expression for every citizen. This is in stark contrast to the provisions of defamation within the Information and Electronic Transactions Law. Therefore, a broader interpretation of the ITE law can now function as a social safety net and assist the public.

Social media facilitates the enforcement of defamation laws and enables its widespread dissemination quickly and effectively by many individuals. Since anyone can contribute anything on social media, it has a negative impact on others. Article 310 of the Indonesian Criminal Code (KUHP) is as follows:

- 1) “Anyone who intentionally harms the reputation or honor of another person by accusing them of something intended to be known by the public can be punished with a fine of up to IDR 4,500 or imprisonment for up to nine months.”
- 2) If you engage in slander or defame someone’s reputation, which can also be referred to as defamation through visuals that are shared, exhibited, or posted publicly, you may face imprisonment for up to 1 year and 4 months or a fine of IDR 4,500.

Based on the information found on this page, defamation is an attack on the honor and reputation of an individual with the intention of making them feel ashamed. Meanwhile, defamation in a social context involves degrading someone with uncertain information, aiming to undermine the victim’s honor.<sup>7</sup>

*The results of an interview at the Law Office of Danto Irwanto, SH, & Partners showed that NPA (the perpetrator) committed the crime of defamation via social media or slander against LSDH (the victim) through the Facebook platform. The case began when the perpetrator posted the victim’s photo online, accompanied by an accusation that the victim was a “mistress,” intending to shame the victim. The victim filed the case with the Karawang Police Station on January 5, 2017, on charges of defamation and insult. After summoning both parties, an investigation was conducted. The investigators gathered all relevant data during the process and acted as mediators between the reported party and the complainant. On January 15, 2017, following the mediation, both parties reached an agreement and decided to proceed with reconciliation, allowing the victim to stop the conflict and withdraw the lawsuit. The peace agreement stated that the reported party must sincerely apologize to the victim, delete the offensive statement, and commit to not repeating the same offense.*

*Based on the criminal act of defamation described earlier, defamation that occurs either directly or through social media is often resolved through restorative justice, which prevents many legal processes from resulting in imprisonment and facilitates peaceful settlements between parties. The only regulation strictly enforced by the Indonesian National Police is “Indonesian National Police Regulation Number 8 of 2021 on the Handling of Criminal Acts Based on Restorative Justice.” With continuous investigation, this regulation governs how the concept of restorative justice is applied in handling criminal acts. Additionally, “Attorney General’s Regulation Number 15 of 2020 of the Republic of Indonesia on the Termination of Prosecution Based on Restorative Justice” also addresses this.*

*However, the values and interests of the victims are also taken into account in resolving defamation cases. In cases where the criminal act forces the victim to reintegrate, the rights mentioned are not limited to compensation in the form of money (see Article 45, paragraph 3 of*

<sup>7</sup>Mulyadi, L. (2010). *Kompilasi Hukum Pidana Dalam Perspektif Teoritis dan Praktik Peradilan*. Bandung: Mandar Maju.

the Law on Information Technology and Electronics). Moreover, victims require non-material compensation, which cannot be measured by money. The victim's reputation, tarnished by slander, is damaged in society. Defamation resolved through restorative justice is the only viable method to stop defamation crimes committed via social media. The application of restorative justice outside the courtroom is as follows: "The perpetrators of crimes must apologize personally or through social media. They must also work to remove all digital evidence from social media due to its significant negative impact on people's lives, particularly the future victims." In using restorative justice, which emphasizes fairness for both victims and perpetrators, it offers a solution for offenders using social media. Therefore, in the context of electronic transactions and information, the Restorative Justice approach offers a perspective on appropriate sentencing for individuals who commit slander or defamation of another person.

## METHOD

In conducting normative research using qualitative research techniques, several key points need to be considered,<sup>8</sup> as follows:

### 1. Approach Method

The author uses a normative legal method in this research. These findings indicate a normative legal approach.<sup>9</sup> The descriptive analysis of this research covers issues and procedures for resolving defamation cases through social media. The legislative approach is carried out by adhering to all victim protection regulations. The author uses this unique methodology because the research requirements serve as secondary data, collected from literature, and function as the primary source of information.

### 2. Research Specifications

The author uses descriptive analysis to explain or provide an overview of the research item being studied by using samples or data that have been collected to develop widely used research. This report also aims to eliminate defamation through social media.

