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Cyber Defamation Through the Media: Comparative Study of Indonesia, South Korea and Malaysia

Kuat Puji Prayitno¹, Ickuk Rangga Bawono²

University of Jenderal Soedirman, Indonesia

Abstract

Technology has enabled the humans to access the information as they need in their march towards progress. However, cybercrime or online crimes have never been a part of this progress. It is the misuse of social media that has contributed to the growth of cybercrime. This study attempts to make a comparison of regulatory provisions for cyber defamation being carried out through electronic-based media in countries like Indonesia, Malaysia, and South Korea. This study used normative juridical research methods to analyze secondary data collected through library research and documentation search. The conceptual, statutory, and comparative approaches were used to analyze the data. The rationale behind this study was to find out whether there exists any legal material or redressals that could be seen as a reformation in the legislative policies regarding Crime of Cyber Defamation through media in the sampled countries. The findings confirmed that there exist several differences in the regulations related to cyber defamation laws in Indonesia, Malaysia, and South Korea, especially those deal with crimes committed through electronic media. The study also found out the cyber defamation crimes are classified in terms of types of offenses, elements, and definitions in each country, Indonesia, Malaysia, and South Korea.

Keywords: Cyber Defamation laws, juridical research, criminal laws, online crimes

1. Introduction

Globalization has deeply impacted the socio-economic life of humans, with media being a strong indicator of this impact. Media has proven to be a great tool for facilitating user-to-user contact, changes in social relations, mostly resulting in positive societal improvements like getting and disseminating knowledge. However, there are harmful effects of media when media breaks down accepted norms of social changes and misuse media platforms in the name of religion, ethnicity, and certain behavior patterns. Social media can also be used to damage,

¹ University of Jenderal Soedirman, Indonesia. Email: kuat.prayitno@unsoed.ac.id
ORCID ID: <https://orcid.org/0000-0003-0481-2439>

² University of Jenderal Soedirman, Indonesia. Email: cukycutes@yahoo.com
ORCID ID: <https://orcid.org/0000-0002-2594-6076>

insult, harass, slander, members of a particular community, using the internet. This kind of misuse is categorized as criminal offence and since internet is used as a tool, it falls under the category of cybercrimes. The law of the nation should address such offenses under cybercrimes legislations.

In the past, the acts of insult, harass, or slander, commonly termed as defamation, were committed manually; now these crimes occur through electronic means. In other words, a person is harassed, or any act of defamation with the aim to cause him the insult and slander, is spread over the cyberspace networks, both through social networks and through websites that are accessible to everyone in the society. Such types of cybercrimes with the help of internet or computers in is termed as illegal use or misuse of resources. The emergence of cybercrime cases in Indonesia began as cases of theft of credit cards, hacking of various sites, tapping transmission of other people's data, and data manipulation with how to set up unwanted commands in computer programs. In the recent past, cybercrimes have switched over to social networking, as there has increased the number of social network users like Facebook, Twitter and so on (Afriansyah, 2015).

In Indonesia, acts of defamation categorized as cybercrimes on media, happened due to the lack of care from the society or negligence shown in supervising the users of the internet and social media (Poisto & Alavi, 2016). As a results, the offenders were involved in acts like publishing slander, insult or derogatory article, photographs, or even audio-video material, which may not be necessarily factual, with the aim to defame a person or an entity. Such defamatory acts had a negative impact, as they undermined the reputation of individuals, organizations, and government entities. According to information provided by the Executive Director of the Southeast Asia Freedom of Expression Network (SAFEnet), there about 15,000 (fifteen thousand) Police Reports filed between 2017 and 2020 and a total of 38 (thirty eight) Police Reports filed between 2021 and 2022 by those who had violated the ITE Law means the Law of the Republic Indonesia No.11 of 2008 on Information and Electronic Transaction as lastly amended by Law No.19 of 2016. (Ali, 2012).

The only primary legal tool in Indonesia for prosecuting offenders who are indulged in cybercrimes is the ITE Law. Indonesia does not yet have a specific law regarding defamation (Prasetyo, 2021). Articles 310 to 321 of the Criminal Code (KUHP) and Law Number 19 of 2016 Amending Law Number 11 of 2008 Concerning Information and Electronic Transactions (UU ITE) are the sole laws that apply to how these crimes are handled. Articles 311 to 318 of the Criminal Code generally contain the provisions pertaining to these crimes, including committing slander due to inability to establish the veracity, making purposefully insignificant insults, notifying the police of false complaints, and making false accusations that harm the victim. However, Article 27 paragraph 3 of the ITE Law, states that "Every person intentionally and without authorization distributes, transmits, makes accessible, or publishes electronic information and/or electronic documents that contain insult and/or defamation," has a reference to this provision of defamation.

A similar condition, in fact, is also experienced by people in South Korea where, according to the South Korean Police, cases of criminal defamation through media increased every year starting from 2017 and 13,348 cases had been registered until

June 2021, but this number has now increased to 75,302 cases in 2021. South Korea, as a country, is also subject to the civil law system, and has the same pattern of legal politics like Indonesia. Law Number 17571 of 2020 Amendments to Law Number 293 of 1953 Concerning the Criminal Law Act, often known as the South Korean Criminal Code, contains Articles 307 to 310 that control laws connected to good pollution in South Korea (Mandagie, 2020). The definition of a defamatory criminal under the South Korean Criminal Code is someone who "broadcasts information and/or false information so as to damage the honor of others." The South Korean ITE Law, also known as Law Number 18201 of 2021 Amendments to Law Number 17358 of 2020 Concerning Protection of Information and Acceleration of Use of Telecommunications and Information Networks, was passed in South Korea keeping such offences in mind. The The South Korean ITE Law further states that "Users are not allowed to broadcast information through telecommunication networks and information that can harm a person's rights by interfering with personality or causing defamation," as stated in Article 44, paragraph 1, of the South Korean ITE Law (Hun & An, 2020).

