

REVIEW APARTMENT BY CONSUMER ON SOCIAL MEDIA VS CRIMINAL CHARGES BY DEVELOPER: BETWEEN CONSUMER COMPLAINT AND DEFAMATION

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Abstract

Despite legal safeguards for freedom of expression and the right to be heard, consumers frequently encounter legal obstacles, particularly in cases where businesses initiate defamation claims. This issue is exemplified by the cases of Deedi Tjhandra, Muhadkly AT, and Desvalia, wherein consumers, after receiving no response to their complaints from developers, took to social media to post reviews of the apartment they had purchased. In these cases, it was found that the developers had breached contractual obligations, as the apartments and their associated amenities did not conform to the standards advertised in promotional materials. This study aims to analyze the rights of consumers to post video reviews of goods and/or services on social media, especially when such reviews result in defamation lawsuits and subsequent convictions. The court's ruling, in this case, found Deedi Tjhandra guilty of defamation despite the defamation statute in question having been repealed and replaced by more recent legislation. The updated legislation specifies that legal entities are barred from pursuing defamation claims. Additionally, the court did not consider the regulations established by the Joint Decree and CC rulings. The research employs a normative juridical methodology incorporating legislative and conceptual analyses. The novelty of this study lies in its exploration of the public interest concept within criminal and civil law as it pertains

to defamation statutes being met through social media, particularly when these reviews serve the public interest. Additionally, the study assesses the adherence of law enforcement agencies to established regulations concerning defamation.

Keywords: Defamation; Social Media; Video Review.

Introduction

In the contemporary digital era, society increasingly utilizes social media platforms to express opinions, grievances, or critiques, a phenomenon that presents a dual-edged dynamic. While this newfound freedom of expression can yield benefits, it also harbors inherent risks. One notable observation within social media user behavior is the tendency for issues to remain unaddressed by governmental institutions or agencies until they gain significant traction in virality. This phenomenon has given rise to the adage "No Viral, No Justice". The phrase "No Viral No Justice" encapsulates the prevailing lack of confidence the public harbors towards state institutions and agencies, particularly concerning public reporting and services. In addition to their skepticism towards state entities, the public utilizes social media platforms to voice criticism or grievances regarding companies and their products.¹ When a case gains viral attention involving state institutions or agencies, it tends to receive heightened public scrutiny. It is promptly addressed, often resulting in punitive actions against those culpable for transgressions. In contrast, when cases go viral due to public critiques or complaints through reviews or feedback on social media regarding companies and their offerings, these companies' responses differ. Rather than proactively addressing the concerns raised, companies frequently issue warnings or initiate criminal defamation proceedings against the individual behind the criticisms or complaints. This phenomenon is illustrated in various instances, with a recent example involving a social media user on TikTok who faced legal action for reviewing the apartment unit he had purchased, as elaborated below:

¹ Johanes Rodo Mulia and Eko Wahyudi, "Legal Protection for Consumers Whose Certificates Are Collateralized by the Developer," *Jurnal Cakrawala Hukum* 13, no. 3 (2022).

Some time ago, social media users, particularly those on TikTok, were captivated by the defamation case initiated against Deedi Tjhandra by PT.Mandiri Bangun Makmur (MBM). This legal dispute stemmed from a review video shared by the TikTok account @ompolosbanget, boasting a substantial following of 1.1 million accounts, concerning Deedi Tjhandra's purchase of a unit in the Tokyo Riverside PIK 2 apartment complex. In the concise video, Deedi Tjhandra, who was operating through the @ompolosbanget account, expressed discontent with the facilities of the apartment unit he had acquired. He highlighted disparities between the amenities advertised in the developer's marketing brochure and those actually provided. Notably, he pointed out the discrepancy in the number of swimming pools advertised (4 pools) versus the sole pool available in reality.

Furthermore, alongside addressing concerns regarding the amenities and balcony views of the apartment unit, the @ompolosbanget account also scrutinized the overall structural integrity of the apartment buildings. Specifically, it asserted that the Tokyo Riverside PIK 2 apartments exhibited issues related to structural stability. The account contended that even the simple act of installing an outdoor air conditioner (AC) could potentially trigger a structural collapse, thus denoting the apartment buildings as "Barbie house." Before resorting to social media, Deedi Tjhandra made efforts to formally address his concerns by lodging an official complaint with the management of PT.MBM. However, despite his efforts, he did not receive any response or acknowledgment from the company.

Following the viral dissemination of the review video, PT.MBM reported Deedi Tjhandra to the police on 4 May 2023. PT.MBM alleged defamation, contending that the widespread exposure of the video led to numerous buyers rescinding their purchase of units in the Tokyo Riverside PIK 2 apartment complex, thereby causing financial losses to the company. Despite the report being filed in May 2023, the case only proceeded to the trial phase in February 2024. During the trial, Deedi Tjhandra was found guilty. The judge ruled that Deedi Tjhandra had violated Paragraph 27 subsection (3) of Law No.19/2016 jo. Law No.11/2008.

