

HOAXES AND DEFAMATION: LEGAL LIMITATIONS IN ASSESSING NON-MATERIAL DAMAGES

Ahmad Haqqi Annazali¹, Irsyaf Marsal², Mufarikha Binti Syarkun³

^{1,2}Fakultas Hukum, Universitas Pembangunan Nasional Veteran Jakarta, Indonesia

³ Maahad Darul Falah Selangor Malaysia

Alamat E-mail: ahmadhaqqiannazali@gmail.com, slamettriwahyudi@upnvj.ac.id,
mufarihahmastor71@gmail.com

Info Artikel

Masuk: 26-10-2025

Diterima: 12-11-2025

Terbit: 13-11-2025

Keywords:

Hoaxes, Defamation, Non-Material Damages, Law, Victim Protection.

Kata kunci:

hoaks, pencemaran nama baik, kerugian non-materiil, hukum, perlindungan korban.

Abstract

The rapid spread of hoaxes and defamation in the digital age has become a destructive phenomenon, causing serious consequences that include not only material losses, but also significant non-material damages such as ruined reputations, loss of public trust, and profound psychological suffering for both individuals and corporations. This condition creates a crucial juridical problem because positive law in Indonesia, despite having instruments like the ITE Law, has not yet provided clear boundaries (limitations) or objective, measurable parameters for assessing and quantifying such non-material damages within the judicial system. This research utilizes a normative legal method employing a statute approach and a conceptual approach, qualitatively analyzing primary legal sources such as the Civil Code, Criminal Code, the ITE Law and its amendments, as well as secondary legal sources through a comprehensive literature review. The results and discussion demonstrate that the forms of non-material damage, as recognized in Article 1365 of the Civil Code and legal theory, encompass a broad spectrum ranging from damage to honor (eer) and good name (goede naam) to psychological suffering (trauma and stress); however, the legal boundaries in Indonesia are dominantly penal-centric, focusing only on punishing the perpetrator (deterrence) rather than restoring the victim. This strong penal orientation in the ITE Law is proven to create systemic fragmentation separating the criminal and civil processes and a legal vacuum (rechtsvacuüm) in non-material remediation mechanisms, thereby necessitating a paradigm shift towards restorative justice supported by Supreme Court Guidelines (PERMA) to provide clear parameters for judges to assess non-material damages fairly and proportionally.

Intisari

Penyebaran hoaks dan pencemaran nama baik di era digital yang sangat cepat telah menjadi fenomena destruktif, yang menimbulkan konsekuensi serius tidak hanya berupa kerugian materiil, tetapi juga kerugian non-materiil yang signifikan seperti rusaknya reputasi, hilangnya

Corresponding Author:

Ahmad Haqqi Annazali, E-mail:

ahmadhaqqiannazali@gmail.com

DOI:

<https://doi.org/10.55583/jkih.v4i2.1681>

kepercayaan publik, dan penderitaan psikologis yang mendalam bagi individu maupun korporasi. Kondisi ini menimbulkan permasalahan yuridis krusial karena hukum positif di Indonesia, meskipun memiliki instrumen seperti UU ITE, belum menyediakan batasan (limitasi) yang jelas serta parameter (tolok ukur) yang obyektif dan terukur untuk menilai dan mengkuantifikasi kerugian non-materiil tersebut dalam sistem peradilan. Penelitian ini menggunakan metode penelitian yuridis normatif dengan pendekatan perundang-undangan (*statute approach*) dan pendekatan konseptual (*conceptual approach*), yang menganalisis secara kualitatif sumber hukum primer seperti KUHPerdata, KUHP, UU ITE beserta perubahannya, serta sumber hukum sekunder melalui kajian literatur. Hasil penelitian dan pembahasan menunjukkan bahwa bentuk kerugian non-materiil, sebagaimana diakui dalam Pasal 1365 KUHPerdata dan teori hukum, mencakup spektrum luas mulai dari rusaknya kehormatan (*eer*) dan nama baik (*goede naam*) hingga penderitaan batin (*trauma* dan *stres*), namun batasan hukum di Indonesia secara dominan bersifat penal-sentris (*pidana*) yang hanya berorientasi pada penghukuman pelaku (*deterrence*) alih-alih pemulihan korban. Orientasi pidana yang kental dalam UU ITE ini terbukti menciptakan fragmentasi sistemik—memisahkan proses pidana dan perdata—serta kekosongan hukum (*rechtsvacuüm*) dalam mekanisme remediasi non-materiil, sehingga diperlukan pergeseran paradigma menuju keadilan restoratif yang didukung oleh pedoman Mahkamah Agung (PERMA) untuk memberikan parameter yang jelas bagi hakim dalam menilai ganti rugi non-materiil secara adil dan proporsional.

1. Pendahuluan

A hoax is a deliberate attempt to deceive or mislead others by spreading false information. Defamation, on the other hand, involves making false statements that can damage someone's reputation. Both hoaxes and defamation can have serious consequences, leading to damaged relationships, loss of trust, and even legal action (Kirana, 2023). It's important to remember to always be vigilant and careful when finding information online or on social media, as hoaxes and defamation can spread rapidly in today's digital age.

To avoid becoming victims of hoaxes and defamation, it's important to be able to distinguish between right and wrong. It's important to consider the potential impact of our

words on others before making any statement to avoid potential defamation (Ardianto, 2022). By prioritizing critical thinking and fact-checking, we can help combat the spread of hoaxes and defamation in our society. In a world where information can be easily manipulated and distorted, it's crucial to be careful and responsible when sharing information with others.

By being aware of the consequences of our words and actions, we can help prevent the harm caused by defamation and misinformation (Adhari et al., 2021). It's important to approach information with healthy skepticism and verify the accuracy of the information we receive before sharing it with others. By taking these steps, we can contribute to a more informed and responsible society, where truth and integrity are valued above all else.

For example, in the case of a viral social media post claiming a popular celebrity has died, it's important to fact-check and verify the information before sharing it to avoid the spread of misinformation (Mahadewi, 2022). By taking the time to research and verify the accuracy of the information, we can help prevent the spread of misinformation and damage to the individual's reputation. If we fail to do this, the false information can continue to spread.

In today's digital age, information can spread quickly and may not be properly verified (Tarantang et al., 2019). Spreading information can easily lead to misinformation and damage a person's reputation. In the social sphere, protecting reputation is crucial to maintaining trust and credibility (Kartika et al., 2025). In both personal and professional settings, it is important to be careful and discerning when sharing information, especially if it involves sensitive or potentially harmful content (Terok, 2023).

By being aware of the impact our words and actions have on others, we can uphold the values of honesty and integrity in our interactions with the world around us (A. Kurniawan, 2019). For example, before sharing a news article or social media post, it is important to fact-check the information and consider its potential consequences for one's character (Kirana, 2023). Furthermore, when communicating with others, it's important to maintain respectful and thoughtful etiquette. This can help prevent misunderstandings and maintain good relationships in both online and offline interactions.

However, even with the best intentions, misinformation can still spread quickly online, resulting in detrimental consequences for individuals. For example, false

accusations shared on social media can permanently damage a person's reputation before the truth is revealed. Even after fact-checking, once false information is shared, it can be difficult to retract and correct, potentially causing long-term harm to individuals.

Based on the background above, the problem formulation is: 1) what are the legal limits and parameters used to assess non-material losses in cases of hoaxes and defamation; and 2) what forms of non-material losses can arise as a result of hoaxes and defamation?

2. Research methods

This research employs a normative legal research method with both a legislative and a conceptual approach. The approach employed in this research is a legal approach, namely by reviewing and analyzing applicable positive legal provisions, particularly those related to the spread of hoaxes, defamation, and non-material losses (Marzuki, 2017). The laws and regulations used in this study are the 1945 Constitution of the Republic of Indonesia and Law No. 11 of 2008 concerning Electronic Information and Transactions and its amendments, as well as a literature review. This approach aims to explain the legal concept of regulating, interpreting, and assessing non-material losses resulting from actions that fall into the category of hoaxes and defamation through electronic media.

3. Analysis and Discussion

Legal Limitations and Parameters Used to Assess Non-Material Losses in Cases of Hoaxes and Defamation

In the realm of social media, the impact of misinformation can extend beyond simply damaging a person's reputation. It can also cause significant emotional and psychological harm to an individual (Candra & Dinata, 2025). This raises important questions about the legal limits and responsibilities of platforms in addressing non-material harm caused by false information. As the digital landscape continues to evolve, there is a growing need for regulations and safeguards to protect individuals from the harmful consequences of spreading misinformation online.

One key issue that arises in assessing non-material harm is determining the appropriate standard of care that should be applied to social media platforms. Should

platforms be liable for all false information posted on their sites, or should they only be liable if they fail to take reasonable steps to address misinformation after becoming aware of it? This question is further complicated by the fact that social media platforms often operate on a global scale, making it difficult to apply consistent standards across jurisdictions.

The issue of freedom of speech must also be considered, as any regulations implemented to combat disinformation must not infringe on individuals' right to express their opinions (Guntara & Herry, 2022). While it is important for social media platforms to be accountable for misinformation on their sites, imposing strict regulations has the potential to limit free speech and hinder open dialogue (Hadiwinata et al., 2023). Balancing the need to address misinformation with protecting individuals' right to express their opinions is crucial to finding fair and effective solutions.

To fully understand the importance of addressing disinformation and maintaining a healthy online environment, it is crucial to consider the historical context of defamation law. Defamation, which includes slander (written defamation) and incitement (verbal defamation), has long been a concern in society. The origins of defamation law can be traced back to ancient civilizations, where reputation was highly valued and false statements could lead to serious consequences. Over time, defamation law has evolved to balance the protection of individual reputations with the right to free speech (Ridha et al., 2025).

The concept of "hoax" or fake news from a legal perspective in Indonesia, particularly in Law Number 11 of 2008 in conjunction with Law Number 1 of 2024 concerning Electronic Information and Transactions (ITE Law), is mapped as a specific criminal act with serious implications. The ITE Law explicitly criminalizes the dissemination of false information, albeit with varying focuses following the amendments (Natasya & Andriasari, 2023). Article 28 paragraph (1) of the ITE Law (old version) and now Article 45A paragraph (1) (version of Law 1/2024) expressly prohibits the dissemination of "false and misleading news" that results in "consumer losses" or "disorder" in society. The phrase "fake news" (hoax) here is interpreted as information that is objectively not in accordance with the facts (untruth) and is disseminated intentionally (*mens rea* in the form of intent/*dolus*) to cause a negative impact (Romandona & Yasin, 2024). The legal emphasis in hoax regulations tends to be oriented

toward protecting the public interest (public order) and economic interests (consumer protection), rather than primarily focusing on non-material losses to individuals. As a result, the parameters of loss in hoax cases under the ITE Law are more often measured quantitatively (material losses to consumers) or sociologically (the occurrence of disturbances/riots) (Kirana, 2023). This regulation does not explicitly provide a mechanism for assessing non-material losses suffered by individuals or legal entities targeted by hoaxes. The focus is on the *actus reus* (the act of spreading) and *gevolg* (the consequences/public impact) (Romandona & Yasin, 2024), thus placing it purely as a public criminal offense. In fact, the recent amendments to Law No. 1 of 2024 (the Second ITE Law) further emphasize the hoax offense by including the offense of spreading uncertain news (Article 28 paragraph 3), which has the potential to cause unrest. Thus, the legal framework for hoaxes in Indonesia prioritizes social stability over remediation of individual reputational damage. The non-material losses individuals incur as a result of hoaxes are often overlooked in this criminal construction and lack clear compensation parameters.

The concept of defamation in the digital realm is specifically regulated in Article 27 paragraph (3) of the ITE Law, which has now undergone significant reformulation through Law No. 1 of 2024. This provision prohibits anyone from intentionally distributing or transmitting electronic information that contains "insults and/or defamatory content." (Kartika et al., 2025). Legally, this article is a digital extension of the offense of insult in the Criminal Code (Articles 310 and 311), thus making it a complaint offense (*klacht delict*) (Lu'luil Maknun, 2018). The essence of this offense is the act of "attacking the honor or good name" (*aanranding van eer of goeden naam*) of a person in a publicly accessible cyberspace. The latest amendments to Law No. 1 of 2024 attempt to provide stricter limits, for example by excluding criticism or objective assessments, to avoid criminalizing freedom of expression. However, the primary focus of Article 27 paragraph (3) remains on the criminal aspect (punishing the perpetrator), not on recovering the victim's losses. Non-material losses, such as damaged reputation, tarnished honor, or psychological suffering of the victim (stress, depression), are implicitly recognized as a result of the crime. However, the ITE Law itself does not provide clear legal parameters for measuring or quantifying the extent of these non-material losses in a criminal verdict. The assessment of non-material losses is left entirely

to the judge's discretion (*rechterlijke discrelie*) without standard methodological guidelines (Arfiani et al., 2023). As a result, legal protection for victims of defamation in Indonesia tends to be punitive toward the perpetrator, rather than restorative. This criminal construction emphasizes that Indonesian law focuses on punishing the act (criminal), rather than comprehensively remediating losses (civil).

The legal framework used to assess hoax and defamation cases in Indonesia has historically and predominantly used a penal (criminal) approach. This legal framework is inherited from the Dutch civil law system, strongly reflected in Article 310 of the old Criminal Code, which positions defamation as a criminal offense against individual honor. The legal definition in Article 310 of the Criminal Code is very clear: the act must be committed "intentionally" (*opzettelijk*) and with the aim of making the accusation "publicly known." (Abdullah et al., 2021). The ITE Law then adopted and expanded this penal paradigm to the digital realm, making cyberspace a new *locus delicti* (scene of crime) that accelerates its spread. As a result, the limitation for a case to be prosecuted in Indonesia is the fulfillment of these criminal elements, not on initial proof of non-material losses. Law enforcement officials focus on finding the perpetrator's *mens rea* (evil intent) and *actus reus* (act) to impose imprisonment or fines. This limitation ignores the fact that the essence of the loss in defamation cases is actually immaterial losses of a private (civil) nature. Law enforcement has become heavily dependent on reporting (complaint-based offenses) that lead to criminalization, which is often used as a tool to silence criticism (Strategic Lawsuit Against Public Participation/SLAPP) (Asmadi, 2021). This reliance on a penal approach creates rigid boundaries, preventing victims from receiving adequate remediation for their damaged reputations. This system prioritizes deterrence through corporal punishment over restoration of victims' non-material losses. Current Indonesian legal frameworks, therefore, prioritize protecting "order" over "restorative justice" for individual victims.

This penal-centric approach in Indonesia contrasts sharply with legal concepts in common law jurisdictions like the United States. In the United States, cases of defamation (including libel and slander) and hoaxes (false light or intentional infliction of emotional distress) tend to be resolved through civil action rather than criminal proceedings. (Sajid et al., 2021). The main limitation in the US legal system is proving the existence of "damages", both material and non-material, suffered by the plaintiff (victim) (Yunanto,

2009). In cases involving public figures, the U.S. Supreme Court, in its *New York Times Co. v. Sullivan* decision, set a very high bar: the plaintiff must prove "actual malice." This bar is designed to provide maximum protection for freedom of speech (the First Amendment) (Khalyubi & Perdana, 2021). Thus, criticism of public officials is almost never prosecuted. The primary focus in US civil litigation is on compensation for non-material losses, which can include general damages (reputational damages) and special damages (specific economic losses) (Sabrina, 2018). Jurisprudence in the US has developed various methodologies for calculating these non-material losses, although they remain subjective (left to the jury) (Sokal, 2010). Victims are strictly required to prove that the hoax or defamation has resulted in actual reputational harm and emotional suffering. This differs from Indonesia, where non-material losses are deemed to have occurred once the criminal element is proven, without needing to prove the extent (Abramson, 2023). The US system prioritizes financial (civil) compensation as the primary solution, while the Indonesian system prioritizes corporal (criminal) sanctions (Sirait, 2022). US legal boundaries, while pro-freedom of speech, explicitly recognize and provide mechanisms for quantifying non-material losses unknown in the Indonesian criminal system.

The legal parameters used to assess the occurrence of hoaxes and defamation in Indonesia, due to the dominance of the penal approach, rely heavily on the interpretation of the elements of the offense in the old Criminal Code (Article 310) and the Electronic Information and Transactions (ITE) Law. The main parameters in Article 310 of the Criminal Code are acts of "attacking honor or reputation" and "accusing something" with the aim of making it "publicly known." In the context of the Electronic Information and Transactions (ITE) Law (Article 27 paragraph 3 as amended by Law 1/2024), (Riswandie, 2023), This parameter is expanded to include the elements of "distributing" and "making accessible" the content in electronic space. The crucial parameter that prosecutors must prove (in a complaint offense) is the perpetrator's *mens rea* (inner state of mind), namely "intentionally" (*opzettelijk*). The assessment of non-material losses (tainted reputation) does not have clear quantitative parameters; it is merely a logical consequence or aggravating factor of the proven crime (Hasan, 2020). Judges in criminal decisions do not have jurisdiction or standard parameters for determining non-material compensation for victims, because the focus is on punishing the perpetrator. Current parameters are purely

qualitative-juridical: is the act "insulting," "misleading," or "slandorous" based on societal standards of decency? Even the Constitutional Court (MK) ruling regarding the ITE Law focuses more on refining the parameters of the act (for example, distinguishing criticism from insults), rather than on the parameters of the victim's losses. Parameters for assessing non-material losses can only be pursued through a separate civil lawsuit (Unlawful Acts/PMH, Article 1365 of the Civil Code), which is processed completely separate from the criminal case. The mechanism for combining compensation (Article 98 of the Criminal Procedure Code) is also very limited, as it usually only covers direct material losses resulting from the crime, not immaterial losses resulting from defamation (Asmadi, 2021). As a result, current Indonesian legal parameters are very strong in validating the criminal status of an act, but very weak in validating the value of non-material losses suffered by victims.

The ideal concept that should be developed in Indonesia is a paradigm shift from a penal-centric approach to a legal approach oriented toward victim-oriented recovery. The first step is to encourage the partial decriminalization of defamation offenses, especially those of a "minor" nature (insults), and shift them to the civil realm or penal mediation. Legal limitations should ideally focus on proving actual injury to the victim, as applied in common law jurisdictions. The Supreme Court needs to develop clear legal parameters (through Supreme Court Regulations/PERMA) to guide judges in assessing and quantifying non-material (intangible) losses. These parameters could include several factors, such as: the level of spread of hoaxes/slander (number of audiences), the victim's social status (public or private figure), the psychological impact (as evidenced by expert assessment), and the level of mens rea of the perpetrator. This ideal concept should also strengthen the mechanism for combining claims for damages in criminal cases (Article 98 of the Criminal Procedure Code), by broadening its definition to explicitly include non-material losses. Indonesia could adopt the concept of punitive damages in civil lawsuits for cases of deliberate and massive hoaxes, with proceeds allocated to public education. Assessment parameters should also consider the perpetrator's attempts to retract or apologize, as factors that can reduce the amount of compensation. For hoaxes, the primary parameter is the level of "disturbation" or "loss" caused, but space must be left open for individuals who have suffered non-material harm to seek redress. The legal system should incentivize out-of-court settlements (alternative dispute resolution) that

focus on restoring reputations (e.g., the right of proportional response) before resorting to litigation. Ultimately, the ideal concept is a hybrid legal system that balances criminal sanctions (for serious cases) with robust civil mechanisms for the restoration of victims' non-material losses.

Forms of Non-Material Losses That Can Arise Due to Hoaxes and Defamation

The concept of compensation in Indonesian positive law is firmly rooted in Article 1365 of the Civil Code (KUHPPerdata), which is the foundation of the doctrine of Unlawful Acts (PMH) or *onrechtmatige daad* (R. Kurniawan, 2018). This fundamental provision articulates the doctrine that any unlawful act that results in loss to another person requires the person whose fault caused the loss to compensate for that loss. Legally, four cumulative elements must be fulfilled simultaneously: the existence of an unlawful act, the existence of an element of fault (*schuld*), the existence of a loss (*schade*), and the existence of a causal relationship (*causal verband*) between the act and the loss (Septian et al., 2022). In this context, "loss" is interpreted broadly by doctrine and jurisprudence, encompassing not only material losses (*materiële schade*) that can be calculated mathematically, but also non-material or immaterial losses (*immateriële schade*) (Sangalang, 2012). Material losses refer to real losses and loss of expected profits (*derving van winst*), while non-material losses are losses arising from mental suffering, fear, or loss of good name (reputation). Article 1365 of the Civil Code functions as a *lex generalis* (general provision) which serves as a legal safety net for anyone who feels their subjective rights have been violated, including the right to honor (Adhisukmawati et al., 2023). In cases of defamation or hoaxes that cause personal harm, this article is the primary basis for victims to file a civil lawsuit seeking redress. However, the greatest challenge in applying Article 1365 to non-material losses is the lack of objective parameters in the law to quantify (assess) the extent of such losses. In practice, the assessment of non-material damages is left entirely to the judge's discretion (*rechterlijke discrelie*) based on the principle of *ex aequo et bono* (justice and fairness) (Satrih, 2018). Therefore, Article 1365 of the Civil Code is the legal foundation that recognizes the right to compensation, but its implementation for non-material losses remains highly jurisprudential and case-by-case.

Although Article 1365 of the Civil Code theoretically opens up the opportunity

for civil lawsuits, the regulatory approach to hoaxes in Indonesian positive law strongly favors the criminal (penal) realm over the civil realm. The primary focus of legislation, particularly in the Electronic Information and Transactions Law (UU ITE) and its amendments, is on criminalizing the act of spreading fake news itself. Provisions such as Article 28 paragraph (1) in conjunction with Article 45A paragraph (1) of the ITE Law (both the old and new versions) explicitly threaten imprisonment and fines for those spreading hoaxes that "cause consumer losses" or "cause public unrest." (Adhari et al., 2021). The choice of framing for this offense clearly demonstrates that the ratio legis (reason for creating) of the law is more oriented towards protecting public order and social stability. The interests protected are not primarily the private rights of individuals who are harmed non-materially, but rather the public interest and the state, which are threatened by disinformation. This penal-centric approach positions the state as the primary actor, with an interest in prosecuting hoax perpetrators in order to maintain collective security. As a result, individual victims who "only" suffer reputational or psychological damage due to hoaxes often struggle to obtain prompt and effective remediation. The Indonesian legal system indirectly encourages victims to report hoaxes as criminal acts, in the hope of punishing the perpetrators, rather than seeking non-material compensation. This tendency places hoax offenses as ordinary crimes or complaint offenses (depending on the context), but remains within the scope of criminal law (Djafar, 2010). This approach ignores the fact that the most direct impacts of hoaxes are often non-material, such as the breakdown of social trust or individual trauma. This criminal orientation makes civil redress mechanisms a secondary, complex, separate, and time-consuming option (Bustani, 2019). The consequence of this legal policy direction is that the justice system is more focused on imprisoning perpetrators (punitive) than on recovering victims' non-material losses (restorative).

The concept of non-material losses that can arise from hoaxes and defamation cases encompasses a very broad spectrum of harm and is often more destructive in the long term than material losses. The most primary and fundamental form of non-material loss is the damage to the honor (*eer*) and good name (*goede naam*) of an individual or corporation in the eyes of the public. Honor is the subjective right to personal dignity (private dignity), while good name is the objective perception or reputation of an individual in the eyes of the public (public reputation). Hoaxes or slander that attack a

person's moral integrity, professionalism, or personal life can destroy a reputation built over years in an instant, especially in the digital age with its viral spread. These losses are non-material because reputation cannot be measured precisely in monetary terms, but they have immeasurable value to the individual concerned. In addition to reputational damage, non-material losses also include psychological harm or emotional suffering experienced by the victim. This suffering can take the form of prolonged anxiety, clinical depression, severe stress, deep shame (humiliation), or even trauma (PTSD) due to cyberbullying. Victims of hoaxes often experience shock from the sudden attack on their character witnessed by the wider public. Further non-material impacts include social exclusion or stigmatization from their environment, where victims may be shunned by colleagues, lose the trust of their families, or be ostracized by their communities (Aburaera et al., 2019). These losses can also manifest as a loss of future opportunities, such as the failure to secure a job or project due to a negative digital footprint. In the context of a legal entity (corporation), non-material losses can include the loss of goodwill or public trust in a brand (brand damage), which can be difficult to recover. All forms of non-material losses are intangible, yet their impact on the victim's life is very real.

Regarding the concept of compensation, one of Indonesia's civil law experts, Professor Subekti, provides a fundamental explanation of the scope of compensation in Indonesian law. According to Subekti, compensation in civil law should ideally encompass three main elements: costs (*kosten*), losses (*schade*), and interest (*interessen*) (Subekti, 2008). "Costs" refers to all actual expenses incurred by the victim as a result of the unlawful act, such as attorney fees or costs for clarification in the mass media. "Loss" refers to the actual material losses suffered, such as loss of actual income or damage to physical assets (Husein & others, 2019). While "interest" refers to the loss of expected profits (*derving van winst*) that the victim should have received if PMH had not occurred (Sari, 2021). However, Professor Subekti also specifically discussed the complexity in calculating non-material losses, which he called compensation that is very difficult to value in monetary terms (Subekti, 2008). He acknowledged that the Civil Code (as a legacy of the *Burgerlijk Wetboek*) is very limited in regulating immaterial damages, which have historically only been granted in limited cases such as physical injury or death. In the context of defamation, Subekti highlighted that the restoration of honor (*herstel van eer*) is often far more important to victims than mere financial compensation.

In his view, immaterial damages serve more as *loutere genoegdoening* or "giving inner satisfaction" to the victim (Satrih, 2018). This "satisfaction" can take the form of an admission of guilt by the perpetrator, a public apology, or a symbolic payment of money in recognition of the victim's suffering. This concept emphasizes that the primary purpose of non-material compensation is not to "pay" the price of a reputation, but rather to provide moral reparation and legal recognition for the injustice experienced. Subekti's view is particularly relevant in cases of hoaxes, where non-material losses (reputation and emotional suffering) are the core of the damages, and he leaves their determination to the judge's discretion (*rechterlijke billijkheid*).

An analysis of Indonesian positive law reveals that a crucial issue regarding non-material losses in cases of hoaxes or defamation is the acute fragmentation of the legal system, which does not focus on victim reparation. As mentioned, Indonesian positive law, particularly through the Electronic Information and Transactions (ITE) Law (as *lex specialis*), has predominantly directed case resolution to the punitive criminal realm (Irfani, 2020). The crucial point is that the focus of the criminal justice system is on proving the guilt of the perpetrator (*dader*) in order to impose sanctions (*straf*), not on calculating and recovering comprehensive losses suffered by the victim (*slachtoffer*) (Fitriyani & Cahyaningtyas, 2022). As a result, victims who suffer massive non-material losses, such as a ruined business reputation or psychological trauma, do not automatically receive any remediation even if the perpetrator has been sentenced to prison. Current positive law forces victims to take a very burdensome double path: first, reporting the crime to punish the perpetrator, and second, filing a separate civil lawsuit (PMH 1365 of the Indonesian Civil Code) to seek compensation. This dual process is highly inefficient, costly, and creates prolonged legal uncertainty for victims. Although the Indonesian Criminal Procedure Code (KUHAP) recognizes a mechanism for combining claims for compensation in criminal cases, its practice is very limited and unpopular (Setiawan & others, 2021).

Jurisprudence tends to interpret Article 98 of the Criminal Procedure Code only for direct and easily proven material losses (e.g., medical expenses or property repairs), not for complex and subjective non-material losses. Another crucial point is the Supreme Court's lack of standard parameters or guidelines for civil judges in assessing the amount of non-material damages. This leads to significant disparities in decisions, where one case

might result in millions of rupiah in damages, while another case might receive billions of rupiah, purely based on discretion. Thus, the key issue in our positive law is the legal vacuum (*rechtsvacuum*) in an effective, efficient, and integrated mechanism for recovering non-material losses.

Given this fundamental weakness, a crucial point that must be the focus of the future development of Indonesian positive law is a paradigm shift from a punitive-centric approach to restorative justice, which focuses on victim recovery (Noya et al., 2021). Positive law must begin to integrate mechanisms for recovering non-pecuniary damages more effectively, both within and outside the criminal justice system. One important breakthrough is the reform of the Criminal Procedure Code (or the implementing regulations of the ITE Law), which broadens the interpretation of Article 98 to explicitly cover non-pecuniary damages arising from defamation or hoaxes. A more pressing issue is the Supreme Court's (MA) proactive initiative to issue a Supreme Court Regulation (PERMA) specifically concerning Guidelines for Assessing Non-Pecuniary Damages. This PERMA must establish clear parameters to guide judges, such as the level of distribution of the slander (virality), the victim's social status (public figure or private figure), the psychological impact (as evidenced by experts), and the perpetrator's level of intent (actual malice) (Kewenangan et al., 2022).

Another important point is the introduction of the concept of punitive damages in civil lawsuits for hoaxes proven malicious and with massive impact, to create a financial deterrent effect. Positive law should also strengthen non-litigation mechanisms, such as the obligation to clarify or the right of reply on digital platforms where hoaxes are spread. Reconciliation efforts (for example, forced public apologies) should be the primary legal option, as a form of *loutere genoegdoening*, as Subekti acknowledged. Indonesia needs to examine the partial decