DEFAMATION AND INSULT VIA DIGITAL MEDIA IN INDONESIA: THE ISLAMIC LAW AND HUMAN RIGHTS PERSPECTIVE

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ABSTRACT

Purpose: In this research, normatively and practically, insults and defamation tested the standard limits of freedom of speech as a form of freedom of expression.

Theoretical framework: Each individual has an obligation to exercise their human rights and to recognize and protect the human rights of others. No entity, whether it be the government, groups, or individuals, has the authorization to infringe on the rights of others.

Method: The research method used in this research was normative juridical research that refers to the norms and principles of law regulating criminal acts of insult and or defamation via digital media.

Conclusions: In principle, the regulation of criminal acts of insult and or defamation via digital media is based on human rights. However, the regulation in the Indonesian Criminal Code and Law Number 11 of 2008 on Electronic Information and Transactions may not be an appropriate for controlling information containing insults and/or defamation in information technology. In Islamic law, respect for human beings is a fundamental right and universal freedom is an integral part of Islam.

Research Implications: In the context of a democracy, freedom of expression is a right, the use of which can be restricted by the state. Insults and defamation through speech and expression can harm an individual's reputation, which is considered one of their fundamental rights that demands protection and respect.

Originality/value: Human dignity has a high position in the core values of Islam. It is because Islam does not allow for the degradation of an individual's dignity through insult or defamation.

Keywords: insult, defamation, digital media, islamic law, criminal law, human rights.
DIFAMAÇÃO E INSULTO ATRAVÉS DA MÍDIA DIGITAL NA INDONÉSIA: 
A LEI ISLÂMICA E A PERSPECTIVA DOS DIREITOS HUMANOS

RESUMO

Objetivo: Nesta pesquisa, de forma normativa e prática, os insultos e a difamação testaram os limites padrão da liberdade de expressão como forma de liberdade de expressão.

Quadro teórico: Cada indivíduo tem a obrigação de exercer os seus direitos humanos e de reconhecer e proteger os direitos humanos dos outros. Nenhuma entidade, seja governo, grupos ou indivíduos, tem autorização para infringir os direitos de terceiros.

Método: O método de pesquisa utilizado nesta pesquisa foi a pesquisa jurídica normativa que se refere às normas e princípios de direito que regulam atos criminosos de insulto e ou difamação por meio de meios digitais.

Resultados e Conclusões: Em princípio, a regulamentação de atos criminosos de insulto e/ou difamação através dos meios digitais baseia-se nos direitos humanos. No entanto, o regulamento do Código Penal Indonésio e da Lei Número 11 de 2008 sobre Informações e Transações Eletrônicas pode não ser apropriado para controlar informações que contenham insultos e/ou difamação na tecnologia da informação. Na lei islâmica, o respeito pelos seres humanos é um direito fundamental e a liberdade universal é parte integrante do Islão.

Implicações da pesquisa: No contexto de uma democracia, a liberdade de expressão é um direito cujo uso pode ser restringido pelo Estado. Os insultos e a difamação através do discurso e da expressão podem prejudicar a reputação de um indivíduo, que é considerado um dos seus direitos fundamentais que exige proteção e respeito.

Originalidade/valor: A dignidade humana ocupa uma posição elevada nos valores fundamentais do Islão. É porque o Islão não permite a degradação da dignidade de um indivíduo através de insulto ou difamação.

Palavras-chave: insulto, difamação, mídia digital, direito islâmico, direito penal, direitos humanos.

1 INTRODUCTION

Based on data from the Criminal Investigation Department (Bareskrim) of the Indonesian National Police Headquarters (Mabes Polri), that criminal acts of insult and defamation, the Police have uncovered cases of Law Number 11 of 2008 on Electronic Information and Transactions as amended by Law Number 19 of 2016 on Amendments to Law Number 11 of 2008 on Electronic Information and Transactions in the last 3 (three) years. According to Bareskrim data, the highest number of cases handled was related to defamation. Based on Rusdi Hartono, the Head of the Public Information Bureau of the National Police Public Relations Division, in an online discussion with the Indonesian Journalists Association (PWI), reports related to defamation have continued to increase from 2018 to 2020. As in 2018 there were 1,258 cases, in 2019 there were
1,133 cases and in 2020 there were 1,794 cases. The number of cases tends to increase when viewed across all data collected from regional police forces from year to year. There were 4,360 cases in 2018, 4,586 cases in 2019, and the number increased to 4,790 in 2020 (Media Kumparan, 2021).

Insults and defamation in digital media certainly greatly affect digital elements. With a huge number of advantages that allow quickly and efficiently drafting regulatory acts, coordinating them taking into account the interests of the state and society, registering, certifying, recording a variety of legally significant facts and events, there is still a risk of violation of the basic principles of law and fundamental human rights with the uncontrolled and total introduction of digital technologies into legal activity (Livson, et.al. 2021).

From the beginning, the Indonesian Criminal Code and the Law on Electronic Information and Transactions have always taken into account the freedom of expression while ensuring reputation protection. Rules to limit freedom of expression are necessary because criminal offenses of insult and defamation have the potential to harm an individual's reputation. Defamation law has historically protected individuals from invasion of reputation and good name under many jurisdictions. Simultaneously, there is an increasing criticism of global defamation laws as they are said to unfairly curtail and impact freedom of expression (Jurau, 2013). Therefore, this paper aims to examine defamation and insult in Indonesia as they relate to freedom of expression, which ultimately does not violate criminal law and Islamic law as part of the legal system in Indonesia.