### 3. Data Collection Method

The author conducts fieldwork or library research to collect secondary data or primary legal materials<sup>10</sup> to compile the necessary data:

- a. Primary legal sources include positive legal provisions such as the Indonesian Penal Code (KUHP) and Law Number 11 of 2008, which are binding legal materials.
- b. Secondary legal documents are documents that assist in understanding primary law and can provide explanations. These materials include literature based on research, books, foreign publications, scholarly works, scientific views, and court rulings related to the intended criminal act.
- c. Tertiary legal sources are those derived from media support, legal books, and Indonesian language dictionaries.

### 4. Data Analysis Method

The data is then verified. Systematic data collection and analysis are carried out to uncover the fundamental truth regarding the issue. The data analysis approach used in this study is

<sup>8</sup>Soerjono Soekanto dan Sri Mamudji,(2006), *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada.

<sup>9</sup>Depri Liber Sonata, 'Metode Penelitian Hukum Normatif Dan Empiris: Karakteristik Khas Dari Metode Meneliti Hukum', *Fiat Justicia Jurnal Ilmu Hukum*, Volume 8.1 (2014).

<sup>10</sup>A. Rifa'i, I. J., Purwoto, A., Ramadhani, M., Rusydi, M. T., Harahap, N. K., Mardiyanto, I., ... & Surasa, (2023), *Metodologi Penelitian Hukum*. ., ed. by Anik. Iftitah. Sada Kurnia Pustaka. <[https://books.google.com/books?hl=id&lr=&id=6008EAAAQBAJ&oi=fnd&pg=PA1&ots=7EWBlj1pv8&sig=pqXgs0C4RPxpr44W\\_HTuGuUC7FU](https://books.google.com/books?hl=id&lr=&id=6008EAAAQBAJ&oi=fnd&pg=PA1&ots=7EWBlj1pv8&sig=pqXgs0C4RPxpr44W_HTuGuUC7FU)>.

known as the qualitative data analysis method. Qualitative analysis techniques are used to describe, analyze, and draw conclusions from this vast collection of data. The results of the qualitative analysis will be applied to the research problem.<sup>11</sup>

## ANALYSIS AND DISCUSSION

### The Application of Restorative Justice as a Means in Handling Criminal Cases through Social Media in the Form of Defamation

A criminal act defined as a process in which an action, initially lawful, becomes unlawful due to a decision-making process. This decision-making can involve overcoming personal obstacles. Any action that is prohibited and threatened with criminal penalties, whether through an act of commission or omission, is considered a criminal offense. Under the applicable criminal law, often referred to as positive criminal law, a crime is defined as an action that has been declared unlawful, and anyone who commits it risks facing criminal consequences.<sup>12</sup>

Criminal law experts provide an explanation of criminal acts. The term “*strafbaar feit*” refers to an event that can be punished by law. Pompe states, “*strafbaar feit*” refers to the prosecution of criminals who intentionally or unintentionally disrupt the law, which protects legal interests and ensures the enforcement of the law.<sup>13</sup>

A criminal act is defined as an action prohibited by legislation, as cited by Ismu Gunadi W. & Jonaedi Efendi. Anyone who violates this prohibition will face the threat (sanction) of a specific punishment.<sup>14</sup> Protecting the reputation of others is a responsibility of every individual when it comes to defamation. In the context of defamation, the connection between honor and reputation is initially seen in its various definitions.

The only person who can truly assess whether someone’s reputation has been tarnished or damaged is the individual themselves. In other words, the victim is the one who has the authority to determine which electronic information or documents, if any, violate their honor or reputation. The right to personal freedom and the rights guaranteed by the constitution are the last line of defense for the dignity of every individual; therefore, victims are provided legal protection.<sup>15</sup> Undermining someone’s honor or reputation is an illegal act. One form of character assassination is defamation. This is because the Indonesian Penal Code (KUHP) regulates crimes against human rights as an issue that affects society as a whole.

Defamation encompasses all titles and identifiers that do not carry specific accusations of violations or are not intended for publication. Defamation can be punishable; however, the Indonesian Penal Code (KUHP) limits the methods of prosecution. Article 310 of the Penal Code regulates defamation offenses. The elements include:

1. The factual aspect of a criminal offense related to the circumstances in which the crime occurs.
2. The subjective element of the crime demonstrates the perpetrator’s intent to commit the crime.

