

## Legal Protection for Victims of Defamation by Journalists

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### Abstract

Mass media in Indonesia plays a significant role in disseminating information and influencing society. Information can spread widely to various corners of the world and be accessed by millions of readers simultaneously. Journalists are prohibited from carrying out actions that harm other people, spreading false news or slander, or taking sides with the intention of inciting. Legal protection for victims of defamation is necessary to maintain a balance between press freedom and individual rights. The problem in this research is how is the legal protection for victims of defamation committed by journalists? This type of research is normative research with a statutory approach and a conceptual approach. The technique for collecting legal materials is carried out through searching and collecting legal materials, researching legal issues, as well as case studies from statutory regulations, legal journals, literature books, news and other materials relevant to the research topic. The results of this research show changes in the rules for defamation by journalists in the old and new Criminal Codes, reflecting a firmer response to the challenges of the digital era and the protection of individual rights. Article 310 of the old Criminal Code provides light sanctions while Article 433 of the 2022 RKUHP provides heavier sanctions and detailed regulations. The main focus is legal protection for victims in the era of social media with the Indonesian Journalist Code of Ethics (KEWI) as a guide. The importance of the Press Law as a *lex specialis* ensures a balance between press freedom and the protection of individuals who are disadvantaged.

**Keywords:** Legal Protection; Defamation; Freedom of Journalists

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## INTRODUCTION

The mass media in Indonesia plays a significant role in disseminating information and influencing society. Information can be widely distributed, reaching various corners of the world, and accessed by millions of readers simultaneously. In a democracy, freedom of the press must be accompanied by the responsibility not to spread false news or slander. Defamation can be in the form of insults or slander verbally or in writing. The presence of mass media also provides great benefits because the public can obtain information about various current events. The mass media is able to disseminate information effectively and efficiently, reaching various corners of the world without geographical boundaries, and can be accessed by hundreds of millions of readers simultaneously. In a democratic country like Indonesia, the role of the mass media is very significant. The information conveyed has the potential for influence that can be felt by individuals or groups, both directly and indirectly. The mass media has an important role as a channel for people's aspirations and in carrying out this task they must act with freedom and responsibility. The freedom of the press allows them to access information freely. However, this freedom is not for the benefit of individuals but for the public good. Thus, freedom of the press does not mean acting as one pleases, but rather the freedom to access information, cover and express opinions while still upholding responsibility (Korua, 2014).

Insults can be made against individuals, groups, religions, officials, or even deceased people. Insults through writing are known as slander while verbally they are called slander.

The law regulates various forms of insults and defamation including slander, slander and minor insults. There are various types of criminal acts that can be prosecuted if there is a report submitted by the party who feels aggrieved. These provisions are regulated in the chapter that discusses the submission and withdrawal of complaints in criminal cases that can only be prosecuted based on complaints. According to Don R. Pember in his book "Mass Media Law 2001-2002 Edition," defamation is a legal problem often faced by media workers. Accusations of defamation can not only be imposed on journalists but also on individuals who write letters to the media, quote sources, or make public statements (Rifda Amalia, 2023). In the modern media era, the impact of reporting that is detrimental to reputation creates a complex situation where freedom of the press as the foundation of democracy and freedom of speech intersect with the rights of individuals to protect their integrity and reputation. This reflects the dynamics of the development of an increasingly open and connected information system. With the continuous flow of information through various platforms, the role of the media in shaping public opinion becomes very significant. Therefore, protection of individual human rights becomes increasingly urgent to respond to the negative impacts of reporting that can harm reputation.

Although the press has an important role in upholding democracy, it must be acknowledged that the press in Indonesia has not fully implemented professional standards and responsibility in reporting. This must be watched out for considering that not all Indonesian citizens have adequate levels of education and intellectuality. If the press is allowed to run without control and responsibility, this has the potential to become a media of agitation that affects the psychology of less educated people (Anom, 2009). Therefore, press freedom needs to be limited through legal regulations so that reporting by the press can remain responsible.