In response to the high crime rate in cyberspace, as a comparison with the law on information and electronic transactions and criminal law, one of the differences between communication in the real world and cyberspace (cyberspace) is the media used, so that every communication and activity via the internet will have the impact on human life in the real world, can cause more extreme and massive negative impacts in the real world.

Therefore, a study of criminal acts of insult and defamation through digital media based on criminal law and Islamic law is relevant for an in-depth study, bearing in mind that the potential for crimes of insult and defamation through digital media in the future will certainly increase along with development of AI (Artificial Intelligence) (Sheikh & Schrijvers, 2023).
Based on the description above, this article is written to examine a formulation regarding the concept of insult and defamation in the field of criminal law through digital media and of course its relevance in the context of freedom of opinion and expression amid the disruption of information and communication technology as part of a digital democracy based on values -the value of human rights and Islamic law.

As for the formulation of the problem in this article, how is the concept of acts of insult and defamation through digital media in relation to criminal law and Islam. This article also looks at the issue of humiliation in the study of human rights as a form of respect for human dignity.

2 THEORETICAL FRAMEWORK

Although the Criminal Code and the Law on Electronic Information and Transactions are difficult to apply, every individual has the right to protect their reputation and is entitled to adequate legal protection. Reputation is generally considered a perfectly natural right by most classical scholars as it falls under the same general category as the right to life and liberty (Bonica, 2021). Conversely, others have also argued that although reputation is a perfect natural right, it is undesirable to resort to defamation law. However, the rationale for ensuring an individual's reputation presupposes the development of an effective and efficient defamation law. Further, that reputation is more valuable than any other property that a person may have and so its protection requires a firm law to prevail. Reputation is the status or position that a person holds in society or the public in response to their roles and contributions (Brouillet, 2005). In short, reputation is about a favorable perception from the other party in return as a form of respect for human rights.

Improving Human Rights protection in Indonesia can enhance the people's trust in the Government, thus reducing protests based on Human Rights issues. This will contribute to public safety and order, resulting in national stability. According to the concept of a democratic rule of law, as adopted by Indonesia, security and order require not only the absence of disturbances to public safety and order but also the welfare of the people and the guarantee of individual rights (Husen.et.al. 2023).

Overall, the issue of criminal insults and defamation requires a balance between freedom of expression and the right to protect one's reputation (Cheng, 2016). Recognizing the inverse relationship between freedom of expression and the right to reputation, it is possible to safely draw the following conclusion; on the one hand,
Defamation law should restrict freedom of expression to protect the legitimate right to reputation. On the other hand, defamation laws are also expected to slightly restrict the right to reputation as far as possible to promote the right to freedom of expression so as to ensure the free flow of information, opinions and ideas.

3 METHODOLOGY

The research method used in this research was normative juridical research that refers to the norms and principles of law regulating criminal acts of insult and or defamation via digital media. This research adopted both a legislative approach and a conceptual approach to analyze legal materials in a prescriptive and analytical manner. This research utilized a data processing approach that involved quoting relevant references to display research findings, abstracting information to obtain complete data, interpreting the data to produce knowledge, and ultimately drawing a conclusion. This research employed a qualitative approach to process, analyze, and construct normative legal materials.

4 RESULTS AND DISCUSSION

4.1 INSULT AND DEFAMATION IN INDORESEAN CRIMINAL LAW

The provisions stipulated in the article on insults and defamation in the Law on Information and Electronic Transactions may not be considered appropriate for controlling information containing insults and/or defamation in information technology. One of the problems with the article is not only the unclear formulation and multiple interpretations of the article, but also the limitations of the provision, which can considered excessively broad. The necessity of Article 27 paragraph (3) of the Law on Electronic Information and Transactions is unnecessary because the element of "without right" in the Article rises the issue of whether or not certain parties have been granted legal authority to disseminate information. The necessity of Article 27 paragraph (3) of the Law on Electronic Information and Transactions is dubious because the actions described in the article can also be governed interpreting the relevant defamation articles in the Criminal Code (Guntara, 2017).

When viewed in the Criminal Procedure Code and the Electronic Information and Transaction Law, there are differences in terms of evidence in uncovering a crime, namely:
Table 1. Criminal Procedure Code and the Electronic Information and Transaction Law

<table>
<thead>
<tr>
<th>Evidence of Criminal Procedure Law, Article 184 KUHAP</th>
<th>Article 184 KUHAP Proof of Cyber Procedural Law Article 164 HIR, 1866 BW jo Article 1 point 1 and number 4 Jo Article 5 Jo Article 43 Jo Article 44 Law on Electronic Information and Transactions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Witness testimony</td>
<td>1. Electronic Information, Electronic Documents</td>
</tr>
<tr>
<td>2. Expert Statement</td>
<td>2. Expert (Explanation of Article 43 paragraph 5 letter h)</td>
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<tr>
<td>3. Letters</td>
<td>3. Witness</td>
</tr>
<tr>
<td>5. Statement of the Defendant</td>
<td>5. Hint</td>
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Source: Compiled by the author based on book Introduction to cybercrime in Indonesia, 2017; Nudirman Munir, 2017.

