

# Hulman Panjaitan (PUBLIC OPINION REGARDING THE IMPLEMENTATION OF RESTORATIVE JUSTICE ON COMPENSATION SANCTIONS AS AN ALTERNATIVE TO IMPRISONMENT FOR THE CRIME OF DEFAMATION)

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## **PUBLIC OPINION REGARDING THE IMPLEMENTATION OF RESTORATIVE JUSTICE ON COMPENSATION SANCTIONS AS AN ALTERNATIVE TO IMPRISONMENT FOR THE CRIME OF DEFAMATION**

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### **Abstract**

"In the eyes of the public, defamation is seen as resulting in damage such as tarnishing one's reputation, including honor. As a criminal act, defamation is regulated from Article 310 to Article 321 of the Criminal Code and Law of the Republic of Indonesia No. 11 of 2008 concerning Information and Electronic Transactions in Article 27 paragraph 3 and Article 45 paragraph 1, which has been amended by Law of the Republic of Indonesia No. 19 of 2016 on amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions. According to these laws, there are clear criminal imprisonment sanctions for offenders, but current public sentiment does not favor this, and the state desires this matter to be resolved through Restorative Justice, as stipulated in the Indonesian National Police Regulation Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, the Republic of Indonesia Attorney General Regulation Number 15 of 2020 regarding the termination of prosecution based on restorative justice, and the decision of the Director General of the General Courts on the Implementation Guidelines of Restorative Justice (restorative justice) Number 1691/DJU/SK/PS.00/12/2020. From the research findings, it is evident that the majority of the public agrees with the application of Restorative Justice by having the offender compensate the victim for damages, usually in the form of a monetary amount agreed upon by the offender and the victim.

**Keywords:** Restorative Justice, Compensation For Damages

### **INTRODUCTION**

As social beings, humans require interaction with others from birth to fulfill their biological needs, such as food and drink (Gerungan, 1991). Hence, humans become members of society. In Indonesian society, where individuals are regulated by customs and laws to create order, harmony, and peace, these elements are essential

for everyone, as well as for the state. In this context, the state aims to prevent conflicts in society, especially those related to defamation.

To achieve this, laws with sanctions for defamation perpetrators must be formulated in positive law. This is intended to ensure compliance with the law. According to Jimly Asshiddiqie and M Ali Safaa'at, initially, there was only one sanction, namely criminal sanctions in the narrow sense related to health or possession. With the development of civil law, civil sanctions emerged, distinguished by the nature of their sanctions. In civil law (Asshiddiqie & Safaa'at, 2014), sanctions aim to provide reparations, while criminal law sanctions have a retributive character or, according to modern views, focus on prevention (deterrence, prevention). From a procedural standpoint, civil law sanctions involve actions by specific interested parties in the implementation of these sanctions, while criminal law procedures are carried out in court *ex officio*, involving the public prosecutor (Asshiddiqie & Safaa'at, 2014).

As a criminal act, defamation is directed towards individuals or groups by accusing them of something false or defamatory. Social media, as an internet medium, allows users to present themselves, interact, collaborate, share, communicate with other users, and form virtual social bonds (Nasrullah, 2015). The prohibition of insulting and tarnishing the reputation of others through social media is justified by law (Panjaitan, 2018). Various legal rules related to defamation are regulated in Articles 310 to 321 of the Criminal Code and Law of the Republic of Indonesia No. 11 of 2008 concerning Information and Electronic Transactions, in Article 27 paragraph 3 and Article 45 paragraph 1, which has been amended by Law of the Republic of Indonesia No. 19 of 2016 on amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions. Looking at both laws, it is clear that there are sanctions, including imprisonment, for defamation offenses, indicating the seriousness of the act.

The current development of Indonesian criminal law emphasizes restorative justice in criminal case resolution, particularly regarding defamation. This is evident in several legal regulations that explicitly accommodate restorative justice, such as the Republic of Indonesia Attorney General Regulation Number 15 of 2020 concerning the termination of prosecution based on restorative justice. This regulation emphasizes the restoration of the original condition and the balance between the protection and interests of victims and criminals, not focusing on retaliation. A legal issue in this regulation is the termination of cases based on restorative justice, which is not the right of the offender and victim but the authority of the public prosecutor (Article 3, paragraph 1, Article 3, paragraph 2, letter e, and Article 3, paragraph 5). These provisions clearly do not reflect that restoration is a right of the victim.