In this situation, legal protection for victims is a must to maintain a balance between press freedom and individual human rights. Journalists as news actors also have certain rights and obligations that need to be recognized. Understanding of press freedom, journalists' responsibilities, and internal and external oversight mechanisms need to be clarified to avoid abuse of freedom and prevent defamation. The formulation of the research problem is: how is the legal protection for victims of defamation committed by journalists?

## **RESEARCH METHODS**

This study uses a normative legal research type to analyze and understand legal regulations, laws, and legal systems based on applicable legal theories and norms. This study will use the statutory approach method. This approach examines existing positive law along with the ontological understanding of these rules and the interpretation of these rules with limitations that do not deviate from the nature of the rules made. In addition to the statutory approach, this study also uses a conceptual approach. The technique of collecting legal materials is carried out through tracing and collecting legal materials, legal issue research, and cases that are reviewed and studied. The sources of these legal materials include statutory regulations, legal journals, literature books, news, and other materials relevant to the research topic.

## **ANALYSIS/DISCUSSION**

### **a. Comparison of Defamation Regulations by Journalists in the Old and New Criminal Codes**

Freedom of the press is a means for individuals to communicate and access information in accordance with their human rights. In an effort to maintain press freedom, journalists in Indonesia recognize the importance of social responsibility and recognition of the diversity of society. To ensure that press freedom is maintained and the rights of the community are fulfilled, a moral or professional ethical basis is needed to guide journalists in maintaining their integrity and professionalism. As an implementation of this principle, journalists in Indonesia have established a Code of Ethics as a guideline in carrying out their duties. The definition of defamation is in accordance with the provisions contained in the old

Criminal Code and the 2022 Criminal Code Bill which was jointly approved by the President and the DPR. This Criminal Code Bill is scheduled to come into effect in 2025, three years after the date of enactment.

The crime of defamation is regulated in Article 310 of the old Criminal Code which states that:

- a) Anyone who intentionally attacks the honor or good name of a person by accusing them of something with a clear intention so that it is known to the public is threatened with a maximum imprisonment of 9 months or a maximum fine of IDR 4.5 million.
- b) If the act is committed with writing or images that are published, shown or posted in a public place, the perpetrator is subject to a maximum imprisonment of 1 year and 4 months or a maximum fine of IDR 4.5 million.
- c) This act is not considered defamation or written defamation if it is done in the public interest or in self-defense. (Asmadi, 2021)

Article 433 of the 2022 Criminal Code Bill stipulates that:

- a. Anyone who verbally attacks the honor or good name of another person by accusing them of something with the intention that it be known to the public shall be punished for defamation with a maximum imprisonment of 9 months or a maximum fine of category II, namely IDR 10 million.
- b. If the act is committed with writing or images that are broadcast, shown or posted in a public place, the perpetrator is subject to a maximum imprisonment of 1 year and 6 months or a maximum fine of category III, namely IDR 50 million.
- c. This act is not punishable if it is done in the public interest or in self-defense. (Koswara, 2023)

According to the Explanation of Article 433 paragraph (1) of Law 1/2023, the core of the act of defamation is an insult carried out by accusing someone verbally, in writing, or through images that are detrimental to the honor and reputation of the individual, thereby causing harm to them. This action does not have to refer to a specific criminal act. The subject of this criminal act is a specific individual, while insults to government institutions or groups of people are not included in the scope of this provision.

Defamation as explained in Article 433 of Law Number 1 of 2023 or known as the New Criminal Code (KUHP) refers to actions that damage a person's honor or reputation with the aim of making it widely known. Meanwhile, if the act of defamation occurs through social media, this is specifically regulated in Article 27 paragraph (3) of Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE). This article prohibits anyone from intentionally and without the right to distribute, transmit, or create electronic information and/or electronic documents containing insulting and/or defamatory content. In its development, the Constitutional Court Decision No. 78/PUU-XXI/2023 modified and declared Article 310 paragraph (1) of the Criminal Code as unconstitutional with several specific conditions. In the ruling, Article 310 paragraph (1) of the Criminal Code is considered to be contrary to the 1945 Constitution and does not have binding legal force unless given an appropriate interpretation. This article stipulates that anyone who intentionally attacks a person's honor or good name by accusing something verbally with the intention that it be widely known can be subject to a maximum prison sentence of nine months or a maximum fine of four thousand five hundred rupiah.