According to the formulation of Article 27 paragraph (3) of the Law on Electronic Information and Transactions, dissemination refers to distributing, transmitting, or providing access to electronic information and or electronic documents. The formulation does not explicitly point to the act of accusing someone of committing a certain act. This is different from the formulation of defamation offense in the Criminal Code. According to Article 310, paragraph (1), the formulation of the prohibited act is defined as making an accusation. The formulation shows that the regulation of defamation in the Criminal Code is aimed at people who directly insult someone by accusing a thing or action, regardless of the nature of the action whether legally or without right. Therefore, the primary offenders of defamation cannot be prosecuted under Article 27, paragraph (3). Instead, this article is a violation of unlawful dissemination of an accusation that contains elements of defamation committed through electronic media as electronic information and/or electronic documents (Rizaldi, 2015).

In short, the primary purpose of insult and defamation law is to protect the reputation. A good defamation law is one that constantly strives for the right balance between the protection of an individual's reputation and freedom of expression. In other words, the legitimate purpose of defamation laws is to protect people from false statements of fact that may damage their reputation (Bayer, 2001). Most countries around the world have some form of protection mechanism although these may be referred to different depending on the jurisdiction, particularly in settings related to insult and defamation.

Historically, the tension between defamation law and freedom of expression is traced back to the ancient Roman period, but has gradually reached its peak in the digital and internet age. Since freedom of expression includes the right to share "views and opinions that may even be offensive or disturbing,"according to the Criminal Code and
the Law on Electronic Information and Transactions, it is challenging to separate the practice not violating the principle of freedom of expression or expression of opinion. Although there is a detailed law to regulate those laws, the threat of prosecution for the criminal offense of insult and or defamation alone, is sufficient to suppress the massive offense of insult in digital media.

In other words, in the paradoxical relationship between human rights, it appears as both a "shield" and a "sword" of the criminal law (Horder, 2016). Human rights act as a safeguard against the authoritarian use of criminal law by providing due process rights. Conversely, human rights have an offensive role when an offense is committed against the defamation of a person's good name, which triggers the application of criminal law.

According to the Nguyen Minh dan Hoa, the impact and influence of science, engineering, and technology on people, and human resources is an indispensable factor in the period when science-technology becomes an important productive force. The work highlights the impact and role of science-technology in improving the quality of human resources (the most important resource for socio-economic development in the early years of the 21st century) to meet the requirements of the times (Nguyen Minh & Le Thanh Hoa, 2023).

Recently, human rights have taken on a new role in criminal proceedings where they are seen as a way of protecting people against criminal defamation offenses through the application of criminal law. The basic idea is that perpetrators of human rights violations committed insults in digital media should be held accountable, and impunity constitutes a violation of human rights.

The development of human rights standards has had a major impact on the protection of human dignity by altering the relationship between governments and individuals and increasing the accountability of public authorities (Duran, 2006). Human rights law requires governments to perform certain actions and prohibits them from engaging in others. Individuals also have a responsibility to exercise their human rights and must respect the rights of others. No government, group or individual has the right to do anything that violates the rights of others, including acts of defamation committed in digital media.
4.2 INSULT AND DEFAMATION IN ISLAMIC LAW AND HUMAN RIGHTS

Freedom of expression or speech is the most important aspect of life in Islam and is not a matter of pleasure but is considered as one of the basic rights that are valued, respected and protected by Islamic law. In Islam, freedom of speech addresses the right of an individual to express his or her own views without violating Islamic principles (Musa, 2015).

Islamic Law outlines several elements of insult as follows (Ahmed, 2020):

1) The statement is not an explicit accusation of adultery/sexual immorality.
2) The perpetrator makes a statement about the victim to another person, in public or in private.
3) The statement is defamatory of the victim.
4) The intention to harm or dehumanize the victim.
5) The statement is false for publication.
6) No privilege for the perpetrator applies when making such a statement.

Islamic law was revealed to protect human dignity. All behaviors that degrade human dignity, either personally or as a member of society are prohibited by Allah Subhanahu wa ta'ala. In Islamic law, the term *jinayah* refers to an act that is prohibited by Shara' because it can cause harm to the soul, property, offspring and intelligence (Sugara, 2017).

The main objective of Islamic criminal law is to prevent individuals from committing crimes, creating a peaceful society in which religion, life, property, body and honor (reputation) are preserved and protected according to the provisions of the law (Vishvanathan, 2015). The concept of "*al-ma'rūf*" (the common good) in Islamic implies respect for human dignity and is reflected in the doctrine of *Amar Ma'ruf Nahi Munkar* (al`amru bil-ma'ruf wannayu'anil-mun'kar, which orders to promote good deeds and prevent from evil deeds) (Esposito, 1995).