Another regulation is the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice. This regulation has considerations similar to those in the prosecutor's regulation. Looking at the narrative in Article 2, paragraph 5, restorative justice can

stop investigations and prosecutions. Several conditions are required, which actually limit the restoration of the victim's rights if an agreement is reached with the offender. Article 5, letter e, states that if the offender repeats the criminal act based on a court decision, they cannot meet the material requirements for obtaining restorative justice. This demonstrates a misunderstanding of restorative justice because, in essence, the restoration of the victim's condition based on an agreement with the offender is the primary goal of restorative justice. There is also the decision of the Director General of the General Courts on the Implementation Guidelines of Restorative Justice (restorative justice) Number 1691/DJU/SK/PS.00/12/2020.

These three regulations have accommodated the restoration of victims with restorative justice. However, the state still maintains control by setting conditions for obtaining restorative justice. Similarly, the new Criminal Code, which prioritizes the restoration of victims as the main goal of punishment, has accommodated restorative justice. But do victims really want restorative justice to restore their condition?

To understand this, research needs to be conducted to analyze why these aspects are desired. This research focuses on public opinion regarding the application of restorative justice for compensation sanctions as an alternative to imprisonment for defamation, as well as the amount of compensation as a substitute for imprisonment. The research is conducted from September 1, 2022, to March 2023. Data sources consist of secondary and primary data. Primary and secondary data are collected, studied, and analyzed, focusing on relevant primary and secondary legal materials through literature reviews.

To determine public opinion, a questionnaire method is used, with the data collection tool called a questionnaire. The data source is individuals or respondents. In this method, questions are presented in writing in the form of a questionnaire distributed to 100 respondents, including 42 high school graduates, 6 diploma holders, 45 bachelor's degree holders, and 7 master's degree holders. The age group of 19 to 26 years includes 58 respondents, while the age group of 27 to 50 years includes 58 respondents. The study is conducted in the Jakarta, Bogor, Tangerang, Depok, and Bekasi regions, based on the researcher's proximity and understanding level relative to the respondents, facilitating the acquisition of information.

## **RESEARCH METHOD**

This study is a public opinion research aimed at conducting an assessment and analysis to understand the public's opinions regarding compensation as an alternative to imprisonment for defamation offenses, as well as the amount of compensation. Data collection was performed through in-depth interviews and surveys. The analysis was conducted to identify issues and find the best solutions for the community regarding legal matters related to defamation of character.

## RESULT AND DISCUSSION

### Public Opinion on the Implementation of Restorative Justice for Compensation Sanctions as an Alternative to Imprisonment for Defamation Offenses

The need for resolving conflicts among community members in criminal defamation through the Restorative Justice model is primarily due to its personal nature. In this context, if a prison sentence is imposed on the perpetrator, the benefits of such a sanction will not be useful to the victim. Thus, a paradigm shift is necessary, viewing sanctions not merely as pain or suffering for the offender but also as compensation, manifested in the form of an agreed-upon monetary restitution.

The resolution of criminal defamation cases through Restorative Justice is referred to in modern and organized societies as Criminal Policy. Criminal Policy, as stated by Marc Ancel (1965), is the rational organization of crime control by society, an endeavor by the community to tackle crime. According to Pieter Hofnagels, crime prevention efforts in the concept of crime prevention policy can be broadly categorized into "penal" (criminal law) and "non-penal" paths. Penal efforts focus more on the "repressive" nature after a crime has occurred, while the "non-penal" path emphasizes "preventive" measures before a crime takes place (Sunarto, 2003).

The actual use of penal means in crime prevention can be observed in the functioning of the Criminal Justice System in society. This system, as described by Mardjono Reksodiputro, is a system within society to combat crime (Reksodiputro, 1994). According to Muladi, the Criminal Justice System aims for short-term goals such as the rehabilitation of offenders, medium-term goals related to the control and prevention of crime in the context of criminal policy, and long-term goals aiming for the welfare of society in the context of social policy (Muladi, 1988). The Criminal Justice System consists of subsystems: the police, the public prosecutor's office, the court, and correctional institutions. This system comes into operation after a report, complaint, or the apprehension of a criminal act.

