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ANALYSIS OF *PRITA MULYASARI* CASE ON JUDICIAL REVIEW VERDICT NO. 225 PK/PID.SUS/2011

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Abstract: *Social Media Are Growing So Rapidly Now, Besides Having A Positive Impact On Society, It Also Has Negative Impacts Such As Hoaxes, Pornography, And Defamation. Some Cases That Are Closely Related To Social Media Are Criminal Defamation In Violation Of The Information And Electronic Transactions Law, As Experienced By Prita Mulyasari, A Case That Was Initiated By Sending A Complaint Email For Omni Hospital To Her Friends, So She Was Charged Violating No. 11 Of Information And Electronic Transactions Law Year 2008, In This Study, The Author Uses The Doctrinal Or Normative Juridical Research Methodology By Discussing Court Verdict No. 225 PK / PID. SUS / 2011 where Prita Mulyasari Was Dismissed By The Tangerang District Court, But Was Found Guilty At The Supreme Court Level And Finally Was Released Free At The Judicial Review Level*

Keywords: Prita Mulyasari, RS. Omni, Information and Electronic Transaction Law
Research Area: Law
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1. INTRODUCTION

According to Webershandwick's data, Indonesia has 65 million active Facebook users, and 33 million active users every day, 55 million users use cellphones to access per month and 28 million use cellphones to access per day. Indonesian people, in addition to Facebook and Twitter, also actively use other social media such as WhatsApp, Line, Email, and others[1]. The use of social media today is not only used as a communication medium, but as a medium for the promotion of goods, food, tourist attractions, besides that social media is also used as a means of education, and delivery of information.

Besides having a positive impact on society, social media also has a negative impact, which can have an impact on the loss or damage to certain parties. The negative impact that is often encountered in the community is false news (hoax), this happens because of the lack of understanding from the user, the lack of checking the information received, the user tends to proceed directly without caring about the truth of the source of the information or news. Other cases that have occurred, social media are used by inappropriate interests, such as pornography, gambling, violence, and other criminal activities. Cases of social media, especially false news, have an impact and cause quite a big noise for the people of Indonesia. Several other cases, related to the Electronic Information and Transactions Law (hereinafter abbreviated as ITE Law), which have occurred in Indonesia, for example, the Prita Mulyasari case and the Baiq Nuril case which captured public attention.

Prita Mulyasari's case began when Prita went to the Omni Jakarta hospital on August 7, 2008, Prita experienced a high fever and the hospital conducted a blood lab test. Prita's

blood thromobocyte lab test result was 27,000 (normal 200,000). Prita then received some medical treatment, but on August 8, 2008 there was a revision of the results of the lab test, with written platelets of 181,000 thromobocyte. On 11 August 2008, Prita decided to leave the Omni Hospital, and asked for the results of her blood lab, because based on the results of the 27,000 thrombocyte lab, Prita was finally hospitalized, but only 181,000 thrombocyte result was obtained. The Omni Hospital said that this was not allowed because the results were indeed invalid.

In the new hospital, Prita was put in an isolation room because she was stricken with a contagious virus. Prita then sent a complaint via e-mail to customer_care@banksinarmas.com and Her relatives about the service She received from the Omni Hospital with the email subject "Fraud of Omni International Alam Sutra Hospital".

On September 5, 2008 Omni International Hospital submitted a report to the Special Criminal Investigation Directorate (Direskrimsus). Omni Hospital, besides submitting a report to the police, also filed a lawsuit in court. This research only examines the criminal case only, does not examine the civil case.

The Public Prosecutor (JPU) in his indictment, charged Prita with an alternative indictment. First, violating Article 45 paragraph (1) jo. Article 27 paragraph (3) of Number 11 Year 2008 concerning ITE Law, second violates Article 310 paragraph (2) of the Criminal Law Code (hereinafter abbreviated as KUHP), and third, violates Article 311 paragraph (1) of the KUHP.

Prita Mulyasari was once found not guilty by the Tangerang District Court (PN Tangerang) decision, but then the decision was cancelled at the Cassation level (MA), until finally at the Judicial Review (PK) that is Verdict no. 225 PK / PID. SUS / 2011 dated 17 September 2012 Prita Mulyasari was convicted innocent and free from all charges and restored her good name, dignity and position[2].

Based on the above background the authors are interested in expressing the formulation of the problem as follows:

a. Which of the decisions between the PN Tangerang, MA, and PK decision that was appropriate and correct in the Prita Mulyasari case according to article 27 paragraph 3 of ITE Law?
b. Are there legal consequences or legal consequences with the existence of a free decision through the PK Decision?