Respect for human beings' fundamental rights and universal freedoms is an integral part of Islam and is a binding commandment of God, which no one is allowed to deprive, suspend, violate, or ignore under Islamic law. The concept of human rights in classical Islamic jurisprudence identifies that the moral foundation and the relationship between the general object and purpose of human rights law must be in harmony with Maqashid Sharia (sharia as law and the achievement of its purpose in providing benefits).
Human dignity has a high position in the core values of Islam. In Islam, there is no justification or anything that dehumanizes a person. Maqashid al-syari’ah consists of two words, maqashid and shari’ah. Maqashid is a plural form of maqshad, which means intent and purpose, while shari’ah refers to the laws of Allah set for humans to be guided towards happiness in this world and in the hereafter. Thus, maqashid al-syari’ah means the value content that is the purpose of the law. Thus, maqashid al-syari’ah is the objectives to be achieved from a legal stipulation (Jaya, 1996).

Izzuddin ibn Abd al-Salam, as quoted by Khairul Umam (2001), said that all taklif laws always aim at the benefit of servants (humans) in the life of the world and the hereafter. Allah does not need someone's worship, because the obedience and disobedience of servants do not have any effect on the glory of Allah. So, the aim of legal benefits is solely human interests.

In the hadith narrated by Tirmizi and Ahmad also explains about morals. Rasulullah SAW said: "And behave with your fellow human beings with good manners". In connection with that, humans are created by Allah SWT with the best of events and equipped with good morals. However, sometimes there are also some of the humans who have morals inclined towards insult and defamation.

The main purpose of Islamic law (al-maqashid al-sharia) is to form the benefit of the people, as well as to reduce the intensity of crime and violation on earth. The benefits, as explained by as-Syatibi, are categorized into three groups, including (Ridwan, 2008):

1. **Daruriyat**, linguistically means emergency need. It contains five principles (religion, soul, mind, offspring and property) as aspects of the law that are urgently needed for the proper conduct of human religious and worldly affairs. Neglect of these aspects will lead to chaos and injustice in this world, and will be very unpleasant.

2. **Hajiyat** (linguistically meaning necessity), refers aspects of the law necessary to reduce excessively burden, allowing the implementation of the law can be implemented without demoralization and contraint. This kind of legal leniency is necessary for the acceptance of Muslim life and laws.

3. **Tahsiniyyat** (linguistically means refinement), refers to aspects of the Islamic that includes recommendation, such as liberating slaves, charity to the poor, and so on. Although not urgent, they add significant value to an individual's
character. Islamic law is based on this taxonomy of benefits (masalih) (al-maqasid al sharia).

To maintain the reputation's honor based on its interests and needs, it can be divided into three levels (Al-Qaradhawi, 2017):

1. Maintaining the honor of reputation, in the level of dharuriyat, individuals are expected to help each other, be polite, maintain honesty, and demonstrate noble character. Neglecting these values can threaten the existence of honor.
2. Preserving the honor of the reputation, in the level of hajjiyat, individuals are prohibited from insulting others and are punished by ulil amri through ta’zir in order to protect the honor of a person's reputation. Neglecting these values will make it difficult for a person to seek justice.
3. Maintaining the honor of reputation, in the level of tahsiniyat, individuals should always respect human dignity. This idea is closely related to ethics and will not directly threaten the existence of honor.

According to Abdullah Darraz’s commentary on As-Syatibi's view states Allah established the law to realize the benefit of human life in this world and in the hereafter (Al-Syatibi, 2003). The concept of Maqashid Sharia, which primarily centers around benefit, according to as-Syatibhi can be considered from two vantage points, which are first, maqashid as-Syari’ (God's purpose) and second, maqashid al-mukallaf (the purpose of the servant). Based on the first point, which is God's purpose, maqasid sharia contains four aspects (Rusli, 1999), such as: First, the initial purpose of Shari’ establishing sharia is human welfare in the world and the hereafter, secondly, the establishment of sharia as a concept requiring comprehension, third, the establishment of sharia as a taklifi law (obligation) that must be implemented, and fourth, the establishment of sharia to provide with legal protection.

Maqashid al-Mukallaf refers to the intentions of the legal actors (humans; mukallaf) in every aspect of their lives, including intentions, words, and actions. This concept allows distinguishing between good and bad actions, as well as between worship and social life, both in religious life or in the state settings, according to whether they align with or contradict maqashid al-shariah (Rusli, 1999).

The purpose of determining the law or often known as Maqashid al-syari'ah is one of the important concepts in the study of Islamic law. Because maqashid al-syari'ah is has a crucial role, legal theorists have made it a necessary understanding for maqashid
al-syari’ah mujtahids who perform ijtihad. The core principle of the maqashid al-syari’ah theory is to achieve good while avoiding bad deeds, or to seek benefits and reject madharat. The term that is commensurate with the core principle of maqashid al-syari’ah is maslahat, because the determination of law in Islam must lead to maslahat.

It should be noted that Allah SWT as shari’a (who establishes shari’at) does not create laws and rules arbitrarily. However, the laws and rules were created with certain purposes and intentions. Ibn Qayyim al-Jauziyah, as quoted by Khairul Umam (2011), stated that the purpose of shari’at is for the benefit of servants in the world and the hereafter. The Shari’ah is characterized by righteousness, mercy, and wisdom at every turn. If an issue is devoid of justice, mercy, benefit and wisdom, it cannot be considered a legitimate Shari’ah provision.