In addition to the Deedi Tjhandra case, a notable instance involves Muhadkly MT, also known as Acho, who publicly criticized the apartment he purchased in February 2013 due to unmet commitments

by the developer. This issue initially emerged from a complaint posted by Acho on his personal blog, muhadkly.com, dated 8 March 2015. In the blog, Acho detailed grievances regarding the developer's failure to fulfill promises related to the establishment of a green open space, unclear certification processes, additional renovation costs imposed on residents, inadequacies in the apartment's parking system, the absence of an elevator to access to the lobby, and concerns over environmental management fees. Despite demonstrations and formal complaints from the apartment residents, their concerns were largely ignored. On 26 April 2017, Acho was summoned by investigators as a witness in response to a criminal defamation complaint. Subsequently, on 9 June 2017, he was re-summoned as a suspect. The case attracted significant public attention, ultimately leading both parties to reach a settlement. The resolution entailed the developer retracting the defamation report and Acho agreeing to issue a clarification to restore the complaint's credibility.

In addition, which involved criticism of an apartment unit purchased via a TikTok video, another significant case concerns Desvalia. Through her TikTok account, Desvalia detailed issues related to the Collins Boulevard apartment she acquired in 2017. She expressed dissatisfaction with the perceived incompetence of the marketing efforts and noted discrepancies between promotional promises and the actual delivery of the apartment unit, which was delayed beyond the initial commitment. Moreover, the developer had promised a specific brand of bathroom fixtures at the time of marketing, but these were not provided as promised. The developer contended that while the brand differed, the quality remained equivalent. Desvalia was further dismayed to find that the apartment, which she purchased in 2017 for Rp 517 million after a discount and with a size of 21 square meters in its vacant state, was subsequently sold fully furnished by the developer in 2023. Other apartment residents have reported similar grievances. The developer's response indicated that the lower price was due to a 10% government subsidy provided as part of the pandemic stimulus and noted that the brochure included a 'Disclaimer' statement indicating that changes could occur at any time.

Based on the cases described above, several commonalities emerge. Firstly, there is a consistent issue of unmet promises made by developers. In each case, the developers failed to deliver on the

commitments outlined in brochures or during the marketing phase, resulting in discrepancies between what was promised and what the buyers actually received. Additionally, all three buyers experienced a lack of responsive or effective solutions from the developers despite their complaints. Consequently, these grievances were publicly shared on social media platforms, which led to significant public attention and, in the case of Deedi Tjhandra and Muhadkly MT, defamation claims.

Among the cases of consumer reviews or complaints regarding the purchase of apartment units, only the case of Deedi Tjhandra culminated in legal proceedings and resulted in a conviction. In delivering the verdict, the panel of judges did not take into account various legislative provisions, including Paragraph 4 of Law No.8/1999, Constitutional Court (CC) Decision No.50/PUU-VI/2008, CC Decision No.78/PUU-XXI/2023, Paragraph 27A of Law No.1/2024 and Joint Decree of the Minister of Telecommunications and Information Technology of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Chief of the Indonesian National Police Number: 229 Year 2021, Number 154 Year 2021, and Number KB/2/VI/2021 (Joint Decree). Considering the circumstances, what Deedi Tjhandra experienced was, in fact, a breach of contract (as per Paragraph 1243 of the Civil Code) by PT.MBM is responsible for failing to deliver apartment facilities as advertised in the brochure and for the perceived poor quality of the unit. However, the situation became problematic when consumer criticisms or complaints via video reviews were labeled as defamation without regard for consumer rights.² as stipulated in Paragraph 4 of Law No.8/1999.³

The focus of this study pertains to the legal ramifications surrounding consumer evaluations of apartment units on social media, particularly in cases where developers breach contracts, leading to defamation allegations. The study investigates the application of

² Musa Taklima, Adi Sulistiyono, and M. Syamsudin, "CONSUMER PROTECTION AS AN INSTRUMENT FOR FULFILLING HUMAN RIGHTS IN THE ECONOMIC SECTOR AND ITS CONSTITUTIONALIZING EFFORTS IN THE 1945 CONSTITUTION," *Jurisdictie: Jurnal Hukum dan Syariah* 14, no. 1 (2023).

³ Mia Maulia Fajriana, "How Are Business Actors Responsible for Consumer Losses in Default Cases? An Analysis of Indonesian Consumer Protection Law," *Journal of Law and Legal Reform* 2, no. 2 (2021).

Paragraph 27 subsection (3) of Law No.19/2016 jo. Law No.11/2008 in judicial decisions subsequent to the enactment of Law No.1/2024 and CC Decision No.78/PUU-XXI/2023. Its objective is to examine the rights of consumers in producing video reviews of goods and/or services on social media platforms, which may result in legal actions and convictions for defamation, particularly under the new legal frameworks introduced by Law No.1/2024 and CC Decision No.78/PUU-XXI/2023. Employing a normative juridical approach with a methodological framework based on legislative and conceptual perspectives. This research utilizes a variety of legal sources, including statutory regulations. The main legal foundation stems from Law No.8/1999, Law No.1/2024 jo. Law No.19/2016 jo. Law No.11/2008, Joint Decree, Criminal Code and CC Decision. Data collection techniques include a literature review of both primary and secondary legal materials. Primary legal materials consist of relevant laws and regulations pertaining to the issues examined in this study, while secondary legal materials are derived from national and international journals. The data are processed using a descriptive qualitative method, which involves analyzing consumer review cases in reference to applicable laws, regulations, and journals. The research methodology involves quantitative analysis to provide a comprehensive understanding of the legal issues about consumer complaints and defamation.

