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Determining Relative Competence in Resolving Criminal Defamation Cases Under Indonesian Positive Law

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Original Article

Abstract

The determination of relative competence in criminal cases is based on the court with geographical authority to adjudicate a particular case, as established through normative legal research. Relative competence is determined by the location where the crime occurred or the residence of the perpetrator and/or victim, as stipulated in Article 84 paragraph (1) of the Criminal Procedure Code: "The competent district court is the court where the crime was committed." In the South Jakarta District Court Decision Number 283/Pid.Sus/2023/PN.Jkt.Sel, although the crime occurred in Bogor, the case was tried in the South Jakarta District Court. The judge considered additional factors, such as the defendant's place of residence or the case's significant influence in the area. This demonstrates flexibility in applying relative competence while adhering to relevant legal provisions.

Keywords: *Relative Competence, Criminal Act, Defamation, Good Name, Positive Law*

Abstrak

Penentuan kompetensi relatif dalam kasus pidana didasarkan pada pengadilan yang berwenang secara geografis untuk mengadili perkara tertentu, sesuai penelitian hukum yuridis normatif. Kompetensi relatif ditentukan berdasarkan tempat terjadinya tindak pidana atau tempat tinggal pelaku dan/atau korban, sebagaimana diatur Pasal 84 ayat (1) KUHAP: "Pengadilan negeri yang berwenang adalah pengadilan di tempat tindak pidana dilakukan." Dalam Putusan PN Jakarta Selatan Nomor 283/Pid.Sus/2023/PN.Jkt.Sel, tindak pidana terjadi di Bogor namun diadili di PN Jakarta Selatan. Hakim mempertimbangkan faktor lain, seperti tempat tinggal terdakwa atau pengaruh signifikan terhadap perkara di wilayah tersebut. Hal ini menunjukkan fleksibilitas dalam penerapan kompetensi relatif dengan tetap mengacu pada ketentuan hukum yang relevan.

Kata kunci: *Kompetensi Relatif, Tindak Pidana, Pencemaran, Nama Baik, Hukum Positif*

1. INTRODUCTION

The resolution of disputes in court remains one of the most widely utilized methods among individuals, despite the availability of alternative dispute resolution mechanisms outside the court. Courts are institutions entrusted with the authority to provide binding solutions to justice seekers in relation to their disputes. However, there are instances where justice seekers feel their rights are violated due to errors in determining the court's jurisdiction over a particular case.

Jurisdiction refers to the authority of a court to hear and decide a case, ensuring that the case submission is accepted and not dismissed on grounds of lack of jurisdiction. Jurisdiction is a formal prerequisite for the validity of a lawsuit. Filing a case with a court that lacks jurisdiction renders the lawsuit improperly addressed and inadmissible, as it fails to comply with either the court's absolute or relative jurisdiction.¹ In criminal law, jurisdiction, or competence, is defined as the authority of a court to adjudicate a case. This jurisdiction is classified into absolute competence and relative competence. The purpose of such classifications is to uphold justice, ensure efficient law enforcement, and maintain legal stability.²

Absolute competence refers to a court's authority to hear specific types of cases that cannot be adjudicated by other courts. This authority is established by statutes or regulations and pertains to the subject matter of the case. Only specific courts are vested with this type of authority, which is exclusive and non-transferable. Conversely, relative competence, also known as *Distributie van Rechts Macht*, pertains to the division of authority among district courts, determining which district court is authorized to adjudicate a particular case.³

Absolute competence is governed by Article 125(2), Article 134, and Article 136 of the *Herziene Indonesisch Reglement* (HIR), as well as Article 149(2) and Article 162 of the *Rechtsreglement Buitengewesten* (RBg). Relative competence is regulated under Articles 118, 133, 142, and 159 of the HIR and RBg. The Indonesian criminal justice system encompasses several judicial frameworks, including general courts, religious courts, administrative courts, military courts, and special courts, with each framework following procedures specific to its jurisdiction.

Regarding the relative jurisdiction of district courts, disputes over authority are addressed in Part Two, Chapter XVI of the Criminal Procedure Code, which outlines the relative jurisdiction to adjudicate. This determines which district or high court holds the authority to try a case. The criteria for determining the relative jurisdiction of district courts

¹ HR Ridwan, *Hukum Administrasi Negara* (Jakarta: Raja Grafindo Persada, 2007).

² Sjachran Basah, *Eksistensi Dan Tolok Ukur Badan Peradilan Administrasi Di Indonesia* (Bandung: Alumni, 1985).

³ Retnowulan Sutantio and Iskandar Oeripkartawinata, *Hukum Acara Perdata Dalam Teori Dan Praktek*, 1st ed. (Bandung: Mandar Maju, 2019).

are outlined in Part Two, Chapter X, Articles 84, 85, and 86 of the Criminal Procedure Code. These criteria include:⁴

- 1) The location where the crime occurred (*locus delicti*).
- 2) The defendant's residence and the residences of the majority of witnesses summoned.

Instances of abuse of power, where courts exceed their jurisdictional authority as stipulated by law, have been observed in some legal cases. This is particularly evident in cases involving defamation or hate speech.

