

# **Legal Review of The Criminal Act of Defamation Through Writing**

**Frengki Yulianto<sup>1</sup>, Bastianto Nugroho<sup>1</sup>, Sri Anggraini K. Dewi<sup>1</sup>**

<sup>1</sup>Faculty of Law, Merdeka University Surabaya, Indonesia

\*Corresponding Author E-mail: [frenki.disorganized@gmail.com](mailto:frenki.disorganized@gmail.com)

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## **ABSTRACT**

The aim of the research is to determine the application of the law to criminal acts of defamation through writing. The research method is normative research, with a conceptual approach, namely legal research that looks for principles, doctrines and sources of law in a juridical philosophical sense. The basic results of the judge's legal considerations in deciding criminal defamation cases. There are proven facts in the elements of Article 311 paragraph (1) of the Criminal Code, in this case the crime of defamation. There is evidence based on valid evidence as regulated in Article 184 of the Criminal Procedure Code which is proven at trial. Factors that mitigate and aggravate the defendant.

**Keywords:** Law, Judge, Criminal, Pollution

## **1. INTRODUCTION**

The criminal act of defamation is a legal crime that needs to be taken into account. Many cases of defamation are currently growing widely with the existence of media, both print media and electronic media. Defamation of a person's good name or slander is the legal provision most often used against the mass media. Defamation that is spread in writing is known as libel, while that which is spoken is called slander (Alviolita & Arief, 2019).

Recently, the issue of the existence of the offense of defamation has resurfaced and is being questioned by many parties. The emergence of public attention to this offense was caused by several cases of defamation that occurred. Defamation articles are also often used as a tool to ensnare someone who is a Whistle Blower (WB). There are two types of meaning of "Whistleblower", namely: (1) A person who discloses violations or wrongdoing that occur within an organization to the public or to people in authority. (2) A worker who has inside knowledge or information about illegal activities occurring within his organization and reports it to the public (Wibowo, 2012).

Defamation is usually a case of complaint offense. A person whose good name has been defamed can file a lawsuit in civil court, and if they win, they can receive compensation (Sirait et al., 2020). Prison sentences can also be applied to parties who commit defamation (Simamora et al., 2020). The threats most often faced by the media or journalists involve articles regarding insults or defamation. In the Criminal Code there are at least 16 articles that regulate insults. Insults



against the President and Vice President are threatened by Articles 134, 136, and 137. Insults against the King, Head of a friendly State, or Representative of a foreign State are regulated in Articles 142, 143, and 144. Insults against institutions or public bodies (such as the DPR, Ministers, MPR, Prosecutor's Office, Police, Governor, Regent, District Head, and the like) are regulated in Articles 207, 208, and 209. If the insult occurs to the person (an official in a state agency) then it is regulated in Articles 310, 311, and 315. Apart from that, there are still a number of articles that can be categorized as this offense of insult, namely Article 317 (slander due to a false complaint or notification to the authorities), Articles 320 and 321 (defamation or insult to someone who is already dead) (Rochman et al., 2021).

Several provisions have been annulled by the Constitutional Court because they conflict with the 1945 Constitution, as explained by Leden Marpaung, (2010:1), namely Article 134, Article 136 and Article 137 of the Criminal Code (Article of Insulting the President) on December 6 2006 because they were considered It is no longer relevant if the Criminal Code still contains articles that negate the principle of equality before the law, reduce the freedom to express thoughts and opinions, freedom of information and the principle of legal certainty (Tampi, 2016).

Criminal acts, which according to (Saputra, 2019) give this term criminal acts, are acts carried out by a legal rule, a prohibition which is accompanied by threats (sanctions) in the form of certain penalties, for anyone who violates the prohibition. It can also be said that a crime is an act that is prohibited by legal regulations and is punishable by a criminal penalty. The prohibition is aimed at the act, while the criminal threat is aimed at the person who caused the incident. There is a close relationship between prohibitions and criminal threats, therefore there is also a close relationship between the event and the person who caused the incident. One cannot be separated from the other. An event cannot be prohibited if the person causing it is not a person, and a person cannot be criminally liable if it is not because of the event that caused it. Every human being has the right to privacy which other people must respect (Sholihin et al., 2023).

