

THE SENTENCING OF INSULT AND/OR DEFAMATION CASES IN INDONESIA

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Submitted: 03-05-2025 | Revised: 25-07-2025 | Accepted: 04-08-2025 | Available Online: 05-08-2024

Abstract

This study examines sentencing decisions in cases of insult and/or defamation by employing a mixed-method approach that combines quantitative and qualitative analysis. Quantitative analysis uses district court verdicts from 2016 to 2021 to identify patterns and trends in sentencing, while qualitative analysis delves into aggravating and mitigating factors in judges' considerations. Compared to previous studies, conducted by Samudra (2019), Ziar (2022), Fatmawati, et al. (2023), Emaliawati (2024), and Nurbaeti (2025), the result of this study shows that most cases end with prison sentences and/or fines. Judges consider various factors such as the severity of the offence, the impact on the victim, and the defendant's background. Interestingly, there were several cases, particularly those involving corporations, where judges imposed much harsher sentences than the prosecutor's prosecution, indicating a unique dynamic in the application of justice. From the perspective of judicial independence theory, the judges should exercise their independence in interpreting legal norms and balancing between positive law and substantive justice. Judges are not merely "mouthpieces of the law"; they are active actors in assessing the moral value and social impact of the defendant's actions. Meanwhile, based on the theory of punishment, the decisions reflect a retributive approach as a form of retribution for reprehensible acts, as well as a preventive approach, to deter perpetrators and the wider community. This study makes an important contribution to understanding the complexity of sentencing in cases of insult and/or defamation and highlights the need for more measurable and consistent sentencing guidelines.

Keywords: Criminal Sentencing; Defamation; Insult; Sentencing Factors

Introduction

The development of human civilisation is parallel to advances in communication and information, particularly in the context of information and communication technology. This phenomenon further supports the rapid exchange of knowledge, including changes in behaviour and expression of opinions. On the other hand, electronic media have become an integral part of everyday life, providing a means to interact, communicate, and access entertainment.¹

1 Emaliawati, "Defamation in the Digital Age: An Analysis of the Application of Restorative Justice under Indonesian Criminal Law," *Intellectual Law Review (ILRE)* 2, no. 1 (2024): 32–45, <https://doi.org/10.59108/ilre.v2i1.62>.

The Indonesian Internet Service Providers Association (APJII) reported that the number of internet users in Indonesia in 2024 reached 221,563,479 people out of a total population of 278,696,200 people in 2023, encompassing male and female users that accounted for 50.7% and 49.1%, respectively. Meanwhile, in terms of age, Gen Z (1997-2012) mostly dominated the Internet use, accounting for 34.4% and Millennials (1981-1996) for 30.62%, while the rest are Gen X, Baby Boomers, and others.²

The freedom of speech supported by electronic media then provides unlimited space for creative expression and public participation. However, this opportunity leaves room for cases of insult and defamation on electronic or social media, violating the law. Hate speech or commenting on social media is seen as a complex issue, where users often share hateful statements in their comments posted on various platforms.³ This issue refers to any form of expression, such as text, images, or videos, that is intended to insult, provoke emotions, or attack individuals or groups on social media/digital communication.⁴ Rizky Pratama Putra Karo Karo states that social media is often exploited as a platform for expressing emotional reactions, disseminating misinformation, and circulating content laden with offensive language, defamation, blasphemy, or various other forms of hate speech.⁵ Freedom of speech is a fundamental element of democracy that should be upheld. Hence, it is possible to strike a balance between safeguarding vulnerable groups and preserving free expression by implementing clear and proportionate legal measures.⁶

In dealing with this, Indonesia has set some regulations, ranging from Article 310 of Law No. 1 of 1946 concerning Criminal Code, to Article 27 of Law No. 19 of 2016 concerning Amendments to Law No.11 of 2008 concerning Electronic Information and Transactions governing criminal acts of insult and/or defamation, and the latest, Law No. 1 of 2024 concerning the Second Amendment to Law No. 11 of 2008 concerning Electronic Information

2 Asosiasi Penyelenggara Jasa Internet Indonesia (APJII), “APJII Jumlah Pengguna Internet Indonesia Tembus 221 Juta Orang,” <https://apjii.or.id/berita/d/apjii-jumlah-pengguna-internet-indonesia-tembus-221-juta-orang>.

3 Fabio Poletto, *et. al.*, “Resources and Benchmark Corpora for Hate Speech Detection: A Systematic Review,” *Language Resources and Evaluation* 55, no. 2 (2021): 477–523, <https://doi.org/10.1007/s10579-020-09502-8>; Ismail Tahir dan Muhammad Gana Fajar Ramadhan, “Hate Speech on Social Media: Indonesian Netizens’ Hate Comments of Presidential Talk Shows on Youtube,” *LLT Journal: A Journal on Language and Language Teaching* 27, no. 1 (2024): 230–51, <https://doi.org/10.24071/llt.v27i1.8180>.

4 Lyrissa Barnett Lidsky dan RonNell Andersen Jones, “Of Reasonable Readers and Unreasonable Speakers: Libel Law in a Networked World,” *Virginia Journal of Social Policy & the Law* 23, no. 2 (2016): 156–78; Lei Guo dan Brett G. Johnson, “Third-Person Effect and Hate Speech Censorship on Facebook,” *Social Media + Society* 6, no. 2 (2020): 2056305120923003, <https://doi.org/10.1177/2056305120923003>; Mahardhika Zifana, *et. al.*, “The Portrayal of Defamation Case Defendant in Court Verdict,” *Indonesian Journal of Applied Linguistics* 11, no. 1 (2021): 94–103, <https://doi.org/10.17509/ijal.v11i1.34672>.

5 Rizky Pratama Putra Karo Karo, “Hate Speech: Penyimpangan terhadap UU ITE, Kebebasan Berpendapat dan Nilai-Nilai Keadilan Bermartabat,” *Jurnal Lemhannas RI* 10, no. 4 (2023): 52–65, <https://doi.org/10.55960/jlri.v10i4.370>; Emeraldal Janessa Josephine dan Rugun Romaida Hutabarat, “Determining Relative Competence in Resolving Criminal Defamation Cases Under Indonesian Positive Law,” *Jurnal Ilmu Hukum Kyadiren* 6, no. 2 (2025): 53–71, <https://doi.org/10.46924/jihk.v6i2.235>.

6 Fatmawati, *et. al.*, “Defamation in the New Criminal Code: A Review of Substantive Justice,” *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 3 (2023): 465–80, <https://doi.org/10.29303/ius.v11i3.1288>.

and Transactions (hereinafter referred to EITL).⁷

Nevertheless, these days, defamation cases in online media continue to increase every year.⁸ In Indonesia, Rusdi Hartono (Head of the Public Information Bureau, Public Relations Division, Indonesian National Police) mentioned the increasing number of defamation cases from 2018 to 2020, with 1,258 cases in 2018, 1,133 cases in 2019, and 1,794 cases in 2020.⁹

Anyone can be a victim of insult and/or defamation posted on electronic media. Individuals, groups, and companies can suffer losses due to acts of insult and/or defamation against them. However, in practice, articles related to insults and/or defamation are sometimes used to censor criticism of the government or opinions that do not conform to the will of certain groups with power. Some cases have even raised polemics in society and sparked debates around fulfilling the right to freedom of opinion and expression.¹⁰ Moreover, data reveals that 70% of the EITL whistleblowers are public officials (38%), professionals (27%) and businessmen (5%), while the rest are fellow citizens (29%) and unknown (1%) (2008-2020).¹¹

Departing from this problem, this study seeks to examine the decisions of the district courts in 2016-2021 more deeply on cases of insult and/or defamation. This year's range has recorded the highest number of cases of insult and/or defamation.¹² In addition, this study also aims to complete the possible gap with previous research. Research conducted by Anton Hendrik Samudra¹³ for example, focused on examining the nature of defamation and insult through information and communication technology; Nanda Nugraha Ziar's research¹⁴ focused

7 Raymon Reza Punusingon, Arie S. M. Lumenta, dan Yaulie D. Y. Rindengan, "Animasi Sosialisasi Undang-Undang Informasi dan Transaksi Elektronik," *E-Journal Teknik Informatika* 12, no. 1 (2017): 1-8, <https://doi.org/10.35793/jti.v12i1.17796>; Rafiki Candra Priambudi, Adi Tirta Koesoemo, dan Dientje Rumimpunu, "Pencemaran Nama Baik Menurut Pasal 310 KUHP dan Pasal 27 Undang-Undang Nomor 19 Tahun 2016 tentang ITE," *Lex Administratum* 8, no. 4 (2020): 185-93; Dhani Samatha *et. al.*, "Analysis of Human Rights Protection in Defamation Charges Based on Indonesian Laws (Case Study Number: 560/PDT.G/202/PN JKT.PST)," *Legal Brief* 11, no. 5 (2022): 3111-20.

