

Juridical Analysis of the Judgment of Acquittal from All Lawsuits for Perpetrators of Defamation Through Social Media

Apriyanti Maskur*

Fakulty of Law, Universitas Khairun, Ternate, Indonesia

* Corresponding author: apriyantimaskur@gmail.com

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Abstract: This study aims to examine the suitability of the Judge's considerations in Decision Number 98/Pid.Sus/2020/PN Sos with the trial facts and the implications of Decision Number 98/Pid.Sus/2020/PN Sos. The type of research used is normative legal research which is a research method that focuses on positive legal norms. The data collected in this study include secondary data sources from legal literature with data collection techniques in the form of literature studies of legal materials and then analyzed qualitatively using descriptive methods. The results of the study on Decision Number 98/Pid.Sus/2020/PN Sos can be explained that the Panel of Judges' considerations are basically inappropriate, because Article 49 paragraph (1) of the Criminal Code only covers honor in the sense of the sexual field so that it cannot be used to argue for a defense of honor in the sense of a good name, besides that, the defendant's actions do not fulfill the element of "in the public interest and forced to defend himself" as referred to in Article 310 paragraph (3) of the Criminal Code. This decision has implications for the application of the law in the future, which can be used as a reference for law enforcement officers, both Judges, Prosecutors, or Legal Counsel in handling the same case even though it has not become jurisprudence, but this decision will be used as a reference for law enforcement officers because the decision has permanent legal force. In addition, this decision will also be a reference for the public, in terms of behavioral patterns in using social media, with a tendency to feel free to use social media to attack the legal interests of others, by arguing that their actions are a form of defending public interests or being forced to defend themselves in order to escape the law.

Keywords: Judge's Decision, Crime, Social Media

A. Introduction

Globalization is the basic driving force for the birth of the information and communication technology era. Information and communication technology continues to develop over time, the rapid development is the impact of the increasing human need for information. The use of information and communication technology on the one hand contributes to the improvement of human welfare and civilization, but on the other hand, this progress can be used to commit crimes or acts that are against the law and even attack the legal interests of others. Crimes will automatically adapt to become a new phenomenon as a result of the development of information and communication technology. One type of crime committed through information and communication technology is defamation.



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Defamation according to Article 310 paragraph (1) of the Criminal Code is an act of attacking a person's honor or good name by alleging something, with the intention that it becomes public knowledge. The Criminal Code qualifies this act as a form of insult. Insult in this article means attacking someone's honor and good name, which causes the victim to feel embarrassed. The insult is committed by accusing someone of having committed a certain act with the intention that the accusation will be spread or known to many people.¹

The prohibition of defamation committed with the intermediary of information and communication technology is regulated in Article 27 paragraph (3) of Law Number 11 of 2008 as amended by Law Number 19 of 2016 concerning Electronic Information and Transactions, this provision basically prohibits the act of distributing and/or transmitting and/or making accessible electronic information and/or electronic documents that have insulting content and/or defamation. This provision is further regulated in Article 45 paragraph (3) regarding criminal penalties for anyone who violates the prohibition in Article 27 paragraph (3). Article 45 paragraph (3) stipulates that, "any person who intentionally and without right distributes and/or transmits and/or makes accessible electronic information and/or electronic documents that contain insults and/or defamation as referred to in Article 27 paragraph (3) shall be punished with imprisonment of 4 (four) years and/or a maximum fine of Rp. 750,000,000.00 (seven hundred fifty million rupiah).

As a state of law, various aspects of life are regulated and limited by applicable legal norms, including the use of information and communication technology. Law exists to integrate and coordinate the interests of each individual, so that these interests can go hand in hand. As the main basis in driving every aspect of life, law is also used as a means of social control. The law exists to keep society controlled in a comprehensive pattern of behavior, the unlimited use of information and communication media also provides space for everyone to express everything, but this situation actually makes people's behavior patterns uncontrolled so that they do not hesitate to commit criminal acts with the intermediary of information and communication technology. The case with decision number 98/Pid.Sus/2020/PN Sos handled by the Soasio District Court of Tidore Islands City is one example of the misuse of information and communication technology, the case is an act of defamation through social media that occurred in the city of Tidore Islands. In this case, M. Ramli DG Basso Alias Ucok as the victim felt that his good name was defamed because of Saleh Mansur Alias Ical's statement through his Facebook account.

