

**THE ACTION OF SHARING CONSUMER REVIEWS ON SOCIAL
MEDIA FROM THE PERSPECTIVE OF THE ELECTRONIC
INFORMATION AND TRANSACTIONS ACT**

THESIS



Arranged by:

MUHAMMAD AMIN KAMASE

18410425

**INTERNATIONAL PROGRAM
UNDERGRADUATE STUDY PROGRAM IN LAW
FACULTY OF LAW
UNIVERSITAS ISLAM INDONESIA
YOGYAKARTA
2022**

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Presented as the Partial Fulfillments of The Requirements to Obtain a Bachelor's

Degree at The Faculty of Law

Universitas Islam Indonesia

Yogyakarta

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ke depan TIM Penguji dalam Ujian Tugas Akhir / Pendaratan
pada tanggal 16 Maret 2021



Yogyakarta, 18 Maret 2023
Dosen Pembimbing Tugas Akhir,


Ayu Izza Elvany, S.H., M.H.

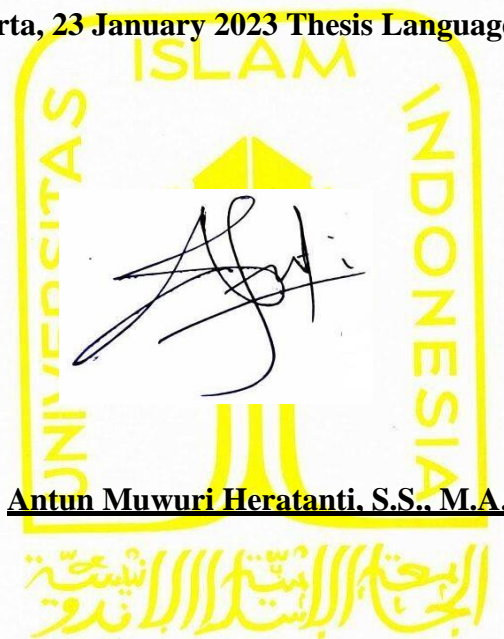
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Yogyakarta, 23 January 2023 Thesis Language Advisor,



Antun Muwuri Heratanti, S.S., M.A.



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Telah Dipertahankan di Hadapan Tim Penguji dalam
Ujian Tugas Akhir / Pendararan
pada tanggal 16 Maret 2021 dan Dinyatakan LULUS



Yogyakarta, 18 Maret 2023

Tim Penguji

1. Ketua : Hanafi Amrani, S.H., M.H., LL.M., Ph.D.
2. Anggota : Mahrus Ali, Dr., S.H., M.H.
3. Anggota : Ayu Izza Elvany, S.H., M.H.

Tanda Tangan



Mengetahui:
Universitas Islam Indonesia
Fakultas Hukum
Dekan,



Prof. Dr. Budi Agus Riswandi, S.H., M.H.
NIK. 014100109

ORIGINALITY STATEMENT PAGE

SURAT PERNYATAAN

ORISINALITAS KARYA TULIS ILMIAH BERUPA TUGAS AKHIR MAHASISWA FAKULTAS HUKUM UNIVERSITAS ISLAM INDONESIA

Bismillahirrahmanirrahim

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Nama : **Muhammad Amin Kamase**

NIM : **18410425**

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Demikian surat pernyataan ini saya buat dengan sebenarnya, dalam kondisi sehat jasmani dan rohani, dengan sadar dan tidak ada tekanan dalam bentuk apapun dan oleh siapapun.

Yogyakarta, 25 Januari 2023

Buat pernyataan,

Lamin Kamase
NIM: 18410425



CURRICULUM VITAE

1. Full Name : Muhammad Amin Kamase
2. Birth Place : Makassar
3. Birth Date : May 10th, 1999
4. Sex : Male
5. Blood Type : B
6. Last Address : Jl. Utama no. 104, Sleman, D.I.
Yogyakarta
7. Original Address : Perumahan Griya Harapan Andi Tonro
Blok F/21, Makassar, 90221
8. Parents Identity
 - a. Fathers' Name : Warsa Kamase
Fathers' Occupation : Enterpriser
 - b. Mothers' Name : Suryani Makkawaru
Mothers' Occupation : Employee
9. Educational Background
 - a. Elementary School : SD Inpres Minasa Upa
 - b. Junior High School : MtsN Model Makassar
 - c. High School : MAS Mu'allimin Muhammadiyah
Yogyakarta
10. Organization :
 1. Secretary of Language Division
PR IPM Mu'allimin
Muhammadiyah Yogyakarta
2017
 2. Head of Language Development
Division F-PALS 2017
11. Hobby(ies) : Singing, Playing Game

Yogyakarta, January 25th 2023
Concerned,


Muhammad Amin Kamase
18410425

MOTTO

‘Ya Allah, buatlah aku menjadi hambamu yang mencintaimu lebih dari aku mencintai makhlukmu, dan buatlah aku mencintai diri sendiri lebih dari cintaku pada orang lain.’



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Finishing this thesis take a long of journey which is not an easy path to pass on. Though it seems impossible, thanks to all the guidance, assistance, and support from everyone, the finish line is possible to be cleared. My deepest gratitude for everyone who gives them all, especially:

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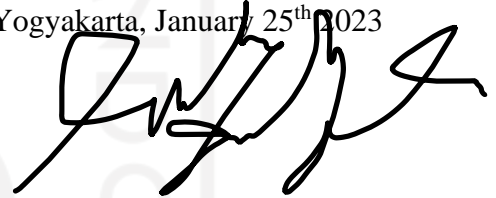
patiently guiding through every process though thousands mistake I made until the thesis is done;

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Last but not least, this thesis is indeed still far from perfection. There are still a lot of holes and so many things could be written better. Due to that condition, any suggestion and recommendation is highly needed in the name of knowledge for the better studies in the future.

Yogyakarta, January 25th 2023



Muhammad Amin Kamase

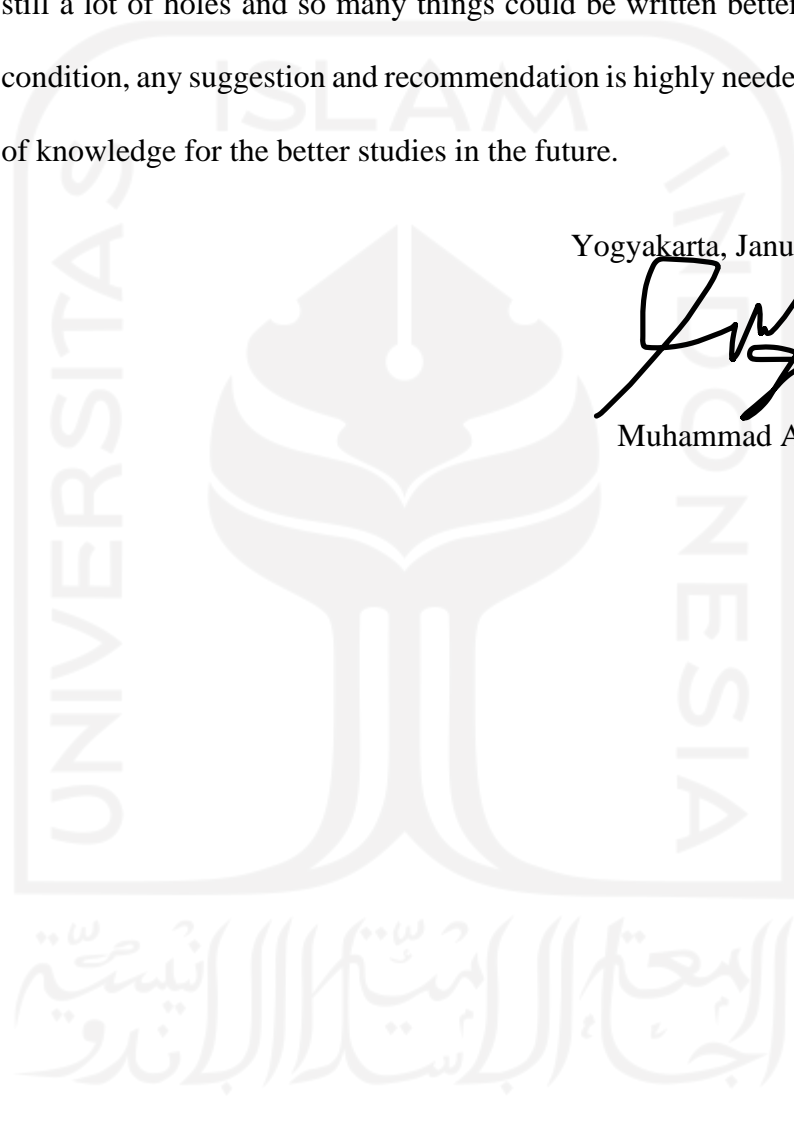


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ABSTRACT

This research is made in purpose to analyse whether or not the action of sharing consumer review on social media could be considered as a crime based on Electronic Information and Transaction Act. The research is done by using statute approach and conceptual approach. The analysis of the research showed that the action of sharing consumer review in social media is a part of consumer rights stipulated in Article 4 Law no. 8/1999 on Consumer Protection. Nonetheless, the action could also be recognized as crimes as stated in Law no. 19/2016 on Electronic Information and Transaction if fulfilling the elements of the crime stated in Article 27 section (3) and Article 28 section (1) of the act and the action is done not based on Consumer Protection Act. Still, elements like 'insult' stated in the article is not in accordance with the Joint Decree of minister of communication and informatics, attorney general, and head of police, no. 229/2021, 154/2021, KB/2/VI/2021. The act is also lacking regarding the material article stipulated in Article 28 paragraph (1) on the consumer loss. In line with that, this research recommends for the Act to be revised so there will be no clash with other legal material.

Keywords: Product Review, Defamation, Consumer Loss, ITE Act.

CHAPTER I

INDTRODUCTION

A. Background

The internet has been one of the most used things in the past few years.¹ This is due to the high accessibility and ease to almost every social event. Everyone can access almost all public information on the internet. Not only to access information but the internet can also be used to spread information. Because of this function, the internet became unseparated from humanity's daily activities.

These past years, including years of the Covid-19, the use of the internet is increasing massively, including in Indonesia.² The restriction from direct contact by governments all around the world made the whole society should still do their living online.³ Thus, many daily activities have become more active online such as education, work, and trade. These circumstances then are being used by the people positively or negatively.

¹ Based on the data by Internet World Stats, 65,6% of the world population are considered as internet users per March 2021. The number exceeds half of the population.

² Published by Badan Pusat Statistik, 'Statistik Telekomunikasi Indonesia', showing that in the year of 2016, the number of internet users in Indonesia increased from 25,37% to 78,18% in 2020.

³ Oswar Mungkasa, 'Bekerja dari Rumah (Working From Home/WFH): Menuju Tatanan Baru Era Pandemi COVID 19', Jurnal Pembangunan: The Indonesian Journal of Development Planning, Vol. 4, No. 2, 2020, pp. 126-150.

The positivity caused by the circumstances is how people use the internet to educate others freely with information or knowledge they have. There are many people sharing their educational content on various platforms. The educational contents are usually shared in the form of videos, writings, and podcasts. The negative impact is the number of cybercrimes that arose in line with the increasing number of the use of the internet.⁴ This circumstance has a big impact on the number of actions done on the internet considered as crime or not. One of the most problematic and controversial is the legal status of the action of product reviewing.

Many cases have been up until this day on this matter. The issue is on the peak when one of beauty drugs reviewers, Dr. Richard Lee, a content creator on TikTok, was reported by Kartika Putri, a distributor of Helwa, a beauty drugs product, to the police.⁵ The case started when Dr. Richard Lee uploaded a content on the ingredients of *Helwa* products and stated that the products contain dangerous ingredients. Kartika Putri then reported Dr. Richard Lee for electronic defamation.

The article used by Kartika Putri, and many others, is Article 27 paragraph (3) of Law of Electronic Information and Transaction. The article

⁴ According to a news article on faculty of Social Science and Political Science of UI official website, Cyber Crime Meningkat Tajam di Masa Pandemi, 2021.

⁵ According news article on Kompas.com, "Kronologi Kasus Dokter Richard Lee-Kartika Putri hingga Munculnya Petisi "Selamatkan Tokoh Penyelamat Kaum Wanita Indonesia", by Nur Rohmi Aida, 2021.

states, ‘Whoever intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain insults and/or defamation.’ Generally, the article is prohibiting the insult and/or defamation done on the Internet, which the word insult and/or defamation themselves are really subjective, making it possibly able to criminalize every word posted online.

Many platforms provide on the internet a chance to make money by posting contents in many forms such as vlog, videos, photos, and so many more.⁶ One of the most popular and viewed contents is product reviewing. Some of the examples of the popular product reviewing creator are *Gadgetin* reviewing electronic products on YouTube, *PewDiePie* reviewing game products on YouTube, and *@foodies* reviewing food products on TikTok.

According to the Law of consumer protection in Indonesia, the consumer has the very right to do a review.⁷ It is stated that the consumer has the right to be listened to on complaint or thought of the product used.⁸ Hence, the law did not really regulate on how and where the complaint should be done, making it too general.⁹ This circumstance leads to the possibility of clashing with the law of Electronic Information and Transaction.

⁶ Most of the content creators make money on these platforms by endorsement.

⁷ Law no. 8/1999 on Consumer Protection, Article 4 letter d.

⁸ *Ibid.*

⁹ There is no explanation in Article 4 about the correct way of complaining or reviewing the products consumed.

The clash may appear on the case above and article 27 paragraph (3) of Act no. 19/2016 on Electronic Information and Transactions. The Article regulates the prohibition of doing defamation electronically. Due to these facts, the controversy then arises among society on whether or not product reviewing could be criminalized. Another clash might appear on article 28 paragraph (1) whereas the review may lead to consumer loss, which is in accordance with the principles used in Consumer Protection Act.

With all of these situations, it is urgent to understand the elements of the actions and the circumstances so the precise understanding could be learned and taken into the consideration on criminalizing the action of product reviewing. There must be any limitation and specific consideration on the way of product reviewing that could or could not be criminalized based on electronic information and transaction law.

Based on all written above, the writer would like to dig up more about the topics, collecting the information and studies, to finally sum up on the limitation of the product reviewing act based on Law on Electronic Information and Transactions, also to find out whether or not it is clashing with Consumer Protection Law, in this research titled: ***'Sharing Consumer Reviews on Social Media from the Perspective of the Electronic Information and Transactions Act'***.

B. Problem Formulation

1. When does the act of sharing consumer reviews on social media be classified as the criminal defamation under the Law on Electronic Information and Transactions?
2. When does the act of sharing customer reviews on social media can be considered as consumer loss under the Law on Electronic Information and Transactions?

C. Research Objectives

1. To understand the perspective of consumer criminal law on the action of sharing consumer review on social media
2. To know when the act of product reviewing on the internet could be considered as defamation based on the Law on Electronic Information and Transaction.

D. Originality of Research

1. Mirza Mar'ali, Priliyani Nugroho Putri, '*Perlindungan Hukum Terhadap Konsumen dalam Melakukan Review Suatu Produk di Media Sosial dari Delik Pencemaran Nama Baik*', 2021. This journal has the same subject which is the act of product reviewing. Nevertheless, the journal is focused on legal protection of consumers, whereas this research will be focused on the relation between the action and the Law of Electronic Information and Transactions.
2. Vanessa Stefanie, Shafira Andiena, Lau FannyLian, '*PERLINDUNGAN KONSUMEN DALAM MEMBERIKAN REVIEW PRODUK YANG JUJUR*

DI MEDIA SOSIAL', 2021. This journal has similarities on the subject of the research, but is more specific, 'honest review'. The subject of this journal will be used in this research as one of the elements to be compared with the Law of Electronic Information and Transaction.

3. Erwin Asmadi, '*RUMUSAN DELIK DAN PEMIDANAAN BAGI TINDAK PIDANA PENCEMARAN NAMA BAIK DI MEDIA SOSIAL*', 2021. The main discussion in this journal, criminalization of defamation on social media, criminal acts used on product reviewing, will be highly considered in this research.

E. Literature Review

1. Overview of Criminal Defamation

The formulation of the law of defamation has a long history as one of law with absurd technicality and complexity.¹⁰ As the development of mass media, the absurdity of the concept of defamation law is acutely exposed.¹¹ It is one-sidedly a heavy burden, especially for the media side, that the plaintiff leads the assumption that the statement by the media about them is untrue, leading to the forward assumption that the statement would ruin the reputation of the plaintiff.¹² This circumstance then being used by the

¹⁰ Thomas Gibbons, '*Defamation Reconsidered*', *Oxford Journal of Legal Studies* Vol. 16, No. 4 (Winter, 1996), pp. 587-615.

¹¹ *Ibid.*

¹² *Ibid.*

government as the tool to control the content of mass media, leading to the abuse of power.¹³

As the circumstances of the media control by the government were concerning, back in September 1999 when lawyers, journalists, human rights advocates, and United Nation representatives gathered in Sri Lanka to develop international standards for defamation law.¹⁴ The international organization, Article 19¹⁵, then formulated the International Standard on Defamation Law.¹⁶

This standard consists of legal principles that have been formulated by the event above. The standards are divided into two standards: defamation law as part of civil law and defamation law as part of criminal law.¹⁷ Even though there are two standards, the principles command that the state which formulating defamation law as part of criminal law should reformulate and substitute it into civil law.¹⁸ This is urgent to prevent the abuse of power by

¹³ Bonnie Docherty, 'Defamation Law: Positive Jurisprudence', Harvard Human Right Journals, vol. 263, 2000.

¹⁴ *Ibid.*

¹⁵ Article 19 (stylised ARTICLE 19) is an international human rights organisation that works to defend and promote freedom of expression and freedom of information worldwide. It was founded in 1987. The organisation takes its name from Article 19 of the Universal Declaration of Human Rights, which states: Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.

¹⁶ Article 19, Defining Defamation Principles on Freedom of Expression and Protection of Reputation, 2000.

¹⁷ *Ibid.*, Section 2 and Section 3.

¹⁸ *Ibid.*, section 2, letter (a).

the upper hand.¹⁹ For the one who still formulate criminal defamation law should fulfil these conditions²⁰:

- 1) no-one should be convicted for criminal defamation unless the party claiming to be defamed proves, beyond a reasonable doubt, the presence of all the elements of the offence, as set out below;
- 2) the offence of criminal defamation shall not be made out unless it has been proven that the impugned statements are false, that they were made with actual knowledge of falsity, or recklessness as to whether or not they were false, and that they were made with a specific intention to cause harm to the party claiming to be defamed;
- 3) public authorities, including police and public prosecutors, should take no part in the initiation or prosecution of criminal defamation cases, regardless of the status of the party claiming to have been defamed, even if he or she is a senior public official;
- 4) prison sentences, suspended prison sentences, suspension of the right to express oneself through any particular form of media, or to practise journalism or any other profession, excessive fines and other harsh criminal penalties should

¹⁹ *Ibid.*, com. principle 4.

²⁰ *Ibid.*, Section 2, letter (b).

never be available as a sanction for breach of defamation laws, no matter how egregious or blatant the defamatory statement.

a. Criminal defamation under the Penal Code

In Indonesia, the general regulation (*lex generalis*) regarding defamation is in the Indonesian Criminal Code which is a legacy from the Dutch colonial era known as *Wetboek van Straafrecht* (WvS)²¹, making it classified as criminal defamation. The Criminal Code has general principles that can be used as the basis for all criminal provisions regulated outside the Indonesian Criminal Code.²² The actions that are considered as defamation in Indonesian Criminal Code²³:

1) Blasphemy (*smaad*)²⁴

Defamation is an act of intentionally attacking someone's honor or reputation by accusing someone of something with the intention of making it known to the public.

2) Written blasphemy (*smaadachrift*)²⁵

²¹ Law Reform, Fifink Praiseda Alviolita, Barda Nawawi Arief, '*Kebijakan Formulasi Tentang Perumusan Tindak Pidana Pencemaran Nama Baik dalam Pembaharuan Hukum Pidana di Indonesia*', Vol. 15, No. 1, 2019.

²² *Ibid.*

²³ Quoted from hukumonline.com, '*Bentuk-Bentuk Pencemaran Nama Baik Menurut KUHP dan UU ITE.*'

²⁴ Indonesian Criminal Code, Article 310 Paragraph (1).

²⁵ *Ibid.*, Article 310 Paragraph (2).

Defamation in the form of blasphemy is carried out with writing or images that are broadcast, displayed or posted in public.

3) slander (*tester*)²⁶

Slander is considered to be one form of defamation, whereas the statement by the defendant is untrue and causes harm to the reputation of the plaintiff.

4) Light insults (*eenvoudige bledkjing*)²⁷

Mild insults can be interpreted as insulting utterances, examples of defamation in the form of minor actions can be in the form of utterances or other insults.

Apart from cursing, minor insults can also take the form of actions, such as spitting in the face, holding the head of an Indonesian, smacking, or acts of mistreatment of a mild or non-violent nature.

5) Complaints of defamation (*lasterajke aanklacht*)²⁸

Complaints of slander can be interpreted as false notification to the authorities in writing about someone so that their honor or good name is attacked.

²⁶ *Ibid.*, Article 311.

²⁷ *Ibid.*, Article 315.

²⁸ *Ibid.*, Article 317

The behavior that can be punished by this crime is people who intentionally submit a false complaint against someone to a state official; and a person who intentionally orders or writes a false complaint against someone to a state authority so that his good name is attacked.

6) Defamatory accusations (*lasterajke verdarhtmaking*)²⁹

A person accused of slander is a person who intentionally commits an act that causes another person to be wrongly involved in a criminal act.

b. Criminal defamation under the Law of Electronic Information and Transaction³⁰

Freedom to express thoughts and freedom of opinion as well as the right to obtain information through the use and utilization of information and communication technology is aimed at advancing public welfare, and educating the nation's life as well as providing a sense of security, justice, and legal certainty for users and Electronic System Operators.

The sense of security for the use of technology and information can be in the form of legal protection from all disturbances of criminal acts, both verbally, visually or that causes physical contact. However, the

²⁹ *Ibid.*, Article 318.

³⁰ Official website of *Mahkamah Agung*, mahkamahagung.go.id, *Aspek Hukum Pencemaran Nama Baik melalui "Facebook"*, Article written by Dr. Riki Perdana Raya Waruwu, S.H., M.H. (Judicial Judge of the MA Law and Public Relations Bureau).

large private area of social network users with minimal standards of prevention is a fact that is not easy to prevent the occurrence of various criminal acts.

Electronic Information and Transaction Law 2008 has stipulated 8 articles of criminal provisions but renewed Law 2016 has amended Article 45 and added Articles 45 A and 45 B, all of which function to ensnare perpetrators of crimes related to Information Technology crimes (Cyber Crime). One of them is Article 45 paragraph (3) UITE 2016:

"Every person who intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents containing insults and/or defamation as referred to in Article 27 paragraph (3) shall be punished with imprisonment a maximum of 4 (four) years and/or a maximum fine of Rp. 750,000,000.00 (seven hundred and fifty million rupiah)".

Changes in the basic elements of the provisions of Article 45 paragraph (1) Electronic Information and Transaction Law 2008 to Article 45 paragraph (3) Renewed Law 2016 related to insult/defamation is the length of punishment reduced from a maximum imprisonment of 6 (six) years to 4 (four) years while a fine from 1 billion to 750 million. As for the impact of the reduced criminal threat, the suspect/defendant cannot be detained by investigators, public prosecutors or judges.

In addition, there is a change in the explanation of the provisions of Article 27 Electronic Information and Transaction Law 2008 which was previously written "clear" later in the explanation of Article 27 Renewed Law 2016 to *"The provisions in this paragraph refer to the provisions*

for defamation and/or slander as regulated in the Criminal Code". This further clarifies the meaning of defamation and/or slander as regulated in the Criminal Code and changes the nature of the offense.

2. Overview of Consumer Protection

a. The definition of consumer protection

Based on the Consumer Protection Law, Consumer protection is all efforts that guarantee legal certainty to provide protection to consumers.³¹ The definition of consumer protection law is also provided by several experts:

1) Aziz Nasution stated that consumer protection law is part of consumer law which contains principles or rules that are regulating and contain properties that protect the interests of consumers, while consumer law is a law that regulates relationships and problems between various parties related to goods or consumer services. The consumer protection law that applies in Indonesia has a legal basis that has been set by the government.

2) According to Mochtar Kusumaatmadja, the definition of Consumer Protection is the entirety of the principles and rules of law governing the relationship and problems between various parties with one another, and relating to consumer goods or services in the association of human life.

³¹ Consumer Protection Law, Article 1, number 1.

Based on all the definition above, consumer protection is protection provided to protect the interest of consumers using regulation and law related as a tool to maintain legal certainty of both parties.

b. The rights and obligation of consumers

1) Rights of consumers³²

- a) the right to comfort, security and safety in consume goods and/or services;
- b) the right to choose goods and/or services and to obtain such goods and/or services in accordance with the exchange rate and the promised conditions and guarantees;
- c) the right to correct, clear and honest information regarding the conditions and guarantees of goods and/or services;
- d) the right to have their opinions and complaints heard on the goods and/or services used;
- e) the right to obtain proper advocacy, protection, and efforts to resolve consumer protection disputes;
- f) the right to receive consumer guidance and education;
- g) the right to be treated or served correctly and honestly and not discriminatory;
- h) the right to obtain compensation, compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or not properly;

³² *Ibid.*, Article 4.

- i) the rights regulated in the provisions of other laws and regulations.
- 2) Obligations of consumers³³
 - a) read or follow information instructions and procedures for the use or utilization of goods and/or services, for security and safety;
 - b) have good faith in making transactions for the purchase of goods and/or services;
 - c) pay according to the agreed exchange rate;
 - d) follow efforts to settle consumer protection disputes properly.

F. Operational Definition

1. Product Reviews

Product review is all the action that is considered as giving a critique, advices, comments, and/or opinion on any legal products in any market.

2. Criminal Defamation

Criminal defamation is a criminal act of defaming the reputation, honour, and/or fame of any person and/or legal body.

3. Consumer Protection

Consumer protection is every regulation made in purpose of protecting the rights of the consumers.

4. Electronic Information and Transaction

³³ *Ibid.*, Article 5.

Electronic Information and Transaction is every information or transaction available on any platform on the Internet.

G. Method of Research

1. Type of Research

This research is normative legal research a process to find a rule of law, legal principles, and legal doctrines in order to answer the legal issues carried on the research.

2. Research Object

- 1) Sharing consumer reviews on social media based on the Law on Electronic Information and Transaction
- 2) Consumer Protection perspective regarding the act of sharing customer reviews on social media

3. Approach Method

This research is using statutory approach which is carried out by reviewing all laws and regulations related to the legal issues on the matter. This research is also using conceptual approach which provide an analytical point of view of problem solving in legal research seen from the aspects of the legal concepts behind it, or even can be seen from the values contained in the norms.

4. The Source of Data

The data used in the writing of this thesis consists of:

1. Primary Legal Materials, namely regulatory documents that are binding and stipulated by the competent authority.³⁴ In this thesis, primary legal materials are obtained through the KUHP, Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions, Law No.8 of 1999 concerning consumer protection, and international treaties relating to either consumer protection and defamation law.
2. Secondary Law Materials, basic principles of legal science and classical views of highly qualified scholars, in addition to textbooks, secondary legal materials can be in the form of writings on law either in the form of literature or journals.
3. Tertiary legal materials, namely documents containing concepts and information that support primary legal materials and secondary legal materials such as dictionaries, encyclopedias relevant to this thesis, official website of: International organizations, government bodies, and highly trusted news companies.

5. Data Compile Methods

a. Literatures Studies

Literatures studies is done by collecting literatures that have relevance and are in accordance with what is needed to support the research.

b. Documents Studies

³⁴ Prasetyo, T., '*PENELITIAN HUKUM, Suatu Perspektif Teori Keadilan Bermartabat*', Bandung: Nusamedia, 2018.

Documents studies rely on documents as a source of data to support research. Examples of documents used can be in the form of written sources, films, pictures and photographs.

6. Data Analysis Method

Primary data and secondary data that have been systematically compiled are analysed using deductive and inductive methods. The deductive method is carried out by reading, interpreting and comparing, while the inductive method is carried out by translating various sources related to the topic of this thesis, in order to obtain conclusions that are in accordance with the research objectives that have been formulated.

H. Writing Framework

This research is divided into 5 parts with writing framework as follows:

1. Chapter I: Opening

Introduction is the part that explains the background problem, formulation of the problem taken, purpose and use of research and writing framework.

2. Chapter II: Literature review

Literature Review is a section that explains the theoretical basis related to the research and the things that might be the driving factor.

3. Chapter III: Result and Discussion

Result and discussion chapter is the result of the analysis on the data collected. The result then arranged properly to build up a good foundation of discussion and proper conclusion could be taken.

4. Chapter IV: Closure

The closure consists of the conclusion of the research and recommendation to the parties who need it.



CHAPTER II

CRIMINAL DEFAMATION, CONSUMER PROTECTION, AND DEFAMATION AND FRAUD IN THE PERSPECTIVE OF ISLAMIC LAW

A. Criminal Defamation

1. General Study of Defamation

Criminal defamation is the action of defamation where the elements of the conduct is recognized as crime and regulated under criminal code. This liability is charged in accordance with the criminal element that has been reviewed in terms of the conditions of criminal liability, so that perpetrators of criminal acts of defamation can be held accountable for their actions as decided in court.³⁵

Terminologically, defamation comes from *diffamacion* and directly from Medieval Latin *deffamation*. It was then being used as *Defamacioun* in the 1300 century, which basically means ‘disgrace’, ‘dishonor’, and ‘ill repute’. The word defamation means the action of damaging the reputation of a person or group by saying or writing bad things about them that are not true.³⁶ It is a noun version of the verb ‘defame’, which means to damage the

³⁵ Mauludi, S., ‘*Seri Cerdas Hukum: Awas Hoax! Cerdas Menghadapi Pencemaran Nama Baik, Ujaran Kebencian & Hoax.*’ Jakarta: PT. Elex Media Komputindo, 2018.

³⁶ See: defamation, Cambridge Dictionary, dictionary.cambridge.org

reputation of a person or group by saying or writing bad things about them that are not true.³⁷

In Tort Law, a communication is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.³⁸ Defamatory matter may include statements that would subject one to hatred, ridicule, obloquy, or contempt, or to statements which would reflect negatively on one's reputation for morality, integrity, or honesty, or to matter which tends to negatively affect one's financial status or standing in the community.³⁹

In Indonesia, the word 'defamation' is not popular in terms of word use. The closest words on the word 'defamation' are '*fitnah*' and '*penistaan*', which is what the translation would give in translating the word 'defamation' into Bahasa Indonesia. *Fitnah* means lies or without truth that is spread with the intention of discrediting people (such as tarnishing the good name, harming the honor of people)⁴⁰, while *penistaan* means process, method, act of blasphemy.⁴¹ Though, the directly absorbed word of 'defamation', '*defamasi*', also exists in Bahasa Indonesia. The word

³⁷ See: defame, *Ibid.*

³⁸ Restatement (Second) of Torts § 559 (1977).

³⁹ *Ibid.*, comm. b.

⁴⁰ See: *firnah*, KBBI.

⁴¹ See: *penistaan*, *Ibid.*

'defamasi' is rarely used, and rather than using the phrase 'defamasi', the academic documents use the phrase 'pencemaran nama baik' instead. This is due to In Indonesia, the term defamation offense is not a juridical term (legal term) because it is not explicitly mentioned in the Criminal Code, but is a term that has developed in the academic world (academic term) and society (social term).⁴²

2. Electronic Information and Transaction Law and Defamation

Freedom to express thoughts and freedom of opinion as well as the right to obtain information through the use and utilization of information and communication technology is aimed at advancing public welfare, and educating the nation's life as well as providing a sense of security, justice, and legal certainty for users and Electronic System Operators.

The sense of security for the use of technology and information can be in the form of legal protection from all disturbances of criminal acts, both verbally, visually or that causes physical contact. However, the large private area of social network users with minimal standards of prevention is a fact that is not easy to prevent the occurrence of various criminal acts.

globalization of information has placed Indonesia as part of the world's information society so that it requires the establishment of regulations regarding the management of Information and Electronic Transactions at the national level so that the development of Information

⁴² Pandecta, Ari Wibowo, 'Kebijakan Kriminalisasi Delik Pencemaran Nama Baik di Indonesia', Vol. 7, No. 1, 2012.

Technology can be carried out optimally, evenly, and spread to all levels of society in order to educate the nation's life.⁴³ The rapid development and progress of Information Technology has led to changes in the activities of human life in various fields which have directly influenced the birth of new forms of legal action. the use and utilization of Information Technology must continue to be developed to maintain, maintain, and strengthen national unity and integrity based on laws and regulations for the national interest. the government needs to support the development of Information Technology through legal infrastructure and regulations so that the use of Information Technology is carried out safely to prevent its misuse by taking into account the religious and socio-cultural values of the Indonesian people. Based on urgencies above, Electronic Information and Transaction Law then be made.

The Electronic Information and Transaction is made considering several legal principles.⁴⁴ The principles used are the principles of legal certainty, benefits, prudence, good faith, and freedom to choose technology or technology neutrality. Ideally, all the principles are implemented precisely into all the chapters on the chapters of the act. To comprehend accurately, the definition on the principles shall be provided.

- 1) Legal certainty is part of the legal objectives adopted by most countries in the world, especially in European countries that adhere

⁴³ Consideration of Law no.11/2008 on Electronic Information and Transaction.

⁴⁴ *Ibid.*, article 3.

to the civil law legal system, including Indonesia.⁴⁵ In the explanation article, the law stated that "Principle of legal certainty" means the legal basis for the use of Information Technology and Electronic Transactions as well as everything that supports its implementation which obtains legal recognition inside and outside the court.⁴⁶

According to Sudikno Mertokusumo, legal certainty is a guarantee that the law can be implemented properly. Of course, legal certainty has become an inseparable part and is a priority for written legal norms. This is because certainty is one of the objectives of the law. This legal certainty becomes the regularity of society is closely related to the certainty itself because the sense of order will cause a person to live with certainty in carrying out the activities needed in carrying out the activities of community life itself. Law without the value of certainty will lose its meaning because it can no longer be used as a guide for behaviour for everyone. This is in line with the said *Ubi ius incertum, ibi ius nullum*, which means that where there is no legal certainty, there is no law.⁴⁷

⁴⁵ Fathor Rahman, 'Perbandingan Tujuan Hukum di Indonesia, Jepang Dan Islam', *Khazanah Hukum*, Vol. 2, No.1, 2020, p.35.

⁴⁶ Explanation of article 3, Electronic Information and Transaction Law.

⁴⁷ Muammar Alay Idrus, 'Keabsahan, Kepastian Hukum dan Perlindungan Hukum atas Perwakafan yang Tidak Tercatat (Case Study on Practice of Land Endowment in Sukamulia District)', *Journal IUS* Vol. V, No.1, April 2017, p.34

- 2) "The principle of benefit" means the principle for the use of Information Technology and Electronic Transactions to support the information process so that it can improve the welfare of the community.
- 3) "Principle of prudence" means the basis for the party concerned to pay attention to all aspects that have the potential to cause harm, both for himself and for other parties in the use of Information Technology and Electronic Transactions.
- 4) "Principle of good faith" means the principle used by the parties in conducting Electronic Transactions that are not intended to intentionally and without rights or against the law cause harm to other parties without the knowledge of the other party.
- 5) "The principle of freedom of choice of technology or neutrality of technology" means the principle of using Information Technology and Electronic Transactions is not focused on the use of certain technologies so that they can follow developments in the future.

Electronic Information and Transaction Law implemented *leer van het gevolg*⁴⁸ as the *locus delicti*. It is as stated in article 2 of the law, which sounds like follow:

‘This Law applies to any Person who commits a legal act as regulated in this Law, both within the jurisdiction of Indonesia and outside

⁴⁸ A theory stated that the law is applicable to a crime based on where the effect of the crime arose.

the jurisdiction of Indonesia, which has legal consequences within the jurisdiction of Indonesia and/or outside the jurisdiction of Indonesia and harm Indonesia's interests.'

Based on the choice of words, any person who commit any prohibited action regulated within the law is potentially to be processed in Indonesian state court.

Electronic Information and Transaction Law 2008 has stipulated 8 articles of criminal provisions but renewed Law 2016 has amended Article 45 and added Articles 45 A and 45 B, all of which function to ensnare perpetrators of crimes related to Information Technology crimes (Cyber Crime). One of them is Article 45 paragraph (3) UUIITE 2016:

"Every person who intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents containing insults and/or defamation as referred to in Article 27 paragraph (3) shall be punished with imprisonment a maximum of 4 (four) years and/or a maximum fine of Rp. 750,000,000.00 (seven hundred and fifty million rupiah)".

Changes in the basic elements of the provisions of Article 45 paragraph (1) Electronic Information and Transaction Law 2008 to Article 45 paragraph (3) Renewed Law 2016 related to insult/defamation is the length of punishment reduced from a maximum imprisonment of 6 (six) years to 4 (four) years while a fine from 1 billion to 750 million. As for the impact of the reduced criminal threat, the suspect/defendant cannot be detained by investigators, public prosecutors or judges.

In addition, there is a change in the explanation of the provisions of Article 27 Electronic Information and Transaction Law 2008 which was

previously written "*cukup jelas*" later in the explanation of Article 27 Renewed Law 2016 to "*The provisions in this paragraph refer to the provisions for defamation and/or slander as stipulated in the Criminal Code*". This further clarifies the meaning of defamation and/or slander as regulated in the Criminal Code and changes the nature of the offense.

With this addition of explanation article, the relationship between both laws then arose, which is *lex specialis* towards *lex generalis*, whereas article 27 of Electronic Information and Transaction Law as the *lex specialis*, and Article 310-318 of Indonesian Criminal Code as the *lex generalis*. The differences between both laws are located in only 1 element, whereas the defamation stated in the Electronic Information and Transaction is the one done virtually, while the defamation stated within the Indonesian Criminal Code is done in reality.

Regardless of many forms of defamation stated in Indonesian Criminal Code, which each type has different type of punishment, the one that is done virtually will be included into one definition of defamation stated in the Electronic Information and Transaction Law, whereas it only has one type of punishment. For example, article 310 paragraph (1) stipulated the punishment of the perpetrator for 9 months imprisonment, but if the defamation is done with image, the imprisonment duration increased to 1 year. Nonetheless, if either type of defamation done by perpetrator online, there will be no differences of punishment because of the

formulation of the articles inside the Law of Electronic Information and Transaction.

B. Consumer Protection

1. Consumer, Business Actor, and Consumer Review

a. Definition of Consumer

Consumers in the general sense are users of goods and/or services for certain purposes.⁴⁹ Hondius, an expert in consumer stated that legal experts generally agree to define consumers as users, the final users of goods and services (*uiteindelijke gebruiker van goederen en diensten*). With that formulation, Hondius wants to differentiate between non-end-user consumers (intermediate users) and final-user consumers.⁵⁰ In the United States, the definition of consumer includes 'victims of defective products,' which includes not only buyers, but also victims who are not buyers but users, even victims who are not users receive the same protection as buyers.⁵¹

In his book. Az. Nasution gives borders about consumer, which are:⁵²

- 1) Consumers are people who get goods or services used for certain purposes.

⁴⁹ A.Z. Nasution, *'Perlindungan Hukum Konsumen, Tinjauan Singkat UU No.8 Tahun 1999-LN 1999 No. 42*

⁵⁰ Abdulhakim Barkatullah, *'Hak-Hak Konsumen'*, Jakarta: Nusa Media, 2010.

⁵¹ Ahmad Miru, *et al.*, *'Hukum Perlindungan Konsumen'*, Jakarta: Grassindo, 2006.

⁵² Az. Nasution, *Op.Cit.*

- 2) Intermediate consumer is anyone who obtains goods and/or services to be used for the purpose of making other goods/services or for trading.
- 3) The final consumer is every natural person who obtains and uses goods and/or services for the purpose of fulfilling their personal, family and/or household needs and not for re-trading.

In Indonesian Law, consumer is authentically stated within Consumer Protection Act, which is defined as every person who uses goods and or services available in the community, both for the benefit of himself, his family, other people, and other living creatures and not for trading.⁵³

b. Definition of Business Actor

A Business Actor is defined as an entity that performs behaviour in an organisation such as business processes or functions. Typically, a Business Actor performs the behaviour assigned to one or more Business Roles. Based on Indonesian Consumer Protection Act, Business actor is any individual or business entity, whether in the form of a legal entity or not a legal entity established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either alone or jointly through agreements to carry out business activities in various economic fields.⁵⁴

c. Definition of Consumer Review

⁵³ Law no.9/1999 on Consumer Protection, Article 1, paragraph (2).

⁵⁴ Article 1 no. 3, Indonesian Consumer Protection Act.

In simple way, consumer review is the review made by consumer after tasting or experiencing a product. Product is good or service that are made and added to their use or value in the production process and become the final product of the production process.⁵⁵ In the Law of Consumer Protection, both goods and services are defined specifically.⁵⁶ According to the law, goods are every object, both tangible and intangible, whether movable or immovable, consumable or non-expendable, which can be traded, used, used, or utilized by consumers.⁵⁷ While services are any service in the form of work or achievements provided to the public to be utilized by consumers.⁵⁸

Product reviews are reviews given by customers on the product.⁵⁹ The indicator of product review is based on:⁶⁰

- 1) Awareness;
- 2) Frequency;
- 3) Comparison; and
- 4) Effect.

⁵⁵ See: *Kamus Besar Bahasa Indonesia*.

⁵⁶ Law no. 8/1999 on Consumer Protection, Article 1.

⁵⁷ *Ibid.*, number 4.

⁵⁸ *Ibid.*, number 5.

⁵⁹ Nurul, M., Soewarno, N., & Isnalita, I, 'Pengaruh Jumlah Pengunjung, Ulasan Produk, Reputasi Toko Dan Status Gold Badge pada Penjualan Dalam Tokopedia', E-Jurnal Akuntansi, Vol. 28, No.3, 2019.

⁶⁰ Sudjarmika, 'Pengaruh harga, ulasan produk, kemudahan, dan keamanan terhadap keputusan pembelian secara online di Tokopedia. com.' AGORA, Vol.5, No.1, 2017.

Ideally, Reviews should contain pictures that reflect the actual quality of the products such as colour matters, inconsistent specifications, usage problems, or high quality, and a good experience.⁶¹ This is the reason why product review affects the interest of the prospective consumers. The product review could be seen as a double-edged sword. It might attract more consumers if the product has good reviews, but it might also damage the sales if the product reviews are bad. Based on the definitions of product and product reviewing, the bigger image on product review on the internet could be seen more vividly.

Online Activity means online forms of communication including email, text, online files, pictures, videos and in the matter, social media, that can be shared via websites, apps, and/or through social networking platforms. Based on the definition, the action of product review on the internet could also be considered as one of online activities. This action is well-known as Online Customer Review (OCR).

OCR is a form of Words of Mouth Communication in e-commerce, where the prospective consumers are able to gain information about the product without the need to see the product directly. Due to the ease of seeing reviews online, the prospective

⁶¹ Khafidatul Ilmiyah, Indra Krishernawan, 'PENGARUH ULASAN PRODUK, KEMUDAHAN, KEPERCAYAAN, DAN HARGA TERHADAP KEPUTUSAN PEMBELIAN PADA MARKETPLACE SHOPEE DI MOJOKERTO', *Maker: Jurnal Manajemen*, Vol. 6, No. 1, June 2019.

consumers are able to analyse the product review indicator quickly, without the need to directly surveys to the business actors.

OCR can contain information about positive or negative things about the product, and/or producer, and/or business actor, which is made by consumers online. The results show that the suggestions given by consumers who have used the product through the provision of information about the product become one of the valuable evaluations for decision making by prospective consumers.

2. Consumer Protection Law

General idea of consumer protection law started when the idea of basic rights is stated by American President, J.F. Kennedy, in front of congress held in March 15th, 1962.⁶² The basic rights stated are:

- 1) right to get security;
- 2) rights to vote;
- 3) right to get information; and
- 4) right to be heard.

Beside J.F. Kennedy, the idea of basic rights for consumer is also made by International Organization of Consumers Union (IOCU).⁶³ The rights stated by IOCU includes:

⁶² Fajar Nugroho Handayani, et al. '*HUKUM PERLINDUNGAN KONSUMEN*', Yogyakarta: Bintang Pustaka Madani, 2021

⁶³ Wirjono Prodjodikoro, '*Asas-asas Hukum Perjanjian*', Bandung: Mandar Maju, 2011.

- 1) right to get life necessity;
- 2) right to get compensation;
- 3) right to get consumer education; and
- 4) right to get healthy life environment.

Back in the April of 1985, when the United Nations General Assembly, taking into account the legislation of the EEC on the consumer right, adopted the Guiding Principles on the consumer right protection, as a ground for elaborating the policy and the legislation in this sphere by the governments. In the UN's Assembly's Resolution, called "The guiding principles in the consumer right protection," eight basic rights of the consumer are highlighted: Right to Choice, Right to Safety, Right to be Heard, Right to Information, Right to consumer education, Right to satisfy the basic needs, Right to Quality, Right to Redress.⁶⁴

In Indonesia, the consumer protection law is stipulated by Law no. 8/1999 on Consumer Protection. With the same idea of giving rights as stated above, Indonesian Consumer Protection Act provides rights and obligations to both parties to give legal protection. The rights and the obligations given to both parties are urgent to increase the dignity of consumers, it is necessary to increase awareness, knowledge, care, ability and independence of consumers to protect themselves and to develop the

⁶⁴ Elena Anatolyevna Kirillova, *et al.*, 'The principles of the Consumer Right Protection in Electronic Trade: A Comparative Law Analysis', *International Journal of Economics and Financial Issues*, 2016, 6(S2), 117-122.

attitude of responsible business actors. The law is made to achieve a balance in protecting the interests of consumers and business actors so as to create a healthy economy.

Indonesian Consumer Protection Act is based on five legal principles, which is stated in article 2. The principles are⁶⁵:

- 1) The principle of benefit, intended to mandate that all efforts in the implementation of consumer protection must provide the maximum benefit to the interests of consumers and business actors as a whole.
- 2) The principle of justice, intended so that the participation of all people can be realized maximally and provide opportunities for consumers and business actors to obtain their rights and carry out their obligations fairly. In a piece called 'Theory of Justice', a work John Rawls, one of famous American moral, legal, and political philosopher in the liberal tradition, justice is stated as the main virtue in social institution as how righteousness in the system of thought.

It is stated that justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise, laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust.⁶⁶

⁶⁵ Explanation article of article 2, Indonesian Consumer Protection Act.

⁶⁶ Uzair Fauzan, et al. 'A Theory of Justice, John Rawls, *Teori Keadilan, Terjemahan dalam Bahasa Indonesia*', Yogyakarta: Pustaka Pelajar, 2011.

- 3) The principle of balance, intended to provide a balance between the interests of consumers, business actors, and the government in a material or spiritual sense.
- 4) The principle of consumer safety and security, intended to provide guarantees for security and safety to consumers in the use, use and utilization of goods and/or services consumed or used.
- 5) The principle of legal certainty, intended so that both business actors and consumers obey the law and obtain justice in the implementation of consumer protection, and the state guarantees legal certainty.

Thus, all of the legal protections provided by Indonesian Consumer Protection Act is based on those principles stated above.

The rights and obligation stipulated by the Indonesian Consumer Protection Act is meant to be given to consumer and business actor. Both parties should respect each other rights and obligation so the balance which is meant to be reached by the law is achieved. The rights and obligations of both parties are stated as follows:

a. Rights of Consumers

Rights of consumers are stated in article 4 of Indonesian Consumer Protection Act, which are:

- 1) The right to comfort, security, and safety in consuming goods and/or services;

- 2) The right to choose goods and/or services and to obtain such goods and/or services in accordance with the exchange rate and the promised conditions and guarantees;
- 3) The right to correct, clear and honest information regarding the conditions and guarantees of goods and/or services;
- 4) The right to have their opinions and complaints heard on the goods and/or services used;
- 5) The right to obtain proper advocacy, protection, and efforts to resolve consumer protection disputes;
- 6) The right to receive consumer guidance and education;
- 7) The right to be treated or served correctly and honestly and not discriminatory;
- 8) The right to obtain compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or not properly; and
- 9) Rights regulated in the provisions of other laws and regulations.

b. The Obligations of Consumers

The obligations of consumers are stated in article 5 of the Indonesian Consumer Protection Act, which are:

- 1) Read or follow informational instructions and procedures;
- 2) The use or utilization of goods and/or services, for the sake of security and safety;

- 3) Have good faith in making transactions for the purchase of goods and/or services;
- 4) Pay according to the agreed exchange rate;
- 5) Follow the legal efforts to settle consumer protection disputes properly.

c. **The Rights of Business Actors**

The Rights of business actors are stated in article 6 of the Indonesian Consumer Protection Act, which are:

- 1) The right to receive payments in accordance with the agreement regarding the conditions and exchange rates of traded goods and/or services;
- 2) The right to obtain legal protection from consumer actions with bad intentions;
- 3) The right to conduct appropriate self-defense in the legal settlement of consumer disputes;
- 4) The right to rehabilitate reputation if it is legally proven that consumer losses are not caused by traded goods and/or services;
- 5) Rights regulated in the provisions of other laws and regulations.

d. **The Obligations of Business Actor**

The obligations of business actor are stated in article 7 of the Indonesian Consumer Protection Act, which are:

- 1) Have good intentions in carrying out their business activities;

- 2) Provide correct, clear and honest information regarding the condition and guarantee of goods and/or services as well as provide an explanation of the use, repair and maintenance;
- 3) Treat or serve consumers correctly and honestly and non-discriminatory;
- 4) Guarantee the quality of goods and/or services produced and/or traded based on the provisions of the applicable quality standards of goods and/or services;
- 5) Provide opportunities for consumers to test, and/or try certain goods and/or services as well as provide guarantees and/or guarantees for goods manufactured and/or traded;
- 6) Provide compensation, compensation and/or compensation for losses resulting from the use, use and utilization of traded goods and/or services;
- 7) Provide compensation, compensation and/or replacement if the goods and/or services received or utilized are not in accordance with the agreement.

Beside the rights and obligation of both parties, in order to protect the rights of the consumers, as a party with less power compared to the business actor, the Indonesian Consumer Protection Act also provide the criminalization of business actor. This is in accordance with article 19 which states that even though the consumer has already got the compensation by the business actor, the consumer still has the right to report the business

actor to the police as an offense if there is further proof of the element of error. This is directly related to the article 45 of the law, which states:

‘Every consumer who is harmed can sue business actors through institutions tasked with resolving disputes between consumers and business actors or through courts within the general court environment.’

Based on the law, business actors’ action can be considered as offense if any of consumers’ right or business actor’s obligation is violated. This is then formulated into specific offense, which is found in the article 62, where the act gives punishments according to which type of offenses done by the business actors.

3. Criminal Law in Consumer Protection

Consumer protection law and criminal law have both received considerable analysis from academic lawyers.⁶⁷ The role of legal intervention to protect the consumer has come in for scrutiny in many seminal works, many of which concentrate upon the role of consumer law in the marketplace. The role of criminal law has also been discussed by many leading commentators, with particular attention paid to the boundaries of criminal sanctions and particular concerns being addressed to increasing criminalization. Against this background, it is surprising that so little has been written about the role of criminal sanctions in consumer protection.

Various regulations relating to consumer protection efforts are basically the same as other regulations whose provisions contain ideas or

⁶⁷ Peter Cartwright, ‘Consumer Protection and the Criminal Law, Law, Theory, and Policy in the UK’(New York: Cambridge University Press, 2001).

concepts that may classify the rules as abstract, ideally including ideas about justice, certainty, and usefulness, as expressed by Gustav Radbruch.⁶⁸ The most obvious example is the main law on consumer protection in Indonesia, the law no.8/1999 on Consumer Protection. The parameter of elements used in determining criminal action is based on the rights and obligations stipulated within. In other words, the conception of consumer loss is going to be seen on whether or not the business actor ignores the consumer rights stipulated in the act or whether the obligation given to the business actor is violated.

The concept of criminal law in consumer protection is also found in various legal systems in Indonesia. In line with the research, the idea is found in the Consumer Protection Act, the Indonesian Legal Code, and the Electronic Information and Transaction Act, in which the concept of the Consumer Protection Act has been stated previously.

The Indonesian Legal Code, *lex generalis* of Indonesian Criminal Law, stipulates consumer protection related to article 204, which sounds as follows:

“Any person who sells, offers, delivers or distributes goods, knowing that they are endangering the life or health of a person, although the nature of the danger has not been made known, shall be punished by a maximum imprisonment of fifteen years. If the act results in the death of a person, the offender is subject to life imprisonment or imprisonment for a specified period of up to twenty years.”

⁶⁸ Alviani Vinsensia Simarmata, Pujiyono, ‘Dimensions of Consumer Protection in Criminal Law Perspective and Islamic Economic Law Perspective’, Jurnal Hukum Prasada, Vol. 6, No. 2, pp.115-122 (2019)

Following the stipulation, the criminal law consumer protection is stated in article 45A paragraph (1) of Electronic Information and Transaction Act, sounds as follows:

“Everyone who intentionally and without right spreads false and misleading news that results in consumer losses in Electronic Transactions as referred to in Article 28 paragraph (1) shall be punished with imprisonment for a maximum of six years and/or a fine of up to one billion rupiah”

Applying criminal law to overcome the misbehavior of business actors is necessary so that consumers feel protected.⁶⁹ Consumers also feel that business actors will carry out their rights as consumers. Criminal sanctions aim to limit the behavior of business people so that they will not harm consumers in carrying out their business.

Nevertheless, there is a limitation on the accountability of business actor on consumer loss. The limitation is stated in the Consumer Protection Act as follows:⁷⁰

- 1) it is proven that the goods should not have been circulated or were not intended to be circulated;
- 2) goods defects arise at a later date;
- 3) defects arise as a result of compliance with the provisions regarding the qualification of goods;
- 4) negligence caused by consumers;

⁶⁹ *Ibid.*

⁷⁰ Law no.8/1999 on Consumer Protection,

- 5) the expiration of the prosecution period of 4 (four) years since the goods were purchased or the expiration of the agreed period.

C. Defamation and Fraud in the Perspective of Islamic Law

1. *Fiqh Jinayah and Jarimah*

Fiqh Jinayah consists of 2 words, which are *Fiqh* (الفقه) and *Jinayah* (جناية).⁷¹ *Fiqh*, etymologically, came from the words *faqih*-*yafqahu*-*faqhan* (فقيه-يفقه-فقه), which means *famun amiq* (فهم عميق), translated as deep understanding. Deep understanding means that having a really complex comprehension, which is in higher level than simply knowing and understanding.

In other hand, *Jinayah*, etymologically, is a form of verbal noun (*Masdar*) from the word *jana*-*yajni*-*jinayatan* (جنى-يجنى-جناية), which means doing sins (*jarimah*). *Jinayah* is generally understood as evil action done by humans that is threatened to be punished in both world and hereafter. Terminologically, is a legal prohibition that is threatened by Allah with punishment *hadd* or *ta'zir*.⁷² Legal prohibition can take the form of doing prohibited acts and can take the form of leaving the commanded. Thus, both the person who does the prohibited act and the person who abandons the ordered action will be punished according to what have been done and what is left behind. *Fiqh Jinayah* has the principles that is highly related elements of formality, morality, and material aspect.⁷³ All the elements are

⁷¹ Nurul Irfan & Masyrofah, *Fiqh Jinayah*, (Jakarta: AMZAH, 2022)

⁷² Sahid, 'EPISTEMOLOGI HUKUM PIDANA ISLAM', (Surabaya: Pustaka Idea, 2015)

⁷³ Islamul Haq, 'FIQH JINAYAH', (Parepare: IAIN Parepare Nusantara Press, 2020)

connected to each other, forming the whole complete provision of Fiqh Jinayah. The comprehension of each element shall be explained. The brief explanation of each element is provided below:

The element of formality is applied on the use of legality principle. the principle of legality is the principle which states that there is no violation and no punishment before there is a law that regulates it. In other words, an action will be considered as *jarimah* if there is a *nash* that prohibits the act and threatens it with punishment. This principle can be found in surah Al-An'am verse 19, where in this surah it is emphasized that Allah will not punish anyone unless he has sent His Messenger, which states as follows:

“Ask ‘them, O Prophet’, ‘Who is the best witness?’ Say, ‘Allah is! He is a Witness between me and you. And this Quran has been revealed to me so that, with it, I may warn you and whoever it reaches. Do you ‘pagans’ testify that there are other gods besides Allah?’ ‘Then’ say, ‘I will never testify ‘to this’!’ ‘And’ say, ‘There is only One God. And I totally reject whatever ‘idols’ you associate with Him.”

The element of morality is that the perpetrator is a person of the *mukallaf*, namely a person who can be held responsible for the crime he has committed. Some of the moral principles of Islamic criminal law:

- 1) The principle of *Adamul Uzri* states that a person is not accepted for his statement that he does not know the law.
- 2) The principle of *Raful Qalam* states that sanctions for a crime can be waived for certain reasons, namely because the perpetrators are underage, people who are asleep, and crazy people.

- 3) The principle of *al-Khath was Nis-yan* means that a person cannot be held accountable for his criminal actions if he commits his actions due to mistake or negligence.
- 4) The principle of *Suquth al-'Uqubah* means an amnesty. This principle states that legal sanctions can be dropped for two reasons: when the crime done by the perpetrator has carried out of duties or because he is forced to do so. An example of the execution of duties is an executor in the execution of a death sentence. Meanwhile, an example of coercion is a murder that occurred in self-defence.

The last is the material element of criminal law states that a crime is an act that forms a *jarimah*, both in the form of a real act or an attitude of inaction. The material principle in Islamic criminal law relates to the actions of the offenders who cause an individual or societal harm. The harm itself could be a severe harms, mediocre harms, and light harms. The punishment of the action will be varying according to the weight of the harms.

In general, the scholars divide the *jarimah* based on the severity and lightness of the punishment and whether it is confirmed or not by the Koran or al-Hadith. On this basis, they divide it into three types, namely *Jarimah Hudud*, *Jarimah qishash/diyat*, and *Jarimah ta'zir*. Related to the research, the main discussion will be focused on *Jarimah Ta'zir*.

2. Defamation and Fraud as *Jarimah*

The research will be focused on two crimes contained within Electronic Information and Transaction Act, which are the Article 27 Paragraph (3) jo. Article 45 Paragraph (1) on defamation and Article 28 paragraph (1) jo. Article 45A paragraph (1) on false and misleading information causing consumer loss. Thus, the correlation between both crimes and *Jinayah* shall be examined.

Both of the crimes are recognized as *Jarimah*. The concept of defamation is recognized in *Jinayah* as one of actions that is prohibited by Allah swt. Due to one of the objectives of Islam is to protect the honour of humanity from any action that could cause degrading honour and dignity of others.⁷⁴ The concept of defamation is divided into three forms:

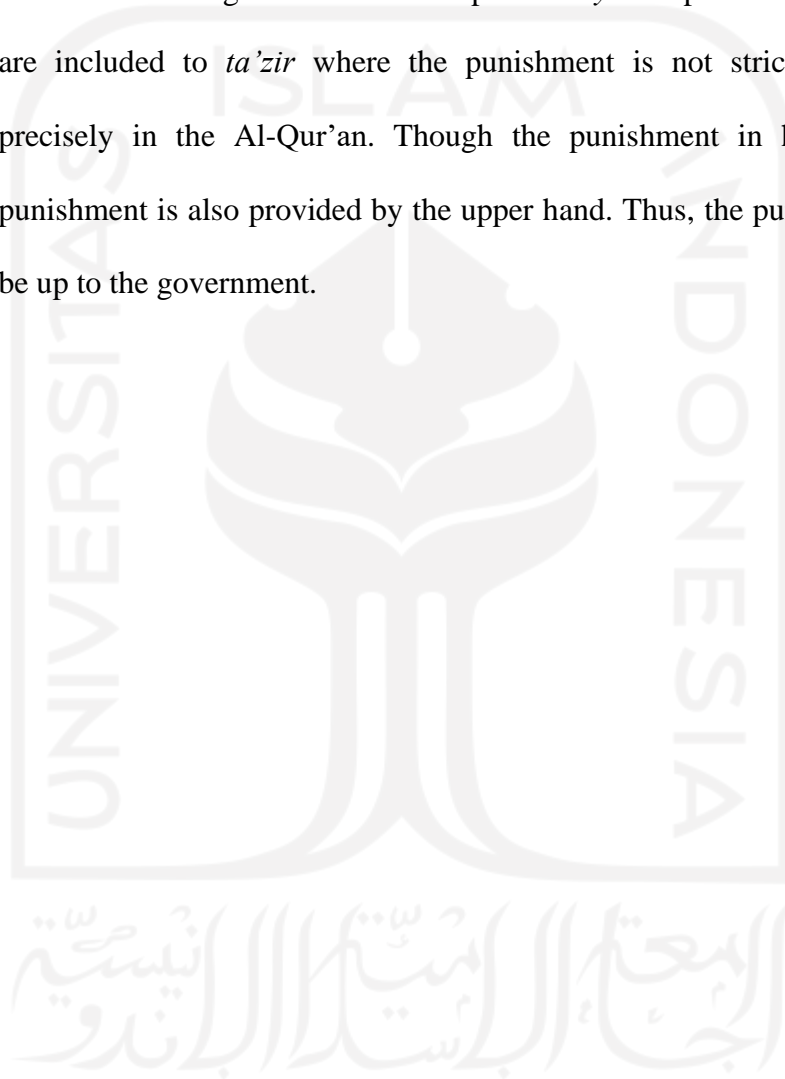
- 1) *Sukhriyyah*, which means look down on other people for some reason;
- 2) *Lamzu*, which means vilify with insults or with ugliness of others; and
- 3) *Tanabuz*, which is type of insults by calling the other person with a bad things, though it is not represent the person who is being insulted.

While the action of sharing false and misleading information causing consumer loss is also recognized as *Jarimah*. It is recognized in the most basic form, fraud. Islam forbids all kinds of fraud in all matters such as sale and purchase, as well as in all kinds of *mu'amalah*. The concept of fraud is

⁷⁴ Alie Yafi, et.al., 'Ensiklopedi Hukum Pidana Islam', p. 84

taken by the concept of lie due to the cause of the actions that could cause loss to the others. This loss is the reasoning behind of the criminalization.

In conclusion, the act of defamation and action causing consumer loss are both recognized in the concept of *Jinayah* as part of *Jarimah*. Both are included to *ta'zir* where the punishment is not strictly stipulated precisely in the Al-Qur'an. Though the punishment in hereafter, the punishment is also provided by the upper hand. Thus, the punishment will be up to the government.



CHAPTER III

THE ACTION OF SHARING CONSUMER REVIEW ON SOCIAL MEDIA FROM THE PERSPECTIVE OF THE ELECTRONIC INFORMATION AND STRANSACTION ACT

A. The Action of Sharing Consumer Review on Social Media as Defamation by Electronic Information and Transaction Act

Law no.19/2016 on Electronic Information and Transaction is the foundation on legal problem arose around the Internet. This is in accordance with the statement on the consideration of the establishment of the act, stating that the rapid development and progress of Information Technology has led to changes in the activities of human life in various fields which have directly influenced the birth of new forms of legal action.⁷⁵ This is in accordance with the number of internet user in Indonesia, reaching the number of 210 million, increasing 20% before the pandemic.⁷⁶ Based on those consideration, the government supports the development of Information Technology through legal infrastructure and regulations by establishing Law on Electronic Information and Transaction.

⁷⁵ Consideration of Law no. 11/2008 jo. Law no.19/2016 on Electronic Information and Transaction.

⁷⁶ Data survey by The Association of Indonesian Internet Service Providers (APJIII), an association consisting of internet service providers which was formed at the First National Conference on May 15, 1996 in Jakarta.

The stipulation within the law is including the legal action done on the Internet. It is implied by scope of Indonesian Electronic Information and Transaction, which several of them are electronic information, documents, and signatures.⁷⁷ Every action done in Internet is considered as online activity, whereas it is already explained in the chapter II, that online activity is online forms of communication including email, text, online files, pictures, videos and in the matter, social media, that can be shared via websites, apps, and/or through social networking platforms. In the definition, text and online files is included as one of online activities. In other hand, electronic information, documents and signatures are things that are stipulated in Indonesian Electronic Information and Transaction Act, it is then valid to say that every action done in internet is part of things where the law applied, because electronic information, documents, and signatures stated in the law are part of text, files, and pictures in the definition of online activity.

The jurisdiction of the law is not limited by land jurisdiction. It is because Indonesian Electronic Information and Transaction Act applied *leer van het gevlug*, where the crime is considered based on the impact of the action located.⁷⁸ It is mean that if the matter is still in the scope of the law, the law will still be applicable to the doer. In other words, if there is any person who commit something stipulated in the law, and the effect of the

⁷⁷ Chapter III of Indonesian Electronic Information and Transaction Act

⁷⁸ Article 2 of Indonesian Electronic Information and Transaction.

doer occurs in the jurisdiction of Indonesia, then the law will be applied to the person. For example, in line with the research, if any person does a crime of defamation in Chicago towards one of Indonesian citizen, which Chicago is a state outside Indonesia's jurisdiction, and it most likely affect the victim in a certain way inside the jurisdiction of Indonesia, then the perpetrator could be processed by the Electronic Information and Transaction law if the victim applies a report toward the perpetrator to the state court.

Based on all explanation above, sharing consumer review on social media then could be considered as one of action considered within the jurisdiction of Indonesian Electronic Information and Transaction Act. It is because the review on social media is in form of documents and pictures, which is part of online activity definition⁷⁹. The review is also done on social media, where as social media is also stated as one platform on online activities, which make it one of platform considered electronically, due to the existence of the social media as part of internet. As stated within the law, Electronic Information is one or a set of electronic data, including but not limited to writing, sound, images, maps, designs, photographs, electronic data interchange (EDI), electronic mail (electronic mail), telegram, telex, telecopy or the like, letters, processed signs, numbers, Access Codes,

⁷⁹ The reviews on the product are always in the form of texts, with or without the image of the product.

symbols, or perforations that have meaning or can be understood by people who are able to understand them.⁸⁰

Understanding the definition of online activity and electronic information based on the law, the correlation between both then could be seen between both definition and the action of sharing consumer review on social media. The correlation is that sharing review on social media is part of online activity, and the review on social media could be considered as electronic information.⁸¹

Based on the principle of freedom of choice of technology or neutrality of technology⁸², means the principle of using Information Technology and Electronic Transactions is not focused on the use of certain technologies so that they can follow developments in the future. It means that as part of action rise due to the use of information technology, the action of sharing consumer review on social media should not stuck on only done by current available technology. Any future information technology used to share consumer review will always be relevant to the law as long as the law

⁸⁰ Article 1 no. 1 of Indonesian Electronic Information and Transaction Act.

⁸¹ The correlation between the consumer review and electronic information will remain valid as long as the review could be understood by any other individual, as it is explained in the definition of electronic defamation based on the law.

⁸² One of legal principle used in ITE Act, stated in article 2.

is still applicable.⁸³ Thus, sharing consumer review on social media is within the jurisdiction of Indonesian Electronic Information and Transaction Act.

As explained before, every action done on social media could be applied by any regulation stated in Indonesian Electronic Information and Transaction Act. The act is applied to any kind of electronic information, one of things inside the scope of the act, which in this case, posts on social media. Social medias, as platform on the Internet, provides many feature options for the user to be used for free. One of the options is sharing post. The option of sharing post is generally used to share the thought, pictures, writing, and many more. The form of the post is also varied. It could be in the form of words, image, video, audio, and many more. The user could use the features once the user making an account by signing up on certain social media.

When signing up on social media, the user then officially has an account, which is owned by own and should not be used by others.⁸⁴ Based on that condition, in other words, every post uploaded on the account is posted directly and intentionally by the owner. Thus, everything posted in the social media by a person will be automatically treated as action done by the owner of the account. Every legal issue arose due to the posts then, logically, will be fully a responsibility by the account owner. Another legal

⁸³ The availability will be done if the law is renewed or replaced by any other law.

⁸⁴ Every social media includes the secrecy of account password in their terms and conditions to prevent the misusing of the account by a person who is not the owner of the account.

issue that might arise by the post in the social media is defamation. It is because the action done on social media reflects the action done by the user. In other words, the defamation that is done on social media will automatically be considered that defamation is done for real. It is because the definition of insult and defamation that is stipulated and prohibited inside Indonesian Electronic Information and Transaction Act is using the definition stipulated inside the Indonesian Criminal Code.⁸⁵ Though, the punishment applied will be the one that is stipulated in ITE act. To be clear, the differences between the articles should be analysed. The article of defamation stipulated in ITE Act states that Every Person intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain insults and/or defamation.⁸⁶

Based on that article, the elements of defamation based on ITE Act consist of *every person, intentionally, and distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain insults and/or defamation*. One of elements making the defamation in ITE act a *lex specialis* is the element of ‘*distributes*’, ‘*transmits*’, and ‘*makes accessible*’. The explanation of each element is

⁸⁵ Explanation article of article 27 of Indonesian Electronic Information and Transaction Act.

⁸⁶ Article 27 paragraph (3) of Indonesian Electronic Information and Transaction Law

provided by the act in the section of article explanation, which briefly explained as follows:

- 1) "Distributing" is sending and/or disseminating Electronic Information and/or Electronic Documents to many People or various parties through Electronic Systems.⁸⁷ In other words, the concept is sharing personally to specific other parties.
- 2) "Transmitting" is sending Electronic Information and/or Electronic Documents addressed to one other party through the Electronic System.⁸⁸
- 3) "Make accessible" are all actions other than distributing and transmitting through Electronic Systems that cause Electronic Information and/or Electronic Documents to be known to other parties or the public.⁸⁹ What makes it different with general defamation is only on the media, which is electronic system.

Based on all those explanations above, in conclusion, every defamation that is done through electronic system in the form of electronic document will be included as specific crime and will be processed according to the ITE act, an act stipulating specific crimes on electronic information

⁸⁷ Explanation article on article 27 of ITE Act 2016.

⁸⁸ *Ibid.*

⁸⁹ *Op.Cit.*

and transaction. To get more understanding on the work of the elements of defamation in ITE Act, the verdict using the article shall be presented.

One of example of defamation case through social media is the case of online defamation by Zubir bin Ahmad, which has been disclosed with a verdict no. 154/Pid Sus/2017/PN Bir.⁹⁰ The verdict stated that Zubir bin Ahmad is guilty for defamation based on Article 45 paragraph (1) jo. Article 27 paragraph (3) of ITE Act. Briefly, the chronology goes as follows:

- 1) the defendant as the owner of a facebook⁹¹ account named "ZUBIR", with email zubirnet@yahoo.co.id saw one of his friends on Facebook with the name of the Facebook account owner MAHDI making a Status regarding Victim H.Saifannur S.sos then the defendant wrote a comment on the status with the following words: 'Are you saying fart, 151 billion people's money was robbed by way of courting the local government'
- 2) the defendant posted or uploaded a photo of Witness H. SAIFANNUR dancing and a photo of Mr. TARMIZI shaking hands with someone and against the photo the defendant made a comment, namely 'hahahahaha Raja Ngebor has realized'
- 3) That on September 5, 2016 in Meuse village, Kec. Kutablang Bireuen the perpetrator posted 3 (three) photos, namely a photo of

⁹⁰ Verdict Directory, <https://putusan3.mahkamahagung.go.id>

⁹¹ Facebook is an American social media and online social networking service owned by Meta Platforms. Founded in 2004 by Mark Zuckerberg

H. SAIFANNUR dancing, a photo of a newspaper report containing the news H. SAIFANNUR OFFICIALLY GANDENG MUZAKKAR, as well as a joke photo of someone pointing a gun at his head on the defendant's Facebook account and against photos In the photo the defendant wrote the words 'O Allah, will you give us the leader of a sawer king in Bireuen, don't give us a leader like that, O Allah' that the statement was addressed to Witness H. SAIFANNUR, S.Sos, because in In Aceh, especially in Bireuen district, Islamic law was applied and the defendant felt that Witness H. SAIFANNUR, S.Sos had violated Islamic law.

4) Furthermore, on September 8, 2016 in the village of Meuse, Kec. Kutablang the defendant again posted 3 photos through the defendant's Nokia 225 Black Mobile Phone on the defendant's Facebook account named ZUBIR, and the defendant wrote the words which contains defamation on the victim, the photo that the defendant posted is a photo of Witness H. SAIFANNUR, S.Sos who is dancing and a photo of a Police member standing on a heavy armored vehicle, and the comments that the defendant gave were addressed to H. SAIFANNUR,S.Sos.

Based on the chronology that has been approved by both parties, the judgement then published with the verdict of guilty, with complete fulfilment of crime elements as follows:

- 1) The element of 'every person', whereas this element could be interpreted as whoever is historically chronologically a legal subject which by itself has been attached to the ability to be responsible, unless the law expressly stipulates otherwise, so that the element of "Every person" here has been legally and convincingly proven.
- 2) The element of intentionally, whereas this element could be interpreted that the person did the action without any force by outside but with own will. Since the perpetrator confessed on posting the post in Facebook by own will, then the element of 'intentionally' here has been legally and convincingly proven.
- 3) Element of Without Right to Distribute And / Or Transmit And / Or Make Accessible Electronic Information and / or Electronic Documents That Have Insults And / Or Defamation, whereas Based on the facts revealed in the trial the defendant SETIAWAN TELAUMBANUA alias AMA WITA in a conscious state had said "Don't listen to the district secretary, he is the instigator to fail in the construction of the Pastor's Official House, the District Secretary is a provocateur, a troublemaker", which was addressed to witness Hermanto Nasution on Sunday. Thursday, April 12, 2012 at around 11.30 WIB at the GNKP Indonesia Church, Jln. Padang Sidempuan Km. 12 Ex. District circles. Pandan Kab. Tapanuli Tengah which caused the victim witness to feel ashamed and his self-esteem was damaged, therefore this element has been fulfilled.

As the case example of defamation and insult based on ITE act has been found and the verdict of the case has been analysed, then the elements of crime based on the verdict could be connected to the act of ‘sharing consumer review on social media.

a. Any person

This element, based on the case example, written in the consideration of the verdict, as explained in *Memorie Van Toelichting* (MvT), is every person as an element who historically chronologically is a legal subject which by itself has been attached to the ability to be responsible, unless the law explicitly stipulates otherwise. Related to the variable of the research, the relation between the element of ‘every person’ and ‘sharing consumer review’ shall be found.

Consumer, explained by consumer protection law, is every person who uses goods and or services available in the community, both for the benefit of himself, their family, other people, and other living creatures and not for trading.⁹² Based on that explanation, consumer is limited to only a person, as already discussed before. The action of sharing consumer review as a right of consumer stipulated under Consumer protection act will be limited only to that.

The element of ‘every person’ should be a person who has the ability to act and the ability to be responsible legally. This is in

⁹² Law no.9/1999 on Consumer Protection, Article 1, paragraph (2).

accordance with the third principle as foundation of ITE act, which is the principle of prudence. Sharing consumer review on social media should be based on principle of prudence, as sharing consumer review on social media comes with many legal consequences.⁹³ As sharing review on social media is one of actions of using information technology, the action then includes as one of actions that is related to this principle. Thus, the ‘every person’ here should be the subject that is fully understand on the action they took.

As mentioned before, ‘consumer’ has the right to complain and to be heard on the product they consume,⁹⁴ leaving the consumer has some kind of immunity from being reported by the business actor. This condition should be maintained to fulfil the consumer protection principle. Nevertheless, if the ‘sharing of consumer review’ is done not by consumer, the legal protection shall not apply. For example, if there is a person who share the review of a consumer, which is the person is not getting benefit of the goods or services consumed by the consumer,⁹⁵ then the person has no protection by the right of consumer given by Indonesian Consumer Protection Act.

⁹³ The principle of prudence in Indonesian Electronic Information and Transaction means that every person should understand the consequences that it could be rise any possibilities of loss to either or both the doer and other party.

⁹⁴ Article 4 of Consumer Protection Law.

⁹⁵ Explanation of consumer is the one who use the goods and/or services for the benefit of themselves or others, based on Indonesian Consumer Protection Act.

Along with the development of technology, the account on social media is used as a representative of the account owner. Until today, not only an individual could make an account on social media. Legal entity could also make their own social media, which is usually used for marketing and advertisement purposes. Nevertheless, inside the Indonesian Criminal Court, in general, the intended target for criminal acts is "people" or is limited to the quality of a person. This can be seen from the use of the idiom "whoever" is the equivalent of "*hij die*".⁹⁶ Logically, legal entity could not be taken liable on a crime. Nonetheless, it is not impossible for an account of a legal entity on social media to do an action of sharing consumer review. Thus, the liability of legal entity on this matter should be formulated.

In the development of criminal law in Indonesia, it turns out that legal entity could be recognized as liable.⁹⁷ Unlike other *lex specialis* that explain the terms of the element of 'every person' as 'individual' or 'legal entity', ITE Act does not give any explanation on 'every person' on its criminal stipulation. Nevertheless, the statement on considering

⁹⁶ Septa Candra, '*PERUMUSAN KETENTUAN PIDANA DALAM PERATURAN PERUNDANG-UNDANGAN DI INDONESIA*', Jurnal Hukum PRIORIS, Vol. 3 No. 3, 2013, p.111.

⁹⁷ corporations began to be positioned as subjects of criminal law with the enactment of the Emergency Law no. 7 of 1955 on Investigation, Prosecution and Trial of Economic Crimes. Then, regulations emerged regarding corporate crime which were spread in various Acts and regulations, such as Law no. 11/PNPS of 1964 concerning the Eradication of Subversion Activities, Law no. 38 of 2004 on Roads ("the Road Law"), Law no. 31 of 1999 on the Eradication of Criminal Acts of Corruption ("Corruption Act") as amended by Law no. 20 of 2001 on Amendments to Law no. 31 of 1999 on the Eradication of Criminal Acts of Corruption, and Law no. 32 of 2009 on Environmental Protection and Management.

legal entity as a subject that could be liable on crime based on ITE Act is laid on article 52 paragraph (4), which states that the sentence will be added by two-thirds if the crime as mentioned on article 27 to article 37 is done by a corporation.

This provision is intended to punish any unlawful act that meets the elements as referred to in Article 27 to Article 37 committed by a corporation (corporate crime) and/or by management and/or staff who have the capacity to:

- a) representing the corporation;
- b) make decisions within the corporation;
- c) perform supervision and control within the corporation; and
- d) carry out activities for the benefit of the corporation.

In proper comprehending, it is then valid to state that legal entity could be recognized as 'every person' that is stipulated in ITE Act from article 27 to 37. In line with the case related, it is including The Article 27 Paragraph (3) about online defamation, which is a crime with the highest potential against the act of sharing consumer review.

Thus, based on all the explanations above, the element of 'every person' could not fit 'consumer' which the rights are protected by The Consumer Protection Act. Nevertheless, the 'Consumer' shall

be act in accordance the applicable stipulation⁹⁸. The consumer which acts outside the stipulation and non-consumer shall be considered fulfilling the element of ‘every person’.

b. Intentionally

The element of intention is the hardest element to be proven by the court, due to the nature of ‘intention’ itself.⁹⁹ The easiest way to get the element of intention is the self-confession by the perpetrator. Yet, the intention could also be proven logically by the circumstances or the written evidence by the perpetrator. It is possible to prove the element of intentionally also with proper analysis on the chronology.

In terms of sharing consumer review, related to the post of on social media, the post could be used as the legal proof on any crime before the court. It is stated that the legal certainty in the law means that legal basis for the use of Information Technology and Electronic Transactions as well as everything that supports its implementation which obtains legal recognition inside and outside the court.¹⁰⁰ Sharing consumer review on social media is one of actions appear as a cause by the use of information technology. Beside of that, sharing consumer review on social media could raise many

⁹⁸ Consumer protection Act and Electronic Information and Transaction Act

⁹⁹ The nature of intention is highly subjective, which is united with the perpetrator themselves.

¹⁰⁰ Explanation of article 2 of Indonesian Electronic Information and Transaction Act

of legal consequences possibility, where it could be either positive or negative cause. As sharing consumer review on social media is considered as electronic information, and electronic information is recognised inside and outside the court, it could be concluded that sharing consumer review on social media is recognized by legal certainty principle as one of legal proof that could be used inside the court in purpose of certainty to the parties,¹⁰¹ in this matter, to prove the intention of the perpetrator.

In the case example, it is stated that the perpetrator did the insult on Facebook intentionally without any force outside own will. The victim was the candidate running for regent on the region related. Though the state gives the freedom to speech,¹⁰² which one of them is the right to give a criticism, the language used should also fit the language that would make it sounds like a criticism, not an insult or defamation. The perpetrator, in related case, is proven as intentionally doing the insult by the language used in the writing posted on Facebook.

By the way of the proof, the intention of sharing consumer review on social media could be then determined by the choice of words used in

¹⁰¹ Electronic Information is stated as one of valid proof to be taken to the court, thus it is one of elements could be taken to achieve legal certainty.

¹⁰² Article 28E paragraph (3) of UUD NKRI 1945.

the writing. The choice of words on the review should be in accordance with norms and ethic, such as¹⁰³:

- 1) Using polite words in expressing opinions.
- 2) Does not mention sensitive matters such as Pornography, Race, Sara and Violence.
- 3) Be honest in giving opinions.
- 4) Providing constructive suggestions/criticism for sellers.

Based on those conditions, any review should not be carelessly written. Every word contained within the review shall be considered in determining the intention of the writer or the sharer. Therefore, either when writing the review or sharing a review on social media, the principle of good intention should be applied. the principle of good intention, which in Indonesian Electronic Information and Transaction Act means that the principles used by the parties in conducting Electronic Transactions are not intended to intentionally and without rights or against the law cause harm to other parties without the knowledge of the other party. Still related to the principle of benefits, the action of sharing consumer protection on social media will be still in accordance with principle of good intention as long as the purpose of the review is valid.

¹⁰³ Bagus Andika Artha Surya, et al., 'SANKSI PIDANA BAGI KEGIATAN MEREVIEW SUATU PRODUK USAHA DI MEDIA SOSIAL TANPA IZIN', Jurnal Interpretasi Hukum Vol. 2, No. 3, December 2021, p. 567-572

On top of that, the element of ‘intentionally’ which is going to be proven by the post on social media will stay valid as long as the post is still could be publicly seen. It is as the recent case of Helwa vs. Dr. Candra Lee, which the chronology goes as follows¹⁰⁴:

- 1) It started in January 2021, from Richard Lee's video upload discussing one of Helwa Beauty's products in the form of a face cream which he considered dangerous. Apparently, the product that Richard Lee was referring to in his video was promoted by Kartika Putri. Disappointed with Richard Lee's statement, which was considered baseless, Kartika Putri reported it to the police.
- 2) Following up the report by Kartika Putri, Dr. Richard Lee then investigated by the police. The result of investigation that the crime element is exist. Dr. Richard Lee, in one of his posts on TikTok¹⁰⁵, states that the product is not safe. It is stated that the product bought and examined by Dr. Richard Lee in that video was the

¹⁰⁴ Reported by Hernowo Anggie, with article tittled ‘Polisi Tetapkan Richard Lee Jadi Tersangka, Skincare Helwa yang Dipromosikan Kartika Putri Ternyata Miliki Izin BPOM’ on April 7th, 2022, accessed in October 12th, 2022, 17:04 WIB, <https://www.liputan6.com/showbiz/read/4932607/polisi-tetapkan-richard-lee-jadi-tersangka-skincare-helwa-yang-dipromosikan-kartika-putri-ternyata-miliki-izin-bpom>

¹⁰⁵ A social media focusing on short videos as main contents, tiktok.com

product from 2019, whereas the BPOM license¹⁰⁶ of the Helwa Beauty's product is listed on June 2020.

- 3) Following the preliminary evidences, Dr. Richard Lee then officially stated as suspect.¹⁰⁷

Based on the terminology above, any posts on social media, as long as it is accessible by public, no matter even if it is before the accusation is fixed, could be considered as fulfilling the element of 'intentionally'. The video that is used by Kartika Putri as the proof on defamation done by Dr. Richard Lee is the video of the Helwa face cream review that is posted on YouTube¹⁰⁸ in 2019, while Helwa's product was licensed in 2020. Yet, the Dr. Richard Lee is still getting the status of suspect by the preliminary evidences.

One of principle of the ITE act is the principle of benefit, which states that the Information Technology and Electronic Transactions is used to support the information process so that it can improve the welfare of the community. The action of sharing consumer review on social media could be either in accordance with the principle or against

¹⁰⁶ A business license issued by the Food and Drug Supervisory Agency (BPOM). The BPOM permit itself needs to be obtained before the product can be sold in the market. The product that has been licensed with BPOM license will be considered safe to consume as long as it is consumed in accordance with the instructions for use listed on the product.

¹⁰⁷ According to article 1 no. 14 of Indonesian Criminal Procedure Code, suspect could be determined with the condition of enough preliminary evidences.

¹⁰⁸ The video was uploaded on November 3rd, 2019, in Dr. Richard Lee Youtube Channel, 'dr. Richard Lee, MARS', with the title 'PARAH BETHOL!! HASIL LABORATORIUM HELWA BEAUTY NIGHT CREAM 2019!!!', <https://www.youtube.com/watch?v=J7cO9oPRaQo>

the principle, depends on the intention of the doer. The review that is done by the consumer might be done to give information on the bad effect of the product so the society could be aware on the danger of the product, which is the reason of the establishment of several review websites such as femaledaily.com.¹⁰⁹ This kind of concept is in accordance with the principle due to the nature of the concept on helping other consumers to get the right choice on products. Hence, it is only applied if the reviewer writes the review as how it is without any addition or subtraction on the fact. In line with the case of Dr. Richard Lee, the video posted on the YouTube was in accordance with the principle due to the nature of public interest. Nevertheless, since the product is already been fixed, the video then automatically shared a wrong information, making the intention of the video changed to spreading false information, though it was not the original intention.

- c. Without Right to Distribute And / Or Transmit And / Or Make Accessible Electronic Information and / or Electronic Documents That Have Insults And / Or Defamation

This element is the element which makes the crime of defamation done online considered as the *lex specialis* of general defamation. The defamation that is spread with the way of distributing, transmitting, or

¹⁰⁹ A website focused on information about beauty products. One of the sections is review section, where the consumers of beauty products giving review on the product consumed so others can read and take notes before purchasing the product.

making accessible. Such an action where has been explained shall be considered fulfilling this element.

Based on the case example, the defendant, in the writing posted on Facebook, contains the element of insult and defamation, which are:

- 1) the word 'robs', which can be interpreted to take the property of others by force or violence.
- 2) Raja Sawyer, which can be interpreted as a person who likes to distribute money, but in this sentence, he distributes money in a negative way.

As the definition of insult and defamation in ITE Act is based on Indonesian Criminal Code, the fact and the article inside the Indonesian Criminal Code then need to be in line.

As for the first accusation, robs, could be connected to defamation stated in Article 318. It is stated that anyone who is intentionally creates a false suspicion against a certain person by any action that this person has committed a criminal act could be recognized as one of defamation forms under the Indonesian Criminal code. In the case example, the defendant wrote the word rob as defining the victim. Rob itself is a criminal act, stipulated under Article 365 of Indonesian Criminal Code. As the truth of the accusation was not proven, this element is then considered valid.

Another word accused by the defendant is the words 'raja sawer'. As the words are accompanied with the picture of the victim doing the

‘sawer’, though it also came with exaggeration of word ‘raja’, it is then fulfilling the element of light insult, which states that intentional insult element could apply written or spoken, in front of the subject or without the subject around.¹¹⁰

Based on the facts, the defendant is proven to have done both the action of insult and defamation. Despite of that, the phrase stated by The Article 27 Paragraph (3) is only ‘...containing insult and/or defamation’. Because the phrase is using ‘or/and’, it means that even if only one of the actions is proven to be done, it is fulfilling the element already. Due to that fact, it is then valid to say that the defendant is fulfilling this element.

Nonetheless, that will not be the case if the containing of the post is only an insult stated in Article 315. It is due to the article implementation guidance¹¹¹ stating that is not a criminal offense that violates Article 27 paragraph (3) of the ITE Act, if the content or matter that is transmitted, distributed, and/or made accessible is in the form of insults which are categorized as insults, ridicule, and/or inappropriate words. For such an act, the qualification of a mild insult offense as referred to in Article 315 of the Criminal Code shall be used. As for the act of sharing consumer review on social media, the way of sharing should be matched with the element. The ways that which are

¹¹⁰ Article 315 of Indonesian Criminal Code

¹¹¹ Constitutional Court Decision No. 50/PUU-VI/2008

recognized as the element of offense is distributing, transmitting, and/or making accessible.

The first way is distributing, which briefly is interpreted sending electronic document to various party through electronic system. Social media itself could be considered as part of electronic system.¹¹² As on social media, there is a feature called 'group', where the information share inside the group can be accessed by everyone who is joining the group. Thus, if any action containing insult and/or defamation shared to the group on the social media, this element then can be considered fulfilled.

The second way is transmitting. Social media is a medium to socialize with each other and is done online which allows humans to interact with each other without being limited by space and time.¹¹³ Along with this line, post, usually uploaded to be seen publicly or privately strict to any specific others, is not the only way recognized as the move on doing defamation. Any other way on spreading the information containing the defamation shall be considered fulfilling this element.

The last way is to make accessible. The general post on social media could be considered as this way due to its nature on making the

¹¹² Definition of electronic system on article 1 of ITE Act.

¹¹³ There is no official or exact definition on what social media is. Thus, the author states the definition based on how the social media works currently.

electronic document visible to the public. Thus, the post which is uploaded publicly shall be considered fulfilling this element.

The second line that should be connected is between the sharing consumer review and the 'insult and/or defamation'. It is still highly related to the intention that has been explained previously. The review will be considered as insult and/or defamation if it contains words that are obviously used to insult and/or defame. The writing should be in accordance with norms and ethic stated before. As long as the review matches the norms and ethic, it shall not be considered as an insult and/or defamation. This is in line with Joint Decree on ITE Act¹¹⁴ which states that is not an offense related to defamation and/or defamation in Article 27 paragraph (3) of the ITE Law, if the content or post that is transmitted, distributed, and/or made accessible is in the form of an assessment, opinion, evaluation result, or a reality.

Another crime deletion is stated in the Article 310 paragraph (3) of Indonesian Criminal Code, which states that it does not constitute defamation or written defamation, if the act is clearly carried out in the public interest or because it is forced to defend oneself. This article shall apply to Article 27 paragraph (3) of ITE Act due to the link stated in the article itself. according to the basis of consideration in the decision of

¹¹⁴ Joint Decree of minister of communication and informatics, attorney general, and head of police, no. 229/2021, 154/2021, KB/2/VI/2021.

the constitutional court no. 50/PUU-VI/2008, the definition of content of insult and/or defamation refers to and cannot be separated from the provisions of Article 310 of the Indonesian Criminal Code. Thus, Article 310 paragraph (3) of Indonesian Criminal Code is applicable to the Article 27 paragraph (3) of ITE Act. This is in accordance with one of legal principle stated in Article 2 of ITE Act, the principle of benefit.

In conclusion, the action of sharing consumer review on social media is a part of consumer right that it should not be criminalized directly. The criminalization based on defamation could also be cancelled though the doer is not protected by the consumer protection act, as long as the content shared is done with the intention of protecting the public interest.

B. The Action of Sharing Consumer Review on Social Media as The Cause of Consumer Loss by Electronic Information and Transaction Act

Another legal issues that could happen is the spreading of misleading information. Misleading information is a statement on something that contains which is not in accordance with the reality. Misleading information could make a condition that possibly harms the other. One of the harms that could be possibly happen is the consumer loss.

The stipulation on such an action is found on Article 28 paragraph (1) jo. Article 45A paragraph (1) of Electronic Information and Transaction Act. It is stated that the criminalization is possible on the action of sharing

information on the internet if consumer loss appeared due to such an action.

Based on the articles, the elements of crime on the matter consists of:

- 1) Any person;
- 2) Intentionally and without right spreading false and misleading information causing consumer loss in electronic transaction;

Indonesian Consumer Protection Act, the main legal instrument on consumer and business actor, does not provide the definition of consumer loss directly, though the words of 'consumer loss' is stated 4 times.¹¹⁵ Hence, the limitation and the parameter of consumer loss is implied in the act as a whole. It is including the violation of rights of the consumers,¹¹⁶ the neglected obligation of the business actors, and so on.

Based on the joint decree, the criminal offense based on this article is not a criminal offense of common misleading information in general, but an action in the context of electronic transaction. Based on this explanation, it is then summed up that the action shall contain the solicitation, recommendation, and/or instigation to do the electronic transaction. In other words, if there is no electronic transaction happened after such an action, this article shall not be applied.

Not only that, the joint decree also states that this article is a material offense. Being a material offense, it means that as long as there is a loss

d. ¹¹⁵ Consideration letter b, Article 6 letter d, Article 19 paragraph (1), and article 63 letter

¹¹⁶ Article 4 Consumer Protection Act

claimed by the consumer, the investigation shall be processed immediately. The loss could be both material and immaterial loss. The loss then shall be examined on which whose fault is the loss on. If the loss is caused by the consumer themselves, the case then shall not be continued.

To understand the implementation of the article precisely, case example shall be presented. One of the case examples using Article 45A paragraph (1) jo. 28 paragraph (1) is the verdict on Amran Bin Dawang, here and after, the defendant,¹¹⁷ which the chronology briefly goes as follows:

- 1) Around 5 August 2021, the investigation began based on warrant in accordance with the report by society on the rise of online fraud in the local district.
- 2) Based on cyber patrol and tracking, it is found that the defendant used telegram group "TRAXINDO FOREX INDONESIA" and telegram accounts with the name "MIA AGUSTINA" which promotes investment and a Facebook account with the name "JONI ANDIKA AGLONEMA" with a post namely the sale of ornamental plants with the WhatsApp number +62823333197314 which is linked to communicate, because it is suspected that investment and sale of ornamental plants is a mode of online fraud

¹¹⁷ Verdict no. 206/Pid.Sus/2021/PN Sdr

3) On August 3, 2021, a telegram account in the name of "LAVIGNE CHAN" sent a message to the defendant and asked about the investment that the defendant was promoting and then the defendant sent an explanation and a list of investments which basically offered a lot of profit and a big chance of winning accompanied by a small risk. Due to the huge profits, the owner of the "LAVIGNE CHAN" account, witness PUJIASIH, as a consumer, sent the investment order identity data format and then the defendant directed to send the funds through Bank Mandiri with Account No. 1120017114252 in the name of EMILIA which is an account belonging to the defendant, then at around noon the witness PUJIASIH sent the funds by transfer in the amount of IDR 1,000,000 (one million rupiah) to Account No. 1120017114252 on behalf of EMILIA, then the amount of IDR 2,700,000, - (two million seven hundred thousand rupiah) to No. Account 1120017114252 in the name of EMILIA according to the submission of the defendant, so that the total funds that the defendant had received from witness PUJIASIH amounted to IDR 3,700,000 (three million seven hundred thousand rupiah), and 2 hours after transaction, PUJIASIH got blocked by the defendant due to the feel of suspect by PUJIASIH.

4) on August 7, 2021, the WhatsApp account with the name RITA owned by the witness RITA NUNUMETE as a consumer sent a message to no. WhatsApp belonged to the defendant because he saw

a post on the Facebook page with the account name "JONI ANDIKA AGLONEMA" owned by the defendant.

- 5) then on August 8, 2021 the WhatsApp account with the name RITA owned by the witness RITA NUNUMETE sent an identity format and how many Aglonema flower orders the defendant again assured witness RITA NUNUMETE by submitting delivery to the destination, namely 3 (three) days
- 6) then on August 9, 2021 the account with the name RITA owned by witness RITA NUNUMETE transferred money in the amount of Rp. 300,000, - (three hundred thousand rupiah) to Bank BRI with Account number 574001024194539 in the name of JONI ANDIKA which is the account number belonging to the defendant accompanied by proof of transfer sent via WhatsApp
- 7) On 11 August 2020, because the owner of the account with the name RITA began to become suspicious so the defendant immediately blocked the contact;

After considering the chronology that has been approved in the court process, the verdict then given to the defendant as guilty, fulfilling all the elements on Article 28 paragraph (1) of ITE Act, and punished accordingly.

Based on the verdict, the element of spreading false and misleading information and causing consumer loss in electronic transaction are both fulfilled due to the fact that the posts by the defendant are not in accordance with what it is

in reality and consumers in this case did a payment online. The payment was done due to the influence given by the defendant.

After the chronology and the elements are connected, the next step is to see whether or not the Article 45A paragraph (1) jo. Article 28 paragraph (1) of ITE act could be applied to the action of sharing consumer review in social media, on the phrase of 'any person', 'intentionally', 'without right', 'spreading false and misleading information', and 'causing consumer loss in electronic transaction'. In order to achieve the objective, the comparison between the article, the case example, and the action of sharing consumer review on social media should be executed.

a. any person

The first phrases on the elements are 'any person'. The element of 'any person' here will be the same as what applied with the Article 27 Paragraph (3) on Defamation because both are stipulated on same act. It is also followed up by the statement in the Article 52 Paragraph (4) stating that the punishment stipulated on Article 27 to 37 in the ITE Act will be added by two-third if it is done by the company. In conclusion, the range of 'any person' is applied to both individual and legal entity.

b. Intentionally

To analyse the element of 'intentionally' here, the relation between the intention and the person shall be connected. This is due to the relation between the crime and the consumer protection, as it is

stipulating about consumer loss. To get the understanding on consumer loss, the analysis on the Consumer Protection Act is crucial. As the 'any person' element is divided into individual and legal entity, the element of 'intentionally' here will be dividing the 'any person' into two possibilities: business actor and non-business actor. The intention of business actor will be connected directly to the Consumer Protection Act, while the intention of non-business actor will be examined with general theory of intention in criminal law.

The first one is the intention of the business actor. The stipulation on business actor related to the consumer loss is regulated in Consumer Protection Act. The act contains the right, obligation, and prohibition on business actor. The Consumer Protection Act is made due to the imbalance of the position between business actor and consumer, leading to the condition of consumers become objects of business activity to gain the maximum profit by business actors through promotional tips, sales methods, and the implementation of standard agreements that are detrimental to consumers.¹¹⁸

Detrimental to consumers means that it is causing a loss to the consumer. In other words, all the stipulation on the business actor regulated in Consumer Protection Act is made as a consumer protection from the possibility of consumer loss. If the concept is connected to the

¹¹⁸ General Explanation on Consumer Protection Act, paragraph 3.

concept of *presumption iures de iure*, and understanding 'intention' as '*willen en wetens*', it is valid to conclude that any violation done by business actor on Consumer Protection Act is reflected the intention of the business actor.

The next one is the intention of the non-business actor. Different from the business actor that any violation on the act should be automatically fulfilling this element, the intention of non-business actor should be investigated thoroughly. Since this article is a material article, then the main essence focused on the information in the content shared. This is as what implemented in the case example.

c. without right

The term 'without rights' in criminal law, is also referred to as "*wederrechtelijk*". According to Lamintang "*wederrechtelijk*" includes several meanings, namely: Contrary to law, Contrary to the rights of others, without rights that exist in a person. In the case example, it is illustrated that the defendant fulfilling the without right because the defendant is anyone with no understanding in trading field, has no owned flower shop as claimed. In other words, this element is not fulfilled if it is done by someone who has right to do so. For example, if the action is done by a company that actually sells product, or by affiliation signing contract with the company to do anything related to the content and the posts.

Despite on that, the other context of 'without right' here is also stated as contrary to the law. In this case, the article is stated as a material article

in the joint decree. It means that as long as there is consumer loss arose due to the lead on the information contained within the content shared. As explained before, every post uploaded on the will be directly considered as intention of the account owner. Thus, every social media content will be treated as an action done by account's owner. In other words, legal issues arose from the information in the content uploaded will be account's owner full responsibility.

In another context, sharing consumer review is a right given by the consumer protection act to the consumers. It is then implied that the 'review' rights belong to the consumer, meaning that spreading them should be permitted by the reviewer. Thus, the element of 'without right' in the action of sharing consumer review on social media has potential to be fulfilled.

d. Spreading false and misleading news

The next phrases are 'spreading false and misleading information'. False means not true, while misleading means lead to the wrong path, lead astray, cause erroneous and so on.¹¹⁹ Based on the root of the words, it could be understood that false and misleading has a connection on the untruth. Related to the article, it is then safe to say that false and misleading information here could be interpreted as data containing untrue event that could lead to the wrong doing.

¹¹⁹ *Kamus Besar Bahasa Indonesia Daring*,
<https://kbbi.kemdikbud.go.id/entri/menyesatkan>

Spreading false and misleading news is distributing and/or transmitting and/or making electronic information and/or electronic documents accessible that are not in accordance with the facts, or are not as promised. In the phrase "spreading false information", what is regulated is the action, whereas in the word "misleading" what is regulated is the result of this action which causes people to have wrong or wrong views. The formulation of the elements of spreading false and misleading news uses the word "and", which means that the two elements must be fulfilled, namely spreading false news that is not in accordance with the actual situation/circumstances, and misleading which causes someone to have wrong/erroneous views.

For the business actor, giving false information is against the obligation given by Consumer Protection Act. In other word, it is one of action that is prohibited as a form of consumer protection from consumer loss. It is as stated in Article 7 that business actor is obliged to give a correct, clear, and honest information on goods condition, complete with the explanation on how to use, repair, and maintenance. Dishonest information shared by business actor on the product will be potentially causing harms on the consumer.

In the case of non-business actor, social media is a place where the freedom of speech contained, as long as it is not violated the guide of the social media. It is also included sharing any kind information, which is vary from false to truth information. To prove this element on the business actor,

the content on the post shared should be clarify on the validity. The verification on this element for the non-business actor is implemented in the case example.

In the case example, the defendant posts about the investment promising profits. The defendant also posts about selling artificial flowers on Facebook. Both of the posts by defendant are false information, whereas there is no such investment and there is also no flower shop ran by the defendant, making the element of ‘false information fulfilled. The posts also recommend, encourage, and leads the consumers to do the transaction based on the false information, making the element of ‘misleading’ also fulfilled.

e. Causing consumer loss in electronic transaction

Though the stipulation on prohibition on such an action exists on the Act, the definition on ‘consumer loss’, the further limitation, and/or parameter on the action are nowhere to be found in the ITE act itself. Based on the article, consumer losses in electronic transactions require that false and misleading news must result in a consumer loss. In other words, there should contain untruth that could cause consumer who did the electronic transaction suffer losses.

About the consumer losses on this article, the joint decree stated that the article is a material offense. On the implementation of the article, within the verdict, one of expert witness explains that the losses can include material losses and/or immaterial losses experienced by parties who

consume fake and misleading news. In conclusion, the element will be valid only if the result of the action, which is consumer losses, arose.

In line with the action of sharing consumer review on social media, the one that should be highlighted on this element is the content of the review. For the business actor, one of possibility is the action of stealing videos of review for other products is something that could happen on social media. For example, the personal experience written by Rini Apriliani in Beautynesia,¹²⁰ where her videos on losing weight are stolen and used to promote a certain diet product. The video is edited as if it is a video of product review. In other words, the video is refined to be seems like a consumer review, which means it is fulfilling the element of ‘false information’. It is also fulfilling the element of ‘without right’ because the right of the video does not belong to them.

In the case of non-business actor, one of the examples is the use of *Minyak Tawon*. Many posts and information spread in the social media about how *Minyak Tawon* can be consumed orally, like the one posted by liputan6.com in their article titled ‘*Minyak Tawon Jadi Oleh-Oleh Wajib dari Makassar*’.¹²¹ The articles explained that it is safe to consume *Minyak Tawon* orally if it is only few drops. While in the guide of use, *Minyak*

¹²⁰ online media that contains special info about beauty, <https://www.beautynesia.id/life/4-cara-mengenal-online-shop-bodong-penuh-tipuan-bikin-fake-testimoni-demi-menarik-pelanggan/b-250788>

¹²¹ Administrator, ‘*Minyak Tawon Jadi Oleh-Oleh Wajib dari Makassar*’, <https://www.liputan6.com/regional/read/3637462/minyak-tawon-jadi-oleh-oleh-wajib-dari-makassar>

Tawon is classified as external medicine, which means it could not be consumed orally.

If there is a person, non-business actor, posted that they are fit because orally consuming this product in daily basis and recommend people to buy the product and try it too, while one of the viewers actually buy and try it but causing an indication of side effect, it is then fulfilling this element. Though Consumer Protection Act that business actor is accountable on the loss by consuming their product,¹²² it is not applied if the business actor already fulfilling their obligation and does not violating any prohibition, as it is clear that the guide of using the product is there.

While the last elements, ‘causing consumer loss in electronic transaction’, will be only fulfilled if there is an action of electronic transaction due to the content of the review. In the case above, the uploader edited the video as a fake testimony to encourage and convincing the viewer to buy the product. Because the joint decree stated that this article could only apply if there is an electronic transaction, it is implied then that if the videos only guide the consumer to do an offline transaction with cash, this element is then considered unfulfilled. Thus, if there is any loss arose, this article couldn’t be applied.

In conclusion, if the action of sharing consumer review on social media could be potentially criminalized as an action of sharing false and misleading

¹²² Article 7, letter f.

information causing consumer loss if the doer has ill intention on it. The consumer loss itself should be the loss that is in accordance with the Consumer Protection Act. Ill intention itself should be examined carefully based on the type of the doer. If the doer is a business actor, then the ill intention will show if there is a violation on the right and/or obligation stipulated in the Consumer Protection Act. While if the doer is a non-business actor, the ill intention will be examined as it should be.



CHAPTER IV

CONCLUSION AND RECOMMENDATION

A. Conclusion

After finishing the research, to answer the problem formulation, then there are 2 conclusions that can be taken, which are:

- 1) Sharing consumer review on social media could be possibly recognized as the act of defamation if the perpetrator is not consumer that is protected by Consumer Protection Act. As long as the action of sharing consumer review on social media fulfilling the elements of defamation, it is then recognized as crime of defamation. Nevertheless, it will not be recognized as crime of defamation if it is done in order to public interest.
- 2) Sharing consumer review on social media cannot be separated with the concept of consumer loss. The concept of the consumer loss itself is stipulated under the Consumer Protection Act, whereas it is based on the rights and obligations stipulated. Thus, the crime as stated in article 28 paragraph (1) of ITE Act shall be

considering the Consumer Protection Act as well to determine the fulfilment of the action on the element of 'consumer loss' in the crime elements.

B. Recommendation

Based on the research, the author would like to give recommendation towards the government, such as:

- 1) To change the joint decree on the Article 28 paragraph (1), erasing that the element of electronic transaction should be the element fulfilling to the article. This is because ITE Act is not only stipulates about electronic transaction, but also electronic information. The article is a material offense, which means that the essence of the article is the consumer loss. False electronic information leading to any form of transactions causing consumer loss shall be recognized by this article.
- 2) To add specifically stipulation about consumer review as one of form on rights of consumer. In order to gain the maximum potential of principle of benefit and legal certainty, the limitation on how consumer review should be added. The power of language used by the consumer in reviewing product is highly influencing the thought of other consumers.

- 3) To divide the punishment of defamation and insult specifically inside Electronic Information and Transaction Act due to the big gap on punishment given in Indonesian Criminal Code. If not, erase the insult on Article 27 paragraph (3) and add more paragraph explaining light insult though done on social media will be proceed in accordance with Indonesian Criminal Code.
- 4) To update The Consumer Protection Act so it runs well along The ITE Act, considering the relation of sale and purchase between consumer and business actor become stronger on the Internet.

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FAKULTAS
HUKUM

Gedung Fakultas Hukum
Universitas Islam Indonesia
Jl. Kaliurang km 14,5 Yogyakarta 55584
T. (0274) 7070222
E. fh@uii.ac.id
W. law.uil.ac.id

SURAT KETERANGAN BEBAS PLAGIASI

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Bismillaahirrahmaanirrahaim

Yang bertanda tangan di bawah ini:

Nama : **Joko Santosa, A.Md.**
NIK : **961002136**
Jabatan : **Staf Perpustakaan Referensi Fakultas Hukum UII**

Dengan ini menerangkan bahwa :

Nama : Muhammad Amin Kamase
No Mahasiswa : 18410425
Fakultas/Prodi : Hukum
Judul karya ilmiah : **THE ACTION OF SHARING CONSUMER REVIEWS ON
SOCIAL MEDIA FROM THE PERSPECTIVE OF THE
ELECTRONIC INFORMATION AND TRANSACTIONS
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Joko Santosa, A.Md.