This element lies with the offender, who is held accountable for the offense.<sup>16</sup> Law enforcement agencies, including the police (investigation), prosecution, and courts, are responsible for handling the criminal justice process once a crime has occurred. These organizations work

<sup>11</sup>Edwin Pardede Eko Soponyono, B. W. (2016). Kebijakan Hukum Pidana Dalam Upaya Penegakan Tindak Pidana Pencemaran Nama Baik Melalui Twitter. *Diponegoro Law Journal*, 6-8.

<sup>12</sup>Irsan, K. (2005). *Hukum Pidana 1*. Jakarta: Universitas Bhayangkara Jakarta.

<sup>13</sup>Effendi, E. (2014). *Hukum Pidana Indonesia: Suatu Pengantar*. Bandung: PT Refika Aditama.

<sup>14</sup>Efendi, I. G. (2011). *Cepat dan Mudah Memahami Hukum Pidana*. Jakarta: Graha Abadi.

<sup>15</sup>Hukumonline.com/hukum-pencemaran-nama-baik-di-media-sosial, diakses pada pukul 13.15 tanggal 14 Maret 2024.

<sup>16</sup>Hukumonline.com/bunyi-pasal-310-kuhp-tentang-pencemaran-nama-baik, diakses pada pukul 14.00 tanggal 30 April 2024.

to promote peace, security, harmony, and public order through prevention and eradication programs.

Restorative justice is a legal theory that emphasizes reducing the impact of informal settlement agreements (non-litigation) by balancing the interests of both parties. According to the principles of restorative justice, the process of resolving legal issues is carried out deliberately, with the perpetrator and victim participating in a meeting to discuss matters peacefully. The parties are given the opportunity by the mediator to briefly and clearly explain the perpetrator's actions.

Process of the restorative justice involved the victim must acknowledge and understand, perpetrator's explanation, and victims' response. First, the victim must comprehend both the circumstances and intent behind the illegal act. This step is essential for ensuring that the victim has a clear understanding of what happened and why the perpetrator committed the act. It allows the victim to process the wrongdoing from a more informed perspective. The perpetrator, in turn, must take responsibility for their actions. This includes acknowledging their wrongdoing and explaining the rationale or motivations behind it. The focus here is on personal accountability, and the perpetrator must express how they recognize the harm caused to the victim. After hearing the perpetrator's reasoning, the victim is given a chance to respond. This could involve expressing their feelings, offering feedback, or sharing how the crime has affected them. This response is a crucial part of the process as it gives the victim a voice in the conversation, enabling a more restorative approach.

By outlining the fundamental principles of restorative justice, restorative justice seeks to provide individuals, families, and communities with the opportunity to confront the injustice of punishment using understanding and belief as the foundation for social justice. The focus on restoring the harm caused by a criminal offense is central to the philosophy of restorative justice. The realization of justice is a process in which all parties involved in a crime work together to resolve an issue, which is the ultimate goal of restorative justice. Upon closer examination of the victims, criminal acts, and perpetrators, a responsibility arises to repair and reassure society.<sup>17</sup>

In line with these principles, restorative justice can be effectively used at any level of the criminal justice system, provided certain conditions are met, including the following:

1. The perpetrator must admit their wrongdoing or acknowledge it.
2. The victim must agree to settle the crime outside of the legal system.
3. Institutions with discretionary authority, such as the police or the prosecutor's office, must approve the use of restorative justice.
4. The local community must support the implementation of restorative efforts outside of the criminal justice system.<sup>18</sup>

Based on the definition above, it can be said that restorative justice serves as a means of addressing social issues that affect society. Law enforcement aims to achieve justice for all parties involved.

The provisions regarding the application of restorative justice are regulated in "Indonesian National Police Regulation No. 8 of 2021," which addresses criminal offenses with a restorative justice approach. According to Article 3, paragraph (1), point (b), there are specific requirements for criminal offenses related to digital transactions.

1. According to the provisions of Article 7, section A, the minimum criteria for criminal offenses related to electronic information and transactions include:

<sup>17</sup>Wikipedia.org/wiki/keadilan\_restorative, diakses pada pukul 14.10 tanggal 30 April 2024.