2. RESEARCH METHODS

Problem Approach in this study uses Statute Approach, Doctrinal Approach, and Case Approach. Statute Approach is an approach that is carried out through statutory regulations. Doctrinal Approach is an approach carried out by looking at the views and doctrines of scholars in the field of law. Case Approach is the approach used through the substance of the PN Tangerang Verdict no. 1269 / PID.B / 2009 / PN.TNG, MA Verdict no. 822 K / Pid.Sus / 2010, PK Verdict no. 225 PK / PID.SUS / 2011, and Novum Verdict no.300 K / PDT / 2010.

3. RESEARCH RESULT AND DISCUSSION

3.1. Defamation According to Article 27 Paragraph 3 of ITE Law

Defamation is regulated in articles 310 through 321 of the KUHP. Specifically, pollution is regulated in article 310 of the KUHP which determines:

1. "Anyone who intentionally attacks someone's honor or reputation by accusing something, which means that it is clear so that it is known publicly, is threatened because of pollution with a maximum jail sentence of nine months or a maximum fine of four thousand and five hundred rupiahs."
2. "If this is done in writing or broadcast, shown or posted in public, then the person guilty of written pollution, is liable to a maximum imprisonment of 1 year and 4 months, or a maximum fine of three hundred rupiah".
3. "It does not constitute pollution or written pollution, if an act of light is done in the public interest or because it is forced to defend itself."

In addition to defamation or contempt, defamation is also known as contained in article 311 paragraph (1) of the KUHP, namely:

> "If the person committing the crime of pollution or written pollution, in this case, it is permissible to prove that the accused is true, does not prove it and the accusation is in contradiction with what is known, then he is threatened for defamation, with a maximum imprisonment of 4 years."

The provisions of article 311 paragraph 1 of the KUHP have a close relationship with article 310 paragraph (3) of the KUHP, said so because if a defender is obtained to prove whether what he is accusing someone of is true, but cannot prove it, then the perpetrator of defamation is called as a perpetrator.

According to Article 313 and Article 319 of the Indonesian KUHP, defamation or defamation or defamation are included in the offense of complaint, implied in the words "if the alleged matter can only be prosecuted for complaints". The offense of complaint according to Lamintang is a criminal offense that can only be prosecuted if there is a complaint from the injured person.[3] The offense of complaint according to R. Soesilo is a criminal event which is only prosecuted for complaints or requests from people who have been convicted of a criminal event.[4]

As stated in article 312 of the KUHP, the conditions for justification of defamation and defamation demands are as follows:

1. If the judge considers it necessary to examine the truth, so that he can consider the words of the defendant, that he has done the act in the public interest or because it is to defend himself: (KUHP 310)
2. If a civil servant is accused of carrying out an act in carrying out his work (his position). (KUHP 92.311. 313 s, 488).

"Defending public interests" according to R. Soesilo is for example by showing mistakes in negligence that are clearly detrimental or harmful to the public of the authorities, and forced to defend themselves, for example, people who are suspected of having committed acts (which actually are not), then show people who actually wrong in this matter.[5]

A person cannot be punished for committing an emergency defense to defend himself or others or his property from an attack or threat that is against the law. This is regulated in Article 49 of the KUHP which reads:

1. Not convicted, anyone who commits an act of defense is forced to self or for others, the honor of decency or property of one's own or others, because there is an attack or threat of a very close attack at that time that is against the law.
2. Forced defenses that go beyond the limits, which are directly caused by the shock of the soul because of the attack or the threat of the attack, are not convicted.

This article regulates the act of "emergency defense" or "forced defense" (*noodweer*), the honor of decency or property for oneself or for others because there is an attack or threat of a very close attack. According to this article, a person who makes an emergency defense cannot be punished where this is the reason for a criminal offense, that is, a justification because an emergency defense is not against the law.[6] Conditions of emergency defense[7]:

1. The act done must be compelled to defend. The defense must be very necessary, arguably there is no other way. Here there must be a certain balance between the defense carried out with the attack. To defend meaningless interests, for example, one cannot kill or injure another person.
2. The defense or defense must be carried out only on the interests referred to in that article, namely the body, honor and property of oneself or others.
3. There must be an attack against the right and threatening suddenly or at that moment.