Consumer Rights in Reviewing Apartment Units and Facilities and the Rights of Business Actors for Consumer Actions that Harm Their Credibility

The criticism or grievances expressed by consumers via social media platforms often lead to retaliatory actions from businesses, who may report such individuals to law enforcement agencies for defamation. This response essentially suppresses citizens' freedom of expression as guaranteed by Paragraph 28E subsection (3) UUD NRI 1945 and infringes upon consumer rights outlined in Paragraph 4 letter d of Law No.8/1999. Drawing upon John F. Kennedy's delineation of four fundamental consumer rights, namely, the right to information, the right to choose, and the right to be heard. The International Organization of Consumer Linkin (IOCI) extends this framework by incorporating additional rights such as the right to consumer education,

the right to compensation, and the right to a clean and healthy environment.⁴

Consumer review cases on social media initially involved a violation of consumer rights to obtain comfort, security, and safety regarding the purchased apartment unit, as stipulated in Paragraph 4 letter a of Law No.8/1999.⁵ Furthermore, there existed a disparity between the facilities provided and those advertised or listed in the brochure, resulting in disappointment. Additionally, the lack of good faith demonstrated by the developer in addressing the issues raised by consumers' complaints prompted the creation of a video and posts on social media containing a review of the apartment unit and its facilities and the breach of contract by the developer. The brochure supplied by the developer outlined the housing site plan, various housing types along with, their respective prices, and the available facilities. Moreover, the brochure constituted a unilateral contract, thereby binding the buyer based on the advertisement created by the developer.⁶ The discrepancy between the quality and facilities of the apartment unit compared to what was advertised in the brochure constitutes a violation of consumers' rights as stipulated in Paragraph 4 letter c of Law No.8/1999. This provision guarantees consumers the right to accurate, clear, and honest information regarding the condition and guarantee of goods and/or services.

In Law No.8/1999, which pertains to consumer protection, several key principles are established, namely, the principle of utility, which means that various provisions and policies of consumer protection law should be directed towards maximizing benefits for consumers. This is so that consumer rights can be properly applied, and various provisions and policies of consumer protection law should be oriented towards the benefit of consumers; the principle of justice

⁴ Hasyim Sofyan Lahilote, "Tanggung Jawab Developer Pada Perjanjian Pengikatan Jual Beli (PPJB) Perumahan Dalam Perspektif Hukum Perlindungan Konsumen," *Jurnal Ilmiah Al-Syir'ah* 7, no. 1 (2016).

⁵ Sinta Dewi Rosadi and Zahra Tahira, "CONSUMER PROTECTION IN DIGITAL ECONOMY ERA : LAW IN INDONESIA," *Yustisia Jurnal Hukum* 7, no. 1 (2018).

⁶ Ruth Yiska Lumban Tobing, Suradi, and Dewi Hendrawati, "Gugatan Terhadap Jual Beli Rumah Yang Tidak Sesuai Dengan Brosur," *Diponegoro Law Journal* 8, no. 2 (2019).

places consumer rights and obligations fairly and proportionally. This includes the affirmation of consumer rights and obligations along with business actors as a comprehensive unity; thus, they must be implemented fairly. The principle of this balance emphasizes the interconnection of the three parties in efforts to ensure consumer, which include consumers, the government, and businesses; the principle of consumer security and safety is an important focus for both the government and businesses to prioritize consumer safety and security. This also includes the assertion of requirements and certifications related to the quality of goods or services with detailed scrutiny and supervision to maximize consumer safety and security assurance; the principle of legal certainty is related to the rigid guarantee of consumer rights through various existing laws and regulations.⁷

Product review entails the practice of disseminating information through evaluation, examination, or discussion of all facets of a product, encompassing its condition, quality, strengths, and weaknesses.⁸ According to Abdul Fickar Hadjar, consumer possess the right to review the products they utilize, provided that such reviews do not transgress the boundaries of fair competition. Essentially, the function of a review is to appraise the condition, quality, strengths, and weaknesses of various types of goods and/or services. This is facilitated by consumers themselves, who test the product's utility and present the observed condition and quality through photos or recordings, subsequently shared with other social media users. Through product reviews, consumers can garner deeper insights into the attributes and drawbacks of a product, enabling the conveyance of criticism and suggestions to businesses/producers involved.⁹

In conducting reviews, it's imperative to adhere to certain limitations to uphold the rights and interests of other parties, which encompass honesty, common sense, good intentions, and full responsibility. When providing reviews, it's essential to include factual

⁷ Retno S D, Dwiatmanto, and Surjanti, "Comparison of Consumer Protection Laws Between Indonesia, the Philippines, and South Korea in Achieving Justice," *LSAI* 30 (2024): 169–182.

⁸ Wiwik Sri Widiarty and Aartje Tehupeiory, "THE ROLE OF BUSINESS LAW IN IMPROVING CONSUMER PROTECTION IN THE DIGITAL AGE," *Journal of Law and Sustainable Development* 12, no. 2 (2024).