Hate speech often occurs on social media platforms, where users freely publish text, videos, audio, or images that can be disseminated instantly via the internet. Social media is frequently misused as a medium for emotional outbursts, spreading false information, and sharing content containing insults, slander, blasphemy, or other forms of hate speech.⁵ Defamation is regulated not only under the Criminal Code but also in Law No. 1 of 2024, which amends Law No. 11 of 2008 concerning Information and Electronic Transactions (Law 1/2024). An example of a *locus delicti* case can be found in the South Jakarta District Court Decision No. 283/Pid.Sus/2023/PN.Jkt.Sel, where the defendant was examined as both a witness and defendant at Polda Metro Jaya, despite the crime occurring in Bojonggede District, Bogor.

The location specified in the lawsuit is neither the defendant's domicile nor the site where the alleged crime occurred. The case originated in June 2022 when the Al-Busyro Taklim Assembly, led by Habib Alwi and situated in Bojonggede District, Bogor Regency, West Java, displayed a banner containing a prohibition that read:

“ATTENTION! STRICTLY vFORBIDDEN! Shopping at stalls around Al-Busyro. Sanction: You will be dismissed from the Taklim Assembly.”

One of the shops affected by this prohibition belonged to the defendant, Wahyu, and was located approximately 500 meters from Al-Busyro. On July 29, 2022, upon returning from Ciledug, the defendant Wahyu noticed the banner displayed by the Al-Busyro Taklim Assembly. He subsequently reported the matter to the local neighborhood head (RT), who explained that the banner was intended to target a grocery store occupying land previously owned by an individual who had refused to sell it to the Al-Busyro Taklim Assembly.

Following this explanation, the defendant Wahyu uploaded a TikTok video via his account, @AW_collection50, featuring a photograph of the banner accompanied by the following caption:

⁴ Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi, Dan Peninjauan Kembali*, 2nd ed. (Jakarta: Sinar Grafika, 2007).

⁵ Rizky Pratama Putra Karo Karo, “Hate Speech: Penyimpangan Terhadap UU ITE, Kebebasan Berpendapat Dan Nilai-Nilai Keadilan Bermartabat,” *Jurnal Lembannas RI* 10, no. 4 (2022): 52–65, <https://doi.org/10.55960/jlri.v10i4.370>.

“The best people are those who are useful to those around them. It’s really sad to read. Our shop is not big, just enough for daily food and children’s school. Can’t even buy land or a house. How could you have the heart to make a banner like this.”

On August 5, 2022, a police report was filed under the reference number LP/B/4186/VIII/2022/SPKT/POLDA METRO JAYA. Subsequently, on March 14, 2023, the defendant Wahyu received a notification of being designated a suspect. The public prosecutor charged the defendant with violating Article 28(2) in conjunction with Article 45A(2) of Law Number 19 of 2016, which amends Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law).

2. RESEARCH METHODOLOGY

This study employs normative legal research, a methodology characterized by the examination of library materials and commonly referred to as legal research through literature review.⁶ The rationale for adopting this approach is to investigate, analyze, and elucidate the absence of norms regulating the determination of relative competence in resolving criminal defamation cases within Indonesia’s positive legal framework. The research applies both a statutory approach and a case approach. Data collection is conducted through library research, focusing on relevant legal literature. For the analysis of legal materials, a deductive approach is employed. This involves reviewing court decisions in cases related to the issues under examination to identify patterns and provide insights into the legal principles applied.

3. RESEARCH RESULT AND DISCUSSION

3.1. Determining Relative Competence in Resolving Criminal Defamation Cases in Indonesian Positive Law

The criminal justice system can be understood as the application of a systems approach to the administration of criminal justice. As a system, it results from the interaction of laws and regulations, administrative practices, and social attitudes or behaviors.⁷ The concept of a system implies a rational and efficient interaction process aimed at achieving specific outcomes within certain limitations.⁸ Reksodiputro⁹ further defines the criminal justice system as a mechanism for crime control involving institutions such as the police, prosecutors, courts, and correctional facilities.

⁶ Peter Mahmud Marzuki, *Penelitian Hukum*, 19th ed. (Jakarta: Prenada Media Group, 2019), <https://prenadamedia.com/product/penelitian-hukum-edisi-revisi/>.

⁷ Rugun Romaida Hutabarat, “Legality Letter of Statement of Khilaf in Indonesia Criminal Justice System,” *Fiat Justisia: Jurnal Ilmu Hukum* 12, no. 2 (2018): 128–42, <https://doi.org/10.25041/fiatjustisia.v12no2.1307>.

⁸ Gani Hamaminata, “Perkembangan Sistem Peradilan Pidana Di Indonesia,” *Jurnal Hukum, Politik Dan Ilmu Sosial*, 2, no. 4 (2023): 52–64, <https://doi.org/10.55606/jhps.v2i4.2334>.

⁹ Mardjono Reksodiputro, *Kriminologi Dan Sistem Peradilan Pidana: Kumpulan Karangan Buku Kedua*, 1st ed. (Jakarta: Pusat Pelayanan Keadilan dan Pengabdian Hukum Universitas Indonesia, 1994).

This system is composed of interconnected subsystems—police, prosecutors, courts, and correctional facilities—all operating within specific jurisdictions.¹⁰ Jurisdiction, or area of authority, determines competence, which is categorized into two types: absolute competence and relative competence. Absolute competence refers to a court's authority over specific legal matters as determined by law for each judicial system. Relative competence, on the other hand, pertains to the authority to adjudicate based on territorial jurisdiction within the same judicial framework.