The above chapter has been reviewed extensively about defamation, defamation, and defamation as stipulated in the KUHP. According to the provisions of these articles, acts of defamation are carried out concretely through utterances made in public so that they are known to the public.

But the situation has changed, since entering the 3.0 revolution, we know various means of information technology and digital industry technology that can be done through social media, such as laptops, smartphones, tablets, which are easily connected to the internet, which can access everything. Utilization of information technology facilities has entered various sectors of public life, both the government sector, business, banking, education, health, and personal life. It is important to remember that the use of information technology is still controlled by humans, besides providing a positive impact, information technology can also provide opportunities to make these facilities as a means of new crimes so that prevention efforts are needed,[8] so there are restrictions on use through laws known as restrictions for cellphone or social media users. Of the various restrictions, there are those categorized as criminal acts using information technology information facilities.

Regarding defamation in the ITE Law, it is stated in chapter 7 of prohibited acts that cover articles 27 to 37 of the ITE Law. Article 27 of the ITE Law stipulates as follows:

1. Everyone intentionally and without the right to distribute and / or transmit and / or make accessible Electronic Information and / or Electronic Documents that have contents that violate decency.

2. Everyone intentionally and without the right to distribute and / or transmit and / or make accessible Electronic Information and / or Documents which have gambling contents.
3. Everyone intentionally and without the right to distribute and / or transmit and / or make accessible Electronic Information and / or Electronic Documents that have content of defamation and / or defamation.
4. Everyone intentionally and without the right to distribute and / or transmit and / or make access to Electronic Information and / or Electronic Documents that have extortion and / or threatening contents.

Looking at article 27 paragraph (3) it is said that each person "intentionally distributes ... making Electronic Information accessible ... which has the content of insult or defamation. " This article includes criminal offenses known in the KUHP with insults and / or defamation as regulated in articles 310 and 311 of the KUHP, so people who distribute electronic information are referred to as senders and are accepted by people who receive electronic information in the group that means the recipient consisting of two people or more can be equalized in public as a special element for criminal defamation or insults, only this is done using information technology facilities, such as social media, whatsapp, e-mail, etc. addressed to grub. This is what is meant by public understanding in the KUHP. The provisions of article 27 paragraph 3 have elements:

1. Deliberately

Leden Marpaung in the book Principle-Theory-Practice of Criminal Law explains that the notion of intent is known as 2 theories, first, the will theory proposed by von Hippel, namely the will to make an action and the will give rise to a result of that action, where the effect is desired if that effect becomes the purpose of the action. The second theory of intentional understanding is that if an action that results from an action in question is imagined as the intent of the action.[9] According to the doctrine, intentionally includes the subjective element which is directed towards an act, where the perpetrator knows, is aware of the act and speech which contains defamation of one's honor or good name.[10]

2. Without Rights

The phrase "without rights" refers to the understanding *wederrechtelijkheid*. The word *wedderrechtelijk* there are two kinds of understanding groups, the first is *in strijd met het recht* or against the law, and the second group is negative understanding, which means *wedderrechtelijk* as *niet steunend op het recht* or *zonder bevoegdheid* "or" without rights "[11]. *wedderrechtelijk* itself has many meanings[12] :

1. *in strijd met het recht* or contrary to law
2. *met krenking van eens anders recht* or violate other people's rights
3. *niet steuned op het recht* or not based on law
4. *zonder bevoegdheid* or without authority
5. *zonder eigen recht* or without the rights that exist in itself.

Actions against the law *wederrechtelijk* in criminal law, especially against cases of corruption have occurred shifting perspectives that originally act against formal law or *formele wederrechtelijkheid* shifted into actions against material laws or *materialiele*

wederrechtelijkheid which means every act that violates the norms in the norms the propriety of the community or any act deemed to be disgraceful by the community. [13]

3. Distributing / Transmitting, Or Making Accessible

Distributing according to the explanation of article I adopted 4 article 27 paragraph 1 of the ITE Law is "sending and / or disseminating Electronic information and / or Electronic Documents to many people or various parties through the Electronic System"[14]. To transmit according to this article is "sending Electronic Information and / or Electronic Documents addressed to one other party through the Electronic System"[15]. And "making accessible" are all other acts besides distributing and transmitting through the Electronic System that causes Electronic Information and / or Electronic Documents to be known to other parties or public"[16].