This right is the right to protect one's good name and reputation. In this regard, the state must protect the guaranteed fulfillment of these rights. One of them is including the offense of defamation in the Criminal Code as an effort by the state to protect a person's honor and good name. The implementation of articles on insults and defamation verbally or in writing in the Criminal Code or Criminal Code is often sharply criticized by legal practitioners and journalistic practitioners. This regulation is considered to hamper freedom of expression and convey opinions in society, moreover it is considered to hamper the work, especially for journalists, in conveying information to the public (Wadjo, 2011). The implementation of this rule is also considered to be



contrary to the country's constitution. Article 28 of the 1945 Constitution states that "Everyone has the right to freedom of belief, expression of thoughts and attitudes, in accordance with his conscience". In the same article, the state constitution guarantees everyone's freedom to disseminate and obtain information and communicate through all types of available channels. The criminal act of insulting (belediging) takes various forms, including defamation, slander, slanderous reporting and slanderous accusations. Almost throughout the world, articles relating to insults are still maintained. The reason is that the result of insults in the form of defamation is character assassination and this is a violation of human rights (Sirait et al., 2020).

Even though it is still under debate, the provisions regarding insults contained in Chapter XVI, Book II of the Criminal Code are still relevant. Insult or defamation is literally defined as an action that harms someone's good name and honor. The initial development of the arrangement has been known since 500 BC in the formula of "twelve tables" in the ancient Roman era. However, this provision is often used as a tool to strengthen authoritarian power with very cruel punishments. Until, in the era of Augustine's Empire (63 BC) court cases of defamation (more often called libelli famosi) continued to increase significantly and were passed down from generation to generation to several legal systems in other countries, including England in the Common Law environment, and France as one of the important country in the legal system of Continental Europe (Civil Law). In Indonesia, these insulting articles are still maintained. The reason is, apart from producing character assassination, defamation is also considered inconsistent with the traditions of Indonesian society which still upholds eastern customs and culture. Therefore, defamation is a form of rechtsdelicten and not wetsdelicten. This means that defamation is considered a form of injustice before it is stated in the law because it violates the rules of courtesy.

Regulations regarding defamation offenses can be found in the Criminal Code and laws outside the Criminal Code, namely Law no. 32 of 2002 concerning Broadcasting (Broadcasting Law) and Law no. 11 of 2008 concerning Information and Electronic Transactions (UU ITE). In the Criminal Code, defamation is regulated through Articles 310-320 of Book Two (Crimes) Chapter XVI concerning Insults (Sirait et al., 2020). There are three important notes related to the offense of defamation. First, the offense is very subjective. Second, defamation is an offense of dissemination. Third, the person who commits defamation by accusing something that is considered an attack on the good name of another person or party must be given the opportunity to prove the accusation.

The legal provisions for insults are in the nature of a complaint offense, that is, an insult case occurs if a party makes a complaint. This means that people who feel aggrieved and who are



considered to have defamed their good name or feel insulted can complain to legal authorities so that the case can be investigated, meaning that legal officials cannot take the initiative to carry out investigations and investigations if there is no complaint from the injured party.

## **2. RESEARCH METHODS**

Normative research, with a conceptual approach, namely legal research that looks for principles, doctrines and sources of law in a juridical philosophical sense. The research specifications used are analytical descriptive. Analytical descriptive is a method that functions to describe or provide an image of the object under study through data that has been collected regarding criminal acts of defamation by carrying out analysis and making conclusions.

## **3. RESULTS AND DISCUSSION**

### **Application Of Law To Criminal Offenses Defamation Through Writings In Ruling Number 1835/PID.B/2023/PN.SBY**

So, in order to impose a crime on someone who is suspected of committing a criminal act, they must fulfill the terms or conditions of punishment as regulated in the law, in this case the criminal law.