In connection with this, the development of ideas, concepts, and the desire to resolve criminal cases, especially those not involving loss of life, property, or morality, increasingly leans towards the application of Restorative Justice. This is crucial because the subsystems of the police and the public prosecutor's office are already heavily burdened with criminal acts that are more of a personal nature, such as defamation. The Restorative Justice approach in resolving defamation cases is seen as bringing about reconciliation between the offender and the victim. This is in line with the abolitionist view that in the workings of the criminal justice system, offenders are never involved, and thus, they cannot determine the ultimate goal of the punishment they receive. Even the victims of crime never benefit from the end result of the criminal justice system. The suffering or loss of the victim is represented by the public prosecutor, essentially viewed as "stealing the opportunity" from the conflict between

the parties and manifested in two sides, the state and the accused offender (Atmasasmita, 1996).

In connection with this, the following are the results of research on 100 community members regarding the application of Restorative Justice in resolving criminal defamation by imposing compensation as a substitute for imprisonment. The questions posed to the community revolved around whether defamation is a harmful act, what its dangers are, whether it causes harm, whether imprisonment is necessary, the consequences of such a sanction for the perpetrator, and why the community chooses to resolve criminal defamation through Restorative Justice.

The research results show that one hundred community members agree that criminal defamation is harmful. This is echoed by all respondents, stating that defamation is something that can cause harm. Because the act is considered harmful, defamation is also understood as dangerous, with two people stating it is dangerous when directed at an individual, five people when directed at society, and eighty-eight people when directed at both individuals and society.

As an act causing harm, eighty-seven individuals stated that their reputation and honor were tarnished, while twenty-one individuals claimed that their dignity was lowered, and twelve individuals were socially ostracized due to defamation. In connection with this, it is evident that the community agrees that defamation should be declared a criminal offense, as, without it, people would be free to insult others, as stated by nineteen individuals. Fifty-nine individuals asserted that the absence of legal consequences would lead to a lack of mutual respect in society, while twenty-two individuals believed that it would result in a lack of regard.

On one side, making accusations without proven truth is considered against customary norms, morality, and values of harmony in society. On the other side, society has the responsibility to protect not only the victim but also the perpetrator. Social relations in society must remain intact and uphold existing norms. To uphold these norms, the imposition of sanctions becomes a necessity. Thirty-one individuals in the community agree that an apology from the perpetrator is sufficient, while forty-two individuals prefer the imposition of sanctions in the form of imprisonment. However, twenty-seven individuals in the community state that sanctions for the perpetrator are adequate through the payment of compensatory damages.

Imposing sanctions on the perpetrator serves as evidence of law enforcement prioritizing legal certainty. Justice, certainty, and the benefits of the law must be tangible and felt by society. Punishing the perpetrator is not the ultimate goal; at this level, sanctions serve as a form of admonishment and restoration. Consequently, there is no party that benefits or is harmed more. Through this restoration and the victim's forgiveness, it becomes a form of legal certainty in society.

Forgiveness and payment of certain conditions depend on the perpetrator's ability, with no coercion involved. The majority of respondents state that forgiveness

and compensation through monetary payment represent a shift in the paradigm of the meaning of defamation and criminal imprisonment. Seeking revenge will lead to a never-ending cycle, continuing even through generations. The imposition of a prison sentence on the perpetrator is the will of the state.

The will of the community, manifested through apologies and compensatory payments, symbolizes the perpetrator's origin and return to society. This signifies that the community does not wish for the perpetrator to be isolated, let alone expelled, particularly from their social environment. In this regard, the community encourages the development of collective legal awareness.

The community's awareness through forgiveness and compensation can also be interpreted as a form of solidarity, where everyone is susceptible to lapses and negligence in adhering to norms and traditions. Such awareness can also be understood as a recognition that everyone is not exempt from mistakes. Community solidarity, especially in Indonesia, is undeniable, known for being non-individualistic. Various evidence indicates a familial nature, prioritizing the interests of the majority over personal interests, supporting the weak, and providing assistance to others.