Meanwhile, the cyber defamation provisions in Malaysia, especially in the criminal realm, are contained in the Malaysian Penal Code (MPC) to be precise, in Sections 499 and Section 500. In these provisions, Special Defenses are stated related to defamation. In fact, several examples pertaining to this topic are included in the MPC itself so that everyone is aware of the Special Defense in the criminal act of defamation. The existence of Special Defense is fundamentally significant as a justification or defense for criminal charges for particular acts that have been charged. Even though the law has regulated general defense that applies to all crimes, there are still many problems in its application. However, for certain crimes, special exceptions are needed that are directly related to the type of crime, such as defamation through electronic this media.

This study compared or rather explained similarities and differences between the regulations of criminal defamation in Indonesia, South Korea, and Malaysia. This comparison aimed to find out the criminal law reforms related to the policies of the criminal acts of defamation through media. Apart from discussing normalization and specific legislations, this study also carried out a comparison of the types and models of offenses regulated in the legal systems of Indonesia, South Korea and Malaysia. Hence, the underlying research question that was answered in this study was: What are the most basic similarities and differences between the laws and regulations in Indonesia, South Korea and Malaysia with regard to criminal acts of defamation through media?

2. Literature Review

2.1 What is defamation

Defamation is a statement that injures a third party's reputation. The tort of defamation includes both libel (written statements) and slander (spoken statements). The case of misuse of social media that is currently happening can be termed as defamation if acts of slander and insult target a specific person, organization or a government entity (Bullwinkel, 2005). Defamation behavior at this time is a criminal act whose purpose is to damage someone's good name which is carried out by other parties on social media. This act is a criminal act because it

disturbs public order, comfort, security and causes material and non-material losses. It is noteworthy that because of its great dissemination power, digital communication makes it easier for the court to judge relevant issues such as intentional defamation, uptake, and the ultimate goal of damaging the target's personal dignity and social reputation (Lidsky, 2000). With the development of the era which is quite significant, social media abuse can occur through Facebook, WhatsApp, Instagram, Telegram, Twitter, and so on.

2.2 Criminal law in Indonesia

The concepts of criminal law in Indonesia are vested in doctrines viewed as a steady source of knowledge about the notion of criminal law, criminal elements, scope of law, crime, and accountability in criminal law (Ung, 2015). In Indonesia, criminal law, is a by-product of the views of classical jurists and the Dutch Criminal Code's concordance with Indonesian law (Rochman, Akmal, & Andriansyah, 2021). As stressed by Prodjodikoro (2014), after the Japanese colonization of Indonesia, the phrase criminal law changed to denote *strafrecht* from Dutch and to distinguish it from the term civil law, which denotes *burgerlijkrecht* or *privaatrecht* from Dutch. In addition, W.L.G. Lemaire underlined that criminal law comprises of rules comprising mandates and prohibitions that have been connected by legislators to a penalty in the form of punishment, namely a distinctive suffering. It also determined which acts were doing something or not doing anything when there is a requirement to do, and under what conditions punishment can be imposed on these actions, to be determined by a system of rules known as criminal law (Lamintang, 2014).

2.3 Criminal law in South Korea

Meanwhile, in South Korea, which applies the meaning of the concept of "criminal law" in a simple way, namely criminal sanctions against criminal acts. Therefore, according to Ho (2017), all statutory regulations governing criminal acts and criminal sanctions are actually categorized as criminal law even though the articles stipulated in the law arise that are not criminal law in nature, such as the example of Article 622 Sanctions in the Law-Trade Law, Article 84 Criminal Acts Committed Related to Political Activities in the Civil Service Act or in other laws. Criminal acts contained in criminal law are in principle formal criminal acts, this makes it difficult to explain the definition of criminal acts in detail. From there emerged a need for a non-formal understanding of criminal acts to add an explanation of criminal acts so that criminal law determines what actions are recognized as criminal act (Geun & Jung, 2019).

The overwhelming number of cybercrimes and security incidents compared to those of neighbouring countries contrast sharply with the positive aspects of Internet usage in Korea. Some may consider the undesirable phenomena inevitable costs accompanying the acceleration of an information society. In contrast, others may attribute these undesirable phenomena to the lack of social and legal control of online activity in Korea. No one reason can explain the situation. Without waiting to identify the cause, the Korean authorities have made a great effort to tackle cybercrime and other attacks, including the threat of cyber-terror (Geun & Jung, 2019).

2.4 Criminal law in Malaysia

Legal sources in Malaysia, namely Written Law and Islamic Law, whose position is no less important than unwritten law (in this case judicial decisions, customs and English law) constitute the Malaysian Penal Code. The Malaysian Penal Code (MPC) has strong provision like Sections 499 and Section 500 which relate to defamation. Apart from its provisions in the legislation, it is also significant that everyone is aware of these provisions of cyber defamation. The Malays can make use of the Special Defense vested in MPC to protect them against all crimes. It is interesting to see that the source of "written law" in Malaysia were the five pieces of legislation namely: the Federal Constitution, the Constitutions of each of Malaysia's 13 states, the Federal Acts of Parliament, the State Enactments, and the Subsidiary Legislation. Specifically, written law is employed with other sources of law, particularly court rulings. Even though Malaysia has a lot of laws right now, the Common Law System still relies heavily on case law as its primary source of legislation.