8 Hiroko Onishi, "Defamation in Cyberspace: A Japanese Perspective," *Computer Law & Security Review* 28, no. 6 (2012): 687-95, <https://doi.org/10.1016/j.clsr.2012.09.005>; Gary Chan Kok Yew, "Search Engines and Internet Defamation: Of Publication and Legal Responsibility," *Computer Law & Security Review* 35, no. 3 (2019): 330-43, <https://doi.org/10.1016/j.clsr.2019.01.002>; Christopher P. Moutos, *et. al.*, "Principles of Online Defamation for Physicians," *Fertility and Sterility* 114, no. 3 (2020): e413, <https://doi.org/10.1016/j.fertnstert.2020.08.1204>.

9 Yusrizal, *et. al.*, "Defamation and Insult Via Digital Media in Indonesia: The Islamic Law and Human Rights Perspective," *Journal of Law and Sustainable Development* 11, no. 7 (2023): e1016, <https://doi.org/10.55908/sdgs.v11i7.1016>.

10 Theresia Clara, "Pasal Pencemaran Nama Baik UU ITE," *Perum Perindo*, Oktober 2023, <https://www.perumperindo.co.id/pasal-pencemaran-nama-baik-uu-ite/>.

11 Damar Juniarto, "Revisi UU ITE Total Sebagai Solusi," *SAFENet*, Februari 2021, <https://safenet.or.id/id/2021/03/revisi-uu-ite-total-sebagai-solusi/>.

12 Monika Suhayati, "Larangan Penghinaan dan/atau Pencemaran Nama Baik dalam Pasal 27 ayat (3) UU ITE," *Info Singkat* XIII, no.5 (Maret 2021), accessed May 2, 2025, https://berkas.dpr.go.id/pusaka/files/info_singkat/Info%20Singkat-XIII-5-I-P3DI-Maret-2021-241.pdf.

13 Anton Hendrik Samudra, "Pencemaran Nama Baik dan Penghinaan Melalui Media Teknologi Informasi Komunikasi di Indonesia Pasca Amandemen UU ITE," *Jurnal Hukum & Pembangunan* 50, no. 1 (2020): 91-105, <https://doi.org/10.21143/jhp.vol50.no1.2485>.

14 Nanda Nugraha Ziar, "Prinsip Proporsionalitas dalam Kebijakan Formulatif Tindak Pidana Pencemaran Nama Baik di Media Sosial," *Jurnal Lex Renaissance* 7, no. 3 (2022): 462-75, <https://doi.org/10.20885/>

on determining the proportionality of criminal law policies on defamation in social media; Fatmawati, et. al.,¹⁵ examined the concept and regulation of criminal defamation in the Old Criminal Code and the New Criminal Code; Emaliawati¹⁶ examined the handling of defamation cases in the digital age and the potential use of restorative justice in the context of defamation cases in the digital age. Rani Nurbaeti¹⁷ focused on researching the basis for the Supreme Court's Decision No. 1605K/Pid.Sus/2022 in determining a complaint letter as a formal requirement for an e-criminal defamation indictment.

This research employs a mixed-method approach that combines both quantitative and qualitative methods to collect and analyse data. This approach enables researchers to gain a more comprehensive understanding of the research topic by triangulating multiple sources of data, specifically analysing aggravating and mitigating factors in judges' sentencing decisions. The quantitative analysis identifies trends and patterns in the data, while the qualitative analysis provides a more detailed and nuanced understanding of the factors that judges consider when making sentencing decisions. This approach can provide valuable insights into the judicial decision-making process and help to identify areas for improvement in the criminal justice system.

From hundreds of collected verdicts related to the EITL, the researcher will only focus on criminal acts of insult and/or defamation viewed on social media. This limited scope is also due to limited time and resources, allowing this research to only collect 30 verdicts of insult and/or defamation cases from several District Courts in 2016-2021.¹⁸ This condition is in line with Sugiyono's opinion, viewing that 30 (thirty) people are enough to test the validity of the instrument on the sample, and the data obtained can still form a normal curve.¹⁹

JLR.vol7.iss3.art2.

15 Fatmawati *et. al.*, "Defamation in the New Criminal Code."

16 Emaliawati, "Defamation in the Digital Age."

17 Rani Nurbaeti, "Pengaduan sebagai Syarat Esensial Tindak Pidana e-Criminal Defamation pada Putusan MA Nomor 1605K/Pid.Sus/2022," *Judex Laguens: Jurnal Hukum dan Peradilan Ikatan Hakim Indonesia (IKAHI)* 3, no. 1 (2025): 54–73, <https://doi.org/10.25216/ikahi.3.1.4.2025.54-73>.

18 (1) Verdict Number 5/Pid.Sus/2016/PN.Wgp; (2) Verdict Number 10/Pid.Sus/2018/PN.Yyk; (3) Verdict Number 81/Pid.Sus/2016/PN.Wno; (4) Verdict Number 84/Pid.Sus/2019/PN.Jkt.Pst; (5) Verdict Number 325/Pid.Sus/2021/PN.Jkt.Brt; (6) Verdict Number 128/Pid.Sus/2016/PN.Sbw; (7) Verdict Number 129/Pid.Sus/2020/PN.Kbm; (8) Verdict Number 165/Pid.Sus/2019/PN.Trt; (9) Verdict Number 87/Pid.Sus/2016/PN.Sbw; (10) Verdict Number 217/Pid.Sus/2016/PN.Skg; (11) Verdict Number 254/Pid.Sus/2020/PN.Skt; (12) Verdict Number 341/Pid.Sus/2016/PN.Tsm; (13) Verdict Number 512/Pid.Sus/2016/PN.Jmb; (14) Verdict Number 528/Pid.Sus/2020/PN.Bdg; (15) Verdict Number 530/Pid.Sus/2018/PN.Jkt.Sel; (16) Verdict Number 623/Pid.Sus/2020/PN.Dps; (17) Verdict Number 1010/Pid.Sus/2018/PN.Mdn; (18) Verdict Number 8/Pid.Sus/2018/PN.Bpd; (19) Verdict Number 109/Pid.Sus/2020/PN.Prn; (20) Verdict Number 135/Pid.Sus/2021/PN.Srg; (21) Verdict Number 155/Pid.Sus/2019/PN.Wns; (22) Verdict Number 163/Pid.Sus/2019/PN.Skw; (23) Verdict Number 204/Pid.Sus/2021/PN.Kpg; (24) Verdict Number 215/Pid.B/2016/PN.Lsk; (25) Verdict Number 232/Pid.Sus/2020/PN.Kbm; (26) Verdict Number 302/Pid.Sus/2020/PN.Bgr; (27) Verdict Number 516/Pid.Sus/2019/PN.Tjk; (28) Verdict Number 691/Pid.Sus/2018/PN.Btm; (29) Verdict Number 1010/Pid.Sus/2020/PN.Jkt.Pst; (30) Verdict Number 1615/Pid.Sus/2019/PN.Sby.