The criminal justice process is harmonized across subsystems, functioning seamlessly from investigation to adjudication. Investigations are initiated by the police, who prepare investigation reports (*Berita Acara Pemeriksaan*, or BAP). These reports form the basis for the prosecutor's indictment, and the judge evaluates the evidence in court. This entire process is carried out within the framework of jurisdiction, whether police, prosecutorial, or judicial.

Relative competence in criminal cases defines a court's authority to adjudicate a case within its jurisdiction. Jurisdiction, often used interchangeably with relative competence, determines which district court may hear a criminal case. Article 84 of the Indonesian Criminal Procedure Code (KUHAP) stipulates that the relative competence of a district court is typically based on the location where the crime occurred (*locus delicti*). However, exceptions arise when another district court is geographically closer to the majority of witnesses, potentially leading to a negative conflict of jurisdiction.¹¹

Provisions for determining jurisdiction can lead to disagreements among law enforcement agencies, including prosecutors and courts, potentially resulting in disputes over jurisdiction. Articles 147 to 151 of the Criminal Procedure Code regulate such disputes. As noted by Judge Sondra Mukti Lambang Linuwih of the Cikarang District Court, if a crime occurs in Bogor but the South Jakarta District Court receives the case, the South Jakarta court must evaluate the case files to determine jurisdiction, which typically rests with the court where the crime occurred. Such evaluations ensure that jurisdiction aligns with the Criminal Procedure Code.

The determination of relative competence is essential for ensuring that criminal cases are handled by the appropriate court. Article 118 of the Criminal Procedure Code specifies that district courts have jurisdiction over cases based on the defendant's residence, the crime's location, or the place where the crime's consequences were significantly felt. Judge Sondra Mukti Lambang Linuwih further emphasizes that absolute competence pertains to a court's authority to handle specific types of cases, determined solely by the nature of the case and independent of geographic considerations or the parties' residences.

In the imposition of sanctions, each court determines its territorial jurisdiction, which in turn establishes the relative competence of the court. Relative competence refers to a court's authority within a specific geographic area to adjudicate cases based on factors such

¹⁰ Ramelan Ramelan, *Hukum Acara Pidana: Teori Dan Implementasi* (Jakarta: Sumber Ilmu Jaya, 2006).

¹¹ Bambang Waluyo, *Penyelesaian Perkara Pidana: Penerapan Keadilan Restoratif Dan Transformatif*, ed. Tarmizi Tarmizi, 1st ed. (Jakarta: Sinar Grafika, 2020).

as the location of the incident, the residence of the involved parties, or other relevant considerations. Territorial jurisdiction defines the geographic boundaries of a court's authority, playing a critical role in avoiding conflicts of jurisdiction and ensuring efficiency and order in case handling.

The emergence of defamation cases facilitated by social media and the internet introduces new complexities in determining relative competence, particularly when perpetrators and victims reside in different jurisdictions. Social media's cross-regional and transnational nature challenges traditional jurisdictional boundaries. According to the theory of competence, defamation occurring via social media can span multiple regions, making it necessary for law enforcement to determine the most appropriate and efficient court to process the case.

In cases where multiple locations could be identified as the *locus delicti*, or where the crime's effects are felt, courts must carefully assess which jurisdiction is most suitable. Competence in such defamation cases depends heavily on understanding *locus delicti* (the location of the crime) and *domicilium* (the residence of the parties), as well as the transboundary characteristics of social media platforms. It is evident that determining relative competence for defamation through social media is a dynamic and intricate issue requiring a comprehensive understanding of legal principles, jurisdictional challenges, and available solutions to ensure justice for all parties involved.

Defamation, an act that harms an individual's reputation and causes material and immaterial losses, is regulated under both criminal and civil law. The legal foundation for addressing defamation is found in Article 310 of the Indonesian Criminal Code (KUHP), which governs defamation in general, and Article 27 paragraph (3) of the Information and Electronic Transactions (ITE) Law, which specifically addresses defamation via electronic media.

The Constitutional Court Decision No. 50/PUU-VI/2008 clarified the interpretation of Article 27 paragraph (3) of the ITE Law, emphasizing its connection to its genus—the criminal law norms in Chapter XVI of the Criminal Code, particularly Articles 310 and 311. As such, all elements of the criminal act of defamation outlined in Article 27 paragraph (3) of the ITE Law must be understood in relation to the essence and elements of defamation as defined in Articles 310 and 311 of the Criminal Code. These provisions aim to protect an individual's honor or reputation from public harm.

Defamation, as explained in these legal provisions, constitutes a complaint-based offense (*delik aduan*), meaning legal proceedings are initiated only upon a formal complaint from the aggrieved party. Furthermore, the implementation of Article 27 paragraph (3) of the ITE Law is guided by specific procedural frameworks established to address problematic aspects of its application. These guidelines are encapsulated in the Joint Decree (SKB) of the Minister of Communication and Information, the Attorney General, and the Chief of the National Police of Indonesia, which was enacted in June 2021. This decree provides practical measures for handling cases under the ITE Law, ensuring clarity and consistency in its application. The evolving nature of defamation through digital platforms

underscores the need for a robust and adaptive legal framework to address jurisdictional complexities and protect the rights of all parties involved.

In addressing the application of defamation laws to social media, the content and context of the alleged offense are critical factors. The assessment of whether a person's reputation has been tarnished or damaged is inherently subjective and can only be made by the individual claiming harm. In other words, the victim determines which aspects of the content or electronic document they perceive as attacking their honor or reputation. The Constitution safeguards human dignity as a fundamental human right, necessitating legal protection specifically for the victim, as others cannot evaluate the impact with the same subjective perspective. At the same time, the context provides an objective lens through which the content is analyzed.