Currently, Indonesia, Malaysia and Korea provides for the punishment of cybercrimes in the Criminal Act concerning traditional crimes committed by means of a computer, and in various other laws. The most relevant of these are the Act on the Promotions of Information and Communications Network Utilization and Information Protection, etc. (hereafter: Information and Communications Network Act) and the Information and Communications Infrastructure Protection Act, which are special additions to the Criminal Act. Besides, the following laws are also relevant: the Framework Act on Electronic Commerce and the Digital Signature Act, concerning e-commerce; the Act on the Punishment of Sexual Crimes and the Protection of the Victims (Irianto, 2009).

Thereof, concerning cyber-sexual harassment; the Act on the Protection of Juveniles' Sex, etc., concerning child pornography; the Copyright Act or Computer Program Protection Act, concerning on-line copyright infringement; the Act on Promotion of the Game Industry, and the Act on Special Cases Concerning Regulation and Punishment of Speculative Acts, etc., concerning on-line games (Bullwinkel, 2005).

The attitude of the judicial system in the application of law to a new legal issue is to interpret current law or to amend or add new provisions to meet emerging needs. Digital evidence is the most widely used term to depict the new type of evidence consisting of zeros and ones, which signify the greatest challenges concerning criminal procedural law in cybercrime investigations and in court. Legitimacy of the procedures followed during the collection of digital evidence is the top issue (Prasetyo, 2021).

The most significant method of doing this is a search and seizure operation as defined in the Criminal Procedure Act which is the foundational law for all criminal procedure. There is almost no provision allowing for the statement of digitalized evidence; therefore, the search and seizure issue is basically an interpretation problem. Special procedures, including wiretapping electronic communication to collect specific types of data from specific sources, are defined in a few different laws as outlined below. In court, there are also numerous legal issues (Jayananda, Sugiarta, & Widiantara, 2021).

3. Research Methodology

The research design utilized in this study was normative law, which is a legal investigation done by looking at the secondary sources of information (Man, 2021). This type of study is also known as doctrinal legal research. The normative legal research, in the words of Marzuki (2005), is the process of identifying a legal code, legal tenets, and legal doctrines to address the legal problems that people encounter. In addition to normative approach, two other approaches, statutory and conceptual, were used to analyze the data, as the investigation involved a comparison of three types of legislation. These approaches helped in understanding the respective law of each country. For instance, the Criminal Code (KUHP) and Law Number 19 of 2016 amendments to Law Number 11 of 2008 concerning information and electronic transactions (UU ITE) was the basic reference legislation for Indonesia. For South Korea, this study found the Criminal Law (UU ITE) South Korean Penal Code, and Law Number 18201 of 2021 amendments to Law Number 17358 of 2020 concerning protection of information and accelerated use of telecommunications and information networks (South Korea's ITE Law) as having the statutory approach (Sang, Min, & Bum, 2016). Likewise, since the MPC had a more established legislation pattern with regard to defamation, the Concept Approach was used to understand concepts regarding the principles of norms in the law of defamation for Malaysia (Soekanto & Mamudji, 2006).

4. Results and Discussion

4.1. Comparison of Basic Concepts in Criminal Law

The emerging criminal law theories have parallels in articulating the components of a crime, namely always adhering to subjective and objective aspects, which can be seen in all three Criminal Codes of Indonesia, South Korea and Malaysia. However, there seems to be a difference in giving the meaning of the two aspects. These differences can be observed in Table 1:

Table 1: Subjective and objective elements in Indonesian, South Korean, Malaysian criminal codes

	Indonesia	South Korea	Malaysia
Subjective Element	Elements that are associated to or attached to the culprit	It is an element that is outside the actor's self, namely actions, effects, causes and effects, subjects, and objects.	These elements are outside the actor's self, namely actions, effects, causes and effects, subjects, and objects.
Objective Element	Elements that relate to situations, namely the conditions in which the actor must perform 13	Elements have an understanding of the inner condition of the perpetrators of criminal acts. In general, intention and negligence in criminal acts are elements of objective criminal acts. The objective element in each criminal act is applied to elements such as "purpose", "tendency" or "inner condition" towards perpetrator	Each criminal act's objective components are applied to the components of the offender's "purpose," "tendency," or "inner condition."

A person is considered to have committed a criminal act if his activities are established to have violated the relevant criminal laws and regulations of the land. However, a person who has been found guilty of a crime may not always receive a criminal penalty. This is because in criminal liability, it is not only seen from the actions, but also seen from the element of guilt.

In the Indonesian context, Soedarto (2007) emphasized that the conditions for allowing the imposition of a sentence on a person are related to the act and to the person who committed it. There are significant values or concepts surrounding these criteria in the Indonesian criminal law, especially the ideas of attributing the responsibility of legality and guilt. The criminal responsibility relates to the act, whereas the second relates to the individual.

In contrast, the definition of criminal responsibility in South Korea's criminal law system refers to the imposition of criminal sanctions associated with accountability, particularly the severity of criminal imposition based on the degree of the perpetrator's guilt, as evident in the Article 10 of the Provisions on Human Dignity, Article 12 paragraph of the South Korean Criminal Code. The principle of a fair legal process in the South Korean Constitution, accountability is binding on the imposition of a sentence. The South Korean Constitutional Court regards accountability as a balance between crime and imposition of punishment so as not to undermine the principle of guilt (Afriansyah, 2015).

Likewise, in the Malaysian context, the responsibility of legality and guilt is determined by the type of offence, and the applicability of the MPC on that specific crime. Generally speaking, having viewed the state of criminal accountability and determining elements, it should be noted that the criminal law has a structure usually known as a Criminal Code of a country, the scope of which has a *lex generalis* (general provision), which also includes the *locus delicti* (location of the offense) and *tempus delicti* (time of the offense). The place where the crime occurred (*locus delicti*), is also within the scope when a court needs to determine whether the illegal act is covered under the stipulated law or not. This structure is also known as the theory of relative competence which ideally suits a comparative study like the current one.