19 Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif, dan Kombinasi (Mix Methods): Edisi Revisi* (Alfabeta, 2020).

Such complex data collection can have significant implications for research on the Indonesian court system. Without access to reliable data, researchers may struggle to identify trends and patterns in sentencing decisions, rendering it difficult to develop evidence-based policies and interventions. Moreover, the lack of transparency in the court system can undermine public trust and confidence in the judiciary, possibly leaving negative impacts on the functioning of the legal system.

Discussion

A. Insult and/or Defamation in Indonesia

The massive number of Internet users has led to the freedom of opinion on the massively growing digital media. The converse also holds true, with the remarkable growth of the misuse of digital media leading to criminal law enforcement. The data from the Southeast Asia Freedom of Expression Network (SAFE-net) reported that from 2013 to 2021, 393 people were criminalised under the EITL articles, the majority of which were related to Article 27 paragraph (3) and Article 28 paragraph (2) of the EITL.²⁰

Pertaining to this case, the provisions of the articles commonly referred to are related to insult and/or defamation. Defamation in the Indonesian Criminal Code can be classified into five types: insult, defamation, minor insult, false accusation, and false suspicion. In contrast, in the EITL, the offences related to insult and defamation are formulated into one offence. Mahrus Ali stated that offences related to insult and defamation are no longer distinguished based on the object, levels of punishment, and their types, but are rather regulated in one criminal offence formulation under Article 27, paragraph (3) of the EITL:²¹ “*Any person who intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents containing insult and/or defamation*”. Furthermore, the criminal sanctions related to Article 27 Paragraph (3) of the EITL in Article 45, paragraph (3) of the EITL are mentioned as follows:

“Any person who intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents containing insult and/or defamation as referred to in Article 27 Paragraph (3) shall be punished with imprisonment for a maximum of 4 (four) years and/or a fine of up to IDR 750,000,000 (seven hundred and fifty million Indonesian Rupiah)”.

In the elucidatory provisions, “*distributing*” is defined as sending and/or disseminating

20 Institute for Criminal Justice Reform, “Puluhan Korban Kriminalisasi UU ITE Jalan Santai Sambil dorong Revisi UU ITE,” Mei 2023, <https://icjr.or.id/puluhan-korban-kriminalisasi-uu-ite-jalan-santai-sambil-dorong-revisi-uu-ite/>.

21 Mahrus Ali, “Pencemaran Nama Baik Melalui Sarana Informasi dan Transaksi Elektronik (Kajian Putusan MK No.2/PUU-VII/2009),” *Jurnal Konstitusi* 7, no. 6 (2010): 119–46.

electronic information and/or electronic documents to many people or various parties through an electronic system. The word “*transmitting*” is interpreted as sending electronic information and/or electronic documents to another party through an electronic system. Meanwhile, the phrase “*making accessible*” refers to any other act apart from distributing and transmitting through an electronic system that allows electronic information and/or electronic documents to be viewed by other parties or the public. Meanwhile, the elucidatory provisions regarding Article 27 paragraph (3) of the EITL mention, “*The provisions in this paragraph refer to the provisions on insult and/or defamation as regulated in the Criminal Code.*”²²

Adami Chazawi noted that the definition of insult in the Criminal Code is not clearly explained, resulting in varied interpretations. Therefore, defamation, in this case, can be interpreted as any act intended to tarnish a person’s honour and reputation.²³ Meanwhile, the definition of insult can be interpreted as an attempt to demonise someone, although not defamatory. Mahrus Ali categorised derogatory remarks, such as calling someone a dog, a bastard, and other disrespectful words, as an insult.²⁴ However, it is important to note that speech/writing in insults does not allege certain actions. Accusing someone of committing a certain act is, on the other hand, categorised as an act of defamation (oral/written). This definition distinguishes defamation from insult.²⁵

The crime of insult and/or defamation is categorised as a complaint offence, making the complaint an essential formal requirement in the indictment. The philosophical essence of the complaint is that defamation has a strong relevance to insult, which has the notion of ruining a person’s reputation and honour. Therefore, individuals or corporations must feel threatened by the foundation of their integrity and reputation.²⁶ Sherlyana Carmelita Tey Bhera and Retno Dewi Pulung Sari argue that defamation is an act of attacking a person’s reputation by delivering statements to accuse a person of certain actions aimed at ruining the person’s honour and reputation. This act is often intended to defame, degrade/humiliate the person and the person’s self-esteem or dignity.²⁷ Individuals or institutions that feel threatened must make a complaint to the authorities. In other words, so long as there is no complaint submitted, no party

22 Article 27 paragraph (1) and (3) EITL.

23 Adami Chazawi, *Hukum Pidana Positif Penghinaan (Edisi Revisi)* (Media Nusa Creative, 2020).

24 Ali, “Pencemaran Nama Baik Melalui Sarana Informasi dan Transaksi Elektronik (Kajian Putusan MK No.2/PUU-VII/2009).”

25 Chazawi, *Hukum Pidana Positif Penghinaan (Edisi Revisi)*.

26 Rani Nurbaeti, “Pengaduan sebagai Syarat Esensial Tindak Pidana e-Criminal Defamation pada Putusan MA Nomor 1605K/Pid.Sus/2022,” *Judex Laguens: Jurnal Hukum dan Peradilan Ikatan Hakim Indonesia (IKAHI)* 3, no. 1 (2025): 54–73, <https://doi.org/10.25216/ikahi.3.1.4.2025.54-73>.

27 Sherlyana Carmelita Tey Bhera dan Retno Dewi Pulung Sari, “Pertanggungjawaban Pidana Pencemaran Nama Baik Pejabat Pemerintah Melalui Media Sosial,” *Legitimasi: Jurnal Hukum Pidana dan Politik Hukum* 12, no. 1 (2023): 32, <https://doi.org/10.22373/legitimasi.v12i1.17974>.

should feel that their integrity and reputation are threatened.²⁸

The juridical essence of the complaint serves as a formal requirement for the indictment of insult and/or defamation in the digital world, namely a complaint letter in the complaint offence. The complaint is made by the party who feels aggrieved.²⁹ The complaint can be made within six months if the victim is in Indonesia, and nine months if the victim is abroad.³⁰ Therefore, the complaint becomes an essential condition for whether or not the criminal case process continues. The aggrieved party, in this case, is in control of the legal process. Investigators cannot start examining cases of insult and/or electronic defamation without a complaint from the victim or the injured party. Meanwhile, in the context of sociological essence, the complaint as an essential requirement for electronic insult and/or defamation cases is a criminal offence that provides social sanctions from the injured party for the perpetrator since the complaint is made.³¹

B. Analysis of Court Verdicts on Criminal Acts of Insult and/or Defamation

The legal basis for the authority and obligations of judges is expressed in Law No. 8 of 1981 concerning the Criminal Procedure Code (hereinafter referred to as the Criminal Procedure Code) and Law No. 48 of 2009 concerning Judicial Authority (hereinafter referred to as Law No. 48 of 2009). The Criminal Procedure Code affirms that judges are officials of district courts authorised by statutory laws to put to trial. *“To put to trial”* is defined as the series of acts by judges to accept, examine, and decide criminal cases based on the principles of freedom, honesty, and impartiality in trial courts according to the ways that are regulated in Law. Article 3, paragraph (1) of Law No. 48 of 2009 states, *“In executing their tasks and functions, judges and constitutional judges are required to maintain the independence of the court.”*³² It is thus stated that while performing their tasks and functions, judges must keep the courts independent. Article 10 of Law No. 48 of 2009 states that:³³

- (1) Courts are forbidden to reject to examine, put to trial, and decide cases that are presented with the pretext that the law is non-existent or unclear, but rather are required to examine and put them to trial.
- (2) The stipulation, as stated in paragraph (1), does not preclude efforts of civil case resolution through settlement.

