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## SETTLEMENT OF DEFAMATION CRIMINAL CASES THROUGH SOCIAL MEDIA WITH A RESTORATIVE JUSTICE APPROACH

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### Abstract

*Literally, Restorative Justice is the restoration of justice, but more clearly Restorative Justice is an approach that focuses on conditions for the creation of justice and balance for the perpetrators and the victims themselves. Meanwhile, defamation is an act of attacking someone's honor or good name by accusing something that is clearly meant so that it is publicly known. This study aims to find out what Restorative Justice is, how cases of defamation are resolved with this approach, and what are the factors the perpetrators commit criminal acts of defamation in the study of decisions examined. The factors causing the occurrence of defamation crimes through social media in the city of Bandar Lampung are heartache factors due to events experienced by perpetrators of defamation through social media, there are also political factors, as well as factors of lack of legal awareness by perpetrators of defamation crimes through social media.*

*Keywords:* defamation; justice; restorative; settlement.

### Abstrak

*Secara harfiah Keadilan Restoratif adalah pemulihan keadilan, tetapi secara lebih jelas Keadilan Restoratif adalah suatu pendekatan yang menitik beratkan pada kondisi terciptanya keadilan dan keseimbangan bagi pelaku serta korbannya sendiri. Sedangkan pencemaran nama baik adalah perbuatan menyerang kehormatan atau nama baik seseorang dengan menuduhkan sesuatu hal yang maksudnya terang supaya hal itu diketahui umum. Penelitian ini bertujuan untuk mengetahui apa itu Keadilan Restoratif atau Restorative Justice, bagaimana penyelesaian perkara pencemaran nama baik dengan pendekatan tersebut, dan apa faktor-faktor pelaku melakukan tindak pidana pencemaran nama baik dalam studi putusan yang di teliti. Adapun faktor penyebab terjadinya kejahatan pencemaran nama baik melalui media sosial di kota Bandar Lampung adalah faktor sakit hati akibat adanya peristiwa yang dialami pelaku kejahatan pencemaran nama baik melalui media sosial, juga ada pula faktor politik, serta faktor kurangnya kesadaran hukum oleh pelaku kejahatan pencemaran nama baik melalui media sosial*

*Kata Kunci:* keadilan; restoratif; pencemaran; penyelesaian.

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## I. INTRODUCTION

Rapid technological developments have been experienced by all individuals on Earth, especially for the media sector, dealing with conditions that are always accelerating but simple in the early media. Symbolized by the emergence of the internet, it can be applied to using electronic media in the form of computers. Computers are a cause of social change in society, changing their actions in communicating with other individuals.

Internet media in Indonesia is increasing rapidly and has no legal policies, individuals can easily criticize, ridicule and taint the image of other individuals with no fear of legal sanctions, so the government has designed and determined legal policies that manage information and electronic payments in a statutory system. invitation, namely law No. 11 of 2008 Jo. Law No. 19 of 2016 concerning Information and Electronic Transactions.

An example of an internet violation is damaging the image that an individual performs on another individual. Situations that are spread via the internet can be called a blasphemy (smaad) if in that situation it is inappropriate for the individual as a victim, or a defamation of reputation or causes material loss to the victim.

The formula for defamation (smaad) in Article 310 of the Criminal Code is to deliberately attack an individual's image by accusing him of carrying out an action (beepaldfeit) for a real purpose (kennelijk doel) to spread accusations against society (ruchtbaarheid geven). Then, it is said that an act deliberately attacks an individual's image.<sup>4</sup>

The restorative justice approach is an out-of-court settlement behavior that refers to peace and restitution of losses and has the aim of paying attention to all victims, perpetrators, families, and citizens to revise an unlawful act by using awareness as a basis for evaluating social life.<sup>5</sup>

Protecting individual image against image damage and keeping away from criminalizing image damage must be adjusted and implemented on the expression of the principle of ultimum remedium implemented in a restorative justice approach to be a solution that can be faced, then situations of loss caused by image damage can be attempted to recover losses and can describe acts of misunderstanding and revise the link to the individual concerned. Restoration can presume that there is an elimination of bad stigma on a perpetrator who is said to have become a criminal because of an ex-convict.

Through the conflict that has been described, the problem that is researched and analyzed is how to apply the restorative justice approach in criminal acts of defamation. The approach method used in this research was tested using a normative juridical approach.