<sup>18</sup>Lbhpengayoman.unpar.ac.id/penerapan-keadilan-restoratif-justice-apa-syarat-syaratnya, diakses pada pukul 14.20 tanggal 30 April 2024.

- a. Individuals who intentionally commit crimes using electronic transactions and information that disseminate illegal content.
- b. The perpetrator is willing to remove the transmitted content.
- c. The perpetrator issues a public apology via social media video and requests that the widely disseminated information be deleted.
- d. The perpetrator is prepared to assist the police investigator in conducting further investigations.<sup>19</sup>

Certainly, studying restorative justice is essential, especially regarding defamation in the realm of data and digital operations. As stated in Article 27 of the Law on Electronic Information and Transactions (ITE), “everyone who intentionally and without rights broadcasts, displays, distributes, transmits, and/or makes accessible electronic information and/or electronic documents containing indecent content for public knowledge” must be held accountable. Restorative justice is not only applicable in general cases; it can also be used in special cases, such as defamation. The existence of laws from the police, prosecutors, and the Supreme Court serves as evidence. Even in defamation cases, the ITE itself must apply restorative law. The relevant law enforcement institutions recognize restorative justice.

Therefore, achieving peace is the primary goal of restorative justice, providing benefits for both the victim and the perpetrator. When applying restorative justice, it is also essential to consider the requirements and guidelines that need to be followed, such as:

1. This is the first criminal offense committed by the suspect.
2. The criminal offense is punishable only by compensation or a maximum prison sentence of 5 years.
3. If the stolen money or evidence is valued at less than or equal to IDR 2,500,000.00, a criminal offense has occurred.<sup>20</sup>

### **Implementation of Justice and Legal Certainty Values in Criminal Acts through Restorative Justice in the Field of Information and Electronic Transactions Regarding Defamation**

Implementing the values of justice and legal certainty means simplifying a criminal act, such as through mediation or restorative justice. This can also be seen as an effort that gives both parties a sense of achievement and justice. Restorative justice emphasizes the need for the parties involved to work together to resolve issues that arise as a result of mutual understanding. When dealing with multiple parties (such as victims and perpetrators), formal negotiations are conducted, such as through mediation or deliberation.<sup>21</sup>

At both the state and local levels, police institutions play a significant role. This is due to the broad scope of these areas. The Indonesian National Police (POLRI) is not authorized to terminate a case under the pretext of resolving it through restorative justice, neglecting certain reasons. In such situations, the Chief of Indonesian Police (POLRI) adopts internal policies based on their understanding of the importance of the concept of restorative justice. Therefore, the idea of restorative justice becomes a form of justice for Indonesian society, prioritizing unity. To create legal certainty regarding investigations, especially those using a restorative

<sup>19</sup>PERPOL-No-8-Th-2021-Penanganan-Tindak-Pidana-Berdasarkan-Keadilan-Restoratif, diakses pada pukul 15.50 tanggal 30 April 2024

<sup>20</sup>Lbh pengayoman.unpar.ac.id/penerapan-keadilan-restoratif-justice-apa-syarat-syaratnya, diakses pada pukul 14.42 tanggal 30 April 2024.

<sup>21</sup>Keadilan Restoratif and others, *Restorative Justice in Resolving ..... Restorative Justice in Resolving Narcotics Abuse Cases Post Attorney General 's Guideline Number 18 of 2021 : A Perspective on Dignified Justice Theory . Keadilan Restoratif Dalam Penyelesaian Perkara Penyalahgunaan* , 2023, 01.

justice approach, POLRI issued Circular Letter “No. 8 of 2018 on the Implementation of Restorative Justice in the Settlement of Criminal Cases.”<sup>22</sup>

Essentially, restorative justice reduces the government’s monopoly over the criminal justice system, which often leaves justice seekers unsatisfied. As a result, restorative justice is applied at a higher standard to allow for more equitable discussions among the involved parties. Offenders are encouraged to take full responsibility as the first step in rectifying the harm caused by their illegal actions and restoring public order. The current criminal legislation is closely related to the process used by victims and perpetrators to resolve legal issues outside the court through mediation. Criminal procedural law, as mentioned earlier, refers to the methods or procedures that law enforcement officials must follow or document whenever a punishment is imposed. This clearly implies that the precautionary rules dictate that the law changes when a crime occurs. As is known, criminal cases are resolved outside the court by the parties (perpetrators and victims) who mediate the case through reconciliation. Consequently, the criminal report cannot proceed to the next stage, leading to the submission of a Withdrawal Request for the Report. In light of the previous discussion, the method of limiting the growth of illegal activities should be more effective and efficient. Legal research on criminal activities involving perpetrators and victims in dispute resolution attracts the interest of the author.