Below the author will outline the position of the case and the public prosecutor's indictment in decision number 1835/PID.B/2023/PN. Sby:

#### **1. Identity of the Defendant**

Full name: Usman Wibisono, I.R., S.H., M.M., Bin Artono;

Place of birth : Unfortunate;

Age / date. Born : 62 Years / 19 May 1961;

Male gender;

Citizenship : Indonesia;

Place of residence: Jl. Rambutan 16 Rt.006 Rw.005 Kelurahan

Together with Klojen District, Malang Regency;

Religion: Catholic;

Work : Self-employed;

#### **2. Case Chronology**

Starting in 2015, the Kyokushinkai Karate Mental Development Association held a social gathering called Eka Dharma Bhakti (Not yet a legal entity), then in 2017 the social gathering became a legal entity called the Kyokushinkai Karate Mental Development Association where the



money for the social gathering was transferred to BCA Bank Account No. 088- 3551-777 Ann. The Kyokushinkai Karate Mental Development Association then on August 26 2017 witness Dr.KPHA.Tjandra Sridjaja Pradjonggo, S.H., M.H as General Chair gave a power of attorney to witness Erick Sastrodikoro W to manage the social gathering money;

The defendant sent or uploaded the second and final summons number: 010/AW-A/III/2022 dated March 23 2022 in the Black Belt Forum WA chat group which requested that witness Erick Sastrodikoro, witness Bambang Irwanto and witness Dr.KPHA.Tjandra Sridjaja Pradjonggo, S.H., M.H has the obligation to return the profits from the social gathering amounting to Rp. 11,085,480,000 (Eleven billion eighty-five million four hundred and eighty thousand rupiah) to the Indonesian Kyokushinkai karate Do Mental Karate College. Then the Defendant wrote a chat sentence in the group containing the contents "It's very clear, Doel, how much arisan money is in the BCA arisan holding account No.0883551777?? don't know ??? I'll tell you, it's only Rp. 16,170,099,-. Where are the other amounts???? Where is the remaining money from the social gathering business for periods 1 to 4??? Don't worry, I can prove that the amount transferred out of the account was more than IDR 11 billion. This is not slander but clearly robbery of money belonging to the University. Why don't you answer where the money is??? Answer Coward!!!! You are the Arisan Advisor, Srijaya is the Arisan Protector - The Arisan Advisor and Protector conspired to steal the arisan money which was supposed to support the University. You are not the treasurer. Bambang Irwanto and witness Dr.KPHA.Tjandra Sridjaja Pradjonggo, S.H., M.H committed the actions as the defendant wrote or posted on the WA Black Belt Forum chat group. know a lot about what the Defendant accused witness Erick Sastrodikoro, witness Bambang Irwanto and witness Dr.KPHA.Tjandra Sridjaja Pradjonggo, S.H., M.H even though witness Erick Sastrodikoro, witness Bambang Irwanto and witness Dr.KPHA.Tjandra Sridjaja Pradjonggo, S.H., M.H did not had done what the Defendant was accused of as written in the Black Belt Forum WhatsApp chat group

3. Public Prosecutor's Indictment First:

That he is the Defendant USMAN WIBISONO, I.R., S.H., M.M., Bin ARTONO on Friday 24 March 2022 at around 08.27 WIT or at least at a time that is still included in March 2022 or at least still in 2022 at Jl .Villa Kalijudan Indah J/43 Rt.002/ Rw.007 Mulyorejo Surabaya or at least in a place that is still included in the jurisdiction of the Surabaya Class IA District Court which has the authority to examine and try, intentionally attacking someone's honor or good name by accusing them of something the matter, which is clearly intended so that the matter becomes



known to the public, the act was carried out by the Defendant: The Defendant's act is as regulated and punishable by crime in Article 310 paragraph (1) of the Criminal Code;

Second:

That he is the Defendant USMAN WIBISONO, I.R., S.H., M.M., Bin ARTONO on Friday 24 March 2022 at around 08.27 WIT or at least at a time that is still included in March 2022 or at least still in 2022 at Jl . Villa Kalijudan Indah J/43 Rt. 002/ Rw. 007 Mulyorejo Surabaya or at least in a place that is still included in the legal area of the Surabaya Class IA District Court which has the authority to examine and try, if the person who commits the crime of defamation or written defamation is allowed to prove that what is alleged is true, not to prove it, and the accusation carried out contrary to what is known, then he is threatened with committing slander, this act was carried out by the Defendant: The Defendant's actions are as regulated and punishable by crime in Article 311 paragraph (1) of the Criminal Code;

4. Public Prosecutor's Demands

1) Declare that the Defendant USMAN WIBISONO, I.R., S.H., M.M., Bin ARTONO has been proven guilty of committing a criminal act regulated and punishable by crime in the Second Indictment Article 311 Paragraph (1) of the Criminal Code;

2) Sentenced the Defendant USMAN WIBISONO, I.R., S.H., M.M., Bin ARTONO to prison for 3 (three) years with a detention order.

3) State evidence in the form of:

- 1 (one) sheet of summons letter dated 23 March 2022 number 010/AWA/111/2022;
- 110 (one hundred and ten) sheets of bank deposit proof of BA refund of social gathering money for participants of the kyokushinkai karate mental development association;
- 13 (thirteen) pieces of deed of establishment of the Kyokushinkai Karate Mental Development Association or 1 (one) bundle of Deeds of Establishment of the Kyokushinkai Karate Mental Development Association number 13 dated January 16 2015;
- 6 (six) copies of the meeting decision statement in accordance with deed number 17 dated 18 June 2020;
- 6 (six) copies of the meeting decision statement in accordance with deed number 45 dated 28 January 2020;
- 1 (one) letter of law AHU-0000597 AH.01.07.2015 concerning ratification of the legal entity of the Kyokushinkai Karate Mental Development Association, also known as the International Karate Organization Kyokushinkai;



- 1 (one) letter of law AHU-0000577 AH.01.08.2020 concerning approval of changes to the legal entity of the Kyokushinkai Karate Mental Development Association, also known as the International Karate Organization Kyokushinkai;
- 1 (one) letter of law AHU-0000257 AH.01.08.2022 concerning approval of changes to the legal entity of the Kyokushinkai Karate Mental Development Association, also known as the International Karate Organization Kyokushinkai;
- 1 (one) Bank Mayapada Norek bank statement sheet: 21630007002 for the period 01 December 2021 to 31 December 2021;
- 1 (one) Bank Artha Graha Internasional bank checking account account number: 1078093311 for the period 12-15-2021 to 12-15-2021;
- 1 (satu) lembar leges rekening koran Bank BCA Norek: 0883551777 periode 30-11-2021 s/d 31-12-2021

Attached in the case file

4) Determine that the Defendant be burdened with paying court costs of Rp. 2,000,- (Two thousand rupiah).

5. Judge's considerations

Regarding the judge's consideration in court, the defendant who has committed the criminal act of defamation will be studied first and considered by the panel of judges whether the act for which the defendant is accused meets the elements of Article 311 paragraph (1) of the Criminal Code for which he has been charged:

Considering, that because the Public Prosecutor's indictment is prepared alternatively, the Panel of Judges will consider the indictment in accordance with the facts at trial, namely that the second alternative indictment violates Article 311 paragraph (1) of the Criminal Code, containing the following elements:

1. Whoever;
2. If the person who commits the crime of libel or written defamation is allowed to prove that what is alleged is true, does not prove it, and the accusation is made contrary to what is known, then he is threatened with committing slander;

Ad.1. "Whose" element;