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<sup>4</sup>Wirjono Prodjodikoro. 2012. *Tindak-Tindak Pidana Tertentu Di Indonesia*. Bandung: Refika Aditama, p. 97

<sup>5</sup>R Abdul Djamali. 2011. *Pengantar Hukum Indonesia*. Jakarta: Rajawali Pers, p. 173

Normative legal research is research that is carried out by studying library materials (library research), namely by studying or analyzing secondary information in the form of primary legal materials and secondary legal materials.<sup>6</sup>The normative juridical approach is a form of approach in the sense of studying theory from principles or norms and rules through library research, namely by reading, quoting, copying and studying theories that are closely related to the case in research.<sup>7</sup>

The information in this research comes from library research and field research. The type of information to be used in this research includes primary, secondary, and tertiary information. Primary legal material is the main legal material, as legal material with an authoritative nature, is legal material that has authority. Primary legal material includes statutory regulations and all formal documents containing legal requirements.<sup>8</sup>

Secondary legal material is material that provides an explanation of the primary legal material, where the legal material is interpreted as various references in the form of relevant scientific work in the field of law. As well as there is also information obtained from the parties who have been determined as resource persons, namely judges through interviews regarding the topic of the case discussed by the author. Tertiary legal materials are materials that provide instructions or descriptions. Where the character of this tertiary legal material as an accessory to the two materials above is primary and secondary legal material.

## II. RESULTS AND DISCUSSION

### A. Criminal and Punishment Against Criminal Defamation Actors Through Social Media

A criminal act is an act of doing or not doing something which is stated by laws and regulations as an act that is prohibited and is punishable by crime.<sup>9</sup>Criminal acts are behaviors (conducts) that are criminalized by applicable criminal law (positive criminal law) and therefore can be subject to criminal sanctions for the perpetrators.<sup>10</sup>A criminal act is an act that is prohibited by a rule of law, a prohibition which is accompanied by threats (sanctions) in the form of certain penalties for anyone who violates the prohibition.<sup>11</sup>A criminal act is an act in a certain place, time and condition that is prohibited (or required) and is punishable by law which is

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<sup>6</sup>Sulistiyowati Irianto. Shidarta. 2009. *Metode Penelitian Hukum Konstelasi dan Refleksi*. Jakarta: Yayasan Obor Indonesia, p. 102

<sup>7</sup>Mukti Fajar. Yulianto. 2001. *Dualisme Penelitian Hukum Normatif & Empiris*. Yogyakarta: Pustaka Pelajar, p. 104

<sup>8</sup>Zainuddin Ali. (2009). *Metode Penelitian Hukum*. Jakarta: Sinar Grafika, p. 47.

<sup>9</sup>Koesparmono Irsan. 2005. *Hukum Pidana*. Jakarta : Jakarta Raya, p. 113.

<sup>10</sup>Sutan Remy Syahdeini. 2009. *Kejahatan & Tindak Pidana Komputer*. Jakarta: Pustaka Utama Grafiti, p. 34.

<sup>11</sup>Ismu Gunadi. Jonaedi Efendi. 2011. *Cepat & Mudah Memahami Hukum Pidana*. Jakarta, p. 42.

against the law, as well as by someone (who is responsible) committing an error.<sup>12</sup>

The types of criminal acts in the Criminal Code, there are types of criminal acts that can only be prosecuted if there is a complaint from the aggrieved party, this is regulated in Chapter VII of the Criminal Code regarding filing and withdrawing complaints in terms of crimes - crimes only prosecuted on complaint. One of the criminal complaints is the crime of defamation. The size of an act that can be categorized as defamation of another person is still unclear because there are many factors that must be studied. In terms of defamation or insult that is to be protected, it is everyone's duty to respect other people from the point of view of their honor and good name in the eyes of other people.