⁹ Yan Ferdinal and Pudji Astuti, "Tinjauan Yuridis Kebebasan Berpendapat Konsumen terkait Review Produk di Media Sosial," January 9, 2024.

information that substantiates statements, ensuring that information disseminated to the broader public is supported by robust evidence, thereby mitigating the risk of being construed as defamation or slander. Restrictions on consumers' rights to express opinions, lodge complaints, offer criticisms, provide suggestions, and share information with others should only be imposed in accordance with laws, business ethics, and considerations such as (a) Respect for human rights and the freedom of others; (b) Adherence to prevailing norms; (c) Maintenance of public safety and order; (d) Consideration of public interests; (e) Preservation of national integrity.¹⁰ Consumers are likewise obligated to utilize language or expressions that are appropriate and adhere to norms of decency.¹¹ Consumers are entitled to express opinions or comments on a product or service across any media platform, provided that such expression is conducted in a manner that is appropriate and adheres to prevailing norms and positive laws.¹² Thus, while the law protects consumers' rights to express their opinions, this freedom is not without limits. It is crucial that such expressions do not infringe upon the rights of others, particularly when conveyed using inappropriate language. An illustrative example is the case involving Gandhi, who tweeted about the EsTeh beverage brand. Gandhi criticized the product by using derogatory language, including a term that referred to animals. Consequently, EsTeh issued a subpoena demanding an apology. The matter was ultimately resolved amicably, with Gandhi issuing an apology and deleting his tweet. This case underscores the importance for consumers to adhere to ethical standards and norms of civility when voicing their opinions, ensuring that their expressions are both legally and socially acceptable.

Consumers, upon payment of the offered price, rightfully anticipate receiving goods of commensurate quality. Additionally, prior to disseminating the video review or blog posts, consumers endeavored to address concerns regarding the apartment unit and its amenities

¹⁰Ibid.

¹¹Mirza Mar'Ali and Priliyani Nugroho Putri, "Perlindungan Hukum terhadap Konsumen dalam Melakukan Review Suatu Produk di Media Sosial dari Delik Pencemaran Nama Baik," *Padjadjaran Law Review* 9, no. 2 (2021): 1–10.

¹²Putu Carina Sari Devi and Suatra Putrawan, "Perlindungan Hukum Konsumen yang melakukan Review Produk Barang atau Jasa di Media Sosial," *Kertha Semaya* 6, no. 7 (2018): 1–14.

amicably. This underscores consumers' fulfillment of consumer obligations as mandated by Paragraph 5 of Law No.8/1999. During the trial proceedings, Deedi Tjhandra submitted evidence pertaining to the apartment unit and its amenities, thereby warranting legal protection,¹³ Including the entitlement to compensation, damages, and/or replacement if the received goods and/or services fail to adhere to the agreement or prescribed standards, as outlined in Paragraph 4 letter h of Law No.8/1999.

In accordance with Paragraph 4 letter d of Law No.8/1999, consumer opinions or complaints regarding the utilization of goods and/or services must be acknowledged irrespective of the medium through which they are conveyed. However, it is imperative to recognize that businesses are profit-oriented entities. Consequently, openly expressing criticism or complaints through social media platforms can potentially impact the company's image, brand, credibility, and reputation.

In the past, consumers were revered as kings whose opinions were esteemed, and all criticism or complaints were received graciously. However, in today's social media-driven era, companies are fiercely protective of their reputation, and criticism or complaints are often met with legal recourse, particularly with the enforcement of Law No.19/2016 jo. Law No.11/2008. Frequently, the criticism or complaints articulated by consumers contain offensive, vulgar, defamatory, or misleading language that deviates from the actual situation or experience, thereby transitioning from constructive criticism to being detrimental. For businesses who feel aggrieved by criticism or complaints expressed by consumers on social media, protection is afforded through Paragraph 6 letter b of Law No.8/1999, which confers the right to legal recourse against consumers who act in bad faith.

PT.MBM assesses that since the viral video review by @ompolosbanget, sales of the apartment units have experienced a decline, and buyers who had previously made purchases subsequently canceled their transactions, resulting in substantial losses for PT.MBM. Pursuant to Paragraph 6 letter b of Law No.8/1999, businesses harmed

¹³ Iftinaity Shaumi Rahma et al., "Indonesian Legal Protection for Consumers on the Validity of Electronic Contracts in the E-Commerce Transactions," *Yuridika* 37, no. 3 (2022).

by the actions of consumers are granted the right to rehabilitate their reputation if it is legally proven that the consumer's loss was not caused by the goods and/or services (Paragraph 6 letter d of Law No.8/1999). Consequently, it appears that consumers retain the right to review goods and/or services via social media as long as they are conveyed accurately, while businesses have the right to protect consumers from acting in bad faith. Law No.8/1999 affords balanced legal protection; however, with the enforcement of Law No.19/2016 jo. Law No.11/2008, the consumer's right to express their opinion is often marginalized, particularly in the current digital era.

Paragraph 6 letter b and d of Law No.8/1999 provides that business actors are entitled to legal protection against actions taken by consumers in bad faith and have the right to rehabilitation of their reputation if it is legally established that consumer losses were not caused by the goods and/or services they provided. While Law No.8/1999 does not prescribe sanctions against consumers for infringing upon the rights of business actors. Business actors who believe they have been wronged by consumers acting in bad faith or who can demonstrate that the losses incurred were not due to their products or services may file a civil lawsuit based on Paragraph 1365 of the Civil Code for tort. Additionally, business actors may invoke Paragraph 1372 of the Civil Code, which permits civil claims for defamation aimed at securing compensation for damages and the restoration of their honor and reputation. Consequently, business actors should consider pursuing civil litigation rather than criminal charges in response to losses stemming from consumer reviews.