Based on the Court's considerations in the Constitutional Court Decision No. 78/PUU-XXI/2023 after examining the contents of Article 433 of Law 1/2023, the Court noted the difference between the norms contained in Article 310 paragraph (1) of the Criminal Code and the norms contained in Article 433 of Law 1/2023. Article 433 of Law 1/2023 adds an element that defamation can be committed "verbally," an aspect that is not in Article 310 paragraph (1) of the Criminal Code.

Therefore, without intending to assess the constitutionality of Article 433 of Law 1/2023 which will only come into effect three years after its enactment (January 2, 2026), the

addition of the element "verbally" in Article 433 of Law 1/2023 can be adopted or adjusted to ensure legal clarity in the application of Article 310 paragraph (1) of the Criminal Code. Thus, Article 310 paragraph (1) of the Criminal Code can provide legal clarity and ensure equal legal treatment without causing doubt. Based on these considerations, the Court concluded that Article 310 paragraph (1) of the Criminal Code must be declared unconstitutional with certain conditions.

#### b. Classification of Violations of Honor in Criminal Law

One example of a criminal act that requires a complaint is defamation. Defamation is a form of insult or slander against an individual that is carried out by accusing the person of committing a certain act with the aim of spreading the accusation widely in society. However, detailed regulations regarding the media used are still vague or unclear, especially regarding the crime of defamation through social media. (Zainal, 2016)

The act of insulting or defaming a character can be done through speech or writing. In the study of criminal law, violations of honor are classified into four main forms:

- Defamation  
Defamation is an act that degrades, insults, or damages a person's dignity, often through the spread of false or untrue information. This can threaten a person's honor or beliefs, including certain religious beliefs.
- Written defamation  
Written defamation involves spreading insults through written media such as articles, books, letters, or posts on social media. This includes the spread of false or slanderous information that harms a person's or institution's reputation and degrades a particular religion or belief through writing.
- Slander  
Slander is the spread of information that is not true or not supported by evidence with the aim of damaging a person's reputation. This includes posts or comments on social media that contain cruel gossip, rumors, and false accusations. The elements include the spread of false information, threats to a person's honor, and the intention to hurt or cause division.
- Minor insults  
Minor insults are expressions or statements that are impolite or demeaning as regulated in Article 315 of the Criminal Code. This includes actions that do not reach the level of defamation or written defamation carried out verbally or in writing either in public or directly to the person being insulted. The penalty for minor insults is a maximum of 6 months in prison or a fine.

In addition, the law also regulates other criminal acts related to honor and good name, such as:

- Slander and false accusations
- Defamation of the deceased

#### c. Indonesian Journalist Code of Ethics (KEWI)

Freedom of the press is a way to fulfill human rights in communicating and obtaining information. In an effort to realize press freedom, journalists in Indonesia recognize the importance of social responsibility and respect for the diversity of society. To ensure that press freedom is maintained and the rights of the community are fulfilled, a moral and ethical foundation is needed as a guide in maintaining the integrity and professionalism of journalists.

Every profession has moral standards that must be followed, including journalists in the world of journalism. The journalism code of ethics includes moral principles, laws, and community values. This is in accordance with state law and is often in line with the code of honor and professional rights. This code of ethics is created by professional organizations such as doctors or lawyers and must be adhered to by journalists. The aim is to prevent behavior that is detrimental to the profession and society and to protect journalists from violations of the law, including criminal law. In the context of press freedom, the code of

ethics is very important because sometimes journalists can ignore the rights of others in carrying out their duties. This code of ethics helps reduce the risk of violations, including press crimes, and protects journalists and their organizations from adverse external pressure.

In Indonesia, there are three widely known journalist organizations, namely the Indonesian Journalists Association (PWI), the Alliance of Independent Journalists (AJI) Indonesia, and the Indonesian Journalists Association (PWI) Reformasi. Although these three organizations have different histories and ethical standards in practice, they have agreed to combine their individual codes of ethics into one unit known as the Indonesian Journalists Code of Ethics (KEWI) in a joint meeting. However, internally, each organization still maintains its own code of ethics as the ethical standard that applies within the organization. Based on this, journalists in Indonesia have established the following Code of Ethics:

- 1) Indonesian journalists respect the public's right to obtain accurate information.
- 2) Indonesian journalists follow ethical procedures in collecting and disseminating information and provide recognition to sources of information.
- 3) Indonesian journalists respect the principle of the presumption of innocence, separate fact from opinion, maintain balance in their opinions, always verify the truth of information, and avoid plagiarism.
- 4) Indonesian journalists do not broadcast information that is false, slanderous, sadistic, or obscene, and do not reveal the identity of victims of sexual crimes.
- 5) Indonesian journalists do not accept bribes and do not abuse their profession.
- 6) Indonesian journalists have the right to refuse information, respect embargoes, respect background information, and respect off-the-record agreements.
- 7) Indonesian journalists are responsible for immediately retracting and correcting errors in reporting and providing the right to provide a response.

Supervision and implementation of sanctions for violations of this code of ethics are entirely left to the press community and are carried out by organizations formed for this purpose. The code of ethics was agreed upon in Bandung, August 6, 1999. The journalistic code of ethics also establishes the rights and responsibilities of journalists in carrying out their duties. Each journalist organization usually has its own code of ethics as described previously. Although there are variations between these codes of ethics, they have principles and objectives that are in line. In addition to the code of ethics issued by PWI and AJI, journalists are expected to understand the Journalistic Code of Ethics in general.

#### d. Legal Protection for Victims of Defamation Committed by Journalists

Defamation is a crime that can cause significant harm to individuals. In the digital era, social media has become a popular platform for sharing information and interacting, but the freedom of speech provided by social media can also be misused to commit acts of defamation. Journalists as part of the media have an important role in monitoring and supervising community activities and have broad access to share information and interact with the public.

In some cases, journalists have been involved in acts of defamation against individuals or organizations. This can be in the form of spreading false information or slander that is deliberately carried out to harm others. Defamation committed by journalists can have serious consequences including loss of self-esteem, tarnished reputation, and even financial loss. The crime of defamation can be grouped based on how it is carried out:

1. Conventional defamation  
Performed in traditional ways such as oral or written speech. Oral defamation occurs when someone says words that demean or defame someone in front of a crowd. While written defamation occurs through writing or images that are made to harm or defame someone, and are distributed so that they are known by many people.
2. Defamation using information technology  
It is done by utilizing information technology, both verbally and in writing. Verbal defamation through information technology is generally done through

telephone calls or voice messages that aim to tarnish someone's reputation. Meanwhile, written defamation through information technology is done by creating writing or images in the form of electronic documents intended to tarnish the good name or reputation of others (Nainggolan, 2022).

Legal protection for victims of defamation by journalists is important to ensure that the victim's rights are protected and the perpetrators of the crime are subject to appropriate sanctions. In several laws, such as Law Number 19 of 2016 concerning Information and Electronic Transactions, online defamation is prohibited and can be subject to criminal sanctions. However, there are still several problems in legal protection for victims of defamation that need to be addressed, such as the difficulty of distinguishing between true and false information on social media and limited supervision of social media.

In several cases, victims of defamation by journalists have suffered significant losses and have difficulty obtaining appropriate legal protection. Therefore, legal protection for victims of defamation by journalists must be strengthened and updated to ensure that the rights of victims are guaranteed and the perpetrators are subject to appropriate sanctions.

Legal protection is the state's responsibility towards its citizens. Article 1 paragraph (8) of Law No. 31 of 2014 concerning Protection of Witnesses and Victims states that protection includes all efforts to fulfill the rights and provide assistance to witnesses and/or victims to ensure a sense of security. This obligation is carried out by the Witness and Victim Protection Agency (LPSK) or other institutions appointed in accordance with the law. Defamation or insults through social media are increasingly becoming a major concern in this digital era. There are several forms of protection provided to victims to maintain the integrity and reputation of individuals in a complex online environment. This includes developing policies to protect the interests of individuals and society, technical protection through LPSK, providing special officers such as cyber investigators in the economic sector, notification to victims by the prosecutor's office about cases involving them, and law enforcement against perpetrators with appropriate criminal sanctions. The electronic network system can also be used to close accounts that contain detrimental content or request permission from the account owner to close them.

#### e. Legal Efforts Taken by the Victim

To prosecute the perpetrator of the insult, R. Susilo stated that the insult must be carried out in a public place or in a location where many people can witness it (Azzimattara, 2022). The presence of the victim at the scene of the incident is not essential unless the victim directly hears, sees, or experiences the insult himself. If the insult is delivered by letter, the letter must be addressed directly to the victim. Unfounded statements can hurt other people's feelings and if there is a party who feels insulted they can file a complaint with the authorities. The impact includes feelings of shame and humility experienced by the victim during the insult or defamation.

Insults or defamation contained in certain sentences or words must be understood by the victim because only the victim can personally assess whether the incident has attacked his honor and dignity. The victim can report the perpetrator to the investigator in accordance with Article 43 paragraphs (1) and (2) of the ITE Law together with Article 319 of the Criminal Code. The state provides protection to victims, namely the injured party, through existing regulations. This regulation emphasizes that the state protects the human rights of the community by imposing criminal sanctions on anyone who abuses or acts arbitrarily against the rights of others. The role of the prosecutor as a representative of the state who defends the interests of the victim is vital in this context (Sapardjaja, 2022). After receiving a report from the victim, the investigator will conduct a search and confiscation of evidence to take further steps regarding the case.

In accordance with the applicable Criminal Procedure Code, if the victim feels the need for immediate protection and the situation does not allow for postponement, the victim can submit a request for protection to the Witness and Victim Protection Agency (LPSK). Based on Article 28 paragraph (1) of Law No. 31 of 2014 concerning Protection of Witnesses

and Victims, LPSK can provide protection by considering the following four factors:

- a) the importance of the testimony of the witness or victim
- b) the level of threat that threatens the safety of the witness or victim
- c) the results of the analysis by the medical team or psychologist regarding the condition of the witness or victim
- d) their track record related to previous criminal acts committed by the witness or victim

Immediate protection for victims is very important because of their crucial role in exposing criminal acts. Therefore, the state has the authority to order LPSK or the police to provide protection, including from the potential influence of the mass media that can spread news. In cases involving the media, the court does not directly apply the articles of the Criminal Code related to violations of the law. This is due to the existence of laws that protect the profession of journalists, which are regulated in Law No. 40 of 1999 concerning the Press. If the use of criminal law instruments is required, the element of violation of the law in the Criminal Code must be linked to the provisions regulated in the Press Law.

The importance of paying attention to dynamics in the press sector, especially related to cases of violations that are often associated with efforts to limit press freedom. Many cases of violations in reporting begin with complaints from parties who feel aggrieved, often using the defamation article in the Criminal Code. However, this is sometimes considered a criminalization of the press even though Law No. 40 of 1999 concerning the Press already exists. Therefore, the importance of using this Press Law in resolving cases involving the press cannot be denied. This Press Law must be prioritized as *lex specialis* so that all law enforcement officers will refer to it in handling cases involving journalists.

## CONCLUSION

A comparison between the provisions on defamation in the old Criminal Code and the 2022 Draft Criminal Code shows a significant shift in the legal approach to this case. The old Criminal Code through Article 310 stipulates lighter sanctions for defamation, both verbally and in writing, with a maximum sentence of 1 year and 4 months in prison or a maximum fine of IDR 4.5 million. In contrast, the 2022 Draft Criminal Code stipulates heavier sanctions, especially for written defamation, with a maximum sentence of up to 1 year and 6 months in prison or a maximum fine of IDR 50 million, while maintaining exceptions for actions in the public interest or self-defense and increasing prevention and law enforcement efforts. The Indonesian Journalist Code of Ethics (KEWI) serves as an important moral guideline for journalists, regulating ethical principles such as respect for the truth and the prohibition of publishing false information or defamation, which are essential to maintaining the credibility of the journalistic profession and protecting individual rights in the digital information era.

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