Jasser Auda (2008) argues that expanding the scope of maqasid al-shariah is necessary for Islamic law to positively contribute towards achieving the benefits of humanity and addressing contemporary challenges. At first, the benefit is only for the individual, so it is necessary to expand the scope to cover a more general area; from the individual area to the area of society or humanity at various levels, for example, from the protection of offspring to the protection of the family, from the protection of the intellect to the realization of scientific thinking, research or the enthusiasm for the pursuit of knowledge, from the protection of the soul to the protection of human honor or the protection of human rights, from the protection of religion to the protection of freedom of worship and freedom of belief, from the protection of property to the embodiment of social solidarity (Auda, 2008).

Human rights in Islam are basically centered on 5 (five) main principles, summarized in al-ḍaruriyat al-khamsah or also called al-huquq al-insaniyyah fî al-islam (human rights in Islam). This concept contains five main principles that must be maintained by each individual, namely hifdzu al-din (respect for freedom of religion), hifdzu al-mal (respect for property), hifdzu al-nafs wa al-ird (respect for the soul, right to life and individual honor) hifdzu al-aql (respect for freedom of thought) and hifdzu al-nasl (the obligation to protect offspring). Every Muslim must maintain these five basic principles to produce a more humane life order, based on respect for individuals over individuals, individuals with society, society with society, society with the state, and religious communities with other religious communities (Rohman, 2017).
This is in line with the basic principle in maqashid Shariah in the form of hifdzu al-nafs wa al-ird (respect for the soul, right to life and individual honor) (Hamim, 2021). Although the maqashid guarantees freedom of expression in the principle of hifdzu al-aql (respect for freedom of thought), it must not violate other principle rights, namely honor and dignity. The principle of freedom of speech and expression is naturally limited by other rights, namely the freedom to gain self-respect and honor of the soul. (Firma Aditya, 2020).

The main discussion in maqashid al-syari’ah pertains to the wisdom and illat behind establishing a law, as deduced from the aforementioned understanding. In the study of ushul fiqh, wisdom is different from illa. Illat is a certain characteristic that is clear and can be known objectively (zahir), and there is a benchmark (mundhabit), and in accordance with the provisions of the law (munasib) whose existence is a determinant of the existence of the law, while wisdom is the purpose or intention of the law in the form of benefit for humans. Defamation or insult in Islamic criminal law does not explicitly explain its definition. However, there are many grounds that explain defamation. In Islamic law, defamation has different types, such as reviling, slander, spreading false news, gossip, and others (Temperman, 2008).

Islam strictly forbids gossiping, backbiting, spying, swearing, cursing, calling people unkind names, and similar acts that affect human honor or dignity. Islam also humiliates those who commit these sins, threatening them with a painful punishment on the Day of Resurrection, and including them among the unrighteous (Ma'nunah, 2017).

Yusuf Qardawi (2010) argues that Islam upholds the honor of individuals by forbidding gossiping, even if the information is true. For this reason, Islamic law establishes a distinct system of punishment to promote peace for individual and community and prevent acts that can jeopardize the well-being of the community, both with regard to life, property, and honor (Hanafi, 1967). It is important to maintain honor in Islamic law for criminal acts of insult and or defamation committed through digital, as servants of Allah who live on this earth.

The behavior of insulting, which tends to be expressed in an inconsiderate manner that offends others is included in Akhlaqul madzmunah. Unfavorable language attitudes that can lead to immoral behavior can be described as follows (Yatimin, 2006):
a. Insulting involves belittling others by holding arrogant view of oneself as superior. Ridiculing someone by exposing their weaknesses is one example where the person may not appreciate being laughed at mockingly.

b. Ignoring with gestures involves humiliation expressed by gestures, such as hand, eye, tongue gestures that demonstrate arrogance and belittle others.

c. Assigning derogatory labels involves calling individuals as “fat”, “disobedient”, “short”, “black”, or other derogatory labels, which are disrespectful.

d. Cursing involves using rude or offensive language against someone where the person may find objectionable. The use of curse words is prohibited, both to utter and listen to.

e. Slander involves spreading hurtful rumors about oneself to another person, which is equivalent to fabricating news that never occurred and disseminate the news with the aim to destroy the relationship between two or more person.

According to Abdul Rahman al-Maliki divides humiliation into 3 (three), namely (Al-Maliki, 2010):

1. **Al-Dzamm**: The attribution of a certain thing to a person through subtle insinuations that trigger anger and harassment among people.

2. **Al-Qadh**: Anything that relates to reputation and self-esteem without attributing it to a specific thing.

3. **Al-Tahqîr**: Any word that is abusive or indicates reproach or harassment.

According to al-Ghazali, defamation is insulting (degrading) others in front of people or in public. While in the book Tafsîr al-Jalâlain, Imam Jalaluddin divides three models of defamation, namely (Jalaluddin, 2010):

1) **Sukhriyyah**, which is belittling or underestimating others for a specific reason.

2) **Lamzu**, which is to vilify with abuse or insults or with other people’s weaknesses.

3) **Tanâbur**, is insults or humiliation by mentioning or calling the interlocutor with derogatory labels, and the worst derogatory labels is calling O wicked.

The legal basis for defamation is found in the Qur’an Surah al-Hujurat/11: 12 Allah Subhanawata’ala, says which means (Kementerian Agama RI, 2018): “O you who believe, let not some men laugh at others, maybe those who are laughed at are better than
them, and let not some women laugh at others, maybe those who are laughed at are better than them, and do not reproach yourselves, and do not call each other by offensive nicknames. The worst of calls is that which is bad after faith, and those who do not repent, then they are the wrongdoers”.

