



## Legal Standing of Legal Entities as Victims of Cyber Defamation in Indonesian Laws

### Právne postavenie právnických osôb ako obetí kybernetického ohovárania v indonézskych zákonoch

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#### Abstract:

*Cyber defamation has become an increasingly concerning phenomenon in modern society. Legal entities, as legal subjects under the law, are also vulnerable to attacks of defamation that can harm their reputation. This research aims to analyse the legal standing of legal entity objects in the context of cyber defamation according to Indonesian law. This research used normative legal research method, involving analysis of legislation, court decisions, and relevant legal doctrines. This approach allows for a deep understanding of the legal framework governing the rights and obligations of legal entities in protecting their reputation from attacks in electronic media. The research findings indicate that legal entities have a strong legal standing in cases of cyber defamation in Indonesia. This is based on legal principles that recognize the rights of legal subjects to protect their reputation and honor. However, there are still weaknesses and challenges in implementing legal protection for legal entities in the context of electronic media, particularly regarding law enforcement and effective policies. This research contributes to a better understanding of legal protection for legal entities facing cyber defamation in Indonesia. The practical implications of this research underscore the importance of improving legal systems and policies to ensure more effective protection for legal entities in facing challenges in this digital era.*

**Keywords:** *Criminal Law; Defamation; Electronic Media; Indonesia's Policy; Legal Standing.*



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KARIM, Jonaedi EFENDI, YAHMAN, Bagus Andri DWI PUTRA

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## Abstrakt:

*Kybernetické ohováranie sa v modernej spoločnosti stáva čoraz zaujímavejším fenoménom. Právnické osoby, ako právne subjekty podľa zákona, sú tiež náchylné na útoky ohovárania, ktoré môžu poškodiť ich dobré meno. Cieľom tohto výskumu je analyzovať právne postavenie predmetov právnických osôb v kontexte kybernetického ohovárania podľa indonézskeho práva. Tento výskum využíval normatívnu metódu právneho výskumu, ktorá zahŕňala analýzu legislatívy, súdnych rozhodnutí a relevantných právnych doktrín. Tento prístup umožňuje hlboké pochopenie právneho rámca upravujúceho práva a povinnosti právnických osôb pri ochrane ich dobrého mena pred útokmi v elektronických médiách. Výsledky výskumu naznačujú, že právnické osoby majú silné právne postavenie v prípadoch kybernetického ohovárania v Indonézii. Toto je založené na právnych princípoch, ktoré uznávajú práva právnych subjektov na ochranu ich dobrej povesti a cti. Stále však existujú nedostatky a výzvy pri implementácii právnej ochrany právnických osôb v kontexte elektronických médií, najmä pokiaľ ide o presadzovanie práva a účinné politiky. Tento výskum prispieva k lepšiemu pochopeniu právnej ochrany právnických osôb, ktoré čelia kybernetickému ohováranu v Indonézii. Praktické dôsledky tohto výskumu podčiarkujú dôležitosť zlepšovania právnych systémov a politik s cieľom zabezpečiť účinnejšiu ochranu právnických osôb pri riešení problémov v tejto digitálnej ére.*

**Kľúčové slová:** trestné právo; ohováranie; elektronické médiá; indonézska politika; právne postavenie.

## Introduction

Cyber defamation has become a distressing phenomenon in society. Legal entities, as legal subjects that stand under the law, are also vulnerable to defamation attacks that can ruin their reputation. Defamation in criminal law in Indonesia is regulated in the Electronic Information and Transactions Law of the Republic of Indonesia Number 19 of 2016 on amendments to Law of the Republic of Indonesia Number 11 of 2008 regarding Electronic Information and Transactions, which was originally made by the government to regulate electronic transactions in order to obtain clear legal certainty. The law has recently been widely used as a ground to file reports due to improper application of the law. This cannot be separated from the existence of the rubber law, especially in 27 Paragraph (3) of the Electronic Information and Transactions Law jo. Article 45 Paragraph (3) of the Electronic Information and Transactions Law, regarding the distribution of insulting content and/or defamation. There are a number of misinterpretations of this article so that it is widely used to ensnare people who are considered to have committed defamation. For example, there is a disparity of verdicts in cassation verdict No. 155 K/Pid.Sus/2021 Jo. verdict of Surabaya High Court No. 315/Pid.Sus /2020/Pt Sby Jo. verdict of Malang District Court No. 497/Pid.Sus/2019/Pn Mlg (Malang, 2019)(P. T. Surabaya, 2020).