4. Electronic Documents

Electronic documents according to article 1 paragraph (4) of the ITE Law are:

Any Electronic Information created, transmitted, sent, received, or stored in analog, digital, electromagnetic, optical, or the like, which can be seen, displayed and / or heard through a Computer or Electronic System, including but not limited to writing, sound, image, map, design, photograph or the like, letters, signs, numbers, Access Codes, symbols or perforations that have meaning or meaning or can be understood by people who are able to understand it.

5. Has A Charge of Insult And / or Defamation

The phrase "charge of insult and / or defamation" is not explained in the ITE Law, this shows that the criminal act of defamation, article 27 paragraph 3, is a special part (lex specialis) of "bleediging" insult chapter XVI Book II of the KUHP.[17] In interpreting the word insult and / or defamation, there are two ways of interpretation. Namely narrow interpretation, narrow interpretation applies to defamation only, there are 3 reasons, namely:

1. The KUHP has no offense but rather qualifications from a group of crimes that have an insulting, shameful nature to others, which can give birth to feelings of anger, annoyance, hurt, revenge, etc., all of which are inner suffering for the intended, contained in Chapter XVI Book II of the KUHP.[18]
2. Article 27 paragraph (3) only mentions defamation.
3. The nature of insulting or humiliating others from acts of attacking honor and reputation also exists in five other forms of pollution.[19]

Broad interpretation, the word insult must be interpreted as an insult in the meaning of the genus, for any act that attacks the honor and good name of the person, where the act contains insult in the genus meaning contained in all forms of insults in Chapter XVI Book II of the KUHP.[20]

Criminal sanctions by prohibiting acts prohibited in Chapter 7 Article 27 of the ITE Law, in this case, can be individuals both Indonesian citizens, foreign nationals, and legal entities can be subject to sanctions according to article 45 paragraph 1 of the ITE Law[21], that mentions:

1. Any person who intentionally and without the right to distribute and / or transmit and / or make accessible Electronic Information and / or Electronic Documents that have contents that violate decency as referred to in article 27 paragraph (1) shall be liable to a maximum imprisonment of 6 (six) years and / or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).
2. Any person who intentionally and without the right to distribute and / or transmit and / or make accessible Electronic Information and / or Electronic Documents that have gambling contents as regulated in article 27 paragraph (2) is sentenced to a maximum imprisonment of 6 (six) year and / or dendan at most Rp. 1,000,000,000.00 (one billion rupiah).
3. Any person who intentionally and without the right to distribute and / or transmit and / or make accessible electronic information and / or Electronic Documents that have content of defamation and / or defamation as referred to in article 27 paragraph (3) shall be liable to a criminal offense maximum imprisonment of 4 (four) years and / or a maximum fine of Rp. 750,000,000.00 (seven hundred fifty million rupiah).
4. Any person who intentionally and without the right to distribute and / or transmit and / or make access to Electronic Information and / or Electronic Documents which have extortion and / or threatening contents as referred to in Article 27 paragraph (4) shall be liable to the maximum imprisonment 6 (six) years and / or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).
5. The provisions referred to in paragraph (3) constitute complaint offense.

Judging by criminal sanctions according to article 45 applied alternative and cumulative criminal sanctions. In the KUHP do not recognize the cumulative formulation of criminal sanctions, namely the formulation of criminal threats with the conjunction "and". The KUHP only recognizes the threatening model of a single criminal or alternative criminal threat, where the criminal is only possible to impose one main criminal for one offense, which can be seen in the formulation of criminal sanctions using the word "or". However, several laws outside the KUHP have deviated from the general pattern of criminal threats, namely by using a cumulative threat model marked with the conjunction "and" between the two types of crimes that are threatened, or a cumulative alternative combination model marked with the conjunction "and / or "Between the two types of crimes that were threatened.[22]

The cumulative threat of a judge is bound to impose two types of criminal offenses at once (double penalties), which can be seen as criminal charges. Likewise, in the case of criminal threats that use an alternative-cumulative model, the judge is handed down to be cumulative. Without a decisive guideline, it is not permissible to impose a maximum of two alternative-cumulative threatened crimes that would result in such a criminal charge.[23] Noting the criminal sanctions applied to article 45 paragraph (1) are more severe, this is caused by the spread of the information more quickly and sophisticatedly and it takes a very fast and difficult time to withdraw.