There is a relationship between honor and good name in terms of defamation, so the definition of each can be seen first. Honor is a person's feeling of respect in the eyes of society, where everyone has the right to be treated as an honorable member of society. Attacking honor means doing an act according to the general assessment of attacking someone's honor. Respect and actions that fall into the category of attacking a person's honor are determined according to the community environment in which the action is committed.<sup>13</sup> This sense of honor must be objectified in such a way and must be reviewed with a certain deed, a person will generally feel offended or not. It can also be said that a child who is still very young cannot feel this offense, and that someone who is very crazy cannot feel it. Thus, there is no crime of insulting these two types of people.<sup>14</sup>

Defamation is also known as humiliation, which is basically attacking the good name and honor of someone who is not in a sexual sense so that person feels harmed. Honor and good name have different meanings, but the two cannot be separated from one another, because attacking honor will result in tarnishing one's honor and reputation, as well as attacking one's good name will result in one's good name and honor being tarnished. Therefore, attacking one of the honours or good names is enough reason to accuse someone of having committed an insult.<sup>15</sup>

Oemar Seno Adji defines defamation as attacking honor or good name (aanranding of geode naam).<sup>16</sup> One form of defamation is "defamation in writing and is done by accusing something".<sup>17</sup> Defamation which by law is given the qualifications of defamation or defamation (smaad) and written defamation (smaadschrift) is fully formulated in Article 310 of the Criminal

<sup>12</sup>Amir Ilyas. 2012. *Asas-Asas Hukum Pidana*. Yogyakarta: Rangkang Education Yogyakarta & PuKAPIndonesia. p. 22.

<sup>13</sup>Mudzakir. 2004. *Delik Penghinaan dalam Pemberitaan Pers Mengenai Pejabat Publik*. Dictum 3, p. 17.

<sup>14</sup>Wiryono Prodjodikoro. 2003. *Tindak-tindak Pidana Tertentu di Indonesia*. Refika Aditama, Bandung, hlm. 98.

<sup>15</sup>Mudzakir. *Op. Cit.*, p. 18.

<sup>16</sup>Oemar Seno Adji. 1990. *Perkembangan Delik Pers di Indonesia*. Jakarta: Erlangga, p. 36.

<sup>17</sup>*Ibid.*

Code, namely:

1. Whoever deliberately attacks the honor or reputation of a person by accusing him of something, with clear intentions so that it becomes public knowledge, is threatened with defamation by imprisonment for a maximum of 9 (nine) months or a fine of up to Rp. 4,500.00 (four thousand five hundred rupiahs). ).
2. If this is done in writing or with a picture that is broadcast, shown or pasted in public, then the threat of written defamation is punishable by imprisonment for a maximum of 1 (one) year and 4 (four) months or a maximum fine of Rp. 4,500.00 (four thousand five) hundred rupiahs).
3. It does not constitute defamation or written defamation, if the act is clearly carried out in the public interest or because one is forced to defend oneself.

The legal definition of the qualifications of pollution is formulated in paragraph (1), which is actually verbal pollution (although oral speech is not mentioned there), which is from pollution in paragraph (2). In paragraph (2) the definition of written defamation is formulated. Whereas in paragraph (3) it mentions the exception of criminal defamation in paragraph (1) and written defamation in paragraph (2). Paragraph (3) is the basis for the abolition of the nature of defamation against the law and can also be called the reason for the elimination of special punishment for defamation and written defamation.<sup>18</sup>

The role of information technology and electronic transactions in the era of globalization has placed a very strategic position because it presents a world without boundaries, distance, space and time which has an impact on increasing productivity and efficiency. The influence of globalization has changed people's lifestyles and developed into a new order of life that encourages social, economic, cultural and even law enforcement changes. Information technology and electronic transactions have been utilized in the social life of society and have entered various sectors of life, both the government sector, the business sector, and banking. In addition to having a positive impact, information technology and electronic transactions also have a negative impact such as making it a means of committing new crimes (cyber crime).

This Law on Information & Electronic Transactions is intended to regulate and facilitate the use and transaction of information and electronic transactions that are widely used today. This Electronic Information & Transaction Law is also used to protect parties who are in or related to this electronic information and transaction. In other words, this Law on Information & Electronic Transactions was created to prevent and control irregularities that may and may occur in the process of Information & Electronic Transactions. This has been regulated by the

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<sup>18</sup>Adam Chazawi. 2013. *Hukum Pidana Positif Penghinaan*. Malang: Banyumedia Publishing, p. 80.