Law enforcement agencies are the only state institutions with authority in the current criminal justice system, based on both retributive and restitutive laws. By imposing imprisonment on offenders, the state establishes a level of justice for the victims. Therefore, in the current criminal justice mechanism, the restorative justice approach in handling legal violations is an innovative and relatively new concept. It demonstrates that reaching a resolution that brings peace to all parties is possible. As a result, restorative justice in criminal cases can lead to shorter prison sentences.<sup>23</sup>

Both current and emerging types of crimes are controlled by social media sites like Facebook, Twitter, and others, as well as computers and mobile devices. Therefore, action is needed to enforce the law. According to Barda Bawawi: “Law enforcement is the totality of activities by law enforcement officers aimed at upholding the law, justice, and protecting human dignity, order, peace, and legal certainty in accordance with the 1945 Constitution of the Republic of Indonesia.”<sup>24</sup>

Interview information shows that the Indonesian Government (Polri) has been informed of several defamation cases on social media that are being investigated concerning criminal acts of defamation on social media at the Law Office of Danto Irwanto, SH & Partners. “Regulation No. 8 of 2021,” issued by the Indonesian National Police, regulates the use of restorative justice in the resolution of crimes at the Karawang Resort.

In “Law No. 11 of 2008,” which regulates ITE (Information and Electronic Transactions), “Article 311 of the Criminal Code and Article 310 paragraphs (1), (2), and (3) of the Criminal Code” govern defamation on social media, particularly on Facebook. Based on the report receipt from the Karawang Police dated January 5, 2017, with the number STTL/38/I/2017/JABAR/RES KRW, it was implemented at the Law Office of Danto Irwanto, SH & Partners in a familial manner or through restorative justice.

Based on the report receipt from the Karawang Police No. STTL/38/I/2017/JABAR/RES KRW dated January 5, 2017, on Wednesday, January 4, 2017, a defamation crime was

<sup>22</sup>[Reskrim.metro.polri.go.id/ Penanganan-Tindak-Pidana-Berdasarkan-Keadilan-Restoratif](https://reskrim.metro.polri.go.id/Penanganan-Tindak-Pidana-Berdasarkan-Keadilan-Restoratif), diakses pada pukul 21.10 tanggal 29 April 2024

<sup>23</sup>Steve Kirkwood, ‘A Practice Framework for Restorative Justice’, *Aggression and Violent Behavior*, 63 (2022) <<https://doi.org/https://doi.org/10.1016/j.avb.2021.101688>>.

<sup>24</sup>Nawawi, B. (2005). *Beberapa Aspek Kebijakan dan Pengembangan Hukum Pidana*. Bandung: Citra Aditya Bhakti.



discovered on social media. The complainant, LSDH, was informed by a witness and a friend of the complainant who sent a photo and mentioned that the reported individual wrote a status on Facebook directed at the complainant. Upon checking the account in the name of NPA, it was found that there was indeed a post aimed at the complainant, as the post included a photo of the complainant and accused them of being a mistress. As a result of this post, the complainant felt defamed and reported the incident to the Karawang Police. The accused, NPA, was charged with defamation as regulated in “Article 310 of the Criminal Code paragraphs (1), (2), and (3)” and “Article 311 of the Criminal Code paragraph (1)” and “Law No. 11 of 2008” regarding ITE (Information and Electronic Transactions).

The Law Office of Danto Irwanto, SH & Partners acted as a facilitator for reconciliation because NPA, as the reported individual, showed good faith in apologizing for the misunderstanding caused by posting inappropriate words that resulted in defamation on Facebook, as the emotions were stirred by friends who incited conflict. A witness saw the post and informed LSDH, the complainant, who then refused to accept it. Based on Power of Attorney No. 10/KH-DI/SK,Pid/IX/2017, both parties reached a reconciliation. After the meeting on January 15, 2017, the parties mediated with the help of a neutral third party who had no authority to make decisions. This process helped the parties reach a mutually agreed-upon conclusion. As a result, both parties decided to reach a peaceful resolution. To create a deterrent effect, NPA, as the defendant, and LSDH, as the complainant, agreed on a clear and concise resolution to avoid repeating the harmful illegal act. Following this, LSDH, as the complainant, withdrew the complaint from the Karawang Police.