Thus, the awareness of creating a sense of peace and order without sacrificing individual members of society illustrates that the community has the right and obligation to protect itself (Ginsberg, 2003). Understanding community awareness in resolving conflicts, with a focus on the disputing parties, shows that social relations are quite strong, especially concerning personally harmful actions.

In connection with this, fifteen individuals wish for the perpetrator to receive a minimum of one month and a maximum of one year in prison, while twenty individuals prefer a minimum of one month and a maximum of six months in prison. However, a larger number of community members, sixty-five individuals, agree to compensate the victim through Restorative Justice.

The diverse opinions of the community illustrate that Restorative Justice is more realistic, reasonable, efficient, and beneficial. In line with this, Restorative Justice (Walgrave, 2008) is seen as Victim reparation, communities of care reconciliation, and offender responsibility. Thus, Restorative Justice provides restitution to the victim, fosters peace, and represents a form of the perpetrator's responsibility.

Furthermore, another reason for choosing Restorative Justice, according to twenty-five individuals, is that Restorative Justice prioritizes the peace of both the perpetrator and the victim. Fifty individuals in the community agree that Restorative Justice emphasizes the peace of both the perpetrator and the victim, leading to the restoration of social relationships. Meanwhile, twenty-five individuals agree that it is viewed as faster and doesn't require going to court, as it can be resolved through the police and the public prosecutor's office. Understanding the community's opinions indicates legal awareness that Restorative Justice provides a sense of justice.

The justice embedded in Restorative Justice aims: First, restorative justice focuses on the involvement of the victim in dispute resolution and ensures that crime victims receive personal and satisfying justice; second, restorative justice acknowledges that the actions of the perpetrator directly impact society, making their involvement in the dispute resolution process crucial; third, Restorative Justice (Ali, 2013) does not ignore the existence of the perpetrator; instead, it strives to make the perpetrator accountable for the committed crime.

Understanding legal justice as desired by society further emphasizes that sociologically, Restorative Justice has actually been alive and evolving in Indonesian society, albeit in different forms. Restorative Justice aims to restore and instill confidence in the victim. Restorative Justice can only be applied to minor cases that do not have widespread impact, involving vulnerable community groups, children, and the poor (Solehudin, 2013).

The community's choice of Restorative Justice for resolving criminal defamation cases is due to the unfavorable outcomes of the criminal justice process that lead to the imprisonment of the offender. Sixty-five members of the community state that if a defamation offender is sentenced to prison, they must provide a correctional facility and spend money to finance the offender. However, thirty-five community members state that it is the responsibility of the State to uphold law and order. This understanding from the community indicates that the existence of correctional institutions is seen as not optimally addressing the rehabilitation process of offenders, especially in cases of non-dangerous crimes with limited impact on society.

Furthermore, the inadequacy of correctional institutions' capacity is highlighted by eighty-eight community members stating that imprisoning defamation offenders would result in overcapacity, while thirty-two people disagree. The community's opinion on the potential overcrowding issue is a serious concern, prompting the search for alternatives to suppress crime within tolerance limits or find other ways to resolve low-risk criminal cases. This perspective of the majority of the community suggests that the State should not bear a heavy burden, as personal conflicts can be adequately resolved within the community.

Intelligently, the community understands the limitations of correctional institutions in rehabilitating convicts. Their knowledge and conclusions regarding the evaluation of correctional institutions are greatly assisted by various information received through print and electronic media, as well as stories and experiences shared by former inmates upon their return to society.

The community also understands that the resolution of a criminal defamation case does not necessarily require imprisonment but must align with the meaning of peace. Achieving peace, without forgetting the reprehensible act, must involve the restoration of the harmed party. Retaliation should not exceed the offender's



capacity. In this context, both the victim and the offender are considered parties with equal opportunities in conflict resolution.

The involvement of both the offender and the victim in resolving issues through the criminal justice subsystems, namely the police and the prosecutor's office, marks the beginning of the restoration of social relations. This aligns with the Indonesian National Police Regulation Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, emphasizing the involvement of the perpetrator, victim, families, community leaders, religious leaders, customary leaders, or stakeholders in finding a fair resolution through peace, focusing on restoring the situation to its original state.