## Electronic Information & Transaction Law.

New crimes can also be said to be a form of sophisticated crime committed with high techniques or intellectuals, so that it is very difficult for ordinary people to understand who do not master information and communication technology techniques.<sup>19</sup> In order to tackle these new crimes, legal rules governing Electronic Information and Transactions are needed. On April 21, 2008, the Law on Information and Electronic Transactions No. 11 of 2008 was promulgated. In this law there are several criminal articles which are provisions for specific crimes in addition to the enactment of the Criminal Code (KUHP) as a general criminal act law.<sup>20</sup>

Using the Articles of the Criminal Code to ensnare perpetrators of defamation via the internet, according to some legal experts the Criminal Code cannot be applied, but some other legal experts consider that the Criminal Code can reach it. However, the Constitutional Court (MK) when giving a decision on the application for a judicial review of Article 27 paragraph 3 of Law Number 11 of 2008 Information and Electronic Transactions, in its legal considerations stated that the elements were in public, publicly known or broadcast Article 310 paragraph 2 of the Indonesian Book of Law. The Criminal Law Law cannot be applied in cyberspace, so it requires extensive elements, namely distributing and or transmitting, and/or make accessible electronic information and/or electronic documents containing insults and/or defamation. The Constitutional Court stated that certain articles in the Criminal Code were insufficient to address legal issues arising from cyberspace activities. Referring to the Constitutional Court decision above, in terms of defamation through internet media, the law used to resolve it is Law Number 11 of 2008 concerning Information and Electronic Transactions instead of using the Criminal Code (KUHP).

Punishment comes from the word "criminal" which is often interpreted as "punishment", so that sentencing can also be interpreted as punishment. Punishment is often interpreted as suffering given to someone who has violated a rule and caused suffering or sorrow.<sup>21</sup> Punishment is a term given as a legal consequence for violating a legal norm. The term criminal is a specialization of the word punishment. According to Moeljatno, punishment is a conventional term, so he is looking for something unconventional, namely punishment. Thus it can be distinguished between punishment and punishment. Criminal means things that are punished, namely those that are delegated to a person by a ruling institution as something that is not felt. This is in addition to being related to a situation, a person concerned acts badly while

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<sup>19</sup>Andi Hamza. 1987. *Aspek-aspek Pidana Dibidang Komputer*. Jakarta: Sinar Grafika, p. 26.

<sup>20</sup>Sutan Remy Syahdeini. *Op. Cit.*, p. 225.

<sup>21</sup>Muladi. 2004. *Lembaga Pidana Bersyarat*. Bandung:Alumni, p. 32.

punishment is a retaliation implied in the word crime.<sup>22</sup>

In the criminal law system that applies in Indonesia, the sentence or punishment imposed must first be stated in the criminal law. The existence of criminal provisions governing actions that may and may not be carried out that distinguish between punishment and punishment. A punishment is imposed based on the provisions of the criminal law law, while punishment is a sanction for violating a legal provision and can include everyday events such as parents twisting their child's ear because they have made a mistake, a teacher who punishes his student standing in front of the class, who all of that is based on decency, decency, decency, and custom. But between punishment and punishment still have similarities, that is, both arise based on values, good and bad deeds,<sup>23</sup>

In the eyes of society, it is as if a person who has been subject to a crime gets a stamp, that this person is seen as a bad person, who is not good or a person who is disgraceful. The punishment is not only unpleasant at the time it is served, but even after undergoing it, the person who is undergoing it still feels the consequences in the form of a stamp by society, that he or she has committed a crime. This stamp in science is called a stigma, and if it doesn't disappear, then it's as if he's been sentenced to life imprisonment.

The consequences of being convicted of a person can affect his personal life. Because the authority in imposing a sentence is a very important authority, a question arises as to who has the right to impose a sentence which constitutes suffering. As for the definition of punishment, Soedarto said that the word punishment is synonymous with the word punishment. He said that punishment comes from the word legal basis, so that it can be interpreted as establishing or deciding the law. Establishing law for an event does not only concern criminal law, but also civil law. Therefore, this paper revolves around criminal law, so the term must be narrowed in meaning, namely punishment in criminal cases, which is often synonymous with sentencing or awarding or imposing a sentence by a judge.

Even though the perpetrators of criminal acts of defamation through social media have been regulated by the Information & Electronic Transactions Law, in imposing crimes or imposing criminal penalties on perpetrators, they still refer to the Information & Electronic Transactions Law and the Criminal Code so that the purpose of making the law was achieved, namely that all people are equal before the law. In other words, this Law on Information & Electronic Transactions was created to prevent and control irregularities that may and may occur in the process of Information & Electronic Transactions. This has been regulated by the

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<sup>22</sup>Wirjono Prodjodikoro. 1986. *Asas-asas Hukum Pidana di Indonesia*. Bandung: Eresco, p. 76.