Act of Breach of Contract and Defamation Claim for Apartment Unit Review Video

Initially, consumer cases mentioned above revolved around a breach of contract by developer, specifically regarding the inadequate quality of the apartment unit and the absence of facilities promised in the brochure. This contravenes Paragraph 1243 of the Civil Code, which stipulates that a breach of contract includes the performance of obligations below the expected standard. Instances where developers deliver housing or apartment units of subpar quality and fail to provide promised facilities are not uncommon, often resulting in civil litigation

or criminal charges related to fraud. Such criticism, articulated through video reviews, transformed the developer's initial breach of contract into allegations of defamation against the consumer.

Renegation of the agreement gives birth to the right for the other party to file a lawsuit for default, by looking at Paragraph 1267 of the Civil Code, the injured party may claim : (a) performance (*nakoming*); (b) damages (*vervangende vergoeding*); (c) dissolution, termination, or cancellation (*ontbinding*); (d) performances plus supplementary damages (*ontbinding en aanvullend vergoeding*).¹⁴ Nevertheless, despite the conspicuous breach of contract by the developer, consumers frequently abstain from initiating civil lawsuits due to several considerations, including litigation expenses, the formidable position of the opposing party, protracted trial procedures, among other factors. Consequently, they often opt to articulate their grievances on social media platforms.

The tarnishing of one's reputation or defamation or slander in written form is known as 'libel,' while spoken defamation is termed as 'slander.' There are five forms of defamation, namely, written defamation, slight insult, slander, defamation by accusation, and defamation by allegation.¹⁵ Written defamation (*smaadschrift*) is the act of tarnishing one's reputation through written words or images disseminated, displayed, or affixed in public.¹⁶ The criminal act of defamation is an offense that attacks one's reputation, comprising expressions, statements, and media that assail the honor of others and have the potential to diminish the self-esteem and dignity of the defamed party or the accusation against someone of having done something and disseminated to the public at large. Disturbance or violation is directed towards an individual's reputation in the form of

¹⁴ Gavin Samir, "TANGGUNG GUGAT PENGEMBANG KEPADA PEMBELI AKIBAT WANPRESTASI TERHADAP PRASARANA, SARANA DAN UTILITAS UMUM DALAM PELAKSANAAN PERJANJIAN PENGIKATAN JUAL BELI SATUAN RUMAH SUSUN," *Perspektif* 24, no. 1 (2019).

¹⁵ Melalui Media et al., "Penerapan Sanksi Pada Tindak Pidana Pencemaran Nama Baik Dan Penghinaan Melalui Media Sosial Menurut Uu Iti," *Lex Privatum* 9, no. 5 (2021).

¹⁶ Rafiki Candra Priambud, "PENCEMARAN NAMA BAIK MENURUT PASAL 310 KUHP DAN PASAL 27 UNDANG-UNDANG NOMOR 19 TAHUN 2016 TENTANG ITE," *Jurnal Lex Administratum* 8, no. 32 (2020).

false statements, slander, defamation, mockery, and insult.¹⁷ Oemar Seno Aji described damaging the image as a threat to self-esteem. A form of damaging the image is "defamation by being recorded and accusing something."¹⁸

The criminal act of defamation is divided based on the means used, namely, conventional defamation, which is carried out in the usual manner, such as orally and in writing. Oral defamation involves speaking with the intention of attacking or embarrassing someone in public, while written defamation involves creating written or graphic content with the intention of attacking someone's reputation in the media, which is then disseminated. Second, defamation through information technology, which is carried out orally or in writing. If oral defamation is usually done through voice messages or telephone calls aimed at attacking someone's reputation, defamation using information technology in written form involves creating images or text in the form of an electronic document with the purpose of attacking someone's reputation. R. Soesilo states that such accusations must be directed at individuals, so they do not apply if the party feeling insulted is an institution or organization. However, if the accusation is aimed at serving the interests of many people, meaning it does not cause harm to the rights of many people or is based on self-defense (consideration by the judge), then the accuser is not punished.¹⁹ The Elucidation of Paragraph 27A of Law No.1/2024 provides a definition of defamation, stating that "attacking honor or good name" refers to actions that degrade or damage an individual's reputation or dignity, causing harm to that person, including defamation and/or slander. Consequently, it appears that a victim can file a lawsuit for defamation as long as there is harm, even if the information conveyed or stated aligns with the facts.

¹⁷ M Rifki Herdiana, "HUKUMAN TINDAK PIDANA PENCEMARAN NAMA BAIK MELELUI MEDSOS," *Journal Evidence Of Law* 1, no. 3 (2022).

¹⁸ Indah Satria and I Gede Agung, "SETTLEMENT OF DEFAMATION CRIMINAL CASES THROUGH SOCIAL MEDIA WITH A RESTORATIVE JUSTICE APPROACH," *TANJUNGPURA LAW JOURNAL* 7, no. 1 (2023).

¹⁹ Vita Fajrin Jahriyah et al., "Kebebasan Berekspresi Di Media Elektronik Dalam Perspektif Pasal 27 Ayat (3) Undang- Undang Nomor 19 Tahun 2016 Perubahan Atas Undang- Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Pelayanan Transaksi Elektronik (UU ITE)," *Sosio Yustisia: Jurnal Hukum dan Perubahan Sosial* 1, no. 2 (2021).

Paragraph 27 subsection (3) of Law No.19/2016 jo Law No.11/2008 fundamentally seek to uphold a balance between safeguarding personal rights, familial integrity, honor, dignity, freedom of speech, expression, opinion, and thought, and facilitating the seeking, obtaining, possession, storage, processing, and dissemination of information.²⁰ The elements of Paragraph 27 subsection (3) can be outlined as follows:²¹

1. Intentionally. Fault in the narrow sense can take the form of intent (*opzet*) or negligence (*culpa*). In Latin, this principle of fault is referred to as "*mens rea*." The doctrine of *mens rea* is predicated on the notion that an individual is not deemed culpable for an act unless their intent is malicious.
2. Without right. The illegality of an act is an absolute element in a criminal offense, leading some to assert that "there is no punishment without illegality" and "there is no criminal liability without illegality."
3. Distributing, transmitting, and/or making information and/or electronic documents accessible entail various forms of dissemination. Distribution involves sharing or dispersing activities, whereas transmission pertains to broadcasting. Both actions are proactive in nature. Conversely, 'making accessible' encompasses both active and passive activities, as it can entail granting others access to information and/or electronic documents.
4. Entailing content of defamation and/or character defamation. The term 'defamation and/or character defamation' must correspond to the identical provisions governed in the articles of the Criminal Code, subsequently interpreted by CC Decision, thus inseparable from the norms delineated in article of insult and defamation.

²⁰ Brilliant Lintong, Maarthen Y Tampanguma, and Anastasia Emmy Gerungan, "Pengaturan Tindak Pidana Penghinaan Dan Pencemaran Nama Baik Dalam Undang-Undang Informasi Dan Transaksi Elektronik Pasca Putusan Mahkamah Konstitusi Nomor 50/Puu-Vi/2008 Dan Nomor 2/Puu-Vii/2009," *Lex Crimen* 10, no. 7 (2021).

²¹ Agung Gumelar and Rabiah Z Harahap, "Perlindungan Hukum Konsumen dari Delik Pencemaran Nama Baik Suatu Produk di Media Sosial," *EduYustisia : Jurnal Edukasi Hukum* 2, no. 1 (2023): 40–47.

Soetandyo Wingjosoebroto states that there are objections regarding Paragraph 27 subsection (3) of Law No.19/2016 jo Law No.11/2008, namely: firstly, the lack of clarity regarding who is targeted by the provision “those who make information accessible or those who create the content of defamation of character”. Secondly, the provision containing defamation is subjective in nature, unlike other provisions formulated objectively. Defamation often tends to be subjective because there are parties who feel victimized and insulted.²²

In the Explanation of Paragraph 27 subsection (3) of Law No.19/2016 jo Law No.11/2008, it is elucidated that the provision pertains to the regulations concerning defamation and/or slander as stipulated in the Criminal Code. This alignment is underscored by CC Decision No.50/PUU-VI/2008, wherein it is explicated in its considerations that Paragraph 27 subsection (3) of Law No.19/2016 jo Law No.11/2008 does not introduce novel criminal law norms but rather reinforces the existing defamation criminal law norms from the Criminal Code into the new legislation due to advancement in the electronic or cyber domain. In the CC Decision No.78/PUU-XXI/2023, it was declared that Paragraph 310 subsection (1) of the Criminal Code has been amended and is conditionally unconstitutional. Specifically, Paragraph 310 subsection (1) is deemed incompatible with UUD NRI 1945 and lacks binding legal force unless it is interpreted as follows: “Whoever deliberately attacks the honor or good name of another person by alleging something orally, with the clear intention of making it known to the public shall be punished for defamation with imprisonment...”. With respect to the term ‘orally’, if an individual verbally accuses another of theft without any substantiated report of such theft, the accuser may be prosecuted under Paragraph 310 subsection (1). This paragraph underscores the necessity of basing accusations on factual evidence when making statements that could harm a person’s reputation or honor.

An important element in Paragraph 27 subsection (3) of Law No.19/2016 jo Law No.11/2008 is the phrase 'containing content of defamation and/or defamation of character'. This article is considered

²² Jahriyah et al., “Kebebasan Berekspresi Di Media Elektronik Dalam Perspektif Pasal 27 Ayat (3) Undang- Undang Nomor 19 Tahun 2016 Perubahan Atas Undang- Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Pelayanan Transaksi Elektronik (UU ITE).”

flexible because, in practice, individuals who post criticisms or complaints on social media can be implicated under this paragraph without careful examination and scrutiny to determine whether the elements of defamation and/or defamation of character are truly fulfilled. In practice, simply mentioning the name of a company or brand of goods and/or services while expressing criticism or complaints on social media can potentially result in prosecution under this paragraph. Given the ease with which the general public, especially consumer, can be implicated under this provision when posting reviews or comments containing criticism or complaints, it is frequently contested through judicial review at the CC Decision.

In the case of Deedi Tjhandra, factual information about the quality of the apartment unit and its facilities has been provided. However, in the video review, there is also the term “Barbie house” which sarcastically refers to the strength of the building of the apartment unit he purchased. Deedi Tjhandra openly criticized the building constructed by PT.MBM based on his experience when installing an air conditioner. This action is considered to fulfill the elements of defamation of character. However, what needs to be considered is the legal interpretation and evidence regarding the satirical tone of the statements made in the video review, whether they constitute insults and defamation of character.

R.Soeroso’s viewpoint resonates with the provisions outlined in the Joint Decree concerning defamation, which primarily addresses actions against individuals. This correlation is in line with Paragraph 310 subsection (3) of the Criminal Code, which specifies that an act is not considered defamation or written defamation if performed in the interest of the public or in self-defense, and with the stipulation of Paragraph 1376 of the Civil Code, which stipulates that a defamation lawsuit cannot be entertained if undertaken in the interest of the public or in self-defense. In the case of Deedi Tjhandra, the video review presenting the apartment unit and its facilities accurately depicted the real conditions. The content raised issued regarding the structural soundness of the building and facilities failing to meet the advertised standards, thereby qualifying as being ‘in the common interest’ as governed by both the Criminal Code and Civil Code. This pertains to the safety aspect associated with the utilization of goods and/or services, as delineated in Paragraph 4 of Law No.8/1999. Regarding the

common interest, Paragraph 45 subsection (7) of Law No.1/2024 states that defamation as stipulated in Paragraph 45 subsection (4) shall not be punished if it is committed in the common interest or if it is committed in self-defense. The Explanation of Paragraph 45 subsection (7) clarifies that “carried out in the common interest” encompasses activities aimed at safeguarding common interest as manifested through the right to expression and the right to democracy, such as demonstration or criticism. In a democratic society, criticism is essential as a facet of freedom of expression and should be constructive, even when it entails disapproval of others action or behaviors. Fundamentally, the criticism referred to in this article serves as a form of oversight, correction, and advice on matters pertinent to societal interests.

In reality, business owners who perceive that their reputation and credibility have been impugned can pursue civil lawsuits under Paragraph 1372 of the Civil Code. Conversely, the accused party can invoke Paragraph 310 subsection (3), where the concept of common interest is also addressed in Paragraph 1376 of the Civil Code. According to this paragraph, civil claims concerning defamation cannot be upheld if there is no substantiation of malicious intent, which is considered absent if the creator unequivocally acted in the public interest or in urgent self-defense. The concept of common interest articulated in Paragraph 310 subsection (3) of the Criminal Code and Paragraph 1376 of the Civil Code should be applied in instances of consumer reviews on social media, albeit necessitating thorough evidence and interpretation.

The concept of common interest has also been regulated in the Elucidation of Paragraph 27 subsection (3) of Law No.19/2016 which states that the provisions on defamation refer to the provision in the Criminal Code. This means that Paragraph 27 subsection (3) follows the rules in Paragraph 310 of the Criminal Code including Paragraph 310 subsection (3) on common interest. The concept of common interest should be applied to cases of consumer reviews where the reviews conducted provide benefits to the community, for example in the three cases of consumer reviews mentioned above where reviews of apartments that are not in accordance with what was promised can prevent prospective buyers from purchasing apartments that can harm them. The apartment unit and its facilities that do not match are a form

of default committed by the developer, but because consumer reviews are widespread on social media, the developer suffers losses so that it then files a defamation claim. If every time a consumer reviews a product and is considered detrimental by and countered by a business actor with criminal charges, consumers will not want to review or have an opinion, which is a silencing of freedom of speech. Therefore, in consumer reviews that are carried out in good faith and honesty and are beneficial to the common interest, the concept of common interest should be applied by judges as a form of legal protection for consumers from defamation.

Errors in the Application of Legal Basis in Judges' Decision in Apartment Unit Video Review Cases

Consumers frequently encounter challenges such as discrepancies between apartment units and the advertisements or promises made in brochures. When they raise complaints with developers, they often receive no response or resolution, and developers may attempt to evade responsibility by offering various justifications, despite the apparent breach of contract. Expressing these grievances on social media, however, exposes consumers to the risk of defamation lawsuits. Generally, consumers refrain from pursuing legal action due to considerations such as financial costs, time constraints, and the imbalance of power between themselves and developers, who are typically in a stronger position. Additionally, many consumers do not seek redress through the Consumer Dispute Settlement Body (CDSB) due to a lack of familiarity with this non-litigation option, making social media their preferred platform for raising complaints.

The criminal law system in Indonesia fundamentally adheres to the *ultimum remedium* principle, which positions imprisonment as the last resort. Punitive patterns aimed at retaliation against the perpetrator's legal acts, as found in absolute theory, must be formulated towards restoration, akin to the original state.²³ At the hearing held in February 2024 regarding the case of a video review by the account @ompolosbanget, the judge ruled that Deedi Tjhandra was proven to

²³ MAsna Nuros Safitri and Eko Wahyudi, "Pendekatan Restorative Justice Dalam Tindak Pidana Pencemaran Nama Baik Melalui Media Sosial Sebagai Implementasi Asas *Ultimum Remedium*," *Esensi Hukum* 4, no. 1 (2022).

have violated Paragraph 27 subsection (3) of Law No.19/2016 jo Law No.11/2008. The application of Paragraph 27 subsection (3) of Law No.19/2016 jo Law No.11/2008 was deemed inappropriate because the judge did not consider CC Decision and Law No.1/2024, as well as the Joint Decree. The enactment and promulgation of Law No.1/2024 occurred in January 2024, while the verdict was delivered in February 2024, thus the judge utilized a provision that had been repealed, constituting a violation of the legal fiction principle, namely the presumption that a legal regulation has been promulgated and therefore everyone is deemed to know it (*presumption iures de iure*), as regulated in the Explanation of Paragraph 81 of Law No.12/2011. By applying a provision that has been repealed in Law No.1/2024, the judge's decision was legally flawed.

Due to the frequent misuse of defamation laws to criminalize individuals and suppress freedom of speech, a Joint Decree was issued. Within clause (b) of Joint Decree, it is specified that, in light of CC Decision No.50/PUU-VI/2008, it does not constitute a criminal offense violating Paragraph 27 subsection (3) of Law No.19/2016 jo Law No.11/2008 if the transmitted, distributed, and/or accessible content comprises insults characterized as derision, mockery, and/or inappropriate language. Therefore, for such actions, the categorization of a minor defamation offenses as referred to in Paragraph 315 of the Criminal Code may be applicable, which, as per the Explanation of Law No.19/2016 jo Law No.11/2008 and the CC Decision, is not encompassed within the provision of Paragraph 27 subsection (3) of Law No.19/2016 jo Law No.11/2008.

Furthermore, as elucidated in clause (c), offenses associated with defamation and/or character defamation are not encompassed within Paragraph 27 subsection (3) of Law No.19/2016 jo Law No.11/2008 if the transmitted, distributed, and/or accessible content comprises judgement, opinions, evaluations, or statements. In clause (f), it is delineated that the complainant, acting as the victim, must be an individual with a specific identity, rather than an institution, corporation, profession, or position. Clause (g) specifies that the focal point of prosecution under Paragraph 27 subsection (3) of Law No.19/2016 jo Law No.11/2008 does not center on the sentiments of the victim but rather on the deliberate (*dolus*) actions of the perpetrator with the intent to disseminate/transmit/make accessible information

that impugns someone's honor by making accusations so as to be publicly known.

If law enforcement agencies adhere to the Joint Decree, then utilization of Paragraph 27 subsection (3) would not be readily and freely applied to every case of criticism or complaint on social media, particularly considering points (b), (c), and (f). the non-compliance of law enforcement agencies with this Joint Decree has led to misuse of Paragraph 27 subsection (3) to easily prosecute individuals. This situation instills fear among the public, especially consumers, to voice their opinions through any platform, seemingly allowing their rights as consumers to be violated. As a result, Law No.1/2024 introduced a significant change, explicitly outlined in Paragraph 45 subsection (5), which stipulates that defamation, as a complaint-based offence, can only be prosecuted upon the complaint of the victim or the individual directly affected by the offence and not by a legal entity. Consequently, companies can no longer invoke the defamation provisions under Law No.1/2024 jo Law No.19/2016 jo Law No.11/2008. This provision serves to protect consumers, who are in a weaker position compared to business entities. However, consumers must still remain mindful of the boundaries when posting comments on social media.

It is noteworthy that in Paragraph 27 subsection (3) of Law No.19/2016 jo Law No.11/2008, the phrase "...intentionally and without right distributes and/or transmits and/or makes accessible...which contains insults and/or defamation of character" is present, whereas in Paragraph 27A of Law No.1/2024, it is altered to "...intentionally attacks the honor or good name of another by accusing something with the intention of making it publicly known...". The regulation of Paragraph 27A of Law No.1/2024 places greater emphasis on the phrase "intentionally attacks the honor or good name of another".

With the inclusion of the element of 'intentionality', consumer who express criticisms or complaints in the form of reviews or comments on social media platforms undoubtedly meet the criterion of intentionally for public dissemination. However, the interpretation of Paragraph 27A of Law No.1/2024 should not solely center on the term 'intentionally', but rather must be construed in conjunction with the phrase 'attacks the honor or good name of another'. Consequently, thorough evidence and legal interpretation are imperative to ascertain

the fulfillment of all elements outlined in Paragraph 27A of Law No.1/2024 before applying this provision to criticisms or complaints voiced by consumer concerning goods and/or services. Without comprehensive evidence and legal interpretation, notwithstanding the existence of CC Decision No.50/PUU-VI/2008, CC Decision No.78/PUU-XXI/2023 and Law No.1/2024, there will be no legal ramifications, and this provision will continue to be wielded to ensnare consumer.

Conclusion

The rights of consumer to provide reviews or express their opinions should not be curtailed by Paragraph 27 subsection (3) of Law No.19/2016 jo Law No.11/2008, particularly in light of CC Decision No.78/PUU-XXI/2023 and Law No.1/2024. The limitation for consumer in expressing their criticisms or complaints lies in the principle of ethical expression and civility, ensuring that their communications do not include insults, ridicule, defamation, or inappropriate language, as stipulated in clause (b) of the Joint Decree. Furthermore, businesses cannot readily file lawsuits against consumer who provide reviews if those reviews comprise assessments, opinions, evaluations, or statements containing defamation, as it is also stipulated that the complainant cannot be a company/corporation, nonetheless owing to its classification as a Joint Decree, law enforcement officials frequently do not comply with the stipulated provisions regarding defamation.

In conflicts with the businesses, consumer should prioritize the role of CDSB over openly expressing criticisms or complaints via social media. In addition to consumers, business actors who feel aggrieved by consumer reviews can resolve their problems through the CDSB rather than filing criminal defamation charges. With the existence of Paragraph 45 subsection (5) of Law No.1/2024, business actors in the form of legal entities can no longer use the defamation paragraph so that CDSB must play an important role for business actors and consumers. This approach enables companies to recoup their losses without resorting to litigation. In applying the paragraph concerning defamation of character, judges must initially scrutinize the legal facts.

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