This case was triggered by the actions of the victim who had previously taken the wages from his work as a worker on a project to install tiles at Madrasah Aliyah, Gurabati Village, Tidore Islands City, through the project treasurer, which exceeded the amount that should have been received without the knowledge of the defendant as the foreman of the project. The victim was also known to have slandered the defendant to other workers by saying that the defendant would not pay them for their work. The victim's actions triggered the defendant's frustration, so the defendant posted a status on his Facebook account saying that the victim had a blind eye for money and was a traitor. As a result of this post, the victim rarely received work calls, even though the money that the victim had previously taken through the project treasurer was used to meet family needs. In addition, the victim had intended to repay the

¹ R. Soesilo, *Kitab Undang-Undang Hukum Pidana Serta Komentar-Komentarnya*, (Bogor: Politiea, 1995), hlm. 226

money in installments, but because he rarely received work calls the victim was unable to repay the money.

The actions of the defendant Saleh Mansur Alias Ical who posted a status on his Facebook account had harmed M. Ramli DG. Basso Alias Ucok as the victim, for these actions the victim made a report for alleged defamation at the Tidore Islands City Police. At the prosecution stage the prosecutor charged the defendant with Article 45 paragraph (3) of Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. In his indictment the prosecutor stated that the defendant intentionally and without right distributed and/or transmitted and/or made accessible electronic information and/or electronic documents that contained insults and/or defamation, on this basis the prosecutor demanded a prison sentence of one month against the defendant. The judge of the Soasio District Court who was authorized to hear the case through decision number 98/Pid.Sus/2020/PN.Sos decided that the defendant Saleh Mansur Alias Ical was proven to have committed the acts charged but not a criminal offense and therefore the defendant was acquitted of all charges.

The judge in the decision stated that the defendant's actions fell under Article 310 paragraph (3) of the Criminal Code which explicitly reads "It does not constitute libel or defamation in writing if the act is clearly carried out in the public interest or out of necessity of self-defense". The actions of the defendant in this case were interpreted by the judge as actions to defend the public interest or self-defense. This self-defense was then constructed by the judge with Article 49 paragraph (1) of the Criminal Code regarding forced defense. This is as stated in the decision which states that, according to the Panel of Judges, the explanation of self-defense must be seen from the construction of Article 49 paragraph (1) of the Criminal Code, namely forced defense. Forced defense must have 4 (four conditions), namely first, there is an instant attack, secondly the attack is unlawful, thirdly defense is a necessity and fourthly defense is carried out in a proper manner, these conditions absolutely must be cumulative in the sense that all must be fulfilled before the act can be said to be a forced defense. The judge in his consideration described the defendant's actions with the conditions of forced defense and then stated that the defendant's actions had met the conditions of forced defense so that the element of self-defense from Article 310 paragraph (3) of the Criminal Code had been fulfilled.

The provision of Article 49 paragraph (1) of the Criminal Code basically explains that defense can only be carried out in the case of defending oneself or others from attacks aimed at the physical or human body, to defend the honor of decency and to defend one's own property or the property of others.² In connection with this, Adami Chazawi explained that the types or fields in which forced defense can be carried out are fields covering the body / physical, honor of decency (sex) and the field of property, outside these fields, forced defense cannot be carried out, for example, good name honor or humiliation.³

Referring to this explanation, the actions of the defendant in this case cannot be qualified as a forced defense because Article 49 paragraph (1) of the Criminal Code does not cover honor in the sense of good name, therefore, the judge in the decision should not have to construct self-defense by the defendant with Article 49 paragraph (1) of the Criminal Code.

² Adami Chazawi, *Pelajaran Hukum Pidana Bagian 2*, (Jakarta: Rajawali Pers, 2016, hlm. 41

³ *Ibid*, hlm. 50

The state has an obligation to provide legal certainty, especially in terms of eradicating an act that is contrary to existing legal norms, one of which is legal certainty for victims of criminal defamation. As one of the law enforcement officials, the judge in deciding a case is very important to pay attention to the demands and other related objects as material considerations in determining a fair court decision for each litigant. One of the Judge's considerations in decision number 98/Pid.Sus/2020/PN.Sos which constructs the defendant's self-defense with forced defense contradicts the meaning of the provisions of Article 49 paragraph (1) of the Criminal Code which states that the honor referred to by the article is honor in the sexual sense, not honor in the sense of good name.

B. Methodology

This research is normative legal research, this type of research is basically limited to document studies that use legal materials in the form of laws and regulations, court decisions / decrees, legal theories and opinions of scholars. The data collected in this research is in the form of secondary data, which is sourced from literature legal materials including the first, primary legal material which in this case is legal material consisting of laws and regulations, official minutes, court decisions and official state documents. The collection of legal materials or secondary data in this research is carried out by literature study of legal materials. The data obtained in this research will be analyzed with qualitative techniques using descriptive methods, in this case the author will describe and explain the data that has previously been obtained clearly and in detail. Furthermore, the author will systematize by describing the data in an orderly and logical manner and then analyze, from secondary legal materials obtained with primary legal materials to find whether there is a gap or not. After being analyzed, the author will draw conclusions using the deductive method, namely drawing conclusions from general facts to specific conclusions.

C. Results and Discussion

Juridical Analysis of the Decision of the Soa Sio District Court Number 98/Pid.Sus/2020/PN Sos

The Panel of Judges of the Soasio District Court through decision number 98/Pid.Sus/2020/PN Sos stated that the actions charged against the defendant were proven legally and convincingly but did not constitute a criminal offense and therefore the defendant was declared free from all charges. The Panel of Judges in their consideration stated that the actions of the defendant were interpreted as an act to defend the public interest or forced self-defense as stated in Article 310 paragraph (3) of the Criminal Code. According to the Panel of Judges, the self-defense referred to in Article 310 paragraph (3) has been fulfilled based on the construction of Article 49 paragraph (1) of the Criminal Code regarding forced defense.

The provision of Article 310 paragraph (3) of the Criminal Code states that, "It does not constitute defamation or written defamation, if the act is clearly committed in the public interest or out of necessity for self-defense". This provision is a provision that negates the punishable nature of the acts formulated in paragraphs (1) and (2) of the article a quo regarding oral defamation and written defamation, in other words, this provision is a special reason for criminal elimination, meaning that the reason for criminal elimination only applies to the crime of defamation. In this regard, the act of defamation, whether oral or written, is not considered as an unlawful act if the act is carried out in defense of the public interest or in self-defense.

The provisions in the Criminal Code in addition to Article 310 paragraph (3) which allows the loss of punishability due to forced self-defense, there is another provision that discusses

almost the same thing, namely in the provisions of Article 49 paragraph (1) which discusses forced defense, this provision basically explains that people who carry out forced defense for themselves or others, honor of decency or property of themselves or others because of an attack or threat of attack will not be punished. The provision regarding forced defense in Article 49 paragraph (1) explains that a person who receives an attack or threat of attack is allowed to make a defense as a form of self-protection even though his actions can harm the legal interests of the attacker. Forced defense must basically fulfill four conditions including:

- 1) There is an instantaneous attack;
- 2) the attack is unlawful;
- 3) defense is a necessity; and
- 4) the manner of defense is proper.⁴

The requirement of forced defense is an absolute condition that must be cumulative, meaning that all conditions must be met before an act can be qualified as a forced defense. This means that forced defense can only be done in circumstances that are truly forced in the sense that there is no possibility or other way that can be done to avoid an attack or threat of attack.

Article 310 paragraph (3) and Article 49 paragraph (1) of the Criminal Code are basically provisions that allow the loss of punishability due to forced self-defense. Based on the author's analysis, there are several differences and similarities between the two provisions. The similarity of the two provisions is that the legal consequences of the two provisions are the same, namely not being convicted, while the differences can be described as follows:

1. The perpetrator of forced defense in Article 49 paragraph (1) is not punished due to the elimination of fault in the perpetrator, so it is an excuse. Meanwhile, the perpetrator is not punished for being forced to defend himself as in Article 310 paragraph (3) is due to the loss of the unlawfulness of the act, so it is an excuse;
2. Article 49 paragraph (1) basically explains that an unlawful attack can only be justified as self-defense if it occurs at that time, while self-defense carried out under Article 310 paragraph (3) does not have to be carried out at that time.

This difference can indirectly explain that the element of forced defense in Article 49 paragraph (1) and the element of forced self-defense in Article 310 paragraph (3) are not the same.

The author disagrees with the actions of the Panel of Judges who constructed Article 310 paragraph (3) with Article 49 paragraph (1), according to the author this should not be done because the construction of Article 49 paragraph (1) is very different from Article 310 paragraph (3). If Article 49 paragraph (1) states that an unlawful act is recognized as having occurred but the act is not punishable due to certain reasons, it is different with Article 310 paragraph (3), which states that "it is not a defamation" if it is done because it is "in the public interest" or "forced to defend oneself", meaning that the defamation is considered to have never occurred if it is done in the public interest or forced to defend oneself. Simply put, Article 49 paragraph (1) focuses on the absence of criminal sanctions but the act is recognized while Article 310 paragraph (3) focuses on the absence of the criminal act of defamation.

Article 49 paragraph (1) of the Criminal Code basically explains that the defense or defense is only carried out against the body, honor, and property belonging to oneself or

⁴ Eddy O.S Hiariej, *Prinsip-Prinsip Hukum Pidana*, (Yogyakarta: Cahaya Atma Pustaka, 2016) hlm. 272

others. Honor that can be defended against unlawful instantaneous attacks according to Article 49 paragraph (1) of the Criminal Code includes honor in the sexual sense, not honor in the sense of good name. This is as described by several experts who provide views regarding the provisions of the article such as Professor Pompe who explains that, the word honor here is the same as that referred to in Article 281 of the Criminal Code which further has the meaning of public according to sex, its meaning is not as broad as the meaning of honor (H.R. January 8, 1917, N.J. 1917 page 175, W. 10066), but from its meaning which is merely physical, because it concerns the problem of not tarnishing the body in the sense of decency.⁵ The Hoge Raad Arrest of January 8, 1917, N.J. 1917 at 175 W. 10066 as described by Professor Pompe earlier states that, "An insult does not constitute an attack on body, honor or property".⁶

Opinions regarding the meaning of honor according to the provisions of Article 49 paragraph (1) are also explained by R. Soesilo, which basically states that defense or defense can only be carried out against the interests referred to in the article including body, honor, and goods of oneself or others, the body in this case is the body, and honor here means honor in the sexual field which can be attacked by indecent or obscene acts, holding parts of the body that cannot be done according to decency so that honor in the sense of a good name is not included in the qualifications of this article, while what is meant by goods is everything that is tangible.⁷

The same thing has also been explained by Adami Chazawi who states that regarding the types or fields of what can be done by forced defense are fields which include, body or physical, honor of decency in this case sex and the field of property, outside the field cannot be done forced defense, for example the honor of good name or insult.⁸

Based on the opinions of these experts, the author concludes that the honor referred to by the provisions of Article 49 paragraph (1) of the Criminal Code only includes honor in the sense of sexual field, in relation to this defense can only be done if there is an instant attack such as sexual abuse or indecent acts which according to decency cannot be done, in this case the victim is allowed to carry out a defense or defense as long as it meets the requirements to protect the legal interests of himself or others. Meanwhile, honor in the sense of good name is not included in the qualifications of the article, so that if there are people who are insulted by others and then insult them again under the pretext of self-defense, they cannot be qualified with this article because the article only covers honor in the sense of sexual field, not good name honor.

The Panel of Judges in its consideration stated that the self-defense of Article 310 paragraph (3) had been fulfilled based on the construction of Article 49 paragraph (1) because the defendant's actions had met the requirements of forced defense. The opinion of the Panel of Judges regarding the requirements of forced defense is based on the opinion of Prof. Eddy O.S. Hiariej in his book *Principles of Criminal Law*. Prof. Eddy O.S. Hiariej outlined four conditions for forced defense as described by the Panel of Judges in the decision. The Panel of Judges in the decision concluded that the actions taken by the defendant had fulfilled the

⁵ P.A.F Lamintang dan Franciscus Theojunior Laminating, *Dasar-Dasar Hukum Pidana*, (Jakarta: Sinar Grafika, 2014), hlm. 496

⁶ *Ibid*, hlm 497

⁷ R. Soesilo, *Op.Cit*, hlm. 65

⁸ Adami Chazawi, *Op.Cit*, hlm 50

requirements of forced defense and therefore had also fulfilled the element of self-defense from Article 310 paragraph (3) so that the defendant must be acquitted of all charges.

The consideration of the Panel of Judges who constructed the act of self-defense with Article 49 paragraph (1) is an inappropriate consideration, in addition to the difference between the two provisions, then Article 49 paragraph (1) which only covers honor in the sense of sexual field as the author described earlier, when viewed from the description of the Judge's consideration regarding the actions of the defendant with the condition of forced defense it is clear that there is no relevance between one another so that it can be said that the Panel of Judges in this case in addition to the act of constructing Article 310 paragraph (3) with Article 49 paragraph (1), the Panel of Judges also incorrectly interpreted the condition of forced defense. The following is an analysis of the reasoning of the Panel of Judges with the requirement of forced defense:

1) Immediate Unlawful Attack

The first and second conditions are qualifying conditions that must be met by the attack. The Panel of Judges in the decision did not correctly interpret the meaning of the first and second conditions of the forced defense. The meaning of attack in Article 49 paragraph (1) of the Criminal Code is defined as a real and continuous attack carried out against the body, dignity or decency, as well as property, while instantaneous means that at the time of seeing the attack and when the defense is carried out there must not be a long time lapse, simply put as soon as there is an attack there is an instant defense, while what is meant by unlawful in the article is defined as an attack that is contrary to or violates the law.⁹

Based on this explanation, the instantaneous attack which, according to the Panel of Judges, occurred when the victim took more money than was due from the project treasurer without the knowledge of the defendant as foreman and then slandered the defendant to other workers by saying that the defendant would not pay for their work can no longer be said to be a form of instantaneous attack, and the defendant's actions in posting a status on his Facebook account cannot be said to be a form of defense because these actions were taken after a long time had passed since the attack. In this regard, the first and second conditions are not met.

2) Defense is a Must

Defense is a necessity meaning that there is no other way to avoid an immediate attack.¹⁰ In their deliberation, the panel of judges stated that the post uploaded by the defendant on his Facebook account did not last long. In addition, the post was uploaded not too long after the deliberation, the victim also did not try to pay off the wages of other workers that had previously been taken through the project treasurer, because he felt that the victim did not respond, the defendant immediately posted a status on his Facebook account with the aim that the victim immediately pay off the wages of other workers that had been taken because if not the other workers would collect their wages from the defendant.

The consideration of the Panel of Judges is not in accordance with the meaning of the requirement that the defense is a necessity. If in its consideration the Panel of Judges had elaborated on what efforts had been made by the defendant to resolve the problem, but these efforts did not find a bright spot, it is possible that the third condition of the defense of necessity

⁹ Eddy O.S Hiariej, *Op.Cit*, hlm. 272

¹⁰ *Ibid*, hlm. 274

would be fulfilled, but the Panel of Judges instead considered the actions of the defendant which basically had nothing to do with the meaning of the third condition.

In addition, according to the author, there were other ways or possibilities that the defendant could have resolved the matter. In this case the defendant felt that his good name had been tarnished because he had been slandered by the victim in front of other workers, and he also felt worried that if the victim did not immediately reimburse the money that had previously been taken from the project treasurer, the other workers would collect their wages from the defendant and assume that what the victim had previously said was true that the defendant would not pay them for their work. According to the author, there were other ways that the defendant could have clarified the truth of the victim's allegations against the defendant in front of all parties present at the meeting that was held before the defendant posted the status on his Facebook account. The defendant's statement to provide an explanation of the victim's allegations would have been more likely to be believed by all parties because the deliberation was also attended by the project treasurer who in this case acted as a witness a de charge who knew the facts that actually occurred between the victim and the defendant. In this regard, the third condition of the defense of necessity is not met because according to the author there are still other ways or possibilities that can be done to avoid an attack.

3) Defense is made by Proper Means

The fourth requirement is closely related to the principles in the reasons for criminal abolition in general including forced defense, the principles referred to in this case include the principle of subsidiarity and the principle of proportionality. The principle of subsidiarity means that there is no other possibility or better way so that the defense must be carried out, while the principle of proportionality means that there must be a balance between the interests protected and the interests violated.¹¹

The Panel of Judges in their consideration elaborated that the defendant had already sought other solutions, namely by deliberating with all parties involved in the project, but the victim did not heed, in addition the defendant had contacted the victim but did not respond, so the defendant became angry and then posted a status on his Facebook account. The consideration of the Panel of Judges in this case is in accordance with the meaning of the principle of subsidiarity, however, as with the previous requirement, according to the author, there are still other ways or possibilities that the defendant can do to avoid being attacked so there is no need to immediately post a status on his Facebook account which indirectly has a major impact on the victim. In its consideration, the Panel of Judges stated that the principle of proportionality had also been fulfilled because the defendant's actions were balanced with the attack carried out by the victim.

Apart from other requirements, according to the author, the proportionality requirement from the consideration of the Panel of Judges is correct because the victim and the defendant both want to maintain the honor of their good names and the attacks committed by both of them are also related to the honor of their respective good names so that the attacks and actions are balanced.

The Panel of Judges in its consideration stated that these conditions must be cumulative in the sense that all conditions must be met before the act can be said to be a

¹¹ *Ibid*

forced defense. However, based on the author's analysis, of the four requirements, only one requirement was met, namely the fourth requirement and even then only the principle of proportionality. In this regard, the actions of the defendant cannot be said to be a form of forced defense so that the self-defense intended by the Panel of Judges must be seen from the construction of Article 49 paragraph (1) is not fulfilled.

The Panel of Judges in its decision stated that the defendant's actions fell under Article 310 paragraph (3) of the Criminal Code. The provisions of Article 310 paragraph (3) basically do not clearly explain what is meant by "in the public interest and forced to defend themselves", in addition there are no laws and regulations that further regulate the elements of public interest and self-defense as to what can make the perpetrator cannot be convicted.

Actions taken in the public interest require carefulness to be truly accounted for and it is stated that the action is the best alternative to be taken. Regarding the sentence "clearly done in the public interest" in the provisions of Article 310 paragraph (3) of the Criminal Code, it is explained by S.R Sianturi that the actor clearly and unequivocally alleges something so that the public is aware of the person mentioned in the defamation.¹²

The Hoge Raad (Dutch Supreme Court) has considered this in a decision dated November 26, 1934 that, "If the publication is in the public interest, the perpetrator must mention it sufficiently, by blaming someone using angry words, the public interest cannot be said to be defended, the reason for the public interest must heed good manners because the use of harsh words even if it is true that the action is carried out in the public interest, the perpetrator will still be guilty of minor insults."¹³

Further provisions regarding the criteria of public interest have been outlined in the Supreme Court Cassation Decision Number 364/K/Pid.Sus/2015. The Supreme Court in this decision rejected the cassation application of the defendant who committed defamation through social media who was charged and prosecuted by the Public Prosecutor with Article 27 paragraph (3) Jo. Article 45 paragraph (3) of the Electronic Information and Transaction Law. The Supreme Court's decision upheld the decisions at the first and appellate levels, which basically stated that the defendant was proven legally and convincingly guilty of committing the crime of intentionally and without the right to distribute electronic information and electronic documents that contained insults and defamation.

The Supreme Court's decision rejected the defendant's appeal for cassation, stating that his actions through social media were a form of social criticism for the public interest. In its reasoning, the Cassation Council stated that the defendant's actions on the social networking site Facebook could not be considered as a form of social control in the public interest because the posts contained insults and defamation against the reporting witness. The Cassation Council in its decision outlined the criteria for public interest, including:

- 1) The capacity of the accused in relation to the object mentioned in his/her post;
- 2) The defendant and the victim did not know each other so there was no personal conflict;
- 3) The defendant's actions were merely a form of protest.

The next reason for the loss of punishability in the provisions of Article 310 paragraph (3) of the Criminal Code is forced self-defense. Regarding the definition of self-defense in Article

¹² Sianturi, *Tindak Pidana di KUHP*, (Jakarta: Alumni AHM-PTM, 1983), hlm. 562

¹³ Marselino Jenli Rantung, dkk, *Tinjauan terhadap Pasal 310 ayat (3) KUHP Sebagai Alasan Penghapusan Pidana Untuk Kepentingan Umum*. hlm. 5

310 paragraph (3) S.R Sianturi provides an explanation that what is meant by self-defense is to avoid a loss that should not be his burden.

Further explanation regarding “defending the public interest and forced self-defense” was also explained by R. Soesilo, defending the public interest according to R. Soesilo is done by showing real mistakes and negligence, harming, or even endangering the public, while forced self-defense is done by the person who is suspected of having committed an act (actually not true) then showing the person who is actually wrong in this case.¹⁴

Based on this explanation, then connected to the case in decision number 98/Pid.Sus/2020/PN Sos, the defendant committed defamation on his Facebook account by saying “Woeeee my cousin is a dark eye who sees money and a traitor”. The author argues that the sentence clearly did not contain any information as a form of appeal to the community to be vigilant towards the victim, instead the defendant used a sentence that was not polite and indirectly his actions had harmed the victim. In addition, the content of the defendant's post did not show a form of self-defense or an action as a form of protest against the victim's actions, for example, the post contained facts that had occurred such as clarification that what the victim had accused him of was slander, but in contrast to this, the defendant actually posted a status that could lead to public opinion that the victim had deliberately stolen money, This can be seen from the comments section of the defendant's post where the defendant stated that the victim had stolen money, when in fact the victim did not take the money secretly but with the knowledge of the project treasurer with the excuse of meeting family needs, however this action was carried out without the knowledge of the defendant as foreman on the project.

Based on this description, the author can explain that the non-punishment of defamation as in Article 310 paragraph (3) is a justification reason, this reason is a reason for the elimination of special punishment, meaning that it only exists in certain offenses, unlike the provisions of Article 49 paragraph (1). According to the author, if the Panel of Judges believes that the defendant's actions fulfill the elements of public interest and self-defense as contained in Article 310 paragraph (3), then the Panel of Judges does not need to construct it again with Article 49 paragraph (1) because Article 310 paragraph (3) has been specifically regulated for the crime of defamation.

Article 310 paragraph (3) and Article 49 paragraph (1) have different constructions as described by the author previously. In addition, the provisions of Article 49 paragraph (1) only cover the defense of honor in the sense of sexual field, not the honor of good name, not to mention the condition of forced defense which according to the Panel of Judges has been fulfilled so that the self-defense of Article 310 paragraph (3) is fulfilled is also inappropriate. According to the author, the actions of the defendant in this case did not fall under Article 310 paragraph (3) of the Criminal Code as stated by the Panel of Judges in their decision, because the contents of the defendant's post did not meet the elements of public interest or forced self-defense as referred to in Article 310 paragraph (3) of the Criminal Code.

Implications of the Application of Decisions Released from All Legal Charges in Decision Number 98/Pid.Sus/2020/PN Sos

Article 1 point 8 of the Criminal Procedure Code basically states that Judges are state judicial officials authorized by law to adjudicate. Furthermore, Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power also implicitly explains the obligation of judges

¹⁴ R. Soesilo, *Op.Cit*, hlm. 227

as a “sense of justice of the people”. This provision basically means that judges as enforcers of law and justice explore, follow and understand the legal values that live in society. Judges in deciding a case are required to be able to analyze and assess the facts revealed in the trial, whether based on witness testimony, experts, letters, instructions, and the testimony of the defendant which are then set out in legal considerations based on legal theories, doctrines and principles. The accuracy of the judge in examining and passing a verdict on a case is not only judged by the accuracy of the application of the law, but it is necessary to pay attention to and understand the sense of justice, truth, and legal values that live and develop in society.

The decision to release the defendant from all charges in the defamation case in decision number 98/Pid.Sus/2020/PN Sos was based on the consideration that the defendant did it on the basis of defending the public interest or being forced to defend himself. As the author has previously described, the author disagrees with the Panel of Judges who qualified the defendant's actions as a form of defending the public interest or even forced to defend himself because the elements of public interest and forced self-defense were not fulfilled. In this regard, the action of the Panel of Judges in acquitting the defendant from all charges will indirectly have implications for the law and also for society.

1. Legal Implications

Decisions are basically part of the law enforcement process which aims to realize legal truth or legal certainty. As one of the law enforcers, judges are tasked with receiving, deciding, and resolving a case submitted to the court. The judge has a large share of the decision that will be taken later, because the decision will be based on the judge's consideration of the facts and evidence at trial and supported by the judge's belief. In relation to this, judges certainly have a central role in imposing court decisions.

According to Djoko Soetono, ideally a judge in making a decision must be able to think scientifically, meaning that he can think logically, and integralistically, systematically, orderly, and needs to pay attention to all aspects so that his decision does not contain errors and defects both in substance and formality. However, in practice, in making a decision a judge is inseparable from errors due to negligence, oversight, inattention, or even lack of thoroughness in making a decision so that the decision does not provide justice for the litigants but can harm one of the litigants, especially in a decision to release from all legal claims as in decision number 98/Pid.Sus/2020/PN Sos.

The decision of the Panel of Judges declaring the defendant free from all legal charges even though the act actually constitutes a criminal offense will have implications for the application of the law in the same case in the future. This decision can later become a reference for law enforcement officials, be it Judges when deciding a similar case, Prosecutors, or even Legal Counsel who will use the decision as a reference to defend their clients at trial in similar cases on the grounds of defending the public interest or forced self-defense. The decision will become a reference for law enforcement officials in the future. Although it has not become a jurisprudence, it does not rule out the possibility that law enforcement officials will make the decision as a reference because the decision has permanent legal force, this will certainly affect the application of the law in the future.

2. Implications for the Community

The act of defamation will certainly have a major impact on the victim regarding his position in society, this can have implications for the honor and good name of the defamed party, even after the defamation case is resolved through the court process it still does not rule

out the possibility of public trust in the defamed party can return to its original state. Everyone has self-respect for his or her honor and good name, even if the public does not judge as they feel. As bad as one's temperament is or even as low as one's social position, including one's economic position, one basically still has dignity/self-respect regarding honor and good name.¹⁵

The defamation committed in case number 98/Pid.Sus/2020/PN Sos can have implications for the honor and good name of the victim in the eyes of the community and this will certainly have an impact on the victim's performance as a laborer. The defendant's actions in posting a status on his Facebook account could lead to the opinion of the community that the victim was dishonest in carrying out his work, such an assessment could occur because of the defendant's words in the comments column of the post uploaded on his Facebook account which basically mentioned the name and origin of the victim and then said that the victim had stolen money, even though the victim's actions in taking money from his work wages exceeding the rate that should have been received were not carried out secretly or in the sense of stealing, the victim actually took the money directly through the project treasurer with the excuse of meeting family needs, but all of this was done without the knowledge of the defendant as foreman. In this regard, this act cannot be said to be stealing. The defendant's actions were certainly detrimental to the victim, as evidenced by the victim's statement which basically stated that as a result of the defendant's postings on his Facebook account, the victim rarely received work calls. This reduced opportunity to receive work calls could be due to the victim's image no longer being good in the eyes of the community so that the victim sus

The actions of the judge who decided the defendant with a verdict of release from all charges on the basis that the actions taken by the defendant were a form of defense, but based on the results of the author's analysis, these actions did in fact constitute an act of insult and / or defamation, which can also have implications for the uncontrolled pattern of public behavior in using social media. This can be used to commit crimes or acts that are against the law and even attack the legal interests of others.

The judge's decision to release the defendant from all legal charges in self-defense can be a boomerang for the community at any time when committing the same crime and then arguing his actions as a form of defense. People will tend to use the advantages of social media to expose everything that can even affect the legal interests of others, for example defamation, then claim that their actions are solely to defend the public interest or to defend themselves.

Law exists to integrate and coordinate the interests of each individual, so that these interests can go hand in hand. As the main basis in driving every aspect of life, law is also used as a means of social control. The law exists to keep society controlled in a comprehensive pattern of behavior, the unlimited use of information and communication media also provides space for everyone to express everything, but this situation actually makes people's behavior patterns uncontrolled so they do not hesitate to commit criminal acts.

The provision of defense in the Criminal Code is based on the fact that the state cannot do much to protect every citizen who can be attacked at any time that can attack their legal interests. An instant unlawful attack creates an emergency law that allows victims to defend themselves. To determine whether an action falls within the scope of self-defense, law

¹⁵ Adami Chazawi dan Ardi Ferdian, *Tindak Pidana Informasi dan Transaksi Elektronik*, (Malang: Media Nusa Creative, 2015), hlm. 78

enforcement officials need to review the chronology of the case one by one by paying attention to the elements of self-defense determined by the law.

Defense emphasizes self-defense carried out by a person when there is an unlawful attack. The Criminal Code provides legal protection against acts of defense carried out by a person as a form of self-defense. Defense in this case cannot be punished because this is a right owned by everyone as a form of resistance to unlawful acts, but not all defenses can be exempted from prosecution. The defense must meet several elements of defense that have been determined by law, and the authority to assess the presence or absence of defense elements of a criminal act is the authority of each sub-system of criminal justice, especially judges. Therefore, judges need to be careful in analyzing and assessing the facts of the trial, to then determine what provisions will be applied to the defendant's guilt so that the decision can provide justice for each litigant.

D. Conclusion

The provisions of Article 310 paragraph (3) and Article 49 paragraph (1) of the Criminal Code basically have different constructions. Article 49 paragraph (1) focuses on the absence of criminal sanctions but the act is recognized, while Article 310 paragraph (3) focuses on the absence of criminal defamation. Article 49 paragraph (1) of the Criminal Code basically only covers provisions regarding defenses made against attacks on honor in the sense of a sexual field not good name honor, someone who commits defamation cannot be said to be an act of self-defense on the basis of Article 49 paragraph (1). In this regard, the Panel of Judges in its consideration did not need to construct Article 310 paragraph (3) with Article 49 paragraph (1) of the Criminal Code. The actions of the defendant in this case basically also do not fall under Article 310 paragraph (3), because the actions of the defendant do not meet the elements of "in the public interest or forced self-defense" as contained in this provision.

Decision Number 98/Pid.Sus/2020/PN Sos which decided that the defendant was released from all charges will have implications for the application of the law in the future, the decision will be used as a reference for law enforcement officials, even though it has not become a jurisprudence, it does not rule out the possibility that the decision will be used as a reference for Judges in making a decision, for Prosecutors, and also for Legal Counsel in an effort to defend their clients in court, this kind of thing will certainly have implications for the application of the law in the same case in the future. The decision of the Panel of Judges will also have implications for the victim, after the case it is very difficult to restore public trust in the victim so that the victim will find it difficult to get a job in the future. This also has implications for the uncontrollable behavior patterns of the community in using social media, this case will become a boomerang for the community. People tend to use social media without limits and it is even possible that it will harm the legal interests of others and then make the decision a reference to postulate their actions as a form of defense.

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