Considering, that what is meant by "whoever" is every person or person who commits a criminal act as a legal subject who can be held responsible according to the law for all his actions, so that the element "everyone" refers to a legal subject who is brought to trial as a defendant because he has been accused. commit a criminal act. The conditions for a person to be convicted as





a perpetrator of a crime are the elements of guilt and responsibility. To be held responsible as a perpetrator of a criminal act, the person must be physically and mentally healthy, without any justification, forgiveness or exoneration of the crime;

Considering, that based on the legal facts revealed at the trial it is true that the Defendant Usman Wibisono, I.R., S.H., M.M., Bin Artono is a physically and mentally healthy person, this can be seen during the trial the Defendant has confirmed his identity in accordance with the identity provided stated in the indictment and during the trial the Defendant was able to follow it properly and no contrary facts were found, therefore the Defendant Usman Wibisono, I.R., S.H., M.M., Bin Artono can be said to be a legal subject who is physically and mentally healthy;

Considering, that based on these considerations, the first element has been fulfilled;

Ad.2. The element "If the person who commits a crime of libel or written defamation is allowed to prove that what is alleged is true, does not prove it, and the accusation is made contrary to what is known, then he is threatened with committing slander";

Considering, that what is meant by "certain act" is when it is alleged in such a way that it clearly shows a real behavior. This appointment/action does not need to be specified in detail and also mention the time and place.

Considering, that based on the legal facts above, the defendant was conscious and aware of his actions in sending or uploading the post in the WA Group, which the defendant must be aware of if the post was known to members of the WA Group, where the truth of the post sent or uploaded by the defendant was not yet clear. , so that it can tarnish someone's honor or good name, in this case witness Erick Sastrodikoro, witness Bambang Irwanto and witness Dr. KPHA. Tjandra Sridjaja Pradjonggo, S.H., M.H.;

Considering that the accusations sent or uploaded by the defendant are not true based on the facts. Considering, that based on the legal facts above, the defendant cannot prove the accusations sent or uploaded to the WA group, in other words, that the defendant's accusations are not true; Considering, that based on the information of expert SAPTA APRILIANTO, S.H., M.H., LL.M, there are 2 (two) important requirements for an offense to fulfill Article 310 Paragraph (1) of the Criminal Code, namely first, there is an accusation given verbally or in writing and secondly the accusation is conveyed intentionally in public with the clear aim of being known by the public; That the insult is in the nature of accusing something and being conveyed in public; Whereas Article 311 of the Criminal Code constitutes defamation, so a person can be subject to Article 311 of the Criminal Code, which clearly fulfills the elements of Article 310 of the Criminal Code and then fulfills the elements of Article 311 of the Criminal Code; That if the subpoena was



deliberately distributed, it would have the potential to become a criminal offense; That when the subpoena letter is intentionally delivered in public, the consequences could have implications for fulfilling the offense of Article 310 of the Criminal Code and Article 311 of the Criminal Code provided that the subpoena contains accusations of something and is deliberately delivered in public in compliance with Article 310 of the Criminal Code, whereas Article 311 of the Criminal Code when the accusation is untrue and cannot be proven to be true, that is where the offense phrase Article 311 of the Criminal Code is, namely Slander; That if the subpoena is deliberately delivered in a WhatsApp group of more than 2 (two) people and what is conveyed is outside the purpose of forming the group then it falls into the qualifications in public; Whereas a subpoena letter addressed to someone and then uploaded to a WhatsApp group is already qualified in public and fulfills Article 310 of the Criminal Code and Article 311 of the Criminal Code referring to the requirements for accusing something in public and in public;

Considering, that based on the facts revealed at the trial and connected with the expert's testimony, it appears that the defendant's actions fulfill the elements of this indictment, namely the defendant's actions in sending or uploading a summons to the WA Group which could be known by more than 2 (two) people, which basically accused witness Bambang Irwanto, witness Erick Sastrodikoro W and witness Dr.KPHA.Tjandra Sridjaja Pradjonggo, S.H., M.H. had managed social gathering money amounting to Rp. 11,085,480,000 (eleven billion eighty-five million four hundred and eighty thousand rupiah), which the defendant himself did not know for sure about the truth and the purpose of the defendant's actions was aimed at attacking someone's honor or good name, in this case, witness Erick Sastrodikoro, witness Bambang Irwanto and witness Dr. KPHA.Tjandra Sridjaja Pradjonggo, S.H., M.H., and in fact the defendant could not prove the accusation;