Articles on defamation previously regulated in the Electronic Information and Transactions Law are still valid and binding until the three-year transition period ending in 2026. Although Law No. 1 of 2023 on the Penal Code will replace these provisions, the implementation will only be implemented after the transition period ends (Indonesia, 2023).

Law enforcement regarding cyber defamation still refers to the provisions contained in the Electronic Information and Transactions Law. It indicates that legal entities that are victims of defamation can still use the relevant articles in the Electronic Information and Transactions Law to protect their rights until the

# Legal Standing of Legal Entities as Victims of Cyber Defamation in Indonesian Laws

KARIM, Jonaedi EFENDI, YAHMAN, Bagus Andri DWI PUTRA

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implementation of the Penal Code in full force after the transition period ends (Ramli, 2023).

Defamation is first regulated in Article 310 of the Penal Code which aims to protect the dignity of every person, especially regarding the honor (eer) and good name (goeden naam) of a person. In proving an act as defamation, it is necessary to examine whether the honor and good name of the person is actually attacked or defamed (Chazawi, 2016). The object defamed under this provision must be the honor and good name of the individual (natuurlijke persoon) and not for government agencies, management of an association, population groups and others (Gomgom T.P Siregar, 2020). In Indonesian law, defamation is regulated in the Penal Code. In addition, this matter is also regulated in the Electronic Information and Transactions Law. Thus, this research aims to analyze the legal standing of legal entities that are victims of cyber defamation according to Indonesian law, both civil and criminal.

## Literature Review

This research examines about the legal status of legal entities as victims of defamation in Indonesian laws. In order for the discussion to be comprehensive, it is essential to understand several theories that are used to discuss and examine issues related to the problem chosen by the researchers.

## Rule of Law Theory

The idea of the rule of law developed by several experts such as Plato, John Locke, Montesquieu, Aristotle and others was still ambiguous for a very long time. In the 19th century, the idea reappeared clearly with the emergence of a *rechtsstaat* concept proposed by Frederich Julius Stahl in Continental Europe inspired by the thoughts of Immanuel Kant.

*Rechtsstaats* (rule of law) was first used by Rudolf von Gneist (1816-1895), a professor from Berlin, Germany. In his book, *Das Englische Verweltungsgerechte*, he used the term *Rechtsstaat* to refer to the Britain (Mukhtie, 2004).

The notion of *rechtsstaats* is based on the Continental European legal system. The idea of *rechtsstaats* became popular in the 17th century as a result of the European socio-political situation which was controlled by the absolutism of the king (Wahjono, 1989).

The notion of *rechtsstaats* was elaborated by several Western Continental European jurists such as Immanuel Kant (1724-1804) and Friedrich Julius Stahl (Budiardjo, 1998). The notion of the rule of law became known after Albert Venn Dicey in 1885 published a book, *Introduction to Study of the Law of the Constitution*.

Friedrich Julius Stahl explained the elements of *rechtsstaats* in the classical sense (Budiardjo, 1998):

- 1) The Protection of Human Rights;
- 2) Division of authority to ensure the protection of individual rights (In some countries in Continental Europe also known as the doctrine of *trias politica*);
- 3) Government based on the rules or principles of administrative law;
- 4) Administrative court in dispute resolution.