<sup>23</sup>*Ibid.*

Electronic Information & Transaction Law and the purposes of punishment are: retaliation, the purpose of eradicating sins, deterrence, protection of society.

## **B. Review of Defamation Through Social Media and Criminalization**

Image damage is known as a derogatory term, which generally attacks an individual's image that is not for sexual purposes, so the individual thinks he is disadvantaged. Image has various purposes, but both cannot be separated, because damaging the image can be a bad individual image in society. Thus, attacking is an example of image as a reason to accuse someone of having insulted.<sup>24</sup>

Oemar Seno Adji described damaging the image as a threat to self-esteem (aanranding of geode naam).<sup>25</sup>A form of damaging the image is "defamation by being recorded and accusing something".<sup>26</sup>

Defamation whose draft law is added to the criteria for defamation and defamation (smaad) and recorded destruction (smaadschrift) is made into a formula in Article 310 of the Criminal Code, including:

- a. "Anyone who deliberately attacks someone's honor or reputation by accusing something, with clear intentions so that it becomes public knowledge, is threatened with defamation with imprisonment for a maximum of 9 (nine) months or a fine of up to Rp. 4,500.00 (four thousand five hundred) rupiah)"
- b. "If this is done in writing or with an image which is broadcast, shown or pasted in public, then the threat of written defamation is punishable by imprisonment for a maximum of 1 (one) year and 4 (four) months or a maximum fine of Rp. 4,500.00 (four thousand) five hundred rupiahs)"
- c. "Not a defamation or defamation in writing, if the act is clearly done in the public interest or because it is forced to defend itself"

Even though it has been managed in the Electronic Information & Transaction Law, the imposition of sanctions on perpetrators still leads through the Electronic Information & Transaction Law and the Criminal Code (KUHP) so that the target of establishing a law is that all individuals are equal in rank to achieving it. legal view. Then it has been managed in the Information & Electronic Transaction Law and the purposes of the sanctions include: bondage, the purpose of eliminating sins, the deterrent effect, security for citizens, revising criminals, and resocialization.

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<sup>24</sup>Mudzakir. 2004. *Delik Penghinaan dalam Pemberitaan Pers Mengenai Pejabat Publik*. Jakarta: LeIP, p. 17

<sup>25</sup>Oemar Seno Adji. 1990. *Development of Press Offenses in Indonesia*. Jakarta: Erlangga, p. 36

<sup>26</sup>*Ibid*



### C. Review of the Application of Restorative Justice in Settlement of Cases

Burt Galaway and Joe Hudson said that the justice model based on the restorative model, has general indicators, including<sup>27</sup>first, sanctions are considered to be a problem for someone who causes harm to all victims, residents, and all perpetrators of personal crimes; second, the target at the (criminal justice) stage needs to be a peaceful action with residents to revise the losses caused by the problem; third, the stage needs to involve active participation of all victims, perpetrators and residents in order to determine solutions to related problems.<sup>28</sup>

Criminal acts based on the perspective of restorative justice, is an aberration in the individual. Restorative justice can be done by: discussing the victim with the perpetrator; family deliberations; services to residents whose solutions are suitable for victims or perpetrators. The use of the principles of restorative justice is related to what legal form a country uses. So it can be concluded that Restorative Justice is a choice in designing the legal form of a country.

The sense of peace towards victims and perpetrators has a goal so that the conditions that make debate can be normalized so that victims and perpetrators become normal and there is no more conflict between the two. But by doing peace in overcoming conflicts, it can definitely resolve all conflicts in traditional forms of criminal justice.

The restorative justice approach model is an approach that directs the situation of the occurrence of justice for the perpetrators of crimes and for the victims. The application of procedures leading to sanctions is replaced as a discussion stage in order to realize an agreement on normal problem solving for victims and perpetrators. Restorative justice has the meaning of justice, restoration has a greater meaning than what is known at the conventional criminal justice stage, there is restitution for victims.

Even though the restorative justice model includes solving the relationship between the victim and the perpetrator. Completion of the relationship can be based on a careful agreement with the victim and the perpetrator. The victim can disclose about the loss he has experienced and the perpetrator is given the opportunity to pay for it, with a peace return mechanism or other agreement.

