

Criminal Acts Of Defamation Due To Debt Collection Through Social Media

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Abstract

In Indonesia, there are currently several criminal cases involving creditors. When people lend money to others, they don't realize that they're doing so to humiliate the debtor and make him or her a target of social ostracism, which results in one family being affected. This article employs a qualitative descriptive research method that draws on both scholarly literature and statutory precedents. Study results show libel is a real possibility for anyone, even creditors using social media to collect debts. As a result, caution and a thorough knowledge of defamation law are both required. The perpetrators will not face any legal consequences as a result.

Keywords: Accounts Payable; Social media; Defamation

INTRODUCTION

Communicating well and correctly will have a positive impact on establishing a relationship. Is it in social relations in the community or even in the work environment? In communication can produce definite and clear clarity, both verbal and written communication.

There was also written communication, such as money orders or telegrams, in ancient times. Science and technology have advanced to the point where you can use email, WhatsApp, Twitter, and other social media to communicate via writing. As it turns out, this online media is very popular and can have a significant impact and effect on people's lives, and most importantly, it is extremely cost-effective. Consequently, it is a viable option.

One of the reasons for the emergence of new social norms, values, and so on is the widespread use of computers, which has changed people's behaviour when interacting with

one another (Mansyur & Gultom, 2005). Because the internet makes it easier for us to provide and receive information quickly, it has a significant impact on the development of information.

Many positive things can be done with the presence of social media, but it turns out that these benefits are also used by certain parties for personal or work interests which turn out to hurt others. For example, doing debt collection online, where this is published to the public is not very good and has a bad impact on all parties. The term social media is composed of two words, namely "media" and "social". "Media" is defined as a means of communication (Laughey, 2007). Media and all software are "social" in the sense that they are products of social processes, according to this statement (Fuchs, 2014).

In the old order and the new order, debt collection was still carried out professionally and not so scary that it still gave the first, second, and so on warning letters which became policies with the aim that the recipient of the debt could prepare himself to face the risk if he was unable to pay the debt. But at this time, this is no longer the case, whether the lender from a government or private institution is still finding ways to collect debts illegally and not according to applicable procedures only to pursue targets or job demands or because they are annoyed that the debt recipients have avoided them.

If person A borrows money from person B who is his neighbour and it turns out that person A is not able to pay on time, then person B will collect money at home and even collect money in public places such as at the market or on the street when passing by is still considered a normal thing in society in general. But if this is done by the company then it will be a problem because every billing has rules. Except if the debtor intentionally avoids it and when you meet him on the street, there is no problem if it is billed and still must be in a good way and there is no element of violence and intentional humiliation in public. Namun tidak dipungkiri juga bahwa banyak penghutang yang tidak mengerti dan tidak memiliki itikad baik kepada pihak yang memberikan hutang. Seperti berbohong, menghindar dan ingkar janji. Sehingga menimbulkan kekesalan tersendiri bagi yang memberikan hutang yang bisa mengakibatkan rusaknya hubungan pertemanan dan rasa simpati dan empati dan bahkan bisa memicu konflik baru.

Talking about written communication and debt collection, these two are quite sensitive and private discussions. Why? Because it relates to our ethics and etiquette in social and state life. There is a lot of good news in print, social media and on television, we can see that there are unscrupulous collectors who charge motorists on public roads to ask for arrears

on their motorbike instalments and resort to violence that triggers a response from residents. And what happened was that the debt collectors were battered by the residents. Is that the way the company teaches its employees in billing? And even for this incident, of course, it became a spectacle for residents and did not forget to record the incident and upload it to social media using hashtags so that it could be read and get a response by the related parties.

Then there is also a billing that suddenly immediately satirizes the debtor without wanting to convey it directly. Finally using social media to inform that the debtor has done good, but instead feels cheated because he can't pay his debt on time. Usually, this often happens to the general public who have an emotional connection so they want to give debts to others. Because they are lazy to collect directly, they use social media to express their frustration. This result will of course lead to a response from several parties who do know the incident, whether because of family relationships or just friends.

Currently, online billing is also viral by fintech companies. They also use the same model, namely using online media to collect debts with harsh words and illegally distributing data. Technically, from some of the explanations above, it appears that they use the same method, but with a different workflow. All of them are still breaking the law. If traced again, this online debt collection act can have an impact on giving criminal penalties for the perpetrators. Why can be subject to criminal penalties? Because billing in a way that can embarrass someone can be called a case of defamation. If someone has debts and is absent from obligations, it can be done according to the rules and applicable customary law.

From the discussion above, several questions arise regarding debt collection through social media which has the effect of criminal defamation for the creditor, namely what are the rules for accounts payable and the role of social media? Then what are the procedures for collecting debts so that they do not result in criminal sanctions? Then what is the legal protection that regulates online debt collection?

METHODS

In writing this scientific paper using a qualitative descriptive research methodology, the data collected is poured in the form of a logical and systematic description, then analyzed to obtain clarity of problem-solving. Using an empirical and normative approach as well as a study of criminal law on defamation in online debt collection using social media. The purpose of this research is that it is expected to contribute to academics and the general public the importance of knowing how to use social media wisely and well and paying more attention to

everything related to accounts payable to avoid unexpected problems in the future. The data analysis used in this research is qualitative analysis and conclusions are drawn using the inductive method, which is to describe things that are specific and then draw general conclusions according to the problems discussed in the study (Soekanto, 1983).

RESULTS AND DISCUSSION

1. Rules in Accounts Payable and the Role of Social Media

Debts and receivables are oriented towards acts of help in disobedience and are unlawful. Therefore, it is based on very varied conditions such as obligatory, haram, makruh and permissible (Karim, 2007). As long as it is known that the person who owes the debt intends to persecute the person who lent him or her money, then debit and credit law can be considered to be haram, according to Islamic law.

When in debt, it is recommended to write it down so you don't forget that you owe someone else's debt. Writing debts in notes can also be a reminder for us to manually prepare funds and pay them off. When you are in debt, you certainly have witnesses to prevent unexpected things from happening, so other parties will know about it.

In formal loan institutions, presenting witnesses from the party who submits it has become a standard rule. Meanwhile, if you make a loan outside a formal loan institution such as a personal loan, it should also be known by other parties as witnesses at least from the family. The goal is also the same, namely to avoid things that are not desirable or things that are beyond the expectations of each party.

In the teachings of Islam, Abdurrahman as-Sa'di explained that it is obligatory to determine the payment due date of the debt. If the time for payment of the debt is not determined, then it is not halal because it is ghoror (there is an element of fraud or deceit). It is recommended to record debts so that people who owe each other fairly are not inclined because of kinship and do not oppress because of hatred, there are 2 (two) witnesses when they are in debt (As-Sa'di, 1996).

Talking about the role of social media, if we look at it from the point of view of social media users who upload someone's identity when they are involved in a problem, but it is not based on facts and is embellished with negative things, including the destruction of one's good name. If the object in the publication is not acceptable, the uploader can be reported to the

police. Threatened entanglement Article 27 Paragraph 3 of the Law on Information and Electronic Transactions (ITE) (UU 19/2016).

This provision is explained explicitly in Article 27 paragraph (4) of Law 19/2016 regarding amendments to Law 11/2008 regarding ITE. It is stated that anyone who knowingly and without rights distributes electronic information that contains extortion and/or threats, is threatened with a maximum sentence of six years in prison. As a rule, persecution is carried out by those who believe they are the majority of the population. Take charge of your own destiny and your own money. As a result, the best course of action is to file a lawsuit. By not taking the law into their own hands with retaliatory punishment. In fact, it will make things worse by prolonging the crisis and escalating the level of background noise. Hatred, humiliation, and defamation will only be exacerbated if the general public has a low level of literacy.

Even though people who collect debts have run out of ideas on how to collect, they use social media to collect debts. This method may be considered effective because people are embarrassed when their debt is announced. Even though it was deemed less effective. Debt issues are private matters that should not be made public.

Honor or a good name is something that is owned by humans who are still alive. Therefore, crimes against honor and good name are generally directed against someone who is still alive. Likewise with legal entities, in essence, they do not have honor, but the Criminal Code adheres to certain legal entities, including the President or Vice President, Heads of State, Representatives of Friendly Countries, Groups/Religions/Tribes, or public bodies, have honor and a good name (Marpaung, 2010).

Information and communication technology also contributed negatively, as the spread of information and communication technology resulted in the existence of internet sites that made it easier for humans to access whatever data they desired, resulting in the emergence of new crimes committed specifically through the use of the internet sites. as the mode of operation. Cybercrime is a term that has been used to refer to a variety of subtypes of this new type of crime (Arief, 2007).

Through the world of the internet or also called cyberspace, anything can be done. Along with the development of internet technology, causing the emergence of a crime called cybercrime or crime through the internet network. The existence of cybercrime has become a

threat to stability, so it is difficult for the government to balance the techniques of crime committed with computer technology, especially the internet network.

2. Good Debt Collection Procedures So It Doesn't Result in Criminal Sanctions for Defamation

When viewed from its history, the regulation of insults in Indonesia was first found in the Criminal Code and also the Civil Code which is a legacy of the legal system that prevailed during the Dutch East Indies period (Supriyadi Edi W, 2012). Additionally, there are a number of laws in place that govern the use of insults and threats of punishment. For the most part, creditors and debtors use a variety of methods to collect debt, including deviating from the terms of credit or loan contracts, extending payment deadlines, and other signs that a borrower's financial situation is deteriorating. by starting arrears and failing to pay promptly.

Theoretically, the basis for a criminal act is the principle of legality, while the basis for criminal prosecution is the principle of error. This means that the perpetrator of a criminal act will only be punished if he has a mistake in committing the criminal act. When a person is said to be guilty of a criminal liability issue (Ali, 2012).

Attacking one's reputation is a crime known as defamation. Defamation of a person's honor and good name is a form of assault on a person's sense of self-esteem or dignity that can cause a person's sense of self-esteem or dignity to be desecrated, humiliated or degraded (Chazawi, 2009).

In the context of restriction of expression, there is a three-part test, namely that the restriction must be regulated by law, which is clear and accessible to everyone. Then the restriction must fulfil one of the objectives regulated in Article 19 paragraph (3) of the Covenant on Civil and Political Rights, namely firstly to protect the rights and reputations of others, secondly to protect national security or public order, or health, or public morals. Such restrictions must be aimed at the protection of legitimate interests and more importantly these freedoms (Tim Elsam, 2013).

Furthermore, the limitation must be proven that it is important to carry out and minimal possible limiting methods are needed to achieve the main goal (the principles of interest and balance/proportionality).

Dealing with disputes by inflating debt on social media is not a problem as long as it is based on the truth and without being embellished with lies. Freedom of expression and the right to voice on social media is regulated by the ITE Law. However, you still have to look at the case

and the location of the problem so that it doesn't give a far-fetched impression and even judge others because conflicts on social media have big risks. Before uploading, it's important to think about the impact it can have. It is also important to understand the ITE Law for safe social media.

The Criminal Code (KUHP) defines defamation as an insult or blasphemy against someone. The insult must be carried out by accusing someone of having committed a certain act with the intention that the accusation will be broadcast (known to many people). As for what is meant by "insult" in this context, namely "attacking someone's honor and reputation". People who are attacked will usually feel embarrassed.

From the discussion above, it can be stated that one must be careful in conveying something about recognizing other people through social media. So it can be concluded that the way to collect debts from other people is to make sure you have a clear written agreement, have witnessed and have collateral if needed.

Some of the ways that can be used to collect debts from other people properly and are justified in law are by rebuking the person who borrows money, either by telephone or by visiting in person. Remind them that the debt is due and must be returned. In this case, there are two types of debt. First with the second agreement, orally. If there is an agreement, then show the article that states the debt is due, along with how to pay it off or the sanctions. If there is no agreement, try to bring a witness who knows the existence of the debt.

If the first warning does not get a good response, then you can use the method through a subpoena or warning to the debtor, the contents of which are to immediately pay off the debt. Put forward, the debt can be settled properly, but if not, it will be settled legally.

Furthermore, if the debt is difficult to collect, then the way to take legal action. Previously, he could approach his parents or siblings, in order to help convey to the person concerned to pay his debt. Also, tell the sanctions if you don't pay the debt immediately. This other party is expected to be able to help the borrower with money. Explain to the borrower that debts in law are usually included in civil acts, if there is an agreement that makes them. Sanctions from the court are the confiscation of bail. But if it is verbally, it is more appropriate if it is brought to a criminal act, namely violating articles 372 and 378 of the Criminal Code and can be resolved with a police report, with imprisonment.

Another way that can be taken is to renew the existing debt agreement or make a new agreement on stamp duty, and change the payment method to make it easier by installments according to the agreement. Also include an article that says if the debt is not settled, it will be brought to criminal proceedings. If all the methods mentioned above do not produce results, then there are two ways that can be taken, namely reporting to the police or submitting a lawsuit to the court.

3. Legal Protection That Regulates Online Debt Collection

Unpleasant billing acts that do not follow this rule must be regulated to ensure everyone's safety and comfort or classified as a crime (if they meet the requirements of a crime under the Criminal Code), such as damage to customers' property or stealing from them (Pasal 406 KUHP). If the debt collector uses harsh words and is carried out in public, then he can be sentenced to the article of humiliation (Pasal 310 KUHP). In addition, article 335 paragraph (1) of the Criminal Code can also be used regarding unpleasant acts.

Defamation laws exist for the sole purpose of protecting a person's reputation and privacy. Because of this, if it is applied carelessly, it can actually inhibit freedom of expression, and thus hinder access to information for others (Djafar, 2020).

Its main purpose is to protect debtors from abuse. This is necessary considering that the current Law No. 8/1999 on Consumer Protection does not regulate the activities of collecting the debt at all (UU No 8 Tahun 1999).

There are currently laws and regulations that allow third parties to collect debts on behalf of debtors.

Based on the analysis that the basis for a criminal act is the principle of legality, while the basis for criminal prosecution is the principle of error. This means that the perpetrator of a crime will only be punished if he has a mistake in committing the crime. This also means that the perpetrator of a crime will only be punished if he has a mistake in committing the crime. Based on the theory of criminal responsibility, criminal liability for debt collector services in the form of individuals (natuurlijke person) must include the meaning of being able to hold the maker accountable for his actions. This principle in criminal law is also known as "no crime without fault" or as "liability based on fault" (culpability principle). In particular, those relating to intentional and negligent behavior (Muchtar, 2013).

Criminal penalties can be imposed for defamation. Defamation is defined in Article 310 paragraphs (1) and (2) of the Criminal Code which states: Anyone who intentionally attacks someone's honor or reputation by accusing someone of something, which means clearly so that it is known to the public, will be threatened with libel with imprisonment for a maximum of nine months or fines of up to four thousand and five hundred thousand rupiahs.

Defamation is also regulated in Article 27 paragraph (3) Juncto Article 45 paragraph (1) of Law Number 11 of 2008 concerning Information and Electronic Transactions, which states in Article 27 paragraph (3) that "Everyone intentionally and without the right to distribute and/or transmit and/or make accessible electronic information and/or electronic documents containing insults and/or defamation". If a person satisfies the elements referred to in Article 27 paragraph (1), (2), (3) or (4) and is sentenced to six (six) years in prison and/or one billion rupiahs in fines, they will be sentenced to six (six) years in prison and/or one billion rupiahs.

Judging from the laws and regulations governing defamation, anyone who intentionally attacks someone's honor, either verbally, in writing, or through electronic or social media, can be subject to criminal sanctions for defamation as regulated in Article 310 of the Criminal Code and also in the Criminal Code. In Article 27 paragraph (3) in conjunction with Article 45 paragraph (1) of Law Number 11 of 2008 concerning Information and Electronic Transactions.

There must be proof of the following elements, as stated in Article 310 of the Criminal Code: the intent, the attack on honor and good name, and the attack in public. The act of defamation is considered a crime when all three of the aforementioned criteria are met by the defendant.

CONCLUSIONS

Debt is something that is borrowed. Debt can help a person or business entity escape from difficulties, but on the other hand, debt can also trap and trouble someone or bankrupt a business entity because of debt bondage. While social media is a communication tool using technology and the internet.

Despite the fact that it is no longer his era, people in society have to limit themselves to a few words whenever they want to express themselves freely. This freedom of expression, however, can lead to new social tensions in the process.. Irresponsibility and lack of

understanding or concern about social media's role in distributing information to the general public is major factor in this.

As a result of the debtor's constant absence, someone may feel more at ease using social media. It could also be that the distance between the lender and the debtor is a considerable distance, which adds up to significant costs. For this reason, social media platforms are regarded as more productive and efficient. It is possible to be prosecuted for defamation even if social media billing isn't actually being used for the purpose intended.

Defamation is a criminal act in which this activity is carried out by attacking a person's honor both verbally and in writing, matters regarding defamation are regulated in Article 310 of the Criminal Code and in Article 27 paragraph (3) in conjunction with Article 45 paragraph (1) of the Law. Law Number 11 of 2008 concerning Information and Electronic Transactions, which will be subject to a maximum imprisonment of 6 years and a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

Having a third-party guarantor is necessary to avoid some of the conflicts that can arise from debt collection via social media. Defamation can lead to an increasing number of criminal cases, so it is important to know the full impact and benefits of defamation before predicting the rise in criminal cases.

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