In the Quran, there are many words whose meanings refer to insulting, making fun of or reproaching. One of them is the word "As-Sukhriyah" in verse 11 of Surah Al-Hujurat. The word "As-Sukhriah" or making fun of as defined by Al-Ghazali in Ihya' Ulumuddin is the act of intentionally diminishing someone else's worth, reputation, or dignity by mentioning their faults or shortcomings, and aiming to be ridiculed through actions, words, or gestures (Ubab, 2022).

One hadith that shows the condition of those who insult others in the hereafter is: “The Prophet Muhammad said: "Indeed, Those who make fun will be brought on the day of Qiyama and a door will be opened towards Paradise. He would be told to enter it fast. Full of grief and misery, as soon as he tries to enter it the door will slam shut and another door will open on the other side. He would be told enter quickly, but as soon as he reaches it they will shut that door also. He will continue in this struggle but he would not be able to enter any of the doors. At last he would lose all hope and now when he is called, he shall decline”.

The Hadith of the Prophet (peace and blessings of Allah be upon him) describes those who like to criticize and accuse others as bankrupt (muflis), as narrated by Muslim: “Abu Hurairah said that the Messenger of Allah (SAW) said, Do you know who the muflis (bankrupt) is? The Sahabah replied, The bankrupt among us is the one who has no dirham and no treasure. The Messenger of Allah (SAW) said, 'The bankrupt of my Ummah is the one who comes on the Day of Resurrection with (the reward of) praying, fasting and paying zakat, but he also comes (with sins) by denouncing this one, accusing this one, eating this one's wealth and spilling this one's blood and beating this one. Then he will give those people from his good deeds. And if his good is exhausted before he fulfills his duty, then the evil of their sins will be taken from him and he will be thrown into Hell”.

Basically, in Islamic criminal law there are no specific sanctions related to defamation, therefore the regulation of criminal sanctions against the perpetrators of defamation according to Islamic criminal law is in the form of ta'zir punishment. Ta’zir refers to punishments that are not explicitly mentioned or detailed in the Qur’an or hadith,
and are not covered by jarimah hudud, qishas, diyat, or kafarat for perpetrators of criminal acts. Therefore, these punishments are determined by the government or judges.

Ta'zir linguistically means ta'dib, which means to give a warning without imposing a punishment. Ta'zir is also interpreted according to Ar-Raddu wal Man'u, which means rejecting or avoiding. On the other hand, the interpretation of ta'zir according to Al-Mawardi is the provision of warning for sins (criminal acts) for which shara' has not determined the punishment. According to Islamic law, the imposition of punishment is for a person who meets two conditions: they are mukallaf, which means they are capable of fulfilling their religious obligations, and they have reached puberty and possess sound mental health.

In Islamic law, defamation is categorized in ta'zir punishment. The punishment is not regulated definitively by shara', but it is determined and implemented by ulil amri. In determining the punishment, the ruler only determines the punishment globally (Ma'nunah, 2017). Ta'zir is a form of punishment that is imposed for crimes that are not punishable by hadd or expiation according to Shara'. These crimes may include breaking the fast during Ramadan without a valid excuse, cursing, cheating, and others (Munir, 2020).

The types of ta'zir in Islamic criminal law can be explained as follows (Abdurrahman, 2004):

1) Murder (al-qatil), such as killing people who spy or people who invite the division of Muslims.
2) Jilid (al-jald), which is flogging. However, it should not exceed 100 times. According to the Prophet, “flogging may not be administered 100 times, except when in had, which has been determined by Allah”.
3) Imprisonment (al-habs), From Abu Hurairah: “verily the Prophet Muhammad SAW imprisoned (a person) in (the case of) false accusations for 1 (one) day 1 (one) night and left it to the ijithad qadhi regarding the time measure”.
4) Expulsion (al-nafyu), which is isolating or expelling. The word of Allah SWT in the Qur'an letter al-Maidah verse 33: "... or banished from the earth (expelled from his country...).
5) Boycotting (al-hijr), as narrated in hadist about the story of boycotting that happened to 3 people who did not participate in the war. Rasulullah SAW instructed Muslims not to communicate with them.
6) Paying a penalty (al-gharaamah), which is a punishment for those who commit sin, the punishment is paying property as expiation for their sin.

7) Destroying wealth (itilaaf al-maal), such as counterfeit objects that are said to be genuine. For example, a mixture of milk with coconut milk or a broken milk vessel.

8) The real threat (at tahdiid ush shaadiq), which is aimed at sinners by warning them that they will be sanctioned if they commit the act.

9) Terminating alimony/salary.

10) Reproach as the Prophet said about Abu Dhar, "O Abi Dhar, are you reproaching him with his mother's name? Indeed, you exhibit the qualities of ignorance, commonly known as jahiliyahan”.