Regarding the application of Restorative Justice by the police, the subsequent process is handed over to the Prosecutor's Office as the Prosecution Institution. In this regard, the Attorney General's Office adapts to ensure justice for both victims and offenders. This adaptation is reflected in the Attorney General of the Republic of Indonesia Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. This regulation emphasizes achieving a fair resolution by restoring the situation to its original state rather than seeking retaliation.

Understanding Restorative Justice, the termination of prosecution is carried out based on principles such as justice, public interest, proportionality, criminal punishment as a last resort, and quick, simple, and cost-effective measures. The agreement reached by the victim and the suspect is documented in a written agreement signed by the parties involved and two witnesses, with the knowledge of the public prosecutor. The Attorney General's Office then reviews the agreement, and if approved, the prosecutor issues a termination of prosecution decision within two days.

Additionally, the Indonesian Supreme Court, through Decision Number 1691/DJU/SK/PS.00/12/2020, mandates all judges in the District Courts to implement the guidelines for Restorative Justice. They are also responsible for supervising, monitoring, evaluating, and reporting on the implementation of Restorative Justice in their jurisdiction. This demonstrates the recognition and benefits of implementing Restorative Justice in the criminal justice process in Indonesia.

### **The Public Opinion Regarding the Amount of Compensation as a Substitute for Imprisonment for Defamation Offenses**

The option of resolving defamation cases by emphasizing reconciliation between the offender and the victim in the community has been accepted. This indicates that compensating the victim's loss should be prioritized for recovery. Imposing imprisonment on the offender is seen only to fulfill legal justice and national justice. The victim is the only party satisfied by the suffering of the offender during the prison term. Such a situation, it turns out, has no impact on the victim and the

community. Therefore, compensation becomes a peace process. The size of the compensation, whether small or large, is not the goal because the victim does not want to become a victim, let alone seek profit. The victim realizes that peaceful coexistence with fellow members of society must happen and be nurtured. As social beings and part of society, one should not evade the responsibility of accepting others, even if it results in harm.

For this reason, the community always has conflict resolution mechanisms by prioritizing the values and customs that exist. This reality is not something unfamiliar because before positive law applied in Indonesia, society was governed by its living law or customary law. In this regard, it is clear that the mechanism for peace always relies on traditional customs that are recognized and always preserved. Living law exists because of the nation's soul. Therefore, in Indonesia's various regions, traditional rules governing conflict resolution will undoubtedly be found.

Related to the resolution of defamation cases with Restorative Justice, which advocates compensation for the victim, as research shows, fourteen community members agree to provide compensation ranging from IDR 2,000,000.00 (two million rupiahs) as a minimum to IDR 10,000,000.00 (ten million rupiahs) as a maximum. Meanwhile, thirty-one community members state their agreement with a minimum of IDR 5,000,000.00 (five million rupiahs) and a maximum of IDR 20,000,000.00 (twenty million rupiahs). In contrast, fifty-five community members say that the amount of compensation should be based on the perpetrator's ability and agreement between the perpetrator and the victim.

Considering the majority of public opinions, this aligns with what is stated in the Attorney General Regulation of the Republic of Indonesia Number 15 of 2020 concerning Discontinuation of Prosecution Based on Restorative Justice, in Article 3 paragraph (3) letter a: for certain criminal acts, the maximum fine penalty is paid voluntarily in accordance with the provisions of the laws and regulations. Voluntariness is related to the ability, where there is no coercion, and both the victim and the perpetrator have an equal right to determine the amount of compensation.

Furthermore, in Article 5 paragraph (6), it is explicitly stated that discontinuation of prosecution based on Restorative Justice is done by fulfilling the requirements: a. there has been a restoration to the original condition carried out by the suspect by: 1. Returning the items obtained from the criminal act to the victim; 2. Compensating the victim's loss; 3. Compensating the costs incurred due to the criminal act; and/or 4. Repairing the damage caused by the criminal act; 5. There has been a peace agreement between the victim and the suspect. Thus, the agreement becomes the main key to Restorative Justice for the occurrence of peace.

Therefore, the option of non-justice resolution allows the relatively incurred losses to be restored to their original position, such as returning items or providing compensation. In some jurisdictions, the return of losses can be achieved through a

"diversion program," which involves discontinuing prosecution and releasing the suspect from criminal proceedings (Muhammad, 2016).