Considering, that based on the considerations above, the Defendant's actions can be categorized as an act of Defamation, therefore the second (two) element has been fulfilled;

6. Announcement of Decision

- 1) Declare that the Defendant Usman Wibisono, I.R., S.H., M.M., Bin Artono as mentioned above has been legally and convincingly proven guilty of committing the crime of "Slander" as in the second alternative indictment;
- 2) Sentenced the Defendant Usman Wibisono, I.R., S.H., M.M., Bin Artono to prison for 2 (two) years;
- 3) Determining evidence in the form of: Evidence from the Prosecutor:
  - 1 (one) sheet of summons letter dated 23 March 2022 number 010/AWA/111/2022;



110 (one hundred and ten) sheets of bank deposit proof of BA refund of social gathering money for participants of the kyokushinkai karate mental development association;

13 (thirteen) pieces of deed of establishment of the Kyokushinkai Karate Mental Development Association or 1 (one) bundle of Deeds of Establishment of the Kyokushinkai Karate Mental Development Association number 13 dated January 16 2015;

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1 (satu) lembar leges rekening koran Bank BCA Norek: 0883551777 periode 30-11-2021 s/d 31-12-2021

4) Charge the Defendant to pay court costs in the amount of Rp. 2,000,- (two thousand rupiah);

**Application of the Law Against the Crime of Oral Defamation in Decision Number 1835/PID.B/2023/PN.Sby.**

Judges in examining criminal cases try to find material truth based on the facts revealed in the trial, and stick to what is alleged by the Public Prosecutor. If there are errors in the indictment, such as in the indictment that the author examined, it will be difficult for the judge to consider or make a decision. In the alternative nature of the Public Prosecutor's indictment, according to the author, it is correct to see that there are criminal acts of defamation that are mutually exclusive,



which can cause the Public Prosecutor to be unsure about providing an indictment, but the substance of the alternative indictment is not on target. Looking at the elements in the second alternative charge, it is not the criminal act referred to in this case, namely Article 310 paragraph (1) concerning verbal insults. Seeing the evidence and statements from witnesses that the defendant committed insults by letter, the alternative charge should be Article 310 paragraph (2) insulting by letter. Even though this second indictment is not proven, it needs to be paid attention to because it will be important if the first indictment in this alternative indictment is dismissed or not proven.

Based on the position of the case as described above, it can be concluded that the public prosecutor's indictment, the public prosecutor's demands, and the court's legal considerations in its decision have fulfilled the elements and requirements for a defendant's sentence, this is based on the examination in the trial, where the testimony of witnesses and evidence that is consistent with each other presented by the public prosecutor plus the defendant's statement confirming and honestly admitting the actions he has committed. Therefore, the Panel of Judges at the Surabaya District Court stated in their decision that the defendant had been legally proven to have committed a criminal act of defamation which caused other people to feel attacked by their honor and good name but was unable to prove the accusation as regulated in Article 311 paragraph (1) Criminal Code and sentenced the defendant to 5 (five) months in prison with a probation period of 10 (ten) months.

This criminal act of defamation is driven by several factors that cause someone to defame another person. Sometimes the defendant commits a criminal act driven by the victim's own actions or behavior which provoke the defendant to do something that is against the law. As in this case, the defendant stated in his defense that this letter was written by the defendant to reply to a letter that had previously been sent by the victim, which the defendant also thought offended him. According to the defendant, the words that caused the victim to be defamed referred to the character of the victim who first slandered the defendant. Even though according to the judge the defendant's actions were not right, the defendant should have simply reported the victim's actions if it was true that the victim had slandered him instead of slandering him in return.