According to Sayyid Sabiq as quoted by Misran, ta'zir punishment was originally based on the narration of Abu Daud, At-Tirmizi, An-Nasai and Al-Baihaqi from Bahz Ibn Hakim from his father, from his grandfather, that the prophet had imposed a prison sentence on the perpetrator of false accusations. However, this punishment carried out by the Prophet was a preventive measure before the case became clear. Imam Bukhari and Muslim narrated a hadith from Haani’ ibn Nayyar, that he had heard the Prophet say: "Do not inflict more than ten lashes, except in the execution of a hadd punishment decreed by Allah SWT” (Misran, 2017).

Wahbah Zuhaili as cited by Qosim Khoiri Anwar stated that: ta'zir is imposed to indovoduals who commits an wrongful act or inflict harm on other without a right reason. Such acts may take the form of words, actions, or gestures to fellow Muslims or non-Muslims, for example, anal intercourse between a husband and wife, having intercourse during menstruation, robbing, and all kinds of crimes with no qishash. Besides, and the ta’zir imposition is conditional upon the offender being of sound mind. This pertains to individuals regardless gender, religion, and age (sa los as the ypossess sound mind) (Zubaili, 2011).

Ta'zir punishment is entirely in the hands of the judge (ulil amri). Only the judge (ulil amri) has the authority to give punishment, forgiveness or shafa'at for those who have committed ta'zir crimes (Bahnisi, 1965). Therefore, the crime of insult and or defamation through digital media is considered a criminal offense (jarimah) if two elements have been fulfilled, which are general elements and special elements. The general element is a criminal offense that applies to all criminal offenses (jarimah).
Meanwhile, special elements only apply to each criminal offense (jarimah) and differ from one jarimah to another (Ahmad, 2004).

Crimes related to the rights of Allah SWT are anything that relates to the public good, such as making damage on earth. Meanwhile, what is meant by crimes related to individual rights is something that threatens the benefit of an individual human being, such as not paying debts and insults (Dzajuli, 1996).

4.3 FATWA OF THE INDONESIAN ULEMA COUNCIL ON GUIDELINES FOR CONDUCTING BUSINESS ON SOCIAL MEDIA

Based on the Fatwa of the Indonesian Ulema Council Number 24 of 2017 on the Law and Guidelines for Conducting Business Through Social Media, in letters b and c, it is stated that the ease of communicating and obtaining information via digital media platform, such as social media can bring benefits to mankind, such as strengthening friendship, providing ease in economic, education, and other positive activities; that the use of digital media, especially social media in the community is often not accompanied by responsibility. As a result, it is common to see it being used for disseminating false information, hoaxes, slander, ghibah, namimah, gossip, distortion of facts, hate speech, hostility, confusion, false information, and other prohibited things, which cause social disharmony.

The first general provision in the fatwa also explains that Ghibah is the dissemination of factual information about a person or group that he hates. Slander (buhtan) is false information about someone or without being based on the truth that is spread with the intention of defaming people (such as tarnishing good names, harming people's honor), then namimah is divide and conquer between one another by telling the deeds of others who try to demonize others then have an impact on mutual hatred.

The second general provision of the second number in the fatwa on the law and guidelines for having interaction in social media states that (Fatwa Majelis Ulama Indonesia Nomor 24 Tahun 2017 tentang Hukum dan Pedoman Bermuamalah Melalui Media Sosial):

1. In interaction, whether in real life or on social media, every Muslim is obligated to base their conduct on faith and piety, virtue (mu'asyarah bil ma'ruf), brotherhood (ukhuwwah), mutual advice on the truth (al-haqq) and invite goodness (al-amr bi al-ma'ruf) and discourage evil (al-nahyu'an al-munkar).
2. Every Muslim who make interaction via social media must pay attention to the following matters:
   a. Always increasing faith and piety, discouraging kufr and disobedience.
   b. Strengthening brotherhood (ukhuwwah), both Islamic brotherhood (ukhuwwah Islamiyyah), national brotherhood (ukhuwwah wathaniyyah), and humanitarian brotherhood (ukhuwwah insaniyyah).
   c. Strengthening harmony, both within religious communities, between religious communities, and between religious communities and the Government.
3. Every Muslim who make interaction via social media is prohibited from:
   a. Conducting ghibah, slander, namimah, and spreading hostility.
   b. Bullying, delivering hate speech, and hostility on the basis of ethnicity, religion, race, or intergroup.
   c. Spreading hoaxes and false information even with good intentions, such as information about the death of a living person.
   d. Spreading pornographic material, immorality, and everything that is forbidden by shar'i.
   e. Disseminating content that is true but inappropriate for the place and/or time.
4. Producing, disseminating and/or making accessible untrue content/information to the public is prohibited.
5. Producing, disseminating and/or making accessible content/information about hoaxes, ghibah, slander, namimah, disgrace, bullying, hate speech, and other similar personal matters to other people and/or the public is prohibited.
6. Seeking out information about the disgrace, gossip, ugliness of other people or groups is prohibited except for interests that are justified by shar'i law.
7. Producing and/or disseminating content/information aimed to justify the wrong or blame the right, build opinions to appear successful and accomplished, and the aim to hide the truth and deceive the audience is prohibited.
8. Disseminating private content to the public when it is known to be inappropriate for public dissemination, such as poses that show the aurat, is prohibited.
9. The buzzer profession in social media providing false information, gossip, slander, namimah, bullying, disgrace, gossip, and other similar issues to gain
economic and non-economic benefits is prohibited. Likewise, those who order, support, assist, utilize the services of and those who facilitate them are also prohibited.