Meanwhile, what is related to *tempus delicti*, according to Moeljatno (2015), is that "no act can be punished other than the force of the criminal regulations in the law held at the previous time," which determines the enactment of the criminal law. In terms of whether the act was an act related at that time it had been prohibited and punished. According to Geun (2021), a study of the enactment of criminal law based on time, suggested to apply regulations to everyone who commits a crime, the imposition can be different because there is a time difference in the rules that will be applied when committing a crime and when trying a crime. While this is going on, the creation of criminal law is founded on a number of legal concepts, including the territorial principle, the principle of individuality, the principle of protection, and the principle of universality (Cahyono, 2016).

In the Indonesian context, Criminal Code Article 45 stipulates that if the law is changed after the act has occurred, the lightest rule should be used for the accused. Hence, it is necessary to know the start time of the crime in order to

resolve the issues. In the South Korean context, there are two disputes based on the timing and location. The concepts of *nullum crimen sine lege* and *nulla poena sine culpa* are referred to in that order when the criminal law is applied under the South Korean Criminal Code (Menski, 2000).

4.2. Defamation Through Media in Indonesia

Defamation is a crime that involves attacking someone's reputation by their words, actions, or representation in the media. This can lower the victim's sense of dignity and self-worth. Or accusations against someone that they have done something and spread it to the wider community. Disturbances or violations that lead to a person's reputation in the form of false statements, slander, defamation, ridicule and insults. The crime of defamation has elements, namely intentional elements, elements of attacking honor and good name, and elements in public (Putri, 2018).

Adji (1973), however, defines defamation as a vocal attack on reputation or honor as well as slander in writing. He stressed that insult, which is broken down into the following categories, includes

1. Material humiliation, which consists of a fact that comprises objective spoken and written assertions. This may be present in the statement's content, whether it is made verbally or in writing.
2. Formal humiliation, which is unrelated to the insult's actual content, but how a comment is made matters in terms of formal contempt. The deciding elements are form and procedure. In general, rudeness and objectivity are the preferred modes of expression. The prospect of establishing the validity of the charge is closed since there is no way to do it (Prodjodikoro, 2014).

According to Indonesia's Criminal Code, Article 310, "attacking a person's honor and good name" is considered defamation. People who are attacked frequently experience shame. The Criminal Code admits that defamable honor is the kind of honor that is assailed in acts of defamation.

Indonesia's Criminal Code also suggest 6 (six) different insults or defamation models:

1. Verbal abuse [paragraph (1) of Article 310 of the Criminal Code];
2. Written or spoken defamation, prohibited by [Article 310(2) of the Criminal Code];
3. Slander [Criminal Code, Article 311];
4. Mild humiliation [prohibited by Criminal Code Article 315];
5. Libelous complaints [Article 317 of the Criminal Code];
6. Slander accusation [per Article 318 of the Criminal Code].

Regarding defamation through electronic media, Article 27 paragraph 3 of the ITE Law, states: "Every person must not, either intentionally and/or without distributing and/or transmitting and/or making electronic information and/or electronically, publish such content or documents on the Internet that might contain insults or slander." These clauses of the Criminal Code are often cited while examining the offenses listed in the ITE Law's Article 27 paragraph (3), and which must correspond to those listed in the Criminal Code as cyber offenses.

4.3. Defamation Through Media in South Korea

By disseminating factual or false information in public, someone commits the crime of defamation, which damages someone's reputation or offends other people. Honor is personal values owned by a person to be enjoyed socially, ethically and morally based on human dignity. Therefore, damaging the good name of others is an act that is contrary to human dignity. The definition of defamation is explained through the Decision of the Supreme Court of South Korea Number: 87 do 739, 12.05.1987 which confirms "Defamation is broadcasting information that can damage the honor and good name of a person in general, but defamation is different from insult which has a critique others namely, thinking abstractly or expressing emotions with insulting words. The term good name is given two meanings as follows:

1. Good Name inwardly: This good name is not the realm of criminal law protection because absolute values owned by individuals subjectively cannot be disturbed or harmed by other people.
2. Good Name physically: Physical good name is a public reputation for individuals who carry out social activities, good behavior or human dignity. Therefore, a good name physically needs to be protected by criminal law because it can be tarnished or harmed by other people.

Arrangements regarding criminal acts of defamation regulated in the South Korean Criminal Code are as follows:

1. Defamation [Article 307 paragraph (1) and paragraph (2) of the Criminal Code of South Korea], which confirms as follows:
 - (1). Whoever broadcasts true information for public knowledge so as to damage the reputation of others, shall be punished by a maximum imprisonment of two years or a maximum fine of ₩5,000,000 (five million won);
 - (2). Whoever broadcasts false information for public knowledge so as to damage the good name of others, shall be punished with imprisonment for a maximum of five years, deprivation of rights for a maximum of ten years or a fine of up to ₩10,000,000 (ten million won).
 - (3). Defamation of a deceased person [Article 308 of the South Korean Criminal Code], which states "Anyone who broadcasts false information to be known in public so as to damage the good name of a deceased person shall be punished with imprisonment for a maximum of two years or confinement or a maximum fine ₩5,000,000(five million won)."
2. Defamation through print media [Article 309 paragraph (1) and paragraph (2) of the Criminal Code of South Korea], which confirms as follows:
 - (1). Whoever broadcasts true information to slander other people through newspapers, magazines, radio or other printed media thus violating Article 307 paragraph (1) above, shall be punished with imprisonment for a maximum of three years, imprisonment or imprisonment or a fine of up to ₩7,000,000 (seven million won);
 - (2). Whoever broadcasts false information to slander others through newspapers, magazines, radio or other printed media thus violating Article 307 paragraph (2) above, shall be punished with imprisonment for a maximum of seven years or deprivation of rights for a maximum of ten years or a fine of up to ₩15,000,000 (fifteen million won).

- (3). Justification [Article 310 of the Criminal Code of South Korea], which confirms "Anyone who broadcasts true information that has been included in Article 307 paragraph (1) intended for the public interest, will not be criminally charged."
- (4). Contempt [Article 311 of the Criminal Code of South Korea], which confirms "Whoever insults another person in public shall be punished with imprisonment for a maximum of one year or light imprisonment or a fine of up to ₩2,000,000 (two million won)."

As in Indonesia, the South Korean Criminal Code also emphasizes that the criminal act of defamation or insult, as a Complaint Offense, as stipulated in Article 312 paragraph (1) of the South Korean Criminal Code which confirms "The crime in Article 308 and Article 311 must there be a complaint to file a prosecution." However, specifically for the application of Article 307 and Article 309 of the South Korean Criminal Code, according to Article 312 paragraph (2) of the South Korean Criminal Code, that prosecution may not deviate from what the victim wants.

With regard to regulations for criminal acts of defamation through media, Law Number 18201 of 2021 concerning Protection of Information and Acceleration of Use of Telecommunications and Information Networks (South Korea's ITE Law) explains the purpose in Article 1 of South Korea's ITE Law which affirms "The Law on ITE of South Korea" This law aims to improve people's welfare by accelerating the use of telecommunications networks, protecting users of telecommunications network services and creating a healthy and safe environment for the use of telecommunications networks."

Article 44 paragraph (1) of the South Korean ITE Law, which focuses on this issue explicitly, regulates the crime of defamation through media. The design and formulation of Article 70 of the South Korean ITE Law is a development of the South Korean Criminal Code by adding elements of "broadcasting information to slander" and elements of "through telecommunications networks" and regulating criminal aggravation because the losses that will be experienced by victims are greater and can continue longer period of time than conventional defamation.

4.4. Defamation Through Media in Malaysia

The regulation regarding cyber defamation in the context of Malaysia refers to the Malaysia Penal Code (MPC), and Special Defense, regulated in a more comprehensive manner. Basically, the Special Defense for defamation and cyber defamation crimes regulated in the MPC are based on public interest and good faith. These criteria are further elaborated into 10 Special Defenses which in the MPC itself are referred to as "exceptions":

- 1) If anything is revealed in the public interest, accusing someone of something that is true is not considered defamation;
- 2) Expressing an opinion in good faith on a civil servant's conduct while performing his public duties or regarding his character insofar as that character is apparent in that conduct is not considered defamation;
- 3) A person's actions in relation to a public issue or problem, as well as his character to the extent that his character is apparent in such activity, are not defamatory when expressed in good faith;

- 4) Publishing accurate information regarding trial courts, legislative bodies, or the results of such proceedings is not considered defamation;
- 5) Expressing an opinion in good faith on a matter that has been resolved by a court, the conduct of a party, witness, or agent in that case, as well as the character of that person inasmuch as that character shows in that behavior, is not considered defamation;
- 6) To express an opinion in good faith on the merits of any performance meant for public review is not slander;
- 7) Criticizing someone's actions in circumstances involving linked legal power in good faith is not considered defamation of a person who has authority over another person, whether such authority is provided by law or results from a legally contract entered into with that person;
- 8) If someone complains or accuses another person in good faith to someone who has power over that person in respect to the principal issue of the complaint, it is not defamation;
- 9) As long as the claim is made in good faith to defend the accused person's interests, those of another person, or the public interest, it is not defamatory to make accusations about someone based on their character; and
- 10) As long as the warning is delivered to a person in good faith and is intended for their own benefits, the person's attention, or the public interest, it is not considered defamation.
- 11) Then, in relation to the Special Defense, it is further stated that good faith should be assumed unless additional circumstances occur while showing the presence of conditions as defenses based on the second, third, fifth, sixth, seventh, eighth, and tenth exceptions.

4.5. Comparison of the Indonesian Criminal Code with the South Korean Criminal Code and the South Korean Criminal Code with Malaysia.

On a close examination of the Special Defense in the cyberdefamation context applicable in Indonesia, South Korea and Malaysia, one finds that all three Criminal codes share a characteristic in common: the component of public interest. The difference is that in Malaysia it is added with the elements of good faith and the existence of these elements in the MPC is further elaborated and there are also definitions of the phrases "public" and "good faith". In the General Explanations of the MPC, section 12 states that the phrase "public" includes various classes of society and any community. Similarly, section 52 states the meaning of the phrase "good faith", with an explanation that one cannot say something carried out in good faith if it is not also carried out or believed with care and attention. Hence, the MPC itself provides criteria or limitations related to these elements, where the element of public interest (public good) means the interests of the class of society and various communities.

In Indonesian and South Korean Criminal codes, the element of good faith means that an act must be carried out with care and attention. The definition or notion of defamation has almost the same meaning in the Indonesian and the South Korean Criminal Codes. However, the South Korean Penal Code distinguishes between the definitions of defamation and insult. As a result, Article 311 of the South Korean

Criminal Code, which deals with criminal acts of insult, is less severe than Article 307, which deals with criminal acts of defamation. Contrary to this, the Indonesian Criminal Code, equates insult with defamation, which is a distinct element not present either in Malaysian or South Korean criminal code.

Another point of difference is that articles for crimes related to defamation in South Korean and Malaysian Criminal codes are formulated simpler and shorter than the articles in the Indonesian Criminal Code. The South Korean Criminal Code only briefly distinguishes between four types of defamation: defamation of a living person (Article 307, paragraphs (1) and (2)), defamation of a person who has passed away (Article 308, paragraphs (1) and (2)), defamation through printed media (Article 309, paragraphs (1) and (2)), and defamation through contempt (Article 311). According to the Decision of the South Korean Supreme Court Number: 4293 Hyungsang 244, 16.11.1960, the South Korean Criminal Code separates the articles of "defamation" from "insulting". According to the ruling of the Supreme Court in South Korea, "insult" is a word that cannot be proven whether it is true or not at one time or place, for example saying "a fat person cannot take care of his patient, he himself is a patient too", or calling a person "dog", or make such statements like "Better to die than to be educated by parents like that" or "the information broadcast is false" are used in Article 307 paragraph (2) and Article 309 paragraph (2) in conjunction as the acts of "slander," "complaining slanderously," or "false suspicion".

On the contrary, the criminal act of defamation is a complaint-based offense under Article 319 of the Indonesian Criminal Code, which means that if the person who has been defamed does not file a complaint, the offender cannot be punished. In addition, the South Korean Criminal Code's Article 312 paragraphs (1) and (2) govern complaint offenses and regular offenses in line with the definition of criminal defamation. While defamation in Article 307 and defamation through printed media in Article 309 of the South Korean Criminal Code are ordinary offenses, defamation of a deceased person and humiliation are complaint offenses under Articles 308 and 311 of the South Korean Criminal Code, respectively. However, disputes over the terms complaint offenses and ordinary offenses still occur between the Indonesian Criminal Code and the South Korean Criminal Code, that is, ordinary offenses in South Korea mean that third parties can report them, but investigators must stop the investigation process if the victim has withdrawn his report.

In relation to the criminal act of defamation, Article 307 paragraph (1) of the Indonesian Criminal Code imposes a nine-month sentence for the offender harming the reputation or honor of another person. However, Article 307 paragraph (2) of the Indonesian Criminal Code prescribes a more severe penalty for his actions, namely one year and four months if the perpetrator harms the reputation or honor of another person through writing or pictures that are broadcast, shown publicly, or circulated. Considering that slander is defined in Article 311 of the Indonesian Criminal Code, that complaints of slander are made in Article 317 of the Indonesian Criminal Code, and that false accusations are made in Article 318 of the Indonesian Criminal Code, the sentence is actually aggravated, resulting in four years of criminal prosecution and additional rights revocation based on Article 35 No. 1-3 of the Indonesian Criminal Code.

The Criminal Code of South Korea also includes criminal penalties for those who commit slander. The South Korean Criminal Code's Article 307 paragraph (1) emphasizes that defamation carries a two-year prison sentence for the perpetrator, but Article 307 paragraph (2) aggravates the sentence by stating that "broadcasting false information" carries a five-year prison sentence. As a result, the South Korean Criminal Code's Article 309 paragraph (1) confirms that "Anyone who broadcasts true information to slander other people through newspapers, magazines, radio or print media in violation of Article 307 paragraph (1) above shall be punished with a maximum imprisonment of three years." The South Korean Criminal Code's Article 309 paragraph (2), however, adds to the punishment by stating that "anyone who broadcasts true information to slander other people through newspapers, magazines, radio or print media so as to violate Article 307 paragraph (1) above, shall be punished with imprisonment for a maximum of ten years of imprisonment." The two articles also specify the loss of rights as a punishment in addition to incarceration.

It is evident from the statements above that offenders who conduct slander, file slander charges, make false accusations, or disseminate false information are subject to the aggravated penalties in the criminal codes of Indonesia, South Korea, and Malaysia. With regard to the regulation of criminal defamation punishments, we attempt to summarize the three Criminal Code in Table 2:

Table 2: Summary of the Criminal Code of Indonesia, South Korea, and Malaysia

Comparison	Indonesian Criminal Code	South Korean Criminal Code	Malaysian Criminal Code
Definition of Defamation	Defamation, which essentially damages a person's good reputation and honor, is often referred to as humiliation.	<ol style="list-style-type: none"> Disseminating material that might harm a person's reputation and honor is referred to as defamation. Humiliation that has another critic, namely, thinking abstractly or expressing emotions with insulting words. 	<ol style="list-style-type: none"> Cyberdefamation is a type of crime made possible by the use of the internet. In essence, a crime. Defamation is divided into two forms, namely in writing (libel) and orally (slander), where this form also applies within the scope of cyber defamation.
Forms of Criminal Defamation	General humiliation <ol style="list-style-type: none"> Article 310, paragraph 1, "Contempt" Written Article 310 Paragraph 2: Contempt Falsehood Article 311. Article 315, Mild Insult. Article 317 defamation complaint. Article 318 false presumption. Insult to a deceased person Article 320. 	<ol style="list-style-type: none"> Defamation Article 307. Defamation of a deceased person Article 308. Defamation through print media Article 309. Contempt Article 311 (the meaning is the same as mild insult to the Indonesian Criminal Code). Defamation of certain legal entities 	<ol style="list-style-type: none"> Article 27 Paragraph 3 contains the definition of cyber defamation. Law No. 11 of 2008 Governing Information and Electronic Transactions, as modified by Law No. 19 of 2016 (hereafter referred to as the ITE Law), Article 45 Paragraph 3.

	<p>Special insult Insulting certain legal entities (President/Vice President, State Flag/Symbol, Representatives of friendly countries, Group/Religion/Ethnicity and Public Entities)</p>	(flag/symbol of South Korea, flag/symbol of foreign countries, representatives of foreign countries) and public bodies (judgment of the Supreme Court).	
Elements of the Crime of Defamation	<p>Objective Elements</p> <ol style="list-style-type: none"> 1. Elements of aggression. 2. A person's sense of honor or reputation. 3. The element that accusing a certain act. <p>Subjective Element</p> <ol style="list-style-type: none"> 1. Elements on purpose. 2. Elements of clear intent are generally known. 	<ol style="list-style-type: none"> 1. The elements are publicly known. 2. Elements of information broadcasting. 3. Elements of justification. 4. Elements intentionally (Supreme Court decision). 1. Offences requiring <i>basic intent</i> specify a <i>mens rea</i> element that is no more than the intentional 	<ol style="list-style-type: none"> 1 Elements of public interest. 2. The element of good faith. 3. Elements of public interest (public good). 2 Elements of subject purpose 4. The element of personal intent.
Offense Criminal Defamation	<p>Complaint Crime formal legal document that sets out the facts and legal reasons that the filing party or parties believes are sufficient to support a claim against the party or parties against whom the claim is brought that entitles the plaintiff to remedy (either money damages or injunctive relief).</p>	<p>Ordinary offenses (can stop the case)</p> <ol style="list-style-type: none"> 1. Defamation Article 307. 2. Defamation through print media Article 309. <p>Complaint Crime</p> <ol style="list-style-type: none"> 1. Polluting the remains of the deceased Article 308. 2. Contempt Article 311. 	<p>The ITE Law's Article 27 Paragraph (3) refers to Articles 310 and 311 of the Criminal Code as a delict.</p>
Weighting Criminal Defamation	<ol style="list-style-type: none"> 1. Defamation written Article 310 Paragraph (2) 2. Falsehood Article 311. 3. Article 317 lawsuit for libel. 4. False assumption under Article 318. 	<ol style="list-style-type: none"> 1. Broadcasting of false information Article 307 paragraph (2) 2. Slander through print media with false information Article 309 paragraph (2) 	<ol style="list-style-type: none"> 1. The Constitutional Court noted that while there is a unique factor, namely the advancement of information technology, Article 27 Paragraph (3) of the ITE Law just confirms the legislation of the crime of Defamation in the Criminal Code rather than regulating new criminal law norms. 2. The high level of sentence in defamation cases has ramifications for Article 27 Paragraph 3 of the ITE Law.

4.6. Comparison of Indonesia's Electronic Information and Transaction Law [UU ITE Indonesia], South Korea's Law on Information Protection and Acceleration of Use of Telecommunications and Information Networks [UU ITE South Korea] and Malaysia's Law on Information Protection and Acceleration of Use of Telecommunications and Information Networks

4.6.1 Indonesia's Electronic Information and Transaction Law

Although the defamation definition has been extensively debated in Articles 310 to 321 of the Criminal Code, the Indonesian Information and Electronic Transaction Law (UU ITE) does not contain one. The ITE Law's goal is to create an information society for the Indonesian nation's association in the life system so that it is strong as a unit by fostering the growth of an electronic information system by fostering electronic transactions, which ultimately make Indonesians smarter and make electronic transactions superior in the advancement of trade and the economy to increase Indonesians' well-being. However, in practice, it makes it more difficult to misuse so that there is a chance that crimes will be committed.

Compared to the contempt violation in the Criminal Code, the ITE Law's punishment for contempt is substantially harsher. The maximum sentence under the ITE Law is six years in jail, although the maximum sentence under the Criminal Code is just four years in prison, and even then, it relates to defamation. While the Penal Code applies a low fine and must be referred to in the present as a consideration of Rp. 4500.00 (four thousand five hundred rupiah), the ITE Law imposes extremely large fines, namely Rp. 750,000,000.00 (seven hundred and fifty rupiah). It should be emphasized that fines are crimes levied for infractions or breaches that are considered to be small in nature.

4.6.2 South Korea's Law on Information Protection and Acceleration of Use of Telecommunications and Information Networks

South Korea's ITE Law has almost the same objectives as Indonesia's ITE Law, namely to improve people's welfare by accelerating the use of telecommunications networks, protecting users of telecommunications network services and creating a healthy and safe environment for the use of telecommunications networks. South Korea's ITE Law also has more severe penalties for perpetrators than the South Korean Criminal Code by adding elements of slander and through telecommunications networks. The formulation of an aggravating sentence in South Korea's ITE Law was implemented because the losses suffered by victims were greater and continued for quite a long time compared to defamation in conventional media.

The elements of committing an act are different from those of the Indonesian Criminal Code because they refer to the act, namely distributing and/or transmitting funds/making electronic information accessible/electronic documents referred to in Article 27 paragraph (3) of the Indonesian ITE Law, whereas the elements of defamation are the same as those of the Criminal Code. Elements of the South Korean ITE Law, in principle the same as the elements of the South Korean Criminal Code, only adding two elements, namely elements of telecommunications networks and elements of defamation purposes because South Korea's ITE Law regulates defamation that occurs in cyberspace through telecommunications networks.

Defamation and insult are considered common offenses under the Indonesian ITE Law of 2008, allowing for legal action to be taken even in the absence of a victim's complaint. However, the offense has been modified to a complaint offense (*klacht delict*), which necessitates the victim filing a complaint with the police, by referencing the Indonesian Criminal Code as it is mentioned in the ITE Law. As stated in the discussion of the Constitutional Court Decision 50/PUU-VI/2008, the applicability and interpretation of Article 27 paragraph (3) of the ITE Law cannot be separated from the primary legal standards in Articles 310 and 311 of the Criminal Code as a genus of delict that requires complaints (*klacht*) to be prosecuted, must also be treated against acts prohibited in Article 27 paragraph (3) of the ITE Law, so that Article *a quo* must.

Defamation in cyberspace is an ordinary offense in South Korea, according to Article 70 paragraph 3 of the South Korean ITE Law, although as previously explained, the case may also be dismissed at the victim's request. Based on the objectives and consequences of greater losses than conventional defamation of victims, the Indonesian ITE Law and South Korea's ITE Law clearly provide heavier criminal penalties to perpetrators through articles in their laws. According to Article 310 of the Indonesian Criminal Code, the maximum sentence for defamation is four years in prison or a fine of seven hundred and fifty million rupiahs, while Article 45 of the Indonesian ITE Law sets a maximum sentence of nine months in prison or four thousand five hundred rupiahs. This is obviously extremely different from the sanctions imposed on the offenders.

In addition, the South Korean ITE Law and South Korean Criminal Code differ in how criminal punishments are weighted. According to Article 307 paragraph (1) of the South Korean Criminal Code, the maximum prison term or punishment for the crime of defamation is two years, while Article 70 paragraph (1) of the South Korean ITE Law imposes a criminal penalty, namely a maximum imprisonment of three years or a fine of thirty million Won, paragraph (2) offers even harsher penalties if the information broadcast is found to be false, including imprisonment for a maximum of seven years, revocation of rights for a maximum of ten years, or a fine of up to fifty million Won.

The large number of convictions for criminal acts of defamation under the ITE Law is proof that it is simple to establish each requirement in the article, making it simple to convict the accused. However, it has been declared that Article 27 Paragraph (3) of the ITE Law relates to Articles 310 and 311 of the Criminal Code as a genus delict in Decision of the Constitutional Court Number 50/PUU-VI/2008. The Constitutional Court affirmed that because there is a particular factor, namely the development of information technology, Article 27 Paragraph (3) of the ITE Law does not establish new criminal law norms but rather strengthens the inclusion of criminal actions of defamation in the Criminal Code.⁵ Following the presence of the Constitutional Court ruling, Law Number 19 of 2016 implemented the first amendment. Although it has undergone modifications, Article 27 Paragraph 3 of the ITE Law still does not explicitly link to the Criminal Code in practice. The fact that there is no mention of the Special Defense (reasons for removing penalty for particular offenses) in Article 310 Paragraph (3) of the Criminal Code is one of the issues, which has ramifications for the high degree of sentence in cases of ITE Law defamation.

This is clear from the sheer number of journalists who have been charged with crimes under ITE Law's Article 27 Paragraph 3. 6 In actuality, journalists themselves produce news in the public interest for electronic media. As a result, the Special Defense should be added to it as per Article 310(3) of the Criminal Code, where it will subsequently be taken into account during the legal procedure. However, it appears that the Criminal Code's own Article 310 Paragraph (3) provides a Special Defense against criminal defamation, which is only applicable to activities taken "in the public interest" or "forced to defend oneself." Then, it is also not clear how the measure for an act to be said so and also with the development of information technology the conditions that support the existence of Special Defense are increasingly varied.

4.6.3 Malaysia's Law on Information Protection and Acceleration of Use of Telecommunications and Information Networks

If we examine the laws against cyberdefamation in other nations, such as Malaysia, we find that they specifically relate to Sections 499 and 500 of the Malaysian Penal Code (MPC).^{7,8} Ten Special Defenses against Defamation are outlined in these provisions. In order for everyone to be aware of the Special Defense in the criminal act of defamation, numerous examples relating to this topic are actually contained in the MPC itself. The presence of Special Defense as an explanation or defense for criminal charges for specific activities that have been charged is critically important. Because there are still many issues with its implementation, the law has established general defenses that apply to all crimes.⁹ However, it's a given. The Malaysian Penal Code (Act 574) is a type of written law in the Malaysian legal system that explicitly incorporates the federal act of parliament, essentially rules passed by the parliament, and is also being discussed in this page. The Malaysian Penal Code was historically impacted by laws that were in place in India at the time, laws that were also based on English law.¹⁷, which was due to the British colonial administration adding legislation as a second source of law during the system's growth, despite the fact that case law remained the system's primary source.¹⁸ This MPC is a codification of criminal law laws in terms of form since it contains a variety of principles, such as general and special defenses, criminal provisions, and

In Malaysia, both the accused and law enforcement are extremely concerned about the Special Defense provision included in Section 499 of the MPC. The prosecutor's office has the right to drop the charges even before the case is heard in court if there are good grounds for doing so. Meanwhile, in Indonesia, the use of the Special Defense described in Article 310 Paragraph 3 of the Criminal Code in relation to the offense of cyberslander is almost never taken into account and put into practice, despite the fact that it meets the requirements of the article in a number of instances. In fact, the existence of this article is to protect people who commit acts without the intention of creating a criminal offense.

5. Conclusion

Defamation or humiliation, which is an act of assaulting someone's honor or reputation by charging anything with obvious intents such that it becomes public knowledge, is covered by provisions and definitions in the Indonesian Criminal Code (KUHP). Defamation and humiliation share the same definition in this context. While

the South Korean Criminal Code's definition of defamation and insult differs in terms of the conduct involved, the acts of insult decided by the South Korean Supreme Court are the same as small insults covered by the Indonesian Criminal Code.

With regard to the type of delict, the Indonesian Criminal Code, the South Korean Criminal Code, and the Malaysian Criminal Code look for defamation offenses. The Indonesian Penal Code uses complaint offenses, but the South Korean Penal Code uses Ordinary Delicts and Complaint Delicts. In contrast to the Indonesian Criminal Code, the definition of an ordinary offense in South Korea can also be changed if the victim so desires. Section 499 of the MPC, which contains ten Special Defense categories pertaining to this offense, governs Malaysia's Criminal Code. Based on a comparative legal review, it is known that there are several differences and similarities between the two legal systems, both in terms of concept and application. From the results of this review, five points were found that could be adopted by the Indonesian criminal law system regarding the Special Defense concept of cyber defamation as applicable in Malaysia. The acceptance of these principles in their entirety can be used in the ITE Law, which governs cyberdefamation offences, as a *lex specialis* of the Criminal Code.

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