

LEGAL POLITICS OF REPLACING CRIMINAL PROVISIONS ON DEFAMATION CRIMES AGAINST INDIVIDUALS IN CYBERSPACE IN THE INFORMATION AND ELECTRONIC TRANSACTIONS ACT WITH THE INDONESIAN CRIMINAL CODE 2023

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Abstract: The crime of defamation against individuals in cyberspace will be regulated in Article 433 and Article 441 paragraph (1) of the 2023 Indonesian Criminal Code. The criminal sanctions against perpetrators in the 2023 Indonesian Criminal Code are lighter than the criminal sanctions in Article 27A paragraph (3) of the Information and Electronic Transactions Act. The purpose of replacing this legal rule needs to be criticized based on the aspects of legal politics and criminal theory. Understanding the legal politics of the rules on criminal defamation needs to be done by answering the following 3 research problems: why the rule was replaced, what is the purpose of the legislator in replacing it, and is there any relevance between the replacement of the rule and legal politics and the purpose of criminalization? Based on the results of legal research using doctrinal research with a statutory approach. The results of this study: (1) the reasons for replacing the defamation article are: the rules in the Information and Electronic Transactions Act are not detailed so they do not meet the needs of society, the principles of criminal punishment, and the objectives of criminal punishment, (2) the purpose of legislators in replacing the rules on criminal acts of defamation in cyberspace is to protect the honor of every person, without eliminating the right of every person to express opinions, defend themselves, and fight for the public interest. (3) The criminal rules on defamation in the 2023 Indonesian Criminal Code are consistent with Indonesian legal policy, and their contents can be used as a means of achieving the objectives of criminal punishment because the contents and wording of the rules are clear, coherent, and proportional. The changes to the criminal rules the defamation are based on the principle of mono-dualistic.

Keywords: legal politics, defamation, individuals, information technology, cyberspace

1. Introduction

Since ancient times to the modern era, every society has always had laws, (Glazyrin, 2022) as the center of life rules. (Marzuki, 2009). The discovery of the internet became a milestone in the development of information technology law because crimes can also be committed in cyberspace. Crimes of defamation against individuals can also occur in cyberspace, namely by utilizing information technology devices. (Prayitno & Bawono, 2023). The 1946 Indonesian Criminal Code not only prohibits defamation against individuals, but also against the President and his vice president, heads of friendly states, state officials, and government officials who are carrying out their duties. Specifically, defamation against individuals using information technology in cyberspace has been criminalized since 2008 in Article 27 paragraph (3) of Act No. 11 of 2008 concerning Information and Electronic Transactions (Information and Electronic Transactions Act 2008). The crime of defamation is committed by the perpetrator using information technology through writing in words, terms, sentences (Tanar et al., 2024), opinions or comments, (Rumondor et al., 2024) images, videos, emoticons, which can cause harassment of the dignity or self-esteem of others.

Many legal experts, legal practitioners, and community members have criticized the contents of the criminal regulations on the crime of defamation in cyberspace in Article 27 paragraph (3) Information and Electronic Transactions Act 2008, and have proposed that the criminal threat be reduced, and many even want defamation not to be categorized as a crime in Indonesia. (Widodo, 2020). Indonesian legislators responded to the people's proposal by amending the criminal law provisions in Article 27 paragraph (3) of the Information and Electronic Transactions Act 2016, and in Article 27A Information and Electronic Transactions Act 2024 by reducing the

threat of imprisonment and/or fines, and explicitly regulating the crime is classified as a complaint crime. However, in the end, Indonesian legislators replaced the criminal provisions in Article 27A with Articles 433 and 441 paragraph (1) of Law No. 1 of 2023 concerning the Criminal Code (the 2023 Indonesian Criminal Code), which have more detailed regulations but lighter criminal penalties than the previous criminal provisions. The legislative policy of changing and replacing these criminal regulations is an indicator that the Indonesian state continues to maintain defamation as a crime, while also wanting the number of such crimes to be minimized.

Theoretically, the replacement of criminal law rules by Indonesian legislators must be based on clear and measurable legal policies so that they can function as a means of achieving the objectives of criminal law. Otherwise, criminal law cannot function as a means of preventing crime, while also functioning as a means of final resolution of a crime case. Criminal law functions primarily as the last legal means to resolve a case, but criminal law can also function as a means of preventing crime (secondary function of criminal law). The function of criminal law can be absolute as a means of resolving criminal acts, or relative as a prevention of criminal acts. This function depends on the public's respect for criminal law. (Funk, 1972).

Based on the dimensions of the main function of criminal law, the replacement of criminal regulations in the 2023 Indonesian Criminal Code related to the crime of defamation against individuals in cyberspace, criminal regulations must be used as a means of resolving legal cases fairly, not as an obstacle to the implementation of human rights in a democracy. Thus, it is necessary to examine whether the new regulations in the 2023 Indonesian Criminal Code can be a means of eradicating the crime of defamation using information technology in cyberspace. Optimization of the function of criminal law can be carried out by lawmakers (legislators) from the start by determining the direction and purpose of making and implementing laws. This is based on the opinion that law is central to life so it needs to be organized. (Marzuki, 2009). The field of study regarding the direction, purpose of forming laws, and prospects for implementing laws made by legislators is commonly referred to as legal politics.

Based on the perspective of the field of legal political studies, it is necessary to discuss critically the legal politics in replacing the criminal provisions in Articles 27A and 45A of the Information and Electronic Transactions Act with Articles 433 and 441 paragraph (1) of the 2023 Indonesian Criminal Code, and why the criminal threat is getting lighter. The purpose of changing the criminal provisions needs to be understood by members of the public and law enforcers to support the policy of eradicating defamation crimes and the politics of criminalization in Indonesia. The dimensions of legal politics in replacing the criminal provisions can be known if the following 3 main problems are studied based on several theories. The three problems are: (a) why the criminal provisions were replaced, (b) what is the purpose of the legislator in replacing the criminal provisions, and (3) What is the Relevance between the Cause and Purpose of Replacement, with the Contents of the Criminal Regulations on Defamation of Persons in the 2023 Criminal Code Reviewed from the Perspective of Legal Politics in Criminal Law. The benefits of the results of this study are to provide a comprehensive understanding to members of the public about the direction of accelerating the handling of defamation crimes in cyberspace, so that people can anticipate not becoming victims or perpetrators of crimes, and the legal risks if they commit these crimes. Through this study, the direction and objectives of the development of Indonesian law in the reform era will be understood, so that based on the study of legal politics, the legislator's wishes regarding the direction of the development of criminal law can be known. (Fadjar, 2001).

2. Literature Review

Defamation in cyberspace is a crime that uses information technology as a tool to commit crimes, (Widodo, 2012) the material of which is in the form of insults, ridicule, and/or inappropriate words displayed to degrade the dignity of others. (Zhafira & Ismansyah, 2023). This crime occurs because of the use of information and communication technology in human life, (Widodo, 2007) which then this crime is usually categorized as cybercrime. (Nitibaskara, 2000). Defamation of individuals in cyberspace must be done intentionally, and its contents are disseminated in cyberspace which is public, and can be in the form of writing, film, sound, or other forms according to technological developments.

Legal politics is an elaboration of legal ideals, including in the context of legal politics in criminal law. The legal politics of a Law can be understood in the context of legal regulations and the implementation of legal regulations. (Nusantara, 1985). Based on the contents of the legal regulations contained in the law, the will of the state through

legislators will be understood regarding the direction of legal development and law enforcement to support the achievement of state goals. (Mahfud MD, 2009). Legal policy is made by legislators and law enforcers, which always leads to efforts to create community protection for social welfare. (Muladi, 2002).

Technically, the content of legal policy in a regulation can be understood from the content of the considerations for making the law as stated in the considerations, the objectives of the law as contained in the initial articles, and the content of legal norms as contained in the subsequent articles. The legal policy of a law can also be understood in its entirety based on the general explanation of a law. Legal policy in the law has an important role in achieving the goals of the state, namely to guarantee justice, create peace, maintain legal certainty, and resolve problems concretely. (Huijbers, 1995).

Legal policy is essentially also a tool and step that can be used by the government to create a national legal system that is by the ideals of the Indonesian nation. (Hartono, 1991). Legal policy exists in every legal rule, both old and new as a result of changes that lead to the achievement of state goals. (Mahfud MD, 2009). State goals can be achieved if crimes within a country and between countries are optimally addressed. One way to address crime is to criminalize and penalize acts of defamation in cyberspace. Often, defamation in cyberspace that is not resolved by law results in crimes in physical space, such as assault or even murder.

If related to legal politics in the formation of criminal law in Indonesia, the definition of criminal law politics is the direction of legal policy desired by the government to eradicate crime to protect and prosper the Indonesian people. The function of legal politics is as a guideline and explanation of the existence of a law, even as material in interpreting the contents of legal norms, both teleological, historical, and systematic interpretations. The sources of Indonesian national criminal law politics are Pancasila, the 1945 Constitution of the Republic of Indonesia, the Decree of the People's Consultative Assembly, other laws and regulations, religious law, laws that live in society, jurisprudence, legal doctrine, and court decisions. (Widodo, 2020b)

National legal policy is the basis for legislators in creating criminal policy in criminal law, including in the Criminal Code. Criminal law policy consists of 2, namely (a) the policy of forming criminal law determined by legislators in the formation of criminal law, and (b) the policy of enforcing criminal law determined by criminal law enforcers in order to implement criminal law in society. The context of legal policy studies often refers to the understanding of the direction of criminal law formation in the Law.

3. Methode

The doctrinal legal research method is used to discuss 3 problems in this article. The legal materials used to analyze the 3 problems in this article are legal regulations in: (a) Article 27, 27 A, Article 45, and Article 45A of the Information and Electronic Transactions Act, (b) Article 433 and 441 paragraph (1) of the 2023 Indonesian Criminal Code. The legal materials obtained from the 2 laws are analyzed using comparative law techniques and then the contents of the legal regulations. The analysis of legal materials is carried out by reading, comparing, and assessing the contents of legal norms related to defamation of individuals as regulated in laws and regulations, (Widodo, 2020) then critically comparing the contents of the legal regulations with the contents of court decisions, then verified with other library materials, opinions of criminal law experts, and previous research. Furthermore, the results of the study and analysis of the legal norms are presented in the results and discussion sections. (Widodo, 2020). The results of the analysis are then discussed using deductive and comparative thinking techniques, (Soekanto, 1982) based on the theory of punishment, and the concept of criminal law politics, as well as the theory of changes in criminal law.

4. Result and Discussion

a. Reasons for Legislators Replacing Article 27A of the Information and Electronic Transactions Act with Articles 433 and 441 paragraph (1) of the 2023 Indonesian Criminal Code

The legal reason for the replacement of criminal regulations by the legislator is the content of the results of the judicial review stated in the Decision of the Constitutional Court of the Republic of Indonesia (Number 50/PUU-VI/2008, and Number 2/PUU-VII/2009), that defamation is a criminal act (crime) so that the prohibition of

defamation in Indonesian criminal law is a constitutional rule and does not conflict with democratic values, human rights, and the principles of the rule of law. However, the crime of insult and defamation in cyberspace is not merely general, but rather a complaint offense. The affirmation of the rule regarding the crime of defamation as a complaint offense is referred to so that the legal rule is in line with the principle of legal certainty and the sense of justice of the community.

Some members of the public think that the provisions on defamation in the Information and Electronic Transactions Act are repressive and can hinder freedom of opinion/expression in a democratic country. Even some social media activists, non-governmental organizations, and many people want defamation not to be categorized as a crime. Social media activists refer to the thoughts of abolitionists, that criminal law should be replaced by resolving cases through negotiation, improvement, and restoring relations between perpetrators and victims, (Robinson & Darley, 2007) or replaced with civil sanctions in the form of demands for compensation. (Youm, 1995). However, many members of society also argue that the rule prohibiting defamation must be maintained to maintain a person's honor and public order. This polemic is natural because in every country, especially in developing countries, there is often a mismatch between the values in the existing legal system and the values internalized by members of society. (Pujirahayu, 2001).

Based on the demands and support of the community, Indonesian legislators finally took a compromise, namely maintaining defamation as a crime, but it can only be processed in court upon a complaint from a crime victim. In addition, the criminal threat was reduced, so that the perpetrator does not need to be detained by law enforcement before it is proven in court that the perpetrator legally committed the crime.

However, there are still several weaknesses in the legal provisions in Article 27A of the Information and Electronic Transactions Act, so it needs to be replaced with Articles 433 and 441 paragraph (1) of the 2023 Indonesian Criminal Code. The weaknesses in the content and wording of the criminal provisions in the Information and Electronic Transactions Act are as follows.

- (a) The criminal provisions in the Information and Electronic Transactions Act do not mention the definition of defamation in a limited manner and do not regulate the elements of criminal acts in defamation against individuals in cyberspace. Article 27A only regulates the threat of criminal penalties against the perpetrators. Law enforcers in enforcing the law must seek the definition of the crime of defamation, and the elements of the crime refer to the contents of the provisions of the 1946 Indonesian Criminal Code. (Zhafira & Ismansyah, 2023). The way law enforcers and members of the public describe criminal acts of defamation like this is no longer possible because, on January 2, 2026, the 1946 Criminal Code will no longer apply in Indonesia. After all, it was revoked and replaced by the 2023 Indonesian Criminal Code.
- (b) The criminal law provisions in Article 27A of the Information and Electronic Transactions Act only regulate one qualification or one type of criminal act, so the rules are general, without distinguishing whether the defamation in cyberspace is in the form of speech, writing, or images, or videos, or other forms. General rules like this can cause injustice to the parties. The modus of defamation in cyberspace, and the media used affect the victimization and dissemination of news. Unclear criminal provisions result in legal uncertainty, which has an impact on injustice. (Mertokusumo, 2010). Article 27A is often referred to as a "rubber article" which is easily interpreted according to the interests of certain parties so that it has the potential to be used as a means for powerful parties to silence criticism, (Mangode et al., 2023) and can even be exploited by those in power.
- (c) The threat of criminal penalties in Article 27A against the perpetrators is very severe because it is formulated cumulatively-alternatively, namely in the form of imprisonment and/or fines so that the judge can impose imprisonment and fines simultaneously. The threat of a very long prison sentence, namely a maximum of 2 years, and/or a maximum fine of Rp. 400,000,000 is considered to be a barrier to people expressing their opinions optimally in cyberspace.

b. The purpose of replacing the Criminal Regulation on Defamation of Individuals in Cyberspace in the 2023 Indonesian Criminal Code

The purpose of changing the regulation is so that a person's honor is respected by others, and if defamation or insult occurs, the perpetrator can be punished. Criminal provisions on defamation are considered to prevent people from expressing themselves and expressing their opinions. The Attorney General's Office, the Chief of

Police, and the Minister of Informatics of the Republic of Indonesia 2021 issued a Joint Decree so that the criminal provisions on insults in Article 27 paragraph (3) are not misused by certain parties, and so that there is uniformity in their implementation.

The criminal threat in the crime of defamation against individuals in Indonesia is the most frequently changed, both the type of crime and the size of the crime. In 2008, defamation was criminalized with a penalty of 6 years and/or a fine of 1 billion, then in 2016, it was reduced to a maximum of 4 years and/or a fine of IDR 700,000,000, in 2024 the criminal threat was reduced to a maximum of 2 years in prison and/or a fine of IDR 400,000,000 million. Even in Article 441 paragraph (1) of the 2023 Criminal Code, the criminal threat is only 2 years in prison or a fine of IDR 67,000,000 million.

The purpose of legislators in regulating criminal acts of defamation against individuals in the 2023 Criminal Code is (a) to guarantee recognition and respect for the rights of people to be respected by others, (b) to guarantee the freedom of others to express their opinions in public regarding their assessment of people, and (c) if there is a violation of the right to honor of an individual who is harassed by others, the case can be resolved legally clearly by prioritizing the principle of justice and the principle of legal certainty.

The regulation of lighter criminal threats in the Criminal Code (compared to the Information and Electronic Transactions Act) aims so that every perpetrator of a crime can be punished with imprisonment, but if the judge wishes, he can only impose a fine. This goal is related to the government's efforts to minimize the imposition of imprisonment in Indonesia, because the costs are expensive, and its effectiveness in achieving the objectives of punishment is debated. (Arif, 2002)

The threat of light criminal penalties is related to efforts to open up opportunities for resolving defamation cases using out-of-court channels through a restorative justice approach. This model of settlement can reduce the workload of law enforcers, and provide better justice compared to settlements in court which are often not by the parties' sense of justice and are expensive. This step is by the use of out-of-court criminal settlements using restorative justice, as regulated in the Police Regulations and the Republic of Indonesia Prosecutor's Office Regulations.

The principle of proportionality in the 2023 Indonesian Criminal Code which is manifested in the inclusion of this type of criminal offense is a consequence of the acceptance of criminal law that pays attention to the balance of interests between the actions and circumstances of the perpetrator of the Criminal Act (*daad daader strafrecht*) to develop alternatives other than imprisonment. Based on the general explanation of the Criminal Code, the balance between public or state interests and individual interests, between protection of perpetrators of criminal acts and victims of criminal acts, between elements of acts and inner attitudes, between legal certainty and justice, between written law and law that lives in society, between national values and universal values, and between human rights and human obligations. This is related to individual interests in the Unitary State of the Republic of Indonesia which is based on Pancasila and the 1945 Constitution of the Republic of Indonesia. In detail, the criminal law policy in this regulation is as follows.

- a. The state wants to protect the honor of individuals from being insulted by others so that anyone who is insulted can report the perpetrator to law enforcement.
- b. The state will provide an opportunity for the victim who is insulted to defend themselves by insulting the person who insulted them. Anyone who is insulted by someone else can defend themselves by returning the insult to the perpetrator. The perpetrator who returns the insult is not punished, because it is regulated in the reasons for forgiveness in the 2023 Indonesian Criminal Code. This rule is in the Explanation of Article 35 of the Criminal Code, that defense can only be carried out against interests that are determined in a limited manner, namely the legal interests of oneself or others, honor in the sense of morality, or property; and the balance between the defense made and the attack received (the principle of proportionality).
- c. The state always protects the public interest, so that the perpetrator is not punished because it is in the public interest, the reason for forgiveness is to protect the interests of society.
- d. The state provides opportunities for people widely to express their thoughts and freedom of opinion, as long as it does not harm others

- e. The state provides a clear and measurable measure of insult to the victim, whether they feel insulted or not, therefore the crime can only be processed if the victim reports it. This is to ensure the principle of legal certainty.

c. Relevance between the Cause and Purpose of Replacement, with the Content of Criminal Regulations on Defamation of Individuals in the 2023 Indonesian Criminal Code Reviewed from the Perspective of Legal Politics in Criminal Law

The impact of the weakness of the criminal provisions in Article 27 of the 2008 Information and Electronic Transactions Act includes the detention of suspects because the maximum prison sentence is 6 years. This regulation also indicates that there is no opportunity to resolve cases of defamation in cyberspace through channels outside the courts. As a result, the number of perpetrators of criminal acts of insult and/or defamation as referred to in Article 27 paragraph (3) of the Information and Electronic Transactions Act in Indonesia is increasing, including 20 court decisions that have permanent legal force, (Hukumonline.com, 2016), 94.88% of perpetrators were sentenced to prison, and only 6.12% of cases resulted in acquittals or release from all legal charges. (Tirto.id, 2018) However, many cases were decided unfairly, because they violated the implementing regulations as stipulated in the Joint Decree. (Zhafira & Ismansyah, 2023). The imposition of light criminal sentences on perpetrators of defamation by the court does not have a deterrent effect on perpetrators and potential perpetrators, compared to the consequences and trauma of individual victims in defamation cases. (Mangode et al., 2023). However, there is a positive side to the light criminal threat in the 2023 Indonesian Criminal Code, namely the opportunity to resolve cases using mediation in criminal law between the perpetrator and the victim.

The relevance between the causes of the replacement of criminal rules and the purpose of legislators to make replacements is stated in the following description. The method of achieving the objectives in the criminal law policy has been stated in the legal policy implied in several rules in the 2023 Indonesian Criminal Code below. Defamation is a crime and the perpetrators are subject to criminal penalties (Articles 433 and 441 paragraph (1)). The affirmation that defamation is a criminal complaint (Article 440). There are 2 different forms of defamation crimes and different criminal penalties, namely using speech in the form of speech which carries a lighter criminal penalty than defamation using writing or images. The rules regarding criminal penalties in the 2023 Criminal Code which are lighter than in the 2024 the Information and Electronic Transactions Act, are not only the types that can only be imposed in 1 type, namely imprisonment or a fine, but also the length of the sentence and the amount of the fine. Based on the category, there are also very light defamation crimes, and more serious defamation (433 paragraph (1) and paragraph (2)). The perpetrator will not be punished if the person who insulted the person is intended for the public interest, and in self-defense (Article 433 paragraph (3)). The explanation of Article 433 makes it easier for law enforcement to implement it and law enforcement can implement it uniformly. Even the qualifications for the crime of defamation are explained in detail in Article 433, that the requirements for an act of defamation are if the act of insult is carried out by accusing, either verbally, in writing, or with pictures, which attacks the honor and good name of a person, so that it is detrimental to that person. The act that is accused does not need to be a Criminal Act. According to the provisions in this article, the object of a Criminal Act is an individual. Defamation against a government institution or a group of people is not included in the provisions of this article. This explanation contains more elements of certainty because the form is regulated, and the target of the insult is also clear, namely only to individuals, not including corporations.

In the face of this phenomenon, Indonesian legislators should not only pay attention to the opinions of members of the public who want to eliminate or maintain defamation. Legislators must seek alternatives by maintaining defamation as a crime, but like a complaint crime, defamation will not be punished if the perpetrator commits defamation as an effort to defend himself, or in the public interest. In addition, the criminal threat in the regulation is also reduced to a criminal threat only or a fine only. This solution is clearly stated in Article 433 and Article 441 paragraph (1) of the 2023 Indonesian Criminal Code. Legislators who determine formulative policies by maintaining defamation as a crime with all its conditions, and reducing this criminal threat to guarantee human rights. This legislator's step is in Lippmann's opinion, that mass opinion can be dangerous for society if the object regulated in the law is very essential for human life in society. (Lippmann, 1999)

Based on several criminal provisions in the 2023 Indonesian Criminal Code, theoretically, it can be understood that there is a relationship between criminal law and the needs and demands of Indonesian society. Changes in society can affect criminal law, but criminal law must also be a means for the state to make planned changes, (Manan, 2006) and move towards a better democratic life that is free from crime. (Ali, 1996). Referring to this idea, Indonesian legislators as institutions authorized to change laws and replace laws have considered the need to replace criminal defamation regulations for individuals in the 2023 Criminal Code to be more prospective in overcoming crime. This kind of legal replacement is indeed necessary because according to Wahyono, the development of national law in Indonesia is necessary, (Wahjono, 1986) to move towards responsive law, namely law that can respond to the interests of society, without ignoring justice and legal certainty.

If the change in this regulation is linked to crime prevention, then the change in criminal threats can reduce the number of criminal acts. The number of defamation cases reported to the National Police cyber patrol ranks in the top 3, the first being fraud, the second being threats of violence, and the third being defamation. Based on data from the National Police Criminal Information Center, since 2021 there has been an increase compared to the previous year, and in 2022 there were 162 defamation cases handled by the National Police. (Pusat Informasi Kriminal Nasional, 2022). In 2023, criminal acts of defamation using information technology devices were ranked second, after criminal acts of fraud with a total of 838 cases. (Tanar et al., 2024). Based on these data, when compared to 2024, the number of defamation cases fell by 25.58%. (Pusat Informasi Kriminal Nasional, 2022). The legal provisions in Law No. 1 of 2024 regulate in detail the qualifications of acts that can be categorized as defamation and the criminal sanctions that are threatened. (Rumondor et al., 2024)

If the replacement of this criminal regulation is discussed based on the Politics of criminalization manifested by legislators in the criminalization policy in the process of Indonesian criminal law legislation, then the causes and actions of legislators in the replacement are consistent steps, namely by fixing normative weaknesses, providing positive responses to demands and community support, and continuing to consider defamation as a crime based on victim complaints. Legislators also pay attention to the system of formulating the threat of criminal sanctions in criminal law which can continue into the practice of sentencing in court, (Mudzakkir, 2008) as regulated in Book I of the 2023 Indonesian Criminal Code. The policy of punishment is based on a set of guidelines that determine the nature and amount of punishment for people who commit crimes, and how the punishment is imposed. If a crime occurs, there is a criminal law that strictly regulates the qualifications of criminal acts and the threat of punishment in the 2023 Indonesian Criminal Code. The threat of punishment in the Criminal Code and the imposition of punishment by judges can also be a means of preventing crime. Thus, it is clear that legislators have carried out their duties in functioning criminal law in the context of primary and secondary functions.

If associated with national legal politics, then the 2023 Indonesian Criminal Code was ratified in 2023 (implemented starting January 2, 2026) in line with the direction of criminal law development that adopts living laws in society, religious values, and Pancasila values. During the discussion, the legal political orientation of the replacement of the criminal act regulations was based on the direction of long-term development in the legal sector as stated in Law Number 17 of 2007 concerning the National Long-Term Development Plan for 2005-2025, based on the Object (form) of Legal Development in Indonesia is written law, namely legislation in the form of the 2023 Indonesian Criminal Code. The method of changing the Article has met the requirements, namely as follows. The process, through a mechanism based on Law No. 12 of 2011 concerning the Formation of Legislation, and its Amendments. The parties involved in the formation of the 2023 Criminal Code, the Indonesian Parliament together with the President and stakeholders as regulated in the Law concerning the formation of legislation. The content of the regulations has been adjusted to the needs of society, the era of information technology, democratization, and freedom of expression.

The strategic steps taken by Indonesian legislators in replacing these regulations are by the opinion that legislators in making laws must always be linked to legal interactions with the community of law users, as well as other social values in society. (Glazyrin, 2022).

5. Conclusion

Based on the discussion above, it can be concluded as follows. (1) The reasons why legislators replaced the defamation article in the 2023 Criminal Code are: the rules in the ITE Law are not detailed in defining criminal

acts, the criminal threat is very severe, the criminal threat is the same so it does not meet the needs of society and the principles of criminalization, (2) the purpose of legislators to regulate criminal acts of defamation in cyberspace is to protect the honor of every person without eliminating the right of every person to express opinions in the era of democracy, granting the right to defend themselves, and granting the right to fight for the public interest. However, if they are guilty, they will be punished. (3) The criminal provisions for defamation against individuals in cyberspace in Articles 433 and 441 paragraph (1) of the 2023 Criminal Code are relevant to Indonesia's national legal policy so that new criminal regulations can be used as a means of achieving the goals of criminal law because the rules are clear, consistent, and proportional. The legislator's strategic steps are relevant to the principle of mono-dualistic balance in criminal law.

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