The general guidelines for having interaction via social media are as follows (Fatwa Majelis Ulama Indonesia Nomor 24 Tahun 2017 tentang Hukum dan Pedoman Bermuamalah Melalui Media Sosial):

1. Social media can be used as a means to establish friendship, disseminate information, da'wah, education, recreation, and for positive activities in the fields of religion, politics, economics, and social and culture.
2. Interaction via social media must be done without violating religious provisions and the provisions of laws and regulations.
3. Things to consider when responding to content/information on social media, including:
   a. Content/information originating from social media has the possibility of being true and false.
   b. Good content/information is not necessarily true.
   c. True content/information is not necessarily useful.
   d. Useful content/information is not necessarily suitable for delivery to the public domain.
   e. Not all true content/information can and should be disseminated to the public domain.

The guidelines for verifying content/information when having interaction in social media are as follows (Fatwa Majelis Ulama Indonesia Nomor 24 Tahun 2017 tentang Hukum dan Pedoman Bermuamalah Melalui Media Sosial):

1. Everyone who obtains content/information via social media (both positive and negative) should not immediately disseminate it before it is verified and the tabayyun process is carried out and its usefulness is ensured.
2. The tabayyun process of content/information can be done with the following steps:
   a. Ascertain the source of the information (sanad), which includes its personality, reputation, eligibility and trustworthiness.
   b. Verify the correctness of the content (matan), which includes its content and meaning.
c. Ascertain the context of the place and time and background when the information was conveyed.

3. How to ensure the veracity of information include:
   a. Ask questions to the source of information if known;
   b. Requests for clarification to parties with authority and competence.

4. Tabayyun are carried out privately to the relevant parties, not openly in the public domain (such as through social media groups) to avoid the dissemination of content/information which the truth is still unclear to the public.

5. Content/information that contains praise, flattery, and or positive things about a person or group is not necessarily true, so tabayyun is also necessary.

The guidelines for disseminating content/information via social media are as follows (Fatwa Majelis Ulama Indonesia Nomor 24 Tahun 2017 tentang Hukum dan Pedoman Bermuamalah Melalui Media Sosial):

1. Content/information to be disseminated to the general public must meet the following criteria:
   a. The content/information is correct in terms of content, source, time and place, background and context.
   b. It is useful, both for the disseminator and for the person or group who will receive the information.
   c. General in nature, i.e. the information is suitable and feasible to be known by people from all levels of society according to the diversity of people / audiences who will be the target of information distribution.
   d. Appropriate time and place (muqtadlal hal), i.e. the information to be disseminated must be appropriate to the time and place because correct information delivered at different times and/or places can have different meanings.
   e. Appropriate context, i.e. information related to a certain context should not be removed from its context, especially when placed in a different context that has the possibility of different meanings.
   f. Has rights, the person has the right to disseminate, does not violate rights such as intellectual property rights and does not violate the right to privacy.
2. Do not disseminate information that contains hoaxes, gossip, slander, namimah, disgrace, hate speech, and other similar issues that are not worthy of being disseminated to the public.

3. Any person who obtains information about the disgrace, faults, and or issues that are disliked by others should not spread it to the public, even if it is for the reason of tabayyun.

In Islam, the crime of insulting and/or defaming is always connected to freedom of expression or speech, which is not a matter of privilege but rather one of the basic rights respected, honored and protected by Islamic law. In Islam, the term freedom of speech refers to the right of an individual to express his or her own opinion as long as it does not violate the teachings of Islam. Therefore, Islam considers the issue of insult as highly significant and affords special protection to ensure its realization as a core fundamental freedom.

Human rights in Islam clearly state about the protection of freedom of speech given that the freedom of speech must follow Shariah guidelines. The purpose of this freedom of speech is to give the public access to accurate information without any bias in favor of any party, as it is essential for the well-being of the community. At the same time, the public must also pay attention to some elements that can lead to the criminal offense of insult and or defamation, which can lead to legal problems.

Islam sees freedom of speech as a vital right, but at the same time certain guidelines must be followed in accordance with Islamic law, the Criminal Code, and the Law on Electronic Information and Transactions. The slightest insult to a person will result in the collapse of the peace of social life. It is important to maintain honar, so everyone will always have the best attitude, such as mutual respect, not insulting each other.

5 CONCLUSION AND SUGGESTION

In the context of a democracy, freedom of expression is a right, the use of which can be restricted by the state. Insults and defamation through speech and expression can harm an individual's reputation, which is considered one of their fundamental rights that demands protection and respect. Reputation is closely related to human dignity, which has a high position in the core values of Islam.
In Islam, there is no justification or anything that dehumanizes a person. Restrictions imposed by the state can only be done by law with the reason and purpose of maintaining public order, and these restrictions do not eliminate the guarantee of protection and fulfillment of the right to freedom of expression. Therefore, in general, the regulation of criminal acts of insult and or defamation in the Criminal Code and ITE Law can actually balance the individual's right to protect honor with freedom of expression in the digital space. Islam sees freedom of speech as a vital right, but at the same time certain guidelines must be followed in accordance with the regulations in Islamic law, the Criminal Code, and the Law on Information and Electronic Transactions.
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