Here the author argues that moral values in society have been eroded by developments over time. In this case, looking at the background of the problem, it occurred because the victim first sent a letter containing words which according to the defendant were slanderous, so according to the author the defendant was not completely guilty by initiating and deliberately defaming the victim because in this case the defendant was only defending his dignity and honor by sending a reply to the letter that had previously been sent by the victim. This is also explained in Article 310



paragraph (3) of the Criminal Code "does not constitute defamation or written defamation, if the act is clearly carried out in the public interest or because he is forced to defend himself", according to the author it is clear that the victim is the one who provoked the defendant to commit a criminal act defamation and the defendant only replied to the letter even though the defendant's actions should not be justified. Because the defendant's actions can damage a person's self-esteem and make the victim embarrassed because they have been slandered with inappropriate words.

This will not happen if our human values and traditional values are maintained and adhered to. There are many things that must be protected, including other people's privacy, which must not be disturbed. Because it is every human's human right. If this can be applied, especially to everyday life, then awareness of the existence of laws or regulations will be realized in what we hope for due to an attitude of mutual respect.

#### **Judge's Legal Considerations Regarding Decision Number 1835/ PID.B/2023/PN.Sby.**

Case Number 1835/PID.B/2023/PN Sby, in this case the defendant was brought to trial based on an indictment submitted by the public prosecutor as previously explained where the defendant violated the provisions of Article 311 paragraph (1) of the Criminal Code.

The actions taken by the defendant must be proven by the judge first by reviewing the elements of the article and then adjusting them to the facts revealed at trial and the evidence by analyzing them. The elements of Article 311 paragraph (1) of the Criminal Code based on its content are as follows:

1. Whoever;
2. Deliberately attacking someone's honor or good name by accusing someone of something in writing and the accusation is untrue;
3. With the intention of making the allegations known to many people;

Considering that next the panel will consider whether or not the defendant's actions have fulfilled the provisions of Article 311 paragraph (1) of the Criminal Code, namely as follows:

ad.1. Whose Elements;

Considering, that what is meant by "whoever" is every person or person who commits a criminal act as a legal subject who can be held responsible according to the law for all his actions, so that the element "everyone" refers to a legal subject who is brought to trial as a defendant because he has been accused. commit a criminal act. The conditions for a person to be convicted as a perpetrator of a crime are the elements of guilt and responsibility. To be held responsible as a perpetrator of a criminal act, the person must be physically and mentally healthy, without any justification, forgiveness or exoneration of the crime;



Considering, that based on the legal facts revealed at the trial it is true that the Defendant Usman Wibisono, I.R., S.H., M.M., Bin Artono is a physically and mentally healthy person, this can be seen during the trial the Defendant has confirmed his identity in accordance with the identity provided stated in the indictment and during the trial the Defendant was able to follow it properly and no contrary facts were found, therefore the Defendant Usman Wibisono, I.R., S.H., M.M., Bin Artono can be said to be a legal subject who is physically and mentally healthy;

Considering, that based on these considerations, the first element has been fulfilled;

ad.2. The element of intentionally attacking someone's honor or good name by accusing someone of something, done in writing and the accusation is not true;

Considering, that based on the legal facts above, the defendant was conscious and aware of his actions in sending or uploading the post in the WA Group, which the defendant must be aware of if the post was known to members of the WA Group, where the truth of the post sent or uploaded by the defendant was not yet clear. , so that it can tarnish someone's honor or good name, in this case witness Erick Sastrodikoro, witness Bambang Irwanto and witness Dr.KPHA.Tjandra Sridjaja Pradjonggo, S.H., M.H.;

Considering, that the Defendant's Defense basically states that the First and Second charges are untrue or false:

Considering, that the Panel of Judges has considered the statements of witnesses, experts and the statements of the Defendant as well as evidence, which are mutually compatible and related to the fact that the Defendant's actions have been proven legally and convincingly guilty of committing the acts as in the second alternative indictment, so that the defense of the Defendant and his legal advisor must be set aside;