28 Nurbaeti, “Pengaduan sebagai Syarat Esensial Tindak Pidana e-Criminal Defamation pada Putusan MA Nomor 1605K/Pid.Sus/2022.”

29 Article 1 point 25 Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana / KUHP); Article 45, paragraph (5) EITL.

30 Article 74, Criminal Procedure Code.

31 Nurbaeti, “Pengaduan sebagai Syarat Esensial Tindak Pidana e-Criminal Defamation pada Putusan MA Nomor 1605K/Pid.Sus/2022.”

32 Article 3, paragraph (1) of Law No. 48 of 2009.

33 Article 10 of Law No. 48 of 2009.

Therefore, courts are not allowed to refuse to examine, put to trial, and decide cases that are put forward to them with the excuse that the law does not exist or have clarity, and instead are obligated to carry out the examination and trial process. Meanwhile, Article 12 of Law No. 48 of 2009 states that:³⁴

- (1) Courts examine, put to trial, and decide cases of crimes with the presence of the accused, unless the law determines otherwise.
- (2) In the case that the accused is not present, whilst the examination is stated to have been completed, the verdict may be handed down without the accused being present.

It is thus stated that courts examine, put to trial, and decide criminal cases with the accused being present, except determined otherwise by statutory laws. The form of the criminal sentence verdict is regulated in Article 193 of the Criminal Procedure Code. Criminal sentencing means that an accused is imposed with a criminal sentence appropriate to the penalty that is set out in the article of the criminal act. This is in accordance with Article 193 paragraph (1) of the Criminal Procedure Code, stating, *“If a court takes the view that the accused is guilty of having committed the criminal act that is charged to the accused, then the court imposes a criminal sentence.”*³⁵

It is thus stated that the imposition of criminal sentencing toward the accused is based on court evaluation. If a court determines that an accused is guilty of committing the offence for which they are charged, the court imposes a criminal sentence on the accused. In other words, it may be that according to the view and evaluation of the court, the accused is proven legally and convincingly to have committed the criminal act charged to the accused according to the proof system and the principle of the minimum proof requirement that is established in Article 183, paragraph (1) of the Criminal Procedure Code, stating, *“If a court takes the view that the accused is guilty of having committed the criminal act that is charged to the accused, then the court imposes a criminal sentence.”*³⁶ In this case, if the guilt of the accused is sufficiently proven with at least two legal pieces of evidence that provide confidence to the judge, the accused can be declared as the perpetrator of the criminal act.

A verdict that imposes a criminal sentence on an accused contains an order to punish the accused according to the criminal penalties, as stated in the article of the criminal act being charged. M. Yahya Harahap (2000) takes the view that statutory laws provide freedom to judges to impose a criminal sentence between the *“minimum”* and *“maximum”* punishments relevant to the penalty set out in the article of the criminal act.³⁷ In this study, 30 verdicts, as shown in

34 Article 12 of Law No. 48 of 2009.

35 Article 193, paragraph (1) of the Criminal Procedure Code.

36 Article 183, paragraph (1) of the Criminal Procedure Code.

37 M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP. Jilid 2: Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali*, Edisi Kedu (Sinar Grafika, 2000).

Table 1, will be analysed.

Table 1. Verdicts for Analysis (2016-2021)

No.	Verdict	Origin of District Court
1	5/Pid.Sus/2016/PN.Wgp	PN Waingapu, NTT
2	10/Pid.Sus/2018/PN.Yyk	PN Yogyakarta
3	81/Pid.Sus/2016/PN.Wno	PN Wonosari, Yogyakarta
4	84/Pid.Sus/2019/PN.Jkt.Pst	PN Jakarta Pusat
5	325/Pid.Sus/2021/PN.Jkt.Brt	PN Jakarta Barat
6	128/Pid.Sus/2016/PN.Sbw	PN Sumbawa Besar, NTB
7	129/Pid.Sus/2020/PN.Kbm	PN Kebumen, Jawa Tengah
8	165/Pid.Sus/2019/PN.Trt	PN Tarutung, Sumatera Utara
9	87/Pid.Sus/2016/PN.Sbw	PN Sumbawa Besar, NTB
10	217/Pid.Sus/2016/PN.Skg	PN Sengkang, Sulawesi Selatan
11	254/Pid.Sus/2020/PN.Skt	PN Surakarta, Jawa Tengah
12	341/Pid.Sus/2016/PN.Tsm	PN Tasikmalaya, Jawa Barat
13	512/Pid.Sus/2016/PN.Jmb	PN Jambi
14	528/Pid.Sus/2020/PN.Bdg	PN Bandung, Jawa Barat
15	530/Pid.Sus/2018/PN.Jkt.Sel	PN Jakarta Selatan
16	623/Pid.Sus/2020/PN.Dps	PN Denpasar, Bali
17	1010/Pid.Sus/2018/PN.Mdn	PN Medan, Sumatera Utara
18	8/Pid.Sus/2018/PN.Bpd	PN Blangpidie, Aceh
19	109/Pid.Sus/2020/PN.Prn	PN Paringin, Kalimantan Selatan
20	135/Pid.Sus/2021/PN.Srg	PN Serang, Banten
21	155/Pid.Sus/2019/PN.Wns	PN Watansoppeng, Sulawesi Selatan
22	163/Pid.Sus/2019/PN.Skw	PN Singkawang, Kalimantan Barat
23	204/Pid.Sus/2021/PN.Kpg	PN Kupang, NTT
24	215/Pid.B/2016/PN.Lsk	PN Lhoksukon, Aceh
25	232/Pid.Sus/2020/PN.Kbm	PN Kebumen, Jawa Tengah
26	302/Pid.Sus/2020/PN.Bgr	PN Bogor, Jawa Barat
27	516/Pid.Sus/2019/PN.Tjk	PN Tanjungkarang, Lampung
28	691/Pid.Sus/2018/PN.Btm	PN Batam, Kepulauan Riau
29	1010/Pid.Sus/2020/PN.Jkt.Pst	PN Jakarta Pusat
30	1615/Pid.Sus/2019/PN.Sby	PN Surabaya

Source: Primary Data (processed, 2023)

1. Profile of Convicts

Of the 30 verdicts by district courts analysed, the following is the general picture for the profiles of convicts in cases of insult and/or defamation based on group relations:

Table 2. Profile of Convicts Based on Gender (2016-2021)

Gender	Quantity	Percentage (%)
Male	17	56.7
Female	13	43.3
Total	30	100

Source: Primary Data (2023)

Based on the Table above, of the 30 verdicts analysed, seventeen verdicts (56.7%) involve criminal acts committed by male Defendants, while thirteen verdicts (43.3%) are about offences committed by female defendants.

Table 3. Profile of Convicts Based on Age (2016-2021)

Age	Quantity	Percentage (%)
24-29	10	33.3
30-34	6	20
35-39	7	23.3
40-44	3	10
45-49	2	6.7
50-55	2	6.7
Total	30	100

Source: Primary Data (processed, 2023)

In terms of age categories, there were ten defendants (33.3%) aged 24-29 years old, six defendants (20%) aged 30-34 years old, seven defendants (23.3%) aged 35-39 years, three defendants (10%) aged 40-44 years, two defendants (6.7%) in the 45-49 years category, and the last two (6.7%) in 50-55 years category.