#### 1. Review of the Settlement of Cases of Criminal Defamation through Social Media with a Restorative Justice Approach

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<sup>27</sup>Burt Galaway. Joe Hudson. 1990. *Criminal: Justice Restitution and Reconciliation*. Monsey: Criminal Justice Press, p. 2, accessed from <http://www.restorativejustice.org>, on December 20, 2022

<sup>28</sup>Howard Zehr. 1990. *Changing Lenses: A New Focus for Crime and Justice*. Ontario: Herald Press, p. 181, accessed from <http://www.restorativejustice.org>, on December 20, 2022.

The crime of damaging the image of honor carried out through media applications can be charged using Article 27 paragraph (3) of Law 11 of 2008 No. Article 45 paragraph (3) of Law 19 of 2016 includes:

"Anyone who deliberately, and/or transmits and or makes accessible electronic information and/or electronic documents that contain insults and/or defamation as referred to in Article 27 paragraph (3) shall be punished with imprisonment for a maximum of 4 years and or a maximum fine of IDR 750 million"

"In 2016, changes were made to Law No. 11 of 2008 concerning Information and Electronic Transactions of 2011, in the form of Law Number 19 of 2016 regarding changes to Law no. 11 of 2008 concerning Information and Electronic Transactions. The text of the law is recorded in the 2016 State Gazette of the Republic of Indonesia Number 251 and the Supplement to the State Gazette Number 5952"

The amendment of the ITE Law contains seven main points in improving the ITE Law, especially in this latest law the government has the power to break the reach of electronic information that has indications of deviating from the law. The new law is expected to provide legal guarantees for citizens, so they can be smart and polite when using the internet. So SARA content, radicalism, and pornography can be reduced. In order to avoid multiple interpretations of the provisions on the prohibition of disseminating, as well as to make Electronic Information accessible containing damage to the image of honor contained in Article 27 paragraph (3), 3 (three) changes were carried out covering<sup>29</sup>:

- a. Increasing the elaboration of the term "distributing, transmitting and making accessible Electronic Information", the meaning of "distributing" is extending Electronic Information to the general public with social media.
- b. Explain if the setting is a report.
- c. Explain if the characteristics of the decision lead to a decision to damage someone's image which is managed in the Criminal Code.

The restorative justice approach needs to be structured. This is important because if something in the indicator does not run the model then restorative decisions cannot be made. For example, the police and the prosecutor's office have used the restorative justice model but the judges have used the litigation model of thinking, in this conflict the judge can give a more normative decision so that correctional institutions cannot carry out the restorative justice model.

Restorative justice has been adhered to in the "Indonesian National Police Agency with Circular Letter Number: SE/8/VII/2018" the contents of "Circular Letter Number: SE/8/VII/2018

regarding the Application of Restorative Justice" are explained in the handling of criminal acts crime includes:

- a. If the stage of checking criminal acts, is an entry point at a criminal law institution with the form of criminal justice in Indonesia. Thus, the stage of checking a crime is a key point in determining whether or not a conflict can be increased at the prosecution stage to create a legal target, namely justice.
- b. If the improvement in the form of models of legal institutions in Indonesia illustrates the possibility of participation in the growth of citizens, especially in increasing the model of restorative justice which prioritizes justice as a normal system of individual life.
- c. If the growth of the legal institution model forms in several countries that adhere to the restorative justice model and is in line with the emergence of several conflicts at the stage of criminal law institutions in Indonesia including correctional institutions.
- d. If the model of restorative justice cannot be interpreted as a method of resolving cases peacefully, it expands towards providing a sense of justice for all members connected to the case with efforts that link victims, perpetrators and local residents to become mediators.

However, "Circular Letter Number: SE/8/VII/2018" as a potential for a case according to what is determined includes:

- a. "Article 76 paragraph (1) of the Criminal Code" if except for the judge's decision will be repeated.
- b. "Article 7 (1) of Law Number 11 of 2012 concerning the Legal System for Juvenile Criminal Justice" towards the level of checking, diversion is sought.
- c. "Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees" if the Fiduciary Guarantee Certificate has executorial validity consistent with a court decision that has received permanent legal suspension;
- d. "Article 15 paragraph (7) of Law Number 21 of 2001 concerning Special Autonomy for the province of Papua" if in order to free criminal offenders from sanctions based on active criminal law provisions.