Considering, that because all the elements in the second indictment have been fulfilled, the Defendant must be declared to have been legally and convincingly proven to have committed the crime of "Slander";

Considering, that during the examination at trial no legal facts were obtained which could eliminate the conviction of the Defendant, therefore the Defendant should be held responsible for his actions and should be punished;

Considering, the status of the evidence in this case will be determined in this decision;

Considering, that because the Defendant has been proven to have committed the acts as stated in the second indictment of the Public Prosecutor, the Defendant must be punished and charged with paying the costs of this case;

By paying attention to the elements contained in the formulation of Article 311 paragraph (1) of the Criminal Code, namely because his actions resulted in the name of another person being tarnished and his self-esteem being damaged. Whereas in considering the sentence, the panel of judges considered whether the defendant committed a criminal act or not, by analyzing the elements contained in the provisions of Article 311 paragraph (1) of the Criminal Code based on legal theory and doctrine and then connecting them with the defendant's actions and the incident. Inside proof of the elements contained in the indictment which are supported by the fulfillment of the absolute requirements of proof, namely *unus testis nullus testis*, namely the existence of at least two pieces of evidence, then the elements referred to in the indictment have been fully fulfilled, where to prove the accusation the Public Prosecutor has submitted evidence evidence in the form of witness statements, indicative evidence and defendant statements which are related to each other.

Regarding the basis for proving the criminal act of defamation committed by the defendant based on Article 311 paragraph (1) of the Criminal Code, which in the formulation of the offense must fulfill the elements of a person who intentionally attacks someone's honor or good name by accusing someone of something that was done in writing and the accusation is untrue, with the intention of making the accusation known to many people. In the formulation of the offense because the defendant was unable to prove his accusation and because the accusation was already known to many people or became known to the public, the Panel of Judges based on the statements of witnesses and the defendant's confession, that the defendant committed a criminal act of defamation by slandering. However, the defendant defended himself by saying that this was done on the basis of self-defense, where the victim had slandered the defendant first, but the Panel of Judges did not accept the defendant's defense and held another opinion, that if the defendant really felt slandered or defamed, it should be enough to report the victim to the police. instead of slandering the victim back.

Once the Panel of Judges is convinced that the defendant has committed a criminal act of defamation which has caused other people's good names to be attacked, the Panel of Judges must also consider whether the defendant has any reasons that can be the basis for abolishing the crime, either for forgiving or justifiable reasons.

As for legal considerations by judges in deciding cases regarding defamation, according to the author's interview with the judge who decided the case, in deciding a case, it is best to consider what the situation was at the time of the incident, whether the victim played a role in causing the criminal act of defamation to occur, what the level of consequences were. of the crime committed



and what the status of the defendant is, whether by detaining the defendant many will be harmed or whether many will be neglected especially for the public interest.

This can be taken into consideration by the judge when deciding on a case to lighten the sentence the defendant will undergo. Because the defendant must be declared to be able to take responsibility for his actions, for this reason, the Panel of Judges in sentencing the defendant must first consider the aggravating and mitigating factors for the defendant as well as the reasons which might be able to release the defendant from detention. .

After examining all the facts revealed at the trial, the Panel of Judges deliberated and a decision was made stating that the defendant had been legally and convincingly proven to have committed a criminal act which because of his actions caused the victim to be embarrassed and his good name damaged as stated in the decision of the Surabaya District Court in this case. Number: 1835/ PID.B/2023/PN.Sby.

#### **4. CONCLUSION**

The defendant's actions have been legally proven to fulfill the elements of criminal defamation in accordance with Article 311 paragraph (1) of the Criminal Code, so that the defendant can be held accountable for his actions. The basis for the judge's legal consideration in deciding a criminal defamation case is as follows: The existence of proven facts in the elements of Article 311 paragraph (1) of the Criminal Code, in this case the criminal act of defamation. There is evidence based on valid evidence as regulated in Article 184 of the Criminal Procedure Code which is proven at trial. Factors that mitigate and aggravate the defendant.

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