Verdict no. 1269 / PID.B / 2009 / PN.TNG dated 29 December 2009 in Tanggerang District Court, Prita Mulyasari was charged with article 45 paragraph (1) jo. article 27 paragraph (3) of the ITE Law, article 310 paragraph (2) of the KUHP, or article 311

paragraph (1) of the KUHP. Based on the legal considerations of the Tanggerang District Court especially in the elements of the indictment of article 45 paragraph (1) jo. article 27 paragraph (3) of the ITE Law, namely:

1. "Each person"
    a. That what is meant by every person is anyone who is submitted by JPU as a defendant to the trial and to whom criminal liability can be held.
    b. That what was stated by JPU as the defendant, in this case, was Prita Mulyasari, who was an adult, in good health and during the trial could follow well
    c. That based on the description above the Judge believes that the element " Each person " is fulfilled.
2. "Purposely"

That in Memorie van Toelichting, intentionally defined as the will to carry out a certain act and knowing that it can know the act can have the desired effect.[24] From the fact that Prita sent e-mails to 20 of her friends was just to confide because they were not satisfied with the medical services provided by the hospital. Omni, then Prita Mulyasari's actions have been known by people who are known or unknown, then what Prita Mulyasari wants as a defendant has been fulfilled, so that the element "intentionally" has also been fulfilled.[25]

> Without the right to distribute and / or transmit and / or make accessible electronic information and / or electronic documents that have content of defamation and / or defamation"

Based on the contents of the e-mail sent by Prita Mulyasari, the judge was of the opinion that:

> That the document does not contain contempt or defamation but is criticism and in the public interest so that people avoid hospital practices and / or doctors who provide good medical services to people who are sick who expect to recover from illness.[26]

Based on this description, the third element, namely "Without the right to distribute and / or transmit and / or make electronic information accessible and / or electronic documents that have contents of insult and / or defamation" not fulfilled. By not fulfilling one element of the first charge, Prita Mulyasari was not legally proven and convincingly guilty of committing a crime as the first charge, then Prita Mulyasari was acquitted of the first charge, namely article 45 paragraph (1) jo article 27 paragraph 3 of ITE Law.[27]

Based on legal considerations in article 310 paragraph (2) of the KUHP, namely "whoever"; "Intentionally"; "Damage the honor or reputation of someone with writing or pictures"; "Broadcast, displayed publicly or posted"; or article 311 paragraph (1) of the KUHP, which is "whoever"; "Committing a crime or insulting with writing"; "Prove the accusation is true or not". Article 310 paragraph (2) of the KUHP and article 311 paragraph (1) of the KUHP is essentially the same, namely regarding criminal acts concerning an attack of someone's honor, only in 310 paragraph (2) criminal acts are carried out using pictures and in article 311 paragraph (1) the KUHP is given permission to prove whether what was alleged is true or not.[28]

Article 310 paragraph (2) of the KUHP "does not include insulting or insulting in writing, if it turns out that the maker did it in the public interest or because he was forced to defend himself".[29] Based on legal considerations which state that e-mails sent by Prita Mulyasari are criticized and in the public interest so that people avoid hospital practices and / or doctors who provide good medical services to people who are sick who wish to recover from illness, the e-mail is not included in the sense of contempt, based on e-mail that is not included in the misdemeanor, then Prita Mulyasari does not meet the second and third elements of the indictment.

Based on the legal considerations of the PN Tangerang above, Prita Mulyasari was declared not proven legally and convincingly guilty of committing a crime as charged under article 45 paragraph (1) jo. article 27 paragraph (3) of the ITE Law, article 310 paragraph (2) of the KUHP, or article 311 paragraph (1) of the KUHP, free Prita Mulyasari from all these charges, and restore the defendant's rights in his ability, position, and dignity and dignity.

The prosecutor submitted an appeal to the Supreme Court, in its Verdict no. 822 K / Pid.Sus / 2010 MA legal considerations state:

a. Prita Mulyasari is an impure free verdict (*verkapte vrijspraak)*

The judge was of the opinion that the first email sent by Prita Mulyasari was over bodig so that it contained an element of defamation and defamation, the second was Prita Mulyasari's action, namely sending an email complaint not for public use, the third act of sending an email carried out by Prita Mulyasari was not through a procedural true, based on these considerations Prita was proven to have intentionally committed an act that made possible other consequences, which was not considered before she committed the act, and was proven to have committed a crime in the first charge.[30]

b. Prita Mulyasari's deeds have entered the subject matter and rejected the appeal from Prita Mulyasari.

There are dissenting opinions from members of the panel of judges who examined and decided the case of the Prita Mulyasasi case, and based on Article 30 paragraph 3 of Law No. 14 of 1985 as amended by Law No.5 of 2004 and the second amendment is Law no. 3 In 2009, the judge granted the appeal request from the prosecutor and rejected the appeal filed by Prita Mulyasari.

Based on these legal considerations, the Supreme Court ruled that Prita Mulyasari was legally and convincingly proven guilty of committing a crime "intentionally and without the right to distribute and / or transmit and / or make accessible electronic information and / or electronic documents that have contents of insult and / or defamation of names well".

Prita Mulyasari submitted a Judicial Review on August 1, 2011, namely Verdict no. 225 PK / PID. SUS / 2011. Judicial Review can be done if it meets the elements mentioned in the Criminal Procedure Code (hereinafter referred to as KUHAP), as stated[31]:

1. There are two or more things to the Court's decision;
2. The same thing or condition is used as a basis or reason for the existence of conflicting decisions between one another.

Legal considerations at this PK level are:

a. The existence of a new novum, namely Novum Verdict no.300 K / PDT / 2010 decision in the cassation level submitted by Prita Mulyasari.

The judge has a consideration that Prita Mulyasari's actions are not / are not illegal acts, the news sent is not an insult, the email sent is still within reasonable limits and in line with article 28 F of the 1945 Constitution namely:

"Everyone has the right to communicate and obtain information to develop their personal and social environment, and has the right to seek, obtain, own, store, process, and convey information using all types of available channels"

In Criminal Acts of Prita Mulyasari, there was no evidence of defamation, based on the judge's consideration, Prita Mulyasari was found not guilty and free from indictment. Verdict no.300 K / PDT / 2010 where the aquo decision is contrary to Verdict no. 822 K / PID. SUS / 2010, then PK can be seen as fulfilling the requirements.

2. The existence of a real mistake from the judge because the behavior of Prita Mulyasari has no purpose in committing pollution, and Prita Mulyasari's actions which are against the law cannot be proven.[32]

Based on these legal considerations, Prita stated that "it was not proven to have committed a criminal offense, free Prita Mulyasari from all charges and restore the rights of the convicted person in his ability, position, dignity and dignity."

Based on legal considerations along with the verdicts submitted by the Tanggerang District Court, the Supreme Court, and the Judicial Review Verdict the author states that the correct verdict is the decision of the Tangerang District Court Verdict No. 1269 / PID.B / 2009 / PN.TNG with the verdict "not legally proven and convincingly guilty of committing a crime as charged in the first, second, third". Violation of article 27 paragraph (3) jo. Article 45 Paragraph (1) of the ITE Law because the information passed on by Prita Mulyasari to 20 of her friends is in the form of complaints about health services that have been experienced by Prita Mulyasari due to laboratory results which should not be allowed to occur at a hospital. It does not have the charge of insult/defamation; the authors further agree with the PK Verdict no. 225 PK / PID. SUS / 2011 in the ruling of the decision in accordance with the basis of the Novum Verdict no. 300 K / PDT / 2010 who was found not guilty of committing acts against the law article 1365 BW so that Prita Mulyasari's actions are not against the law.

Based on Novum Verdict no. 300 K / PDT / 2010 as one of the novum put forward for Judicial Review, then it automatically eliminates the crime of violation of Article 45 paragraph (1) jo. article 27 paragraph (3) of the ITE Law concerning defamation jo. Article 310 of the KUHP. It is said so because every crime must have an element against the law, both as an element and as a written element (*bestanddeel*).

Unproven acts against the law based on article 1365 BW in Novum Verdict no. 300 K / PDT / 2010 is the same as the absence of unlawful nature in a criminal offense committed by Prita Mulyasari namely article 27 paragraph (3) of the ITE Law, said so given that the element of unlawfulness is an absolute element of every criminal offense, both stated in the

offense formula and the offenses that are not terterter in the offense formula that must be considered to exist. Therefore, the unlawful nature in every crime or offense is said to be fictitious in the sense that although it is not listed, it is always assumed to exist.