At almost the same time, the concept of rule of law was developed by Albert

## Legal Standing of Legal Entities as Victims of Cyber Defamation in Indonesian Laws

KARIM, Jonaedi EFENDI, YAHMAN, Bagus Andri DWI PUTRA

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Venn Dicey and underpinned by the Anglo Saxon legal system. Dicey explained the various elements of the rule of law:

- 1) Belief in God Almighty in accordance with the Indonesian Constitution confirms that no power is arbitrarily free (*absence of arbitrary power*).
- 2) Equality before the law. This also applies for either common people or officials;
- 3) Human rights are guaranteed in laws (in other countries, guaranteed in the Constitution) and court verdicts.

Paul Scholter, a jurist, wrote about the rule of law in which the characteristics of the rule of law are described in a broad and critical manner. The main characteristic of the rule of law is *er is recht tegenover den staat*, meaning that the state has rights over the state, individuals have rights over society. This principle encompasses two meanings:

- 1) Humans have their own mood and according to the principle, it is beyond the authority of the state;
- 2) Restrictions on human's mood can only be made through statutory provisions with general regulations.

The second characteristic of the rule of law according to Paul Scholten is "*er is scheiding van machten*", the rule of law has a separation of authorities in it. Followed by Von Munch's opinion about the elements of a state based on law with the existence of (Attamini, 1990):

- 1) Human rights;
- 2) Restriction or distribution of authority;
- 3) The subordination of all state institutions to the constitution and the subordination of the judiciary to the constitution and the law.
- 4) The basic rule of proportionality or *Verhältnismässigkeit*;
- 5) Judicial supervision over decrees of the general authorities;
- 6) Judicial guarantees and fundamental rights in judicial proceedings;
- 7) Restriction on the enforceability of a law.

Prior to the amendment, the Constitution of 1945 described Indonesia's government is based on law (*rechtsstaat*) and not mere authority or *machtsstaat*. However, after the amendment, particularly in Article 1 paragraph (3), the Constitution of 1945 explains that Indonesia is a rule of law (Indonesia, n.d.). This implies that all parties involved in the administration of the state and its citizens must comply with the law. The Constitution of 1945 is a manifestation of the basic concepts and thoughts of the Indonesian people, which is often referred to as a written constitution.

### Legal Sytem Theory

The legal system theory that the researchers discusses is the concept developed by Lawrence M. Friedman. He explains that the effectiveness and success of law enforcement is influenced by three elements in a legal system: the structure of law, the substance of law, and legal culture. According to Friedman, the legal framework is "the structure of a system is its skeletal framework; ... the permanent shape and the institutional body of the system." It means that the structure of a

## **Legal Standing of Legal Entities as Victims of Cyber Defamation in Indonesian Laws**

KARIM, Jonaedi EFENDI, YAHMAN, Bagus Andri DWI PUTRA

---

system is its framework; a permanent form and institutional entity of the existing system (Lawrence M. Friedman, 1975).

The substance of the law consists of substantive rules as well as procedures for the proper conduct of institutions (Lawrence M. Friedman, 1975). It means that the substance of the law consists of substantive rules and how an institution should act.

The attachment elaborates that legal development aims to create a national legal system based on Pancasila and the Constitution of 1945. The legal development process includes the development of legal content, legal organizations including law enforcement and legal support systems, and measures to improve public understanding of legal concepts, with the aim of establishing a rule of law and promoting a just and democratic society (B. P. P. Nasional, 2007).

This theory also became the initial basis in the planning of the National Legal Development Grand Design. Legal development aims to establish a national legal system that effectively acts as a means to maintain order and prosperity, as well as a means to stimulate progress. Legal development involves the preparation of legal material or substance, institutional structure, and legal culture. The three elements are interrelated, so legal development must take place in a sustainable manner and with a global outlook. The establishment of a national legal system involves the preparation of legal content that reflects social values and interests, and also involves efforts to create a society that complies with the rule of law. Legal content should ensure legal certainty and order, protect human rights, and encourage obedience, discipline, and respect for the law. This in turns will stimulate public participation in national development (B. P. H. Nasional, 2019).

### **Theory of Legal Enforceability**

Jimmy Asshiddiqie states that a legal norm can be philosophically defined if it is in accordance with the philosophical values adopted by the state. In the drafting of Pancasila, there are values of religiosity of God Almighty, humanity of fair and civilized humanity, nationality of nationhood in the bond of unity in diversity, people's sovereignty and social justice for all Indonesian people. None of these five philosophical values should be forgotten or opposed by existing legal norms in various possible laws and regulations within the Republic of Indonesia (B. P. H. Nasional, 2019).

Pipin Syarifin stated that philosophical foundations are ideas and views as the basis of policies in society through drafts of laws and regulations (Syarifin, 1999). The basic philosophy of Indonesia is Pancasila, so that existing laws are based on Pancasila. Thus, every regulation or law is obliged to pay serious attention to the rechtsidee embodied in the Pancasila (Mahrus Ali, 2015).

### **Legal Certainty Theory**

This theory reflects one of the goals of law. Legal certainty is an integral part of attempts to fulfill the justice. Legal certainty is concrete, which means that in the implementation and enforcement of the law against an act, the identity of the individual or subject who did it is not a matter. The existence of legal clarity facilitates individuals to anticipate the consequences that may arise from the legal actions they take.

# Legal Standing of Legal Entities as Victims of Cyber Defamation in Indonesian Laws

KARIM, Jonaedi EFENDI, YAHMAN, Bagus Andri DWI PUTRA

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Legal certainty theory is a concept that has been developed by the experts with the aims to ensure the execution of general law. Therefore, the existence of legal certainty is an attempt to create order. In the society, the goal is not only to pursue justice and benefit. This perspective is supported by a number of arguments that emphasize that legal clarity is not always in line with the concepts of justice and benefit.

## Methodology

This research uses normative juridical research method. The approach to this study is carried out by raising a problem and describing it in a study by focusing on the application of existing rules and some norms that exist in positive law. The method commonly used by thesis researchers or other studies by using legal principles as a reference material for writing, and referring to the problem approach as follows:

- a. Statute Approach: a method in which the researcher uses laws and regulations as the primary basis for their analysis.
- b. Conceptual Approach: a method that uses concepts in legal science as a starting point or basis for conducting research analysis.
- c. Analytical Approach: a method of in-depth analysis of legal facts or certain legal issues.
- d. Philosophy Approach: a method that uses philosophical principles to understand and analyze the conceptual and theoretical aspects of a legal issue.
- e. Document Study Approach: a method that study various documents that are relevant to the topic or problem being studied, as well as studying legal norms or rules carried out in legal practices.

In normative legal research, these approaches are studied to obtain an overview of the impact of the enactment of a rule of law in legal practice and to explore various aspects of law, including statutory interpretation, public policy, legal practice, and comparative law between countries.

## Findings and Discussion

### *1. Legal Position Between Legal Entity as the Reporter (Victim) and Individual Reporter (Naturlijke Person) in the Crime of Cyber Defamation.*

#### A. The Definition of a Reporting Witness

In general, the definition of a witness is regulated in the Criminal Procedure Code, article 1 point 26 which has been ratified into Law No. 8 Year 1981, the definition of a witness is explained as follows: "A witness is a person who has the ability to provide relevant information in the process of investigation, prosecution, and trial regarding a criminal case that they have heard, seen, and experienced themselves."(Indonesia, 1981). Furthermore, Article 1 point 27 of the Criminal Procedure Code also explains that witness testimony is a form of evidence in criminal cases consisting of direct testimony regarding a criminal event witnessed by the witness personally, which is accompanied by an explanation and knowledge that they have (Prakoso, 1988).

## Legal Standing of Legal Entities as Victims of Cyber Defamation in Indonesian Laws

KARIM, Jonaedi EFENDI, YAHMAN, Bagus Andri DWI PUTRA

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### 1. Legal Position of Legal Entity Reporter Witness with Individual Reporter Witness (Natuurlijke Person) in the Crime of Defamation.

Defamation is regulated in the Electronic Information and Transactions Law Article 27 paragraph (3). Insults and/or defamation refer to or cannot be separated from Article 310 of the Penal Code, in accordance with the legal considerations of verdict No. 02/PUU-VII/2009, that the formulation of Article 27 paragraph (3) of the Electric Information and Transactions Law cannot stand alone because the editorial "has the content of insults and/or defamation." Normatively, Article 27 of the Electronic Information and Transactions Law according to the Constitutional Court's verdict No. 50/PUU/VI/2008, that the interpretation of Article 27 paragraph (3) of the Electronic Information and Transactions Law in 2009 the phrase "insults and/or defamation" refers to or cannot be separated from Article 310 of the Penal Code regarding defamation.

The Penal Code regulates the criminal act of defamation or libel only applies to individuals and cannot be applied to legal entities or business entities. This is because when the Penal Code was drafted, the legal subject and legal object were only limited to individuals. One aspect that is frequently debated in the context of defamation is the element of "honor or good name of a person" as described in Article 310 of the Penal Code.

### 2. Legal Position of Individual Witnesses (Natuurlijke Person) in the Crime of Defamation.

Every form of insult is always defamatory and dishonors people. Laws related to defamation are regulated in Article 310 of the Penal Code. However, if it is done on social media by distributing and/or transmitting and/or making accessible electronic information and/or electronic documents, it is specifically regulated in Article 27 paragraph (3) of the Electronic Information and Transactions Law.

In the defamation norm, it is formulated about who is the legal subject (*addressaat norm*) or the actual target addressed by a legal norm on a criminal act. The *addressaat norm* of Article 310 of the Penal Code is "whoever intentionally attacks the honor or good name of a person". The term "whoever" (*hij die*) in the Penal Code refers to an individual and the attacked person's good name, so that both Article 310 of the Penal Code and Article 27 paragraph (3) of the Electronic information and Transactions law can only be addressed to humans as legal subjects (*natuurlijk persoon*) and not addressed to legal entities (*rechts persoon*).

### 3. Crime of Cyber Defamation.

Defamation is a deliberate act to ruin or besmirch the good name or reputation of another individual. This causes the public's initially good and recognizable image of that person to become ruined, negative, or no longer favorable in the public. Slander is one of the actions that can cause defamation, but not all defamation is caused by slander.

The crime of defamation (*belediging*) has been regulated in various laws, both generally and specifically, with the aim of protecting legal interests related to one's honor and good name. The law does not provide any description of the term defamation (*belediging*) as a qualifying crime in Chapter XVI of Book II. Neither do the two legal objects of the crime, *eer* (honor) and *goeden naam* (good name). This form of crime in Chapter XVI should indeed be called as defamation, because this

## **Legal Standing of Legal Entities as Victims of Cyber Defamation in Indonesian Laws**

KARIM, Jonaedi EFENDI, YAHMAN, Bagus Andri DWI PUTRA

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term is broader than the term honor, although the term honor is often also used by some Indonesian jurists, because honor is only one of the objects of defamation. In Indonesian law, especially in the context of defamation, there are two types of defamation regulated, which are general defamation and specific defamation in the Penal Code. The regulation of defamation in the Indonesian criminal law system is regulated in Articles 310-320 of the Penal Code. Article 310 paragraphs (1) and (2) stipulate that a person can be found guilty of the crime of defamation if they intentionally accuse another person in public with the aim of ruining their honor or good name, including through the dissemination of writings or images that are broadcasted, displayed, or affixed. If the person accused of defamation is given the opportunity to prove the allegation or statement but is unable to prove it, then the person will be deemed guilty of slander in accordance with Article 311 paragraph (1) of the Penal Code.

4. Joint Decree of the Minister of Communication and Information of the Republic of Indonesia, with the Chief of the National Police of the Republic of Indonesia No. 229 of 2021, No. 154 of 2021, No. KB/2/VI/2021 Regarding Implementation Guidelines for Certain Articles of the Electronic Information and Transactions Law.

The Minister of Communication and Informatics of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Chief of the National Police of the Republic of Indonesia made guidelines for the interpretation of certain articles in the Electronic Information and Transactions law because it was considered that there were problems of ambiguity in the meaning of the articles which caused multiple interpretations in their application. For this reason, a Joint Decree No. 229 of 2021, No. 154 of 2021, No. KB/2/VI/2021 regarding Implementation Guidelines for Certain Articles in Law No. 11 of 2008 regarding Electronic Information and Transactions law was made and signed by the Minister of Communication and Information Technology, the Attorney General of the Republic of Indonesia, and the Chief of Police of the Republic of Indonesia.(Kementrian Komunikasi dan Informatika, 2016) This joint decree officially takes effect on June 23, 2021, which considerations and implementation guidelines are specific to article 27 paragraph 3 of the Electronic Information and Transactions Law.

5. Several Types of Defamation Verdicts Through Electronic Media With Objects of Legal Entities.

Cassation Verdict No. 155 K/Pid.Sus/2021 Jo. Surabaya High Court Verdict No. 315/Pid.Sus /2020/Pt Sby Jo. Verdict of the District Court of Malang Number 497/Pid.Sus /2019/Pn Mlg.:(Agung, 2021)(P. T. Surabaya, 2020)

Surabaya District Court Verdict No. 658/Pid.Sus/ 2021/PN Sby;(P. N. Surabaya, 2021)

North Jakarta District Court Verdict No. 1265/Pid.Sus /2023/PN Jkt Utr;(Jakarta, 2023)

6. Grounds and Considerations in Analyzing “Legal Comparison Between Legal Entity Reporter Witness and Individual Reporter Witness (Naturlijke Person) in the Crime of Cyber Defamation”

a) Viewed from a Juridical Study



## **Legal Standing of Legal Entities as Victims of Cyber Defamation in Indonesian Laws**

KARIM, Jonaedi EFENDI, YAHMAN, Bagus Andri DWI PUTRA

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The legal regulation of criminal acts of cyber defamation is regulated in laws related to information and technology, as well as laws that regulate certain criminal offenses such as defamation. In Indonesia, one of the laws that regulates such matters is Law Number 19 of 2016 on the Amendment to Law Number 11 of 2008 on Electronic Information and Transactions (Kementrian Komunikasi dan Informatika, 2016).

### **B. Viewed from a Theoretical Study**

The review of the theory of justice regarding the legal comparison between legal entity reporting witnesses and individual reporting witnesses in the criminal offense of cyber defamation involves considerations about:

- a. Process Justice;
- b. Substance Justice;
- c. Equality of Treatment;
- d. Protection of Rights;
- e. Balance of Interest;
- f. Principle of Applicable Law;

### **C. Viewed from Sociological Foundation**

Viewed from a sociological basis, the problems that occur in legal verdicts that are not in accordance with the principles of justice and legal certainty can be interpreted as the result of complex social and cultural dynamics in society.

## *II. Legal Certainty of Legal Entity Objects in Cyber Defamation According to Indonesian Civil Law*

### **A. Civil Lawsuit Approach.**

Civil Lawsuit is a formal legal framework that aims to maintain and uphold justice in the substantial civil law sector by dealing with violations that take place. Sudikno Mertokusumo states that Civil Lawsuit regulates procedures on how to file a claim or demand for rights, the investigation process and related decision-making, as well as the implementation of the verdict (Sudikno Mertokusumo, 1993).

### **B. Criminal Lawsuit Approach.**

Approach through criminal proceedings against the object of legal entities in defamation cases, the prosecution of liability for acts of defamation committed against legal entities cannot be carried out. Criminal lawsuit approach against the object of legal entities in defamation cases is not possible by legal entities.

### **C. Comparison between Criminal and Civil Proceedings.**

A comparison between criminal proceedings and civil lawsuits against legal entities in defamation lawsuits can be made by considering several important aspects, such as objectives, procedures, sanctions, and the impact on the legal entity.

### **D. The Compensation Rights of Legal Entity Subjects in Cyber Defamation**

According to Indonesian civil law, defamation is one of the specific crimes of civil action. There is no clear and unambiguous definition of defamation in criminal or civil law. This is because defamation is very subjective and many factors must be re-explained.

### **E. Grounds and Considerations in Analyzing Legal Certainty of Legal Entity in**

# Legal Standing of Legal Entities as Victims of Cyber Defamation in Indonesian Laws

KARIM, Jonaedi EFENDI, YAHMAN, Bagus Andri DWI PUTRA

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## *Cyber Defamation According to Indonesian Civil Law*

In analyzing the problem, a fundamental rationale and consideration is needed. In terms of juridical studies in the civil law sector, the concept of compensation is broader (Article 1365 of the Indonesian Civil Code) and aims to restore the original condition as it was before the loss occurred. Compensation in civil law can be requested in an unlimited amount, covering both material and immaterial losses. Although Article 1372 of the Indonesian Civil Code states that civil defamation claims aim to obtain compensation for damages and restoration of honor and good name, there is no clear benchmark in the Indonesian Civil Code to measure the elements and amount of compensation. People often use analogies with the provisions on damages in Chapter I of Book III of the Indonesian Civil Code.

### *Viewed from theoretical study*

- a. Justice Theory: Justice in the context of legal certainty relates to fair and equal treatment for all parties involved in a legal matter.
- b. Legal Protection Theory: Legal certainty in legal protection against legal entity objects in cyber defamation according to civil law in Indonesia can be explained through several aspects.
- c. Law Enforcement: Law enforcement against cyber defamation against legal entities in the context of civil law in Indonesia involves several important aspects.
- d. Legal Liability: In the context of legal liability related to cyber defamation against legal entities, there are several relevant principles and aspects in Indonesian civil law, the Responsibility Principle, Liability of Legal Entities, Proof and Presumption of Innocence, the Principle of Compensation, the Use of Relevant Civil Law.

In analyzing legal certainty, it is important to consider the sociological basis, especially in the context of incompatibility with the principles of justice and legal certainty.

## **Conclusion**

Legal regulations aim to protect the rights of individuals and/or legal entities to their reputation from the distribution of content that can ruin a person's or the legal entities' reputation through electronic media. This research aims to analyze the legal standing of legal entities as victims of cyber defamation in Indonesian law. This study found that the rights of individuals and/or legal entities require the use of constitutional rights and are human rights both juridically, theoretically and sociologically. In the case of cyber defamation, legal certainty means that legal entities also have the right to be protected from defamation regulated in civil law in Indonesia. Juridically, article 1372 of the Indonesian Civil Code states that civil claims for defamation aim to obtain compensation and restoration of honor and good name. However, there is no clear benchmark in the Indonesian civil code to measure the elements and amount of damages. People often use analogies with the provisions on damages in Chapter I of Book III of the Indonesian Civil Code. Electronic Information and Transactions Law Article 27 paragraph (3) and in Article 310 of the Penal Code, criminal defamation is more likely to be addressed to individuals, not

# Legal Standing of Legal Entities as Victims of Cyber Defamation in Indonesian Laws

KARIM, Jonaedi EFENDI, YAHMAN, Bagus Andri DWI PUTRA

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legal entities so that in the criminal laws and regulations in Indonesia there is a legal vacuum on legal entities in cyber defamation. Therefore, it is necessary to regulate criminal cyber defamation with the object of legal entities.

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## Legal Standing of Legal Entities as Victims of Cyber Defamation in Indonesian Laws

KARIM, Jonaedi EFENDI, YAHMAN, Bagus Andri DWI PUTRA

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