Thus, through Restorative Justice, law enforcement only functions as a mediator. Therefore, the existence of Police and Attorney General Regulations on Restorative Justice is evidence that the law is responsive. In this regard, as stated by Philippe Nonet and Philip Selznick: Good law should offer something more than just procedural justice. Good law must be competent and fair; such law should be able to recognize public desires and commitments to achieving substantive justice (Nonet & Selznick, 2007).

Understanding the above opinions and relating them to the State's Response, there is a need to adapt legal justice in society through Police and Prosecutor Regulations, further emphasizing that procedural justice is becoming less popular in society. The public is aware that some legal issues in society do not have to be resolved through positive law by using penal means through the criminal justice system that leads to the imposition of imprisonment sanctions on the perpetrator.

The public response that compensation sanctions can be restraining and not frightening, or in other words, not serving as a deterrent, is evidence that there will always be relativity in the benefits of a sanction. Thus, it is essential to emphasize the meaning and purpose of sanctions when given to lawbreakers, especially perpetrators of defamation offenses. In this regard, we know that a sanction given to the perpetrator serves as a reminder or warning that there will be material implications to be paid, especially a sum of money. We can imagine or feel how an offender has to spend a certain amount of money for an act that could have been prevented. Here, it is not about the amount of money but about shame, where the money should have been used to buy daily necessities, but it is used as a form of guilt relief or 'erasing sins.'

Regarding the compensation penalty, which can also be paralleled with a fine penalty, which is the principal penalty in the criminal code, it undoubtedly has a certain effect, as stated by Suharyono AR: that a fine penalty will have a deterrent effect and, in this case, is part of the suffering. At least a fine penalty can be part of protection for society and guidance (Suharyono, 2012). The same source also says that a fine penalty, in its development, can also shift towards sanctions such as compensation, replacement money, and peace outside the court, as well as the development of the Restorative justice system.

Understanding this opinion further reinforces that suffering is not about the body or losing freedom but paying a sum of money that must be collected or obtained with difficulty while working. The payment of compensation is also seen as a function of protecting society, making everyone behave more carefully because society becomes a means of supporting and enforcing norms and legal rules.

In this regard, the choice of a compensation penalty parallel to a fine penalty indicates that the use of imprisonment or loss of freedom is becoming more sparing

and not arbitrary, only for actions perceived as very detrimental and dangerous. Thus, the criminal penalty becomes the last or behind other penalties, referred to as *Ultimum Remedium* or the last resort. The subsidiarity principle is not to impose a severe punishment if a lighter one is sufficient as a response to one's actions (Pangaribuan, 2009).

Understanding imprisonment as *Ultimum Remedium* can be seen from several perspectives, where this type of penalty requires a considerable cost, resulting in negative effects during or after serving the sentence, such as the potential for prisonization, isolation from society, causing suffering to third parties not involved in the criminal act, especially family members, and the negative prejudice from the community after completing the sentence, fearing a repeat of the offense. If this happens, the loss and opportunities for work will be further away, and there will also be a lasting stigma as a criminal.

## **CONCLUSION**

From the research conducted, answers were found to the question where a majority of eighty-five community members or most agreed to the application of Restorative Justice in resolving defamation cases by paying compensation from the offender to the victim. The reasons include: defamation offenses harm someone's reputation or honor, and the crime is considered dangerous to individuals and society. It tarnishes one's reputation, and there is a potential for a lack of mutual respect in the community. While imposing imprisonment as a penalty is an alternative, it is perceived as not deterrent. In fact, the offender may face social isolation and an additional financial burden. Moreover, it results in overcapacity in correctional institutions. Paying compensation as a substitute for imprisonment is seen as having a deterrent effect in the form of suffering caused by paying a sum of money.

The research results indicate that the majority of community members state that the amount or nominal value of money as compensation is not specified and depends on the perpetrator's ability and the agreement between the perpetrator and the victim. Payment of compensation in the form of money is given to the victim. Additionally, most of the community agrees that compensation should be given to perpetrators of defamation offenses regulated by the Criminal Code and Law of the Republic of Indonesia No. 19 of 2016 concerning Information and Electronic Transactions.

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