The author believes that in lawful circumstances, a person’s honor and reputation must be preserved. Human rights, democratic ideals, and the foundations of the rule of law are highly valued. The principle of *ultimum remedium* is the foundation of criminal law in Indonesia, which involves punishment that does not include imprisonment. Therefore, restorative justice has now become routine and plays a significant role in applying the concept of *ultimum remedium*. The restorative justice method can be used to protect individual rights and avoid the criminalization of defamation because it is based on the idea of restoring conditions for both the victim and the perpetrator.<sup>25</sup>

An act accompanied by legal regulations and threats (i.e., punishment) is considered a crime. Human actions that fall within the definition of crime and are thus considered non-criminal are acts that violate the law. Therefore, a criminal act includes components of human action contained within the definition of the unlawful crime (*wederrechtelijk*). John Stuart Mill expressed his opinion in *On Liberty* (1859) that debate and discussion should be allowed to flow freely and should be restricted only within the boundaries of reason, not morality or zeal. As long as there is potential truth in an argument, it should not be disregarded simply because the argument is unpleasant or controversial. Mill also developed the harm principle, which states that “the only time power can be rightfully exercised over an individual is to prevent harm to others.”<sup>26</sup>

When the rights or reputation of another person are violated without cause, for example in the case of defamation, the right to freedom of expression also ends. For instance, if NPA says something defamatory or tarnishes the reputation of LSDH without valid reason, NPA may

<sup>25</sup>M. Sahputra, ‘RESTORATIVE JUSTICE SEBAGAI WUJUD HUKUM PROGRESIF DALAM PERATURAN PERUDANG-UNDANGAN DI INDONESIA’, *Jurnal Transformasi Administrasi*, 12.01 (2022) <<https://doi.org/https://doi.org/10.56196/jta.v12i01.205>>.

<sup>26</sup>Irwanto, D. (2018). Upaya Kepolisian Dalam Penanggulangan Tindak Pidana Ujaran Kebencian Berdasarkan Surat Edaran Kapolri No.SE/06/X/2015 Tentang Penanganan Ujaran Kebencian. *Skripsi*, 16-18.

face legal action under defamation laws. Hatred is often fueled by fanaticism and small acts like naming someone or making derogatory comments about them.

Defamation on social media is difficult to control because many people believe they have the right to freely express their thoughts and criticisms. Harmonious life in today's society requires socialization for the public, including figures, state apparatus, and various institutions, particularly the police. These are the boundaries when it comes to defamation on social media, as LSDH felt that their reputation, self-worth, honor, and dignity were severely attacked and tainted by what NPA accused through social media, which was read by many people. Therefore, it is important to be wise in using social media today, both in speech and writing.

## CONCLUSION

Restorative justice, as seen in this case study of defamation via social media, effectively summarizes the concept of insult under the Indonesian Criminal Code (KUHP) in the pursuit of justice and legal certainty. Human rights are violated when defamation results in slander, with "character assassination" being one of its impacts. Legally, defamation is not only considered unfair but also a violation of social and moral standards. Furthermore, if defamation includes slanderous content, it also contradicts religious principles. Danto Irwanto, SH & Partner Law Firm strives to resolve disputes outside of formal court proceedings through mediation and restorative justice in defamation cases. This integrated justice seeks fairness for the victim, the perpetrator, and society, promoting harmony among all parties involved. The idea underscores that justice and peace are inseparable; justice without peace is oppression, and peace without justice is tyranny.

To achieve justice through the application of restorative justice, cooperation between law enforcement, society, and relevant stakeholders is essential. This would allow for the resolution of defamation cases more quickly, fairly, and efficiently, without lengthy proceedings. Aside from avoiding exorbitant costs, law enforcers are expected to uphold existing regulations with integrity and maintain moral standards impartially. To effectively handle cases related to the Electronic Information and Transactions (ITE) Law, law enforcers need specialized training and education on ITE matters. The 2008 ITE Law also reflects how swiftly technology evolves and how society adapts to the digital age, enabling communication and information sharing to become easier and more accessible.

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