Rather, the approach to the restorative justice model in cases of image destruction on social media is included in "Circular Number: SE/2/II/2021 concerning Ethical Cultural Awareness to Create a Clean, Healthy and Productive Indonesian Digital Space" explaining point 3 including:

- a. Participate in increasing the function of the digital space which is increasing in all cases;
- b. Mastering the civilized culture experienced in the digital space

- c. Focusing on pre-emptive and preventive efforts with virtual police and virtual alerts with the aim of monitoring and keeping citizens away from cyber crime cases
- d. In order to obtain citizen complaints, investigators need to be able to compare suggestions, issues, and damage to individual images that can be sanctioned and then determine which stage to choose.
- e. When obtaining complaints so that investigators interact with all parties, especially victims
- f. Carry out comprehensive studies on cases based on available evidence and data
- g. The examination assumes that criminal sanctions are a final attempt at affirming the law
- h. To all parties and victims who choose the peaceful stage so that they are the main checkers to carry out restorative justice
- i. The victim, who laughed at the case, was escalated in court, but the perpetrator already regretted his actions
- j. The examiner cooperates with the Public Prosecutor in its application
- k. In order to carry out periodic observations on each selected checking process.

There is a "Circular Letter Number: SE/8/VII/2018 concerning the Implementation of Restorative Justice" on the resolution of legal conflicts and "Circular Letter Number: SE/2/II/2021 concerning Ethical Cultural Awareness to Create a Clean, Healthy and Productive Indonesian Digital Space "It has changed the technique of its handling. Observed through "SE/2/II/2021 point 3" if a criminal act is experienced, such as damaging the image on social media, the victim must have a complaint in the form of a report of the crime to the police.

The penal mediation approach at the stage of the form of criminal justice in Indonesia can realize progressive law which orders all the handling of irregularities not to be mixed in the state. The restorative justice approach to criminal law has the toughness that can resolve the relationship between parties as perpetrators and victims. The mediation stage in criminal irregularities can make criminals to revise losses due to mistakes in constructive techniques.

### **III. CONCLUSION AND SUGESSTION**

The concept of punishment based on restorative theory (Restorative) is of the view that there is fair security for the rights of perpetrators and victims of crime. Restorative justice is a form of justice that leads to efforts to carry out revisions to the effects of destruction caused by actions in the form of criminal acts. Safeguarding the rights of victims is not only an act of respecting the human rights of victims in the application of a fair form of punishment.

From all of the above descriptions, the case of defamation through social media carried

out by the defendant Amrullah (Study of Decision 795/Pid.Sus/2021/Pn Tjk) that is connected with the restorative theory of the Panel's views because it is based on the facts in the trial between the Defendant and Witness Donny Leimena has reconciled and the Defendant has apologized and admitted his guilt and promised not to commit the same act in any way, so that this aquo case should be based on restorative theory can be resolved not only by criminal justice law mechanisms but can be made systematic efforts to repair and restore the impact of losses caused by the Defendant's actions that are material in nature.

The condition of the defendant who also works as a husband and father to his children makes the Panel's consideration in imposing a sentence because with any consideration the sentence imposed on the Defendant has had a disgraceful effect on the Defendant both in the work environment, society and family so that in the opinion of the Assembly the sentence imposed as in The demands of the Public Prosecutor are not a solution to be a shock therapy for both the public in general and the Defendant in particular because the sentence to be imposed by the Assembly is deemed to have had a disgraceful effect on the Defendant in accordance with the theory of punishment or purpose (doel therien). from this matter the Assembly prefers not to choose a pure absolute punishment theory which requires revenge for what was done by the Defendant, because of the Panel's considerations it is clear that the Defendant is still considered capable of improving himself by reproaching in the form of a sentence imposed by the Assembly by adjusting to the sense of justice for both the Defendant, the victim or for society. Based on the above considerations related to the criminal threat imposed in the criminal act committed by the Defendant, the Panel considers that it is appropriate and fair if the Defendant does not have to serve his sentence in detention unless in the future there is a Judge's decision that determines otherwise due to the fact that within a certain period of time specified in this decision.

The author's advice as an Indonesian citizen and active user of the media social, a way to reduce defamation crimes in the media social, by trying to understand the rules that are currently in place on now. It is expected to all Indonesian people, especially for can play an important role in preventing crime defamation through this social media.

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