3.2. Legal Consequences with Objection of Free Decision

In the KUHAP there are three types of verdicts, namely those that declare the defendant guilty and sentence the defendant, acquittal and acquittal.[33] The court's decision according to Article 1 point 11 of the KUHAP is "a judge's statement which is pronounced in an open court hearing, which can be in the form of conviction or free or free as stipulated in this law", so that during the examination stage in a district court it can be said that the judge's decision is " end "of the criminal proceedings.[34] According to Andi Hamzah, "every judge's decision is one of three possibilities", namely criminal conviction or conviction and / or discipline; acquittal; the verdict is free from all lawsuits. [35]

In addition, there is also a decision that is not the final decision regulated in Article 156 paragraph (1) of the KUHAP in the form of a decision or an interim decision, as stated:

> "In the event that the defendant or legal counsel raises an objection that the court is not authorized to hear the case or the indictment cannot be accepted or the indictment must be cancelled, then after being given the opportunity to JPU to express his opinion, the judge considers the objection to further take a decision"

The court's decision so far is regulated in KUHAP No.8 of 1981, referred to as a court decision (not a judge's decision)[36], as formulated in article 191 and article 193 of the KUHAP which reads:

Article 191:

(1) If the court is of the opinion that from the results of the trial hearing, the defendant's guilt for the actions committed against him is not legally and convincingly proven, then the defendant is acquitted.
(2) If the court is of the opinion that the act convicted of the defendant is proven, but the act does not constitute a criminal offense, then the defendant is acquitted of all lawsuits.
(3) In the case referred to in paragraph (1) and paragraph (2), the defendant who is in a detention status is ordered to be released immediately except for other legitimate reasons, the defendant needs to be detained.

Article 193 "If the court is of the opinion that the defendant is guilty of committing a criminal offense charged with him, then the court handed down the sentence".

While the types of judges' decisions article 187 of the Draft Law on Criminal Procedure (*ius constituendum*) (hereinafter referred to as RUU HAP) in 2009, and reads and stipulates [37]:

1. If the judge is of the opinion that the results of the examination at the trial of a criminal offense charged are legally and convincingly proven, then the defendant is convicted.
2. If the judge is of the opinion that the results of the examination in the trial of a criminal offense charged are not legally and convincingly proven, the defendant is acquitted.

3. If the judge is of the opinion that the actions charged with the accused are proven, but there is a basis for criminal negation, the defendant is acquitted of all legal claims.

According to the provisions of article 191 of the KUHAP and article 187 of the RUU HAP in paragraph (2) and paragraph (3) there is an important emphasis, which for the conviction-free verdict is not proven as stated in article 187 paragraph (2) of the 2009 RUU HAP is more right with the consequences of the defendant being acquitted. In view of article 187 of the 2009 RUU HAP clearly different from the provisions of article 191 paragraph (2) of the KUHAP, it is more precise and clear that article 187 paragraph (3) of the 2009 RUU HAP with the emphasis that the actions alleged by the defendant is proven in the sense that all the elements are fulfilled, but it is found that there are reasons for criminal remedies that can be in the form of forgiving reasons and justifications with the consequences of the defendant being severed from all legal consequences.

The conviction is handed down if the judge is convinced based on legal evidence and based on the facts in the trial that the defendant has committed the act as stipulated in the indictment, provided that the judge does not violate the provisions of article 183 of the KUHAP. [38] The conviction can also be compared with the formulation made by van Bemmelen: *Een veroordeling zal del rechter uitspreken, als hij de orvertuiging heft verkregen, dat de verdachte het the laste geledge feit heeft began en hij feit en verdachte ook strafbaar acht* which means "The conviction verdict is handed down by the judge if he gets the conviction that the defendant has committed the indicted act and he considers that the deed and the defendant can be convicted"[39].

An acquittal or acquittal verdict is where the defendant is not convicted or is not serving a sentence because the results of the trial in the defendant's case are not proven to be legally valid and convincing according to the law, or judicially the judge believes that the minimum provisions of proof and convictions based on article 183 of KUHAP.[40]

The loose verdict is regulated in article 191 paragraph (2) of the KUHAP where the defendant cannot be convicted even though the defendant is proven legally and convincingly according to law, this is because the act committed is not a criminal act but belongs to the scope of civil law. [41] The release decision must meet two criteria, the first is that the action that was charged to the defendant is proven, the second is that the act is not a criminal offense, then the defendant is free from all legal claims.[42] The defendant is acquitted of all lawsuits if [43]:

1. One of the designations of a criminal law that is charged is not included in the scope of a criminal offense.
2. There are special circumstances which cause the defendant cannot be punished.

Illegal detention is an act of depriving a person of freedom of movement.[44] In the old criminal procedure law it does not regulate damages, provisions for compensation caused by an arrest, illegal detention, it is also listed in the International Covenant on Civil and Political Rights Article 9 which reads "*Anyone who has been the victim of unlawful arrests or detention shall have an enforceable rights of compensation"*.[45]

The right of the defendant after being acquitted is to get compensation and rehabilitation as stipulated in General Explanation Point 3 letter d of the KUHP, which reads:

> To a person who is arrested, detained, prosecuted or tried without reason based on the law and or because of an error regarding the person or the applied law must be compensated and rehabilitated from the level of investigation and law enforcement officials, who intentionally or because of negligence causes the principle the law is violated, prosecuted, convicted and or subject to administrative punishment.

PK Verdict no. 225 PK / PID.SUS / 2011 which states that Prita Mulyasari is free is not proven to have committed criminal defamation in violation of Article 45 paragraph (1) jo. Article 27 paragraph (3) of the ITE Law, or article 310 paragraph (2) of the KUHP, or article 311 paragraph (1) of the KUHP has consequences Prita Mulyasari can sue for compensation against the plaintiff, namely the Omni Hospital. In view of article 310 paragraph (3) of the KUHP which reads "It does not constitute pollution or written pollution, if an act is clearly done in the public interest or because it is forced to defend itself". This shows the existence of a free verdict for Prita Mulyasari shows that what Prita Mulyasari did was in the form of complaints about hospital services. Omni with the wrong laboratory results carried out in the public interest and at the same time is an attempt to defend himself.

Likewise, with the provisions of article 314 paragraph (2) of the KUHP which reads "If he is with a judge's ruling which remains to be acquitted of the accused, then the ruling is seen as perfect proof that the allegation is incorrect", on the basis of the two articles mentioned above, then Prita Mulyasari has the right to claim compensation from the Omni Hospital for Prita Mulyasari's suffering and material and immaterial losses.

Based on article 1372 BW which reads:

The civil suit regarding insults is aimed at obtaining compensation and restoration of good reputation. In assessing one another, the Judge must pay attention to the severity of the insult, as well as the rank, position and ability of both parties and in the circumstances.

Based on the provisions of this article and the decision of PK no. 225 PK / PID. SUS / 2011 who received the restoration of the honor of a good name, then Prita Mulyasari can sue for compensation based on acts against the law. Pursuant to the provisions of article 1372 BW regarding obtaining compensation and restoration of good reputation, this is reinforced by article 1376 BW which reads “Civil charges of humiliation cannot be granted if there is no intention to insult. The intention to insult is not considered to exist if the creator has clearly acted in the public interest or for an emergency defense against himself.”

Based on the provisions of article 1377 BW which reads "Likewise the civil suit cannot be granted if the person insulted by a Judge's decision that has obtained the absolute power has been blamed about committing the act alleged to him". The claim for compensation that can be addressed at the Omni Hospital by Prita Mulyasari must be accompanied by a criminal decision from a judge who has obtained permanent legal force, in this case, a PK Verdict no. 225 PK / PID. SUS / 2011.

However, all legal remedies given to Prita Mulyasari as a consequence were terminated free on charges of violating Article 45 paragraph (1) jo. Article 27 paragraph (3)

of the ITE Law is not adopted. Based on article 1380 BW which reads "The claim in the case of humiliation has died with the passage of one year, starting from the day the act was carried out and the act was known by the plaintiff". Prita cannot claim compensation for Omni Hospital because it has passed the deadline set in article 1380 BW.

4. CONCLUSION

Based on the above discussion the authors agree with the PN Tangerang Verdict no. 1269 / PID.B / 2009 / PN.TNG which was severed free, as well as PK Verdict no. 225 PK / PID.SUS / 2011 in the ruling of the verdict in accordance with novum based on the civil ruling no. 300 K / PDT / 2010 which was declared free, and was not proven legally and convincingly according to the law in committing criminal defamation of the Omni Hospital. The author agrees with the consideration of PN Tangerangjudges and Judges of the Review of the Prita Mulyasari e-mail that actually does not have an element of insult or defamation, but rather contains a complaint or criticism of the services from the Omni Hospital received by Prita Mulyasari.

With the free verdict on PK no. 225 PK / PID.SUS / 2011, Prita Mulyasari obtained the restoration of her honor and good name as stated in her ruling "Restoring the rights of the convicted person in his ability, position and dignity as well as his dignity", on that basis Prita Mulyasari can file a claim for compensation to Omni Hospital on the basis of acts against the law. In view of article 1380, the BW compensation claim submitted by Prita Mulyasari has a term of one year. Given that after a period of 1 year has passed, then Prita Mulyasari cannot make a claim for compensation to Omni Hospital.

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