Legal certainty, which emphasizes the existence of clear, consistent, and reliable rules to resolve disputes, plays a pivotal role in defamation cases involving social media. Given the complexities and nuances associated with such cases, particularly under the Information and Electronic Transactions (ITE) Law, legal certainty ensures a structured and fair resolution process. The relationship between legal certainty and defamation cases on social media includes several key considerations:¹²

1) Certainty Regarding Defined Offenses

Legal certainty necessitates clear regulations outlining what constitutes defamation on social media. Article 27 paragraph (3) of the ITE Law specifies that individuals who intentionally and unlawfully distribute or transmit electronic information containing insults or defamation are subject to legal penalties.

2) Certainty Regarding Court Competence

Due to the cross-regional nature of social media, determining the court with jurisdiction becomes critical. Legal certainty provides clarity regarding which court holds the authority to examine defamation cases arising from online platforms.

3) Certainty Regarding Law Enforcement

Consistency in law enforcement is essential for legal certainty. However, in social media defamation cases, discrepancies often arise in the application of the law, leading to differing outcomes in similar cases at the police or court level.

4) Certainty Regarding Protection of Rights

¹² Rezkyta Pasca Abrini Daeng Ngiji, Sigid Suseno, and Budi Arta Atmaja, "Penerapan Pasal 27 Ayat (3) UU ITE Dalam Perkara Pencemaran Nama Baik Melalui Media Sosial Terhadap Kelompok Orang," *Jurnal Fundamental Justice* 3, no. 1 (2022): 19–34, <https://doi.org/10.30812/fundamental.v3i1.1796>.

Legal certainty also encompasses the protection of individual rights, particularly in balancing freedom of expression and protection from defamation. The law must clearly define the boundaries of these freedoms to prevent abuses while safeguarding personal dignity.

With respect to determining relative competence in resolving criminal acts of defamation in Indonesia's positive law, the Criminal Procedure Code governs the matter. Relative competence pertains to the authority of a court to adjudicate cases based on jurisdiction. As articulated by Judge Sondra Mukti Lambang Linuwih, S.H., of the Cikarang District Court, relative competence in defamation cases is determined by several factors, including the location of the offense, the defendant's residence, specific regulations for exceptional cases, and the investigative requirements.

For cases of defamation, the district court with jurisdiction is typically located either in the area where the crime occurred or at the defendant's residence if the location of the offense is indeterminate. Once a court accepts the transfer of case files, it proceeds with the trial based on the jurisdictional context of the offense. This procedural framework ensures that criminal cases are adjudicated by the appropriate court, as mandated by the Criminal Procedure Code.

This jurisdictional clarity is essential to uphold the rule of law and ensure that defamation cases, particularly those arising from the unique challenges of social media, are resolved effectively and fairly. The interplay of subjective victim assessments, contextual analysis, and adherence to legal principles underscores the complexity of handling defamation cases in the digital era.

In the South Jakarta District Court Decision Number 283/Pid.Sus/2023/PN.Jkt.Sel, the principle of relative competence remains unclear. According to Article 84 paragraph (1) of the Indonesian Criminal Procedure Code (KUHP), the relative competence of a district court is determined by the location of the crime. If a crime occurs in Bogor, the Bogor District Court should have the authority to hear the case, not the South Jakarta District Court. However, certain exceptions may allow a case to be tried in a different court than the one corresponding to the location of the offense.

If no legal grounds or valid exceptions exist, trying the case at the South Jakarta District Court for a crime that occurred in Bogor constitutes an error in jurisdiction. In such instances, the defendant or their legal counsel can file an objection, commonly referred to as an exception, on the grounds of improper jurisdiction. They may request the case to be transferred to the appropriate court corresponding to the location of the crime. The legal foundation for relative competence is outlined in Article 84 paragraph (1) of the Criminal Procedure Code.

While Article 84 provides the baseline for determining relative competence, Article 85 of the Criminal Procedure Code allows for exceptions under certain conditions. Article 85 states that in the event that regional conditions do not permit a district court to try a case, then upon the recommendation of the head of the district court or the head of the

relevant district attorney's office, the Supreme Court proposes to the Minister of Justice to determine or appoint a district court other than that referred to in Article 84 to try the case in question.

This provision grants the Supreme Court the authority to transfer the examination of a criminal case to another court of the same level for specific reasons. These reasons include ensuring public security and order, maintaining objectivity and fairness, and addressing geographical or technical challenges. A case is typically tried in the district court whose jurisdiction covers the crime's location. However, when regional conditions make this impractical, a transfer may be recommended by the Head of the District Court or District Prosecutor's Office, with the Supreme Court appointing another court to handle the case. A judge may render a verdict only when at least two valid pieces of evidence establish the occurrence of the crime and the defendant's guilt.¹³

In examining the scope of criminal law within the systems of the Indonesian Criminal Code and the South Korean Criminal Code, relative competence plays a critical role. In the Indonesian Criminal Code, which serves as a general provision (*lex generalis*), the scope of criminal law encompasses:

- 1) Application of Criminal Law: Determining whether Indonesian criminal law applies to a crime, as governed by Articles 2-8 of the Criminal Code.
- 2) Court Jurisdiction: Determining which court should handle the case, which relates directly to the principle of relative competence.

The locus delicti (place of the crime) and tempus delicti (time of the crime) are central to these determinations, ensuring that criminal cases are tried in courts with proper jurisdiction and legal authority to administer justice.¹⁴ This comparative perspective highlights the importance of clarity in determining relative competence to uphold the principles of legal certainty, fairness, and efficiency in criminal adjudication.

The concept of tempus delicti—the time when a crime is committed—is significant in several aspects:¹⁵

- 1) Determining the Applicability of Criminal Law

Tempus delicti plays a role in assessing the applicability of criminal law under Article 1 paragraph (1) of the Indonesian Criminal Code (KUHP). This article states that no act can be punished other than by the force of criminal regulations in laws that were enacted at a previous time. It is necessary to determine whether the act in question was prohibited and punishable under the law in effect at the time it occurred. If the law changes after the act was committed, the most lenient provisions for the defendant are applied.

¹³ Togar Sahat Manaek Sijabat, "Pemindahan Tempat Persidangan," *HukumOnline.com*, 2015, <https://www.hukumonline.com/klinik/a/pemindahan-tempat-persidangan-1t54732977ad385/>.

¹⁴ Lukman Hakim, *Asas-Asas Hukum Pidana: Buku Ajar Bagi Mahasiswa*, 1st ed. (Yogyakarta: Deepublish, 2020).

¹⁵ Moeljatno Moeljatno, *Asas-Asas Hukum Pidana*, 8th ed. (Jakarta: Rineka Cipta, 2008).

2) Determining the Expiry Period for Prosecution (Verjarings Termijn)

Tempus delicti establishes the starting point for the statute of limitations, which is crucial for determining whether a prosecution can proceed.

3) Matters Related to Article 45 of the Criminal Code

Tempus delicti is relevant in interpreting and applying provisions within Article 45 of the Indonesian Criminal Code. The scope of criminal law in South Korea, like in Indonesia, considers the time and place of the crime in determining its application. The South Korean Criminal Code regulates defamation and related offenses as follows:¹⁶

1) Defamation [Article 307 Paragraph (1) and Paragraph (2)]

- Paragraph (1): Any person who publicly disseminates true information that damages another person's good name may face imprisonment for up to two years or a fine of up to ₩5,000,000.
- Paragraph (2): Any person who publicly disseminates false information that damages another person's good name may face imprisonment for up to five years, revocation of rights for up to ten years, or a fine of up to ₩10,000,000.

2) Defamation of a Deceased Person [Article 308]

Any person who publicly disseminates false information damaging the good name of a deceased person may be punished with imprisonment for up to two years or a fine of up to ₩5,000,000.

3) Defamation through Print Media [Article 309 Paragraph (1) and Paragraph (2)]:

- Paragraph (1): Disseminating true information to slander another person through print media (e.g., newspapers, magazines, radio) in violation of Article 307 paragraph (1) is punishable by up to three years' imprisonment or a fine of up to ₩7,000,000.
- Paragraph (2): Disseminating false information to slander another person through print media in violation of Article 307 paragraph (2) is punishable by up to seven years' imprisonment, revocation of rights for up to ten years, or a fine of up to ₩15,000,000.

4) Justification [Article 310]

Disseminating true information under Article 307 paragraph (1) for the public interest is not subject to criminal penalties.

5) Insult [Article 311]

¹⁶ Hasbullah Hasbullah and Jung Chang Hee, "Tindak Pidana Pencemaran Nama Baik Melalui Media Elektronik: Studi Perbandingan Indonesia Dan Korea Selatan," *Jurnal Hukum Pidana Dan Kriminologi* 3, no. 2 (2022): 17–35, <https://doi.org/10.51370/jhpk.v3i2.81>.

Publicly insulting another person is punishable by imprisonment for up to one year or a fine of up to ₩2,000,000.

Similar to Indonesian law, South Korean law classifies defamation and insult as Complaint Offenses. Under Article 312 paragraph (1) of the South Korean Criminal Code, prosecution for offenses under Articles 308 and 311 requires a complaint to be filed. However, for offenses under Articles 307 and 309, Article 312 paragraph (2) stipulates that prosecution must align with the victim's wishes, ensuring that the victim's consent plays a critical role in pursuing legal action. This comparative analysis underscores the shared principles and nuanced differences in defamation regulations between Indonesian and South Korean legal systems, particularly in their treatment of public interest, subjective impact, and procedural requirements.

Law Number 18201 of 2021 on Information Protection and Acceleration of Use of Telecommunications and Information Networks, commonly referred to as the South Korean ITE Law, outlines its primary purpose in Article 1 that this law aims to improve public welfare by accelerating the use of telecommunications networks, protecting users of telecommunications network services, and creating a healthy and safe environment for the use of telecommunications networks.

Regarding criminal acts of defamation committed through social media, Article 44 paragraph (1) of the South Korean ITE Law explicitly prohibits such acts:

“Everyone is prohibited from broadcasting information that can damage the good name or harm the personality of others through telecommunications networks.”

Further, Article 70 of the South Korean ITE Law establishes penalties for defamation conducted through telecommunications networks as follows:

- 1) **Broadcasting True Information:** Individuals who broadcast true information in public through telecommunications networks to slander others, thereby damaging their reputation, may face imprisonment for up to three years or a maximum fine of ₩30,000,000.
- 2) **Broadcasting False Information:** Individuals who broadcast false information with the intent to slander others in public through telecommunications networks, thereby damaging their reputation, may face imprisonment for up to seven years, revocation of rights for up to ten years, or a maximum fine of ₩50,000,000.
- 3) **Victim Consent:** Criminal acts under Article 70, paragraphs (1) and (2), may not proceed if they conflict with the victim's wishes.

The structure and formulation of Article 70 represent an evolution of the South Korean Criminal Code, introducing specific elements such as “broadcasting information to slander” and “through a telecommunications network.” The penalties are more severe than for traditional defamation due to the potentially greater and prolonged harm inflicted on victims via digital platforms. The Indonesian Criminal Code (KUHP) defines defamation

or insult as acts intended to attack someone's honor or reputation by making accusations designed to be known by the public. In this context, defamation and insults are synonymous.

- 1) Definition and Acts: the South Korean Criminal Code distinguishes between defamation and insult in terms of the specific actions involved. However, acts classified as insults under the South Korean Supreme Court align with minor insults regulated by the Indonesian Criminal Code.
- 2) Type of Offense: In the Indonesian Criminal Code, defamation is classified as a complaint offense, requiring a formal complaint from the victim for prosecution to proceed.
- 3) The South Korean Criminal Code recognizes defamation as both an ordinary offense and a complaint offense. While ordinary offenses in South Korea can be pursued without a complaint, cases may be withdrawn if the victim so desires, highlighting a nuanced difference from Indonesian legal practice.

The determination of relative competence concerning *locus delicti*—the location where a crime is deemed to have occurred—is a critical factor in establishing the jurisdiction of courts to adjudicate criminal cases, including defamation through social media. Jurisdictional approaches vary significantly across countries, reflecting differences in legal traditions and systems. A comparative analysis of the United States, the European Union, and Indonesia reveals these variations:

a) United States

The United States employs personal and geographical jurisdiction, which is determined by a combination of state and federal laws. In cases of social media defamation, jurisdiction can be based on the perpetrator's location, the victim's location, or the server's location. Courts often rely on the “minimum contacts” principle, which allows a state court to assert jurisdiction if the perpetrator has sufficient connections with the state.

- Example: If a victim resides in California and the perpetrator is located in Texas, a California court may claim jurisdiction if the perpetrator's actions were specifically directed toward the victim in California.
- Advantages: The “minimum contacts” system offers flexibility in handling cross-state cases, ensuring broader access to justice for victims of defamation.¹⁷

b) European Union

Under the Brussels I Regulation, *locus delicti* in criminal cases encompasses both the location of the violation and the place where the resulting harm is felt. In social media

¹⁷ Zharif Azhavrán Amri, “Penentuan Kompetensi Relatif Dalam Tindak Pidana Siber Yang Tempat Kejadiannya Di Lebih Dari 1 (Satu) Tempat: Studi Putusan Pengadilan” (Universitas Islam Indonesia, 2024).

defamation cases, courts in the victim's country of residence are often prioritized for practical and procedural efficiency.

- Case Example: In *eDate Advertising GmbH v. X*, the European Court of Justice held that victims of online defamation may file lawsuits in their country of domicile, provided they experience harm there.¹⁸
- Advantages: This approach simplifies legal proceedings for victims by allowing them to seek remedies in their home jurisdiction.

c) Indonesia

In Indonesia, relative competence is generally determined by the location where the crime was committed (*locus delicti*), as stipulated in Article 84 of the Criminal Procedure Code (KUHAP). For crimes with cross-regional impacts, such as social media defamation, jurisdiction may also extend to the location where the crime's consequences are felt. However, the digital nature of social media often complicates the determination of *locus delicti*, leading to disputes over jurisdiction.

- Challenges: The ambiguity surrounding the *locus delicti* in technology-based cases highlights the need for clearer legal standards to address cross-border digital crimes effectively.
- Comparison of Legal Systems: while the United States, European Union, and Indonesia share the fundamental principle of determining jurisdiction based on the location of the crime, the residence of the parties involved, and the nature of the case, they differ significantly in their approaches:
- United States: Operates within a federal system, with jurisdiction divided between federal and state courts.

d) European Union

Functions as a supranational system, with cross-border jurisdiction regulated by collective legal frameworks like the Brussels I Regulation.

e) Indonesia

Adheres to a unitary system, where jurisdiction is delineated by administrative regions and a hierarchical court structure.

3.2. Judicial Considerations in South Jakarta District Court Decision Number 283/Pid.Sus/2023/PN.Jkt.Sel Regarding a Criminal Act in Bogor, West Java

¹⁸ InfoCuria Case-law, "Judgment of the Court (Grand Chamber) of 25 October 2011" (2011), <https://curia.europa.eu/juris/liste.jsf?num=C-509/09&language=en>.

The authority of a judge refers to the jurisdiction granted to a judge to examine, adjudicate, and render decisions in cases in accordance with applicable laws. This authority is derived from legal statutes and the principle of judicial independence.¹⁹ The legality of a judge's relative competence pertains to the judge's valid authority to preside over cases based on territorial or geographical jurisdiction. Relative competence ensures that the court handling the case is situated within the proper legal jurisdiction as outlined by procedural law.

Judges' considerations in determining whether the elements of a charged offense are met constitute the core of the evidentiary process in criminal trials. Judges must confirm that all components of the crime charged by the prosecutor are proven legally and convincingly, relying on legal facts, evidence, and relevant legal provisions. The identification of elements necessary to constitute a criminal act is regulated under the Criminal Code. To determine whether an action qualifies as a crime, an analysis is conducted to assess whether the act fulfills the legal elements specified in the relevant criminal law article. This requires aligning the facts of the case with the elements of the crime charged.²⁰

In determining relative competence for addressing criminal defamation cases, such as in South Jakarta District Court Decision Number 283/Pid.Sus/2023/PN.Jkt.Sel, the judge considered the single charge brought by the Prosecutor against the defendant. The charge was based on Article 28 Paragraph (2) in conjunction with Article 45A Paragraph (2) of Law No. 19 of 2016, which amended Law No. 11 of 2008 on Information and Electronic Transactions (ITE).

The Panel of Judges evaluated whether the legal facts presented in the trial sufficiently proved the defendant's commission of the crime. Based on the single charge, the judges assessed the case under the relevant provisions of Article 28 Paragraph (2) and Article 45A Paragraph (2) of Law No. 19 of 2016, focusing on the following elements: every person, intentionally and unlawfully, and disseminating information aimed at inciting hatred or hostility toward individuals or groups based on ethnicity, religion, race, or intergroup relations.

Ad. 1. Every Person

In South Jakarta District Court Decision Number 283/Pid.Sus/2023/PN.Jkt.Sel, the element "every person" pertains to the defendant as an individual accountable for their actions. Wahyu Dwi Nugroho was charged under Article 28 Paragraph (2) of the ITE Law for posting a video on social media that allegedly contained hate speech. The video was considered to target certain groups that had displayed banners prohibiting shopping in specific areas, including the defendant's property. This framework highlights the judicial

¹⁹ Ismaidar Ismaidar and Asmirah Mandasari Saragih, "An Independence of Judicial Power Under the System of Justice: Study Case In Indonesia, Malaysia and Brunei Darussalam," in *International Conference of ASEAN Perspective and Policy*, 2018, 53–62, <https://jurnal.pancabudi.ac.id/index.php/ICAP/article/view/268>.

²⁰ Lamintang, *Dasar-Dasar Hukum Pidana Indonesia*, 5th ed. (Bandung: Citra Aditya Bhakti, 2013).

process of analyzing and evaluating the fulfillment of legal elements within criminal cases, ensuring that all determinations are grounded in statutory and procedural law.

The judge must ensure that the defendant has legally and convincingly fulfilled all elements of the charged offense, including their status as a legal subject capable of being held criminally responsible. In this case, the court evaluated whether Wahyu's actions met the element of "disseminating information intended to cause hatred or hostility" as stipulated in the ITE Law. However, some analyses suggest that this element remains debatable, as there is insufficient evidence to prove that the upload was intended to incite hatred or hostility.

Ad. 2: Intentionally and Without Rights or Against the Law

In criminal law, the element "intentionally and without rights or against the law" pertains to the *mens rea*, or the defendant's awareness and intent in committing the alleged act. Under Article 28 Paragraph (2) of the ITE Law, "intentionally" implies that the perpetrator is aware their actions may incite hatred or hostility based on ethnicity, religion, race, or intergroup relations (SARA). In Wahyu Dwi Nugroho's case, his video upload was interpreted as a protest against economic discrimination he experienced, rather than an action explicitly aimed at inciting hatred against a specific group. The defendant asserted that his upload was an expression of the injustice he faced, positioning it as an exercise of the right to freedom of expression protected by law. A legal analysis must carefully examine whether Wahyu's actions were indeed unlawful or fell within the legitimate framework of freedom of expression. The primary focus should be on whether there is explicit evidence in Wahyu's upload demonstrating an intention to provoke hatred and whether such actions can be justified as part of the constitutional right to free expression.

In South Jakarta District Court Decision Number 283/Pid.Sus/2023/PN.Jkt.Sel, arguments were made that Wahyu's actions were more an expression of economic injustice than an unlawful attempt to incite hostility. The panel of judges was urged to consider the broader social and economic context in analyzing this element, rather than relying solely on the text of the law. The element of "intentionally and without rights or against the law" in this case requires a nuanced analysis of the defendant's intent, whether the action was legally unjustifiable, and whether it violated legal norms. Alternatively, it may fall within the legitimate right to freedom of expression. The court's decision focuses on delineating the boundaries between freedom of expression and hate speech, emphasizing the importance of considering the social context and the defendant's motives. The court must exercise caution to ensure the application of the law does not infringe upon the defendant's constitutional rights. In this case, the panel of judges must carefully weigh the evidence and the defendant's intent against the potential impact of their decision on freedom of expression, ensuring that justice is served while upholding constitutional guarantees.

Ad. 3: Disseminating Information Intended to Cause Hatred or Hostility Towards Individuals and/or Certain Community Groups Based on Ethnicity, Religion, Race, and Intergroup (SARA)

In the South Jakarta District Court Decision Number 283/Pid.Sus/2023/PN.Jkt.Sel, the element of disseminating information intended to cause hatred or hostility towards individuals and/or certain community groups based on ethnicity, religion, race, and intergroup (SARA) is a central point that must be proven. Disseminating information involves providing public access through certain media, including social media platforms. In Wahyu Dwi Nugroho's case, the video he uploaded to TikTok qualifies as "disseminating information." The video expressed his protest against economic discrimination he experienced. The court must determine if the disseminated information was intended to reach the broader public and had a potential societal impact.

To establish this element, it must be proven that the defendant's actions were consciously aimed at inciting hatred or hostility. This requires demonstrating the defendant's intent (*mens rea*) through an analysis of the message's content, the context of the upload, and its consequences. In Wahyu's case, there is debate about whether his upload reflected an intention to incite hatred or was simply an expression of dissatisfaction with perceived injustice. Wahyu's video is widely interpreted as a reaction to discriminatory treatment he experienced, rather than a deliberate attempt to promote hatred based on SARA. This distinction is critical for the judge to assess whether his actions meet the criteria of "intended to incite hatred."

The indictment failed to specify the exact location (*locus*) of the crime and did not acknowledge Wahyu's apology video, which could have been a mitigating factor for the complainant who felt slandered. The judges should have considered these elements to evaluate whether the defendant's content intentionally incited others to cause hatred or hostility. Additionally, the prosecutor's indictment lacked a clear articulation of the defendant's malicious intent to incite hatred or hostility over SARA-based issues. Referring to the Joint Decree on the Guidelines for Implementing the ITE Law, law enforcement must demonstrate the motive behind the alleged incitement. In the South Jakarta District Court Decision Number 283/Pid.Sus/2023/PN.Jkt.Sel, involving a crime originating in Bogor, the judge's considerations align with the theory of legal certainty. This theory underscores the need for clarity, order, and predictability in legal applications.

Although the alleged crime occurred in Bogor, the South Jakarta District Court processed the case. Legal certainty requires clear guidelines regarding jurisdiction. In this instance, law enforcement relied on Article 84 of the Criminal Procedure Code, which permits courts to handle cases with widespread impact, such as those involving social media content accessible from multiple locations. While the *locus delicti* was in Bogor, the use of social media justified the case being heard in South Jakarta, highlighting the adaptability of legal procedures to technological realities.

When considering the verdict, the judge must ensure that the interpretation of the law, particularly Article 27 paragraph (3) of the ITE Law governing defamation, is consistent. This consistency is crucial to provide the public with clarity on the boundaries between freedom of expression and defamation. Without clear interpretations, the public may feel uncertain about using social media to voice their opinions.

In this case, the judge must also adhere to the principle of due process of law, a fundamental aspect of legal certainty, to ensure the defendant receives a fair trial and that appropriate legal procedures are followed. In the South Jakarta District Court Decision Number 283/Pid.Sus/2023/PN.Jkt.Sel, the defendant was reported after submitting a complaint that was deemed hate speech. Legal certainty must be balanced with justice, ensuring fairness for both the complainant and the defendant.

The alleged crime took place in Bogor, which falls under the jurisdiction of the Bogor District Court. If the trial is conducted at the South Jakarta District Court, there should be specific legal justifications, such as the defendant's location or where they were arrested. Article 84 paragraph (2) of the Criminal Procedure Code allows for trials to be held in the area of arrest or residence under special circumstances. If the crime indeed occurred in Bogor, the trial venue in South Jakarta could be questioned.

Without a strong legal basis for relocating the trial, this could violate the principle of "lex loci delicti commissi" (the law of the place where the offense occurred). However, relocation may be justified for reasons such as security threats or practical considerations. Moving the trial without clear justification could harm the defendant's rights, particularly regarding access to a court that aligns with the crime's location.

The author believes that the transfer of the trial from Bogor to South Jakarta requires a solid legal foundation. Under the theory of competence, the South Jakarta District Court must establish its relative authority to handle the case in accordance with the Criminal Procedure Code. Failing to do so could provide grounds for objections or a defense by the defendant.

Regarding the South Jakarta District Court's decision in Case Number 283/Pid.Sus/2023/PN.Jkt.Sel, the crime occurred in the Bogor area, West Java. The author concurs with the opinion of Judge Sondra Mukti Lambang Linuwih, S.H., who noted that while the offense took place in Bogor, the defendant was reported in South Jakarta, prompting the court to process the case there.

One of the judges' considerations was related to the nature of violations under the ITE Law. Cybercrimes often span multiple jurisdictions, making relative competence flexible. In this instance, the South Jakarta District Court asserted its authority to handle the case, given the cross-jurisdictional nature of the alleged offense.

CONCLUSION

Determining the relative competence for resolving criminal defamation cases under Indonesian positive law is based on the location where the crime occurred or the residence of the perpetrator and/or victim. This principle aligns with Article 84 paragraph (1) of the Criminal Procedure Code, which states: "The district court with the authority to try criminal cases is the district court where the crime occurred." This rule establishes that relative competence in criminal cases is determined by the locus delicti (the place where the crime occurred). However, an exception is provided under Article 85 of the Criminal Procedure Code. If more than one district court has jurisdiction (e.g., when the crime spans

multiple areas), the prosecutor may designate the court to examine the case, thereby ensuring clarity in the case resolution process. The judge's considerations in the South Jakarta District Court Decision Number 283/Pid.Sus/2023/PN.Jkt.Sel, which pertained to a crime committed in the Bogor area of West Java, can be explained based on the principle of relative competence in Indonesian criminal procedure law. The judge acknowledged that although the crime scene was located outside South Jakarta (in Bogor), relative competence could still apply to the South Jakarta District Court if other factors justified it, such as the defendant's residence or the case's broader significance within the jurisdiction.

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