Table 4. Occupational Profile of Convicts (2016-2021)

Occupation	Quantity	Percentage (%)
Entrepreneur	8	26.7
Private Sector Employee	6	20
Student	3	10
Housewife	3	10
Unemployed	3	10
Merchant	1	3.3

Continue Table 4. Occupational Profile of Convicts (2016-2021)

Occupation	Quantity	Percentage (%)
Farmer	1	3.3
Employee of a Regional Public Hospital (RSUD)	1	3.3
Lawyer	1	3.3
Village Apparatus	1	3.3
Civil Servant	1	3.3
Non-Governmental Sector Employee	1	3.3
Total	30	100

Source: Primary Data (processed, 2023)

Based on the analysis above, it can be observed that eight defendants (26.7%) were entrepreneurs, six defendants (20%) worked as private employees, three defendants (10%) were Students, another three (10%) were housewives, and another three (10%) had no jobs. Others are identified as traders, farmers, employees at Regional Public Hospitals (RSUD), lawyers, and village officials.

2. Application of Articles, Length of Sentencing, and Criminal Fine

Table 5. Application of Articles in District Court Verdicts (2016-2021)

Application of Articles in District Court Verdicts	Quantity	Percentage (%)
Article 27, paragraph (3), in conjunction with Article 45, paragraph (3) of the EITL	23	77
Article 27, paragraph (3), in conjunction with Article 45, paragraph (1) of the EITL	6	20
Article 27, paragraph (3) in conjunction with Article 45, paragraph (3) in conjunction with Article 36 in conjunction with Article 51, paragraph (2) of the EITL	1	3
Total	30	100

Source: Primary Data (processed, 2023)

Table 5 above shows that 23 verdicts (77%) were based on the provisions of Article 27, paragraph (3) in conjunction with Article 45, paragraph (3) of the EITL, six verdicts (20%) were based on the provisions of Article 27, paragraph (3) in conjunction with Article 45, paragraph (1) of the EITL, and one verdict (3%) was based on the provisions of Article 27, paragraph (3) in conjunction with Article 45, paragraph (3) in conjunction with Article 36 in conjunction with Article 51, paragraph (2) of the EITL. The texts of each provision are as follows:

Article 27, paragraph (3) of the EITL

“Any person who intentionally and without right distributes and/or transmits and/or makes accessible electronic information and/or electronic documents containing defamation and/or defamation of character”.

Article 45, paragraph (1) of the EITL (Law No. 11/2008)

“Any person who fulfills the elements as referred to in Article 27, paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be punished with imprisonment for a maximum of 6 (six) years and/or a fine of up to Rp. 1,000,000,000 (one billion rupiah)”.

Article 45 Paragraph (3) of the EITL (Law No. 19/2016)

“Any person who intentionally and without right distributes and/or transmits and/or makes accessible electronic information and/or electronic documents containing defamation and/or defamation of character as referred to in Article 27 paragraph (3) shall be punished with imprisonment for a maximum of 4 (four) years and/or a fine of up to Rp. 750,000,000 (seven hundred and fifty million rupiah)”.

Article 36 of the EITL

“Any person who intentionally and without right or unlawfully commits an act as referred to in Article 27 up to Article 34 that results in harm to others”.

Article 51 paragraph (2) of the EITL

“Any person who intentionally and without right or unlawfully commits an act as referred to in Article 27 up to Article 34 that results in harm to others”.

In cases of insult and/or defamation of character, two crucial points need to be well understood. First, insult and/or defamation of character are private offences, which can only be processed if reported by the aggrieved party. This situation can result in different interpretations among individuals. The boundaries of what actions can be categorised as insult and/or defamation of character become unclear due to their subjective nature. An individual may report an action as an insult and/or defamation of character and then follow the legal process. However, such action may not be viewed by another individual as such. Second, it is essential for both society and law enforcement officials to distinguish between insult and/or defamation of character and criticism. Criticism is essentially part of freedom of expression and freedom of opinion. Criticism is an essential element in the context of a democratic system.³⁸

Table 6 presents the duration of imprisonment between 2016 and 2021.

Table 6. Lengths of Sentencing (2016-2021)

Length of Sentencing	Quantity	Percentage (%)
1 month 15 days	1	3.3
2 months	1	3.3

38 Ahmad Farisi, “Menghargai Kritik, Membangun Demokrasi,” *jawapos.com*, 6 Juli 2021.

Continue Table 6. Lengths of Sentencing (2016-2021)

Length of Sentencing	Quantity	Percentage (%)
3 months	5	16.7
4 months	5	16.7
5 months	1	3.3
6 months	4	13.3
8 months	1	3.3
9 months	2	6.7
12 months	6	20
18 months	2	6.7
24 months	1	3.3
84 months	1	3.3
Total	30	100

Source: Primary Data (processed, 2023)

The analysis of 30 court verdicts reveals that, among the defendants, six were sentenced to twelve months of imprisonment, accounting for 20% of the convicts. This number was the highest of all. Furthermore, three-month and four-month sentencing share the same percentage of 16.7%, representing five defendants in each category of imprisonment. In comparison to these two highest numbers of defendants serving prison sentences, the lowest percentage was 3.3%. This figure refers to only one defendant in every sentencing period, serving one and a half months, two months, five months, eight months, two years, and seven years in prison, respectively.

In terms of the length of sentencing, the shortest sentencing was 1 month and 15 days (1 verdict), and the longest was 84 months (1 verdict). The longest sentencing can be seen in Verdict Number 325/Pid.Sus/2021/PN.Jkt.Brt. In this verdict, the defendant committed an act of “*insult and/or defamation that harms others*” which fulfills the elements of Article 27, paragraph (3) jo. Article 45, paragraph (3) jo. Article 36 jo. Article 51, paragraph (2) of the EITL. Furthermore, there were eight verdicts in which the operative clause stated that the imprisonment sentence did not need to be executed unless otherwise ordered by the Judge because the convicted person committed a crime during their probationary period. This was applied to one verdict with a three-month prison sentence, three verdicts with a four-month prison sentence, two verdicts with a six-month prison sentence, and two verdicts with a twelve-month prison sentence.

Table 7 presents the amount of fines imposed following criminal charges.

Table 7. Criminal Fines (2016-2021)

Fine Amount (IDR)	Quantity	Percentage (%)
500,000	1	3.3
1,000,000	2	6.7

Continue Table 7. Criminal Fines (2016-2021)

2,000,000	2	6.7
3,000,000	1	3.3
5,000,000	2	6.7
10,000,000	1	3.3
30,000,000	2	6.7
50,000,000	4	13.3
100,000,000	3	10
1,000,000,000	1	3.3
Without Criminal Fines	11	36.7
Total	30	100

Source: Primary Data (processed, 2023)

Table 7 shows that fines were imposed on the defendants. However, of the 30 verdicts, eleven defendants (36.7%) were not fined, although they were imprisoned. Furthermore, four defendants (13.3%) were fined IDR 50,000,000, and three defendants (10%) were fined IDR 100,000,000. In terms of its amount, the lowest fine imposed on the Defendants was IDR 500,000, as decided in Verdict Number 10/Pid.Sus/2018/PN.Yyk, while the highest fine imposed was IDR 1,000,000,000, as set out in Verdict Number 325/Pid.Sus/2021/PN.Jkt.Brt.

It should be noted that Verdict Number 325/Pid.Sus/2021/PN.Jkt.Brt involved Herman as the defendant and PT. Dima Indonesia / PT. Esham Dima Mandiri (DIMA GROUP). The defendant, an employee of DIMA GROUP, refused the compensation offered by the company because DIMA GROUP had laid off the defendant and several other employees due to a decrease in sales revenue following the COVID-19 outbreak. Feeling dissatisfied, the defendant then defamed and attacked the honour of the Board of Directors and Owners of DIMA GROUP by posting four photos of the Board of Directors / Owners of DIMA GROUP on Instagram and Facebook. The statements posted by the defendant with the four pictures of the Board of Directors and Owners of DIMA GROUP were considered to contain false information, causing moral damage to DIMA GROUP. The defendant's actions were sentenced under Article 27, paragraph (3), in conjunction with Article 45, paragraph (3), in conjunction with Article 36, in conjunction with Article 51, paragraph (2) of the EITL. In particular, the defendant was sentenced to seven years in prison and fined IDR 1,000,000,000 (one billion rupiahs). Failure to pay the fine would result in a six-month prison sentence.³⁹

Meanwhile, Verdict Number 10/Pid.Sus/2018/PN.Yyk is about the case between Darmayanti aka Maya as the defendant and Kusjayanti aka Aya as the victim witness, both working at Ayodya Reflexology Yogyakarta. The dispute arose because they were both involved in a romantic relationship with the same man, Yustinus Ari Nur Warsono. Tensions escalated when

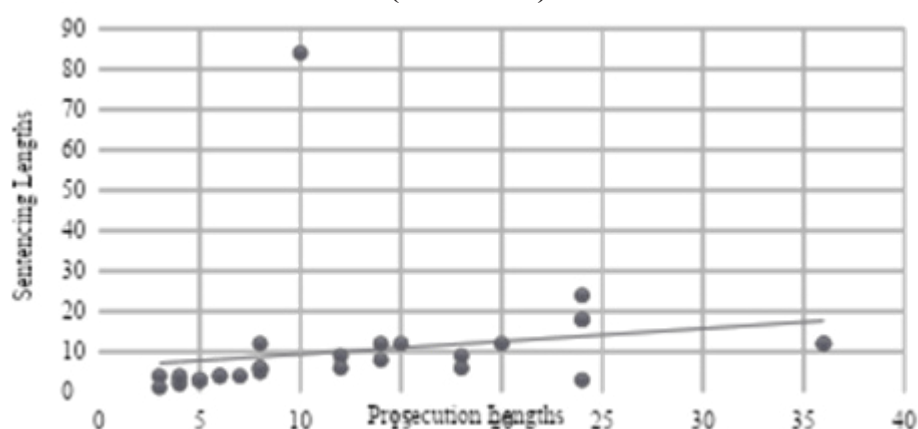
³⁹ Verdict Number 325/Pid.Sus/2021/PN.Jkt.Brt.

Kusjayanti informed Yustinus that she was pregnant, and this was overheard by the defendant, who then became furious. In an unstable state, the defendant faked her BBM profile picture with a photo of Kusjayanti and posted a status message insulting the Victim Witness. The status and profile were screenshot and uploaded to her Instagram account. This happened three times on August 7, 8, and 13, 2017, and the uploaded content was viewed by many Instagram users, ultimately prompting Kusjayanti to report the matter to the police, as she felt her reputation had been tarnished in public. For her actions, the defendant was sentenced under Article 27, paragraph (3) in conjunction with Article 45, paragraph (3) of the EITL, and was sentenced to four months in prison and fined IDR 500,000. However, the sentence was suspended for a probationary period of eight months, with one mitigating factor being that the defendant was in an advanced stage of pregnancy and had recently given birth, thereby having the responsibility of caring for an infant who required the defendant's love and care.

3. Correlation between Lengths of Prosecution and Sentencing

In addition to the quantitative description as above, this research also analysed the relationship between one variable and another. The two variables analysed quantitatively were the length of prosecution and the length of sentencing. This matter becomes relevant for analysis because several prior studies showed that the length of prosecution as imposed by the public prosecutor very much influenced the length of sentencing as imposed by the judge.⁴⁰

Figure 1. Scatter Plot of Correlation between Prosecution and Sentencing Lengths (2016-2021)



Source: Primary Data (processed, 2023)

The results of the scatterplot above indicate a positive correlation between the length of prosecution and that of sentencing, as shown by the linear meeting point of the two variables. This finding becomes essential because in the future, efforts will be made to reduce disparities

40 Sigrid van Wingerden & Jakub Drápal, "Dutch Prosecutorial Sentencing Guidelines: An Inspiration for Other Countries?," *leidenlawblog.nl*, 2018, <https://www.leidenlawblog.nl/articles/dutch-prosecutorial-sentencing-guidelines>.

in sentencing. However, it should be noted again in **Figure 1** that there is one interesting case, showing no positive correlation; Verdict Number 325/Pid.Sus/2021/PN.Jkt.Brt involved a defendant and a company (the complainant/victim of insult and/or defamation committed by the defendant), in which the prosecutor prosecuted the defendant with ten months' imprisonment, but the judge aggravated the punishment by sentencing the defendant to seven years in prison (See: Verdict Number 325/Pid.Sus/2021/PN.Jkt.Brt).

4. The Basis of Non-Juridical Considerations for the Sentencing of Cases of Slander and/or Defamation

In addition to the quantitative method, this research also employed the qualitative method to learn the fundamental considerations of judges that are often referred to as the basis for imposing criminal sentences, in the form of both juridical factors and non-juridical factors. In the judge's verdict, considerations are compulsory to be present in a verdict, because the judge can determine whether the accused is guilty of the committed actions based on those considerations. This is in line with the stipulations of Article 197, paragraph (1), letter d of the Criminal Procedure Code:

“Considerations that are composed succinctly regarding the fact and situation along with the evidence that is obtained from examination in court, which becomes the basis for determining the guilt of the accused”.

If a judge ignores the stipulations, then the verdict becomes legally null and void based on the stipulations of Article 197, paragraph (2) of the Criminal Procedure Code, which states, “*The non-fulfillment of stipulations in Paragraph (1) letters a, b, c, d, e, f, h, I, j, k, and l of this Article causes a verdict to be legally null and void.*”

Aside from the consideration of juridical factors that are related to the proving of the articles that are charged to an accused in court, the basic considerations of judges in the imposition of a criminal sentence are also composed of non-juridical factors. The basic considerations of judges that aggravate and assuage the accused are, in fact, not explicitly regulated in the Criminal Code. Several regulations related to these non-juridical factors can be found in Article 8, paragraph (2) of Law No. 48 of 2009, which states, “*In considering the pettiness and gravity of a criminal sentence, a judge is required to consider also the characteristics that are good and evil of the accused.*” In other words, judges, in considering the severity of criminal sentences, must also consider the good and evil nature of the accused. Additionally, Article 5 of Law No. 48 of 2009 mentions the following:

- (1) Judges and constitutional judges are required to uncover, follow, and understand the values of law and the sense of justice that exist in society.
- (2) Judges and constitutional judges must possess integrity and personalities that are proper,

honest, fair, professional, and experienced in the field of law.

- (3) Judges and constitutional judges are required to adhere to the Code of Ethics and Behavioural Guidelines for Judges.

This article explains the obligation of a judge to find out, heed, and comprehend the legal values and sense of justice present in society.

Non-juridical factors comprise factors outside of juridical factors that are encountered during the trial process. These non-juridical factors are also often called sociological factors or subjective factors. Although these non-juridical factors cannot determine the guilt of an accused, the role of these factors is considerable in the imposition of criminal punishment on an accused. This becomes evident from the many verdicts analysed in this study, which mentioned basic considerations based on the condition of the accused, including the following:

Table 8. The Application of Basic Non-Juridical Considerations by Judges Aggravating District Court Verdicts (2016-2021)

No	Aggravating Factor	Quantity
1	The defendant's actions have tarnished the victim's reputation and caused embarrassment	16
2	The defendant's actions have caused distress in the community	6
3	The defendant's actions have caused harm to others	3
4	The defendant has a previous criminal record	3
5	The defendant has not attempted to apologise to the victim	2
6	The defendant shows no remorse or acknowledgement of their wrongdoing	2
7	There has been no reconciliation between the parties	2
8	The defendant has been evasive in providing testimony	1
9	The defendant, as an educated individual, should have acted wisely in using social media	1
10	The defendant, as an educator, should have been a role model	1
11	The defendant's actions are contrary to social and religious norms	1
12	The defendant's actions may damage the image and trust of the community	1
13	The defendant is a family member of a law enforcement officer who should have set a good example	1

Source: Primary Data (processed, 2023)

Based on **Table 8**, it can be seen that out of 30 judgments, sixteen of them mentioned that the aggravating factor for the defendant's sentence is the defendant's actions that tarnished the reputation and caused embarrassment to the victim. Six judgments out of 30 agreed that the defendant's actions caused distress in the community. Three judgments out of 30 mentioned that the aggravating factor is the defendant's actions that harmed others. Three judgments out of 30 stated that the defendant's previous criminal record was an aggravating factor. Two judgments out of 30 mentioned that the defendant's failure or lack of effort to apologise to the victim

was an aggravating factor. Two judgments out of 30 cited the defendant's lack of remorse or acknowledgement of wrongdoing as an aggravating factor. Two judgments out of 30 considered "lack of reconciliation between the parties" as a reason for aggravation. One judgment out of 30 mentioned that the defendant's evasiveness in providing testimony was an aggravating factor. One judgment out of 30 cited the defendant's education level and expected wisdom in using social media as an aggravating factor. One judgment out of 30 stated that the defendant, being an educator, should have been a role model. One judgment out of 30 considered the defendant's actions as contrary to social and religious norms as an aggravating factor. One judgment out of 30 mentioned that the defendant's actions may damage the image and trust of the community as an aggravating factor. Finally, one judgment out of 30 considered the defendant being a family member of a law enforcement officer, who should have set a good example as an aggravating factor.

Table 9. The Application of Basic Non-Juridical Considerations by Judges Assuaging District Court Verdicts (2016-2021)

No	Aggravating Factors	Quantity
1	The defendant admitted and sincerely regretted his actions and promised not to repeat them.	23
2	The defendant has behaved politely during the trial	19
3	The defendant has no prior convictions or criminal history	19
4	The defendant and the victim have reconciled/forgiven each other	7
5	The defendant is the backbone of the family	4
6	The defendant took the initiative to apologise to the victim	4
7	The defendant's actions were influenced by the victim's actions	2
8	The defendant was honest and straightforward, which facilitated the trial process	2
9	The defendant is a mother	2
10	The defendant is young	1
11	The defendant is a woman suffering from a serious illness (cervical cancer)	1
12	No mitigating factors were found during the trial process	1

Source: Primary Data (processed, 2023)

A verdict involves both aggravating and mitigating factors. Based on the analysis of 30 verdicts conducted by the researcher, twenty-three out of 30 verdicts stated that the defendant admitted and sincerely regretted his actions and promised not to repeat them, nineteen out of 30 verdicts mentioned that the defendant behaved politely during the trial, nineteen were due to the defendant having no prior convictions or criminal history, seven out of 30 verdicts were because the defendant and the victim had reconciled or forgiven each other, four out of 30 verdicts considered "*the defendant as the backbone of the family*" as a mitigating factor for the

defendant, four out of 30 verdicts were because the defendant took the initiative to apologise to the victim, two out of 30 verdicts were due to the defendant's actions being influenced by the victim's actions, two out of 30 verdicts stated that the defendant was honest and straightforward, which facilitated the trial process, two out of 30 verdicts mentioned that the mitigating factor for the defendant was because the defendant is a mother and has responsibilities towards her child, one out of 30 verdicts was because the defendant is young, one out of 30 verdicts was because the defendant is a woman suffering from a serious illness (cervical cancer), and one out of 30 verdicts mentioned that no mitigating factors were found during the trial process.

C. Analysis of the Decision Based on the Theory of Judicial Independence and the Theory of Punishment

1. Analysis based on the Theory of Judicial Independence

One of the main prerequisites for the rule of law is the guarantee of judicial independence or the freedom of judges. This indicates that an essential element in a state governed by the rule of law is the guarantee of judicial independence, meaning that in performing their judicial duties, judges must be free from interference by non-judicial powers, either executive, legislative, or other external forces in society, even though the judiciary remains part of or an instrument of state power.⁴¹ Article 1 of Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power (hereinafter referred to as the Judicial Power Law) states,

“Judicial power is the independent power of the state to administer justice in order to uphold the law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the sake of the implementation of the rule of law in the Republic of Indonesia.”⁴²

This is also reflected in the provisions of Article 3, paragraph (1) of the Judicial Authority Law, which states, “In carrying out their duties and functions, judges and constitutional judges must maintain the independence of the judiciary.”⁴³ Judicial decisions are reached through a process of interpreting applicable regulations, followed by determining the relevant laws, before judges finally apply the violated articles based on their discretion.⁴⁴ However, the discretion of

41 Agus Priono *et. al.*, “Penerapan Teori Penafsiran Hukum oleh Hakim sebagai Upaya Perlindungan Hukum terhadap Notaris (Studi Atas Putusan Hakim Terhadap Tindak Pidana Pemalsuan Akta Otentik),” *Jurnal Hukum dan Pembangunan Ekonomi* 5, no. 2 (2017): 117–30, <https://doi.org/10.20961/hpe.v5i2.18260>.

42 Article 1 of Law of the Republic of Indonesia No. 48 of 2009 concerning Judicial, the State Gazette of the Republic of Indonesia of 2009 No. 157, Addendum to the State Gazette of the Republic of Indonesia No. 5076.

43 Article 3, paragraph (1) of Law of the Republic of Indonesia No. 48 of 2009 concerning Judicial Power, the State Gazette of the Republic of Indonesia of 2009 No. 157, Addendum to the State Gazette of the Republic of Indonesia No. 5076.

44 Nur Iftitah Isnantiana, “Legal Reasoning Hakim dalam Pengambilan Putusan Perkara di Pengadilan,” *Islamadina: Jurnal Pemikiran Islam* 18, no. 2 (2017): 41–56, <https://doi.org/10.30595/islamadina.v18i2.1920>.

judges in exercising their judicial authority is not absolute.⁴⁵ Instead, it must be accompanied by legal responsibility.⁴⁶

According to Alva Dio Rayfindratama, Article 53 of the Judicial Authority Law serves as the legal basis for judges in performing their duties in deciding a case. The decision must be based on considerations that are acceptable to all parties and does not deviate from applicable legal principles, known as legal reasoning.⁴⁷ Therefore, a judge's decision must include adequate considerations that are logically acceptable among academic circles, the general public, and the parties involved in the case. Judges must ensure that their decisions align with legal doctrine.⁴⁸

According to Barda Nawawi Arief, in deciding a court case, judges may consider several factors, including: (1) the offence committed by the perpetrator; (2) the motive and purpose behind the offence; (3) how the perpetrator committed the offence; (4) the perpetrator's state of mind when committing the offence; (5) the perpetrator's background and socioeconomic conditions; (6) the perpetrator's attitude and actions after committing the crime; (7) the impact of the crime on the perpetrator's future; and (8) the community's view of the crime committed by the perpetrator.⁴⁹ Meanwhile, according to P. Wignyosumarto, judges in examining, adjudicating, and deciding a case must adhere to the law and their own convictions, with the following details: (1) if the applicable law or legislation is clear, judges will only apply those rules (judges function as enforcers of the law); (2) if the law or legislation is unclear or ambiguous, the judge must interpret the law or legislation using interpretation methods recognised in legal science; and (3) if there is a violation or application of the law that contradicts the applicable legislation, the judge may exercise their right to review the law through formal or material review.⁵⁰

Based on this explanation, the theory of judicial independence asserts that judges, in performing their judicial duties, must be free from external influence and have independent authority to interpret the law based on values of justice and social context. In the context of defamation and/or slander cases, this study shows that judges do not always follow the prosecutor's demands, as seen in several cases where the verdict exceeds the demands (significant example: Verdict No. 325/Pid.Sus/2021/PN.Jkt. Brt, a seven-year prison sentence and a fine of IDR 1,000,000,000, while the prosecutor only prosecuted the defendant with ten

45 M. Yahya Harahap, *Kekuasaan Mahkamah Agung Pemeriksaan Kasasi dan Peninjauan Kembali Perkara Perdata* (Sinar Grafika, 2008), 2.

46 Alva Dio Rayfindratama, "Kebebasan Hakim dalam Menjatuhkan Putusan di Pengadilan," *Birokrasi: Jurnal Ilmu Hukum dan Tata Negara* 1, no. 2 (2023): 1–17, <https://doi.org/10.55606/birokrasi.v1i2.409>.

47 *Ibid.*

48 *Ibid.*

49 Barda Nawawi Arief, *Masalah Penegakan Hukum Pidana dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan* (Kencana Prenada Group, 2007) in Alva Dio Rayfindratama, "Kebebasan Hakim dalam Menjatuhkan Putusan di Pengadilan."

50 Priono *et. al.*, "Penerapan Teori Penafsiran Hukum oleh Hakim sebagai Upaya Perlindungan Hukum terhadap Notaris (Studi Atas Putusan Hakim Terhadap Tindak Pidana Pemalsuan Akta Otentik)."

months' imprisonment and a fine of IDR 50,000,000).

This demonstrates that the judge exercised his discretion fully and applied substantive justice, not merely formal justice based on written law. In his decision, the judge also considered social and moral factors, such as the victim's reputation and the impact of the defendant's actions on society, not just legal aspects alone. This is certainly in line with Article 5, paragraph (1) of the Judicial Power Law, which requires judges to explore legal values and a sense of justice within society.

2. Analysis based on the Theory of Punishment

Although there are many opinions about the theory of punishment, most of these theories can be divided into three groups:

- a) The Absolute Theory or Retribution Theory serves as the basis for justifying the imposition of punishment in the form of criminal penalties on offenders. This theory does not take into account the consequences that will arise from the imposition of criminal penalties, either for society or for the criminals themselves.⁵¹ As stated by Immanuel Kant and Ragel, criminal punishment is the result or consequence of committing a crime.⁵² The imposition of punishment in the theory of retribution has two directions: (1) it is aimed at the criminal; and (2) it is aimed at satisfying the vengeance of society. Therefore, the theory of retribution seeks to satisfy the victim, their family, and society as a whole.⁵³
- b) The Theory of Relativity or Theory of Purpose argues that criminal punishment serves as a tool to uphold order (law) in society.⁵⁴ Criminal punishment has three characteristics to achieve the goal of social order: (1) deterrence; (2) rehabilitation; and (3) destruction or incapacitation. In terms of prevention, its preventive nature consists of two types: (1) general prevention, which is punishment imposed on criminals to deter others from committing crimes; and (2) special prevention (*speciale preventive*), which is intended to prevent convicted criminals from reoffending. This also aims to prevent individuals with malicious intent from carrying out their intentions in actual actions.⁵⁵
- c) In Combined Theory, punishment is based on the theories of retribution and purpose. This combination can be divided into two parts: (1) In the first Combined Theory, punishment

51 Adami Chazawi, *Pelajaran Hukum Pidana Bagian I: Stelsel Pidana, Tindak Pidana, Teori-Teori Pemidanaan, dan Batas Berlakunya Hukum Pidana* (PT. RajaGrafindo Persada, 2020), 157–58.

52 Bambang Waluyo, *Penyelesaian Perkara Pidana: Penerapan Keadilan Restoratif dan Transformatif* (Sinar Grafika, 2020), 53.

53 Chazawi, *Pelajaran Hukum Pidana Bagian I: Stelsel Pidana, Tindak Pidana, Teori-Teori Pemidanaan, dan Batas Berlakunya Hukum Pidana*, 158.

54 Chazawi, *Pelajaran Hukum Pidana Bagian I: Stelsel Pidana, Tindak Pidana, Teori-Teori Pemidanaan, dan Batas Berlakunya Hukum Pidana*, 161–62.

55 Chazawi, *Pelajaran Hukum Pidana Bagian I: Stelsel Pidana, Tindak Pidana, Teori-Teori Pemidanaan, dan Batas Berlakunya Hukum Pidana*, 162–66.

is retribution, but it also aims to protect the legal order because the purpose of punishment is to restore and maintain obedience to the law and government. Therefore, punishment is only imposed when there is no other way to maintain legal order;⁵⁶ and (2) in the second Combined Theory, the retributive nature of punishment is not the purpose of punishment, but rather a general characteristic of punishment. Therefore, the purpose of punishment is essentially to protect and maintain social order. This is because the imposition of criminal punishment usually not only satisfies society as a whole, but can also be beneficial in some cases, such as when the convicted person begins to respect the rules or order of society.⁵⁷

Based on the above explanation, this study analyses the following decisions:

- a) Retributive (Absolute or Retaliatory), as seen in the majority of sentences involving imprisonment, even in minor cases, indicates a retributive approach—punishment as retribution for reprehensible acts that attack a person’s honour and dignity. In cases with a significant impact on the victim’s reputation, such as defamation through social media by an individual against a corporation, judges tend to impose severe penalties.
- b) Preventive (Relative or Purposeful) is evident in some rulings where sentencing also appears to be aimed at deterring both the perpetrator and the general public, particularly regarding the misuse of social media. The use of conditional criminal penalties in some rulings indicates that judges also consider the rehabilitation and social reintegration of perpetrators into society (e.g., rulings with probationary sentences for breastfeeding mothers or defendants who show remorse).

Conclusion

This study examines 30 district court verdicts from 2016 to 2021 on cases of insult and/or defamation on the internet media. Based on the findings, it can be concluded that the majority of cases of insult and/or defamation are resolved through the imposition of criminal sanctions in the form of prison sentences. This shows that the repressive legal approach remains the preference in law enforcement against this offence. Judges’ decisions in these cases generally take into account several relevant factors, such as the severity of the speech conveyed, the intention of the perpetrator, and the extent to which the impact of the act is detrimental to the reputation of the victim.

In addition, judges also take into account the individual circumstances of the defendant, including previous criminal records, demeanour during the trial, and attempts to take responsibility for the offence. In some cases, mitigating circumstances, such as a public apology

⁵⁶ Chazawi, *Pelajaran Hukum Pidana Bagian I: Stelsel Pidana, Tindak Pidana, Teori-Teori Pemidanaan, dan Batas Berlakunya Hukum Pidana*, 167.

⁵⁷ Chazawi, *Pelajaran Hukum Pidana Bagian I: Stelsel Pidana, Tindak Pidana, Teori-Teori Pemidanaan, dan Batas Berlakunya Hukum Pidana*, 167–68.

or the defendant's cooperation during the legal process, may be considered. In addition, the prosecutor's charges and the judge's verdict are generally positively correlated, with only one case showing a negative correlation, as it involves an individual in a company.

When analysed based on the theory of judicial independence and the theory of punishment, it can be concluded that judges, in cases of insult and/or defamation analysed in this study, play an active and independent role in balancing positive legal norms with substantive justice, as stated in the theory of judicial independence. Meanwhile, the sentencing in cases of insult and/or defamation analysed in this study reflects a combination of retributive (retaliatory) and preventive (relative or purpose-oriented) approaches, tailored to the social context and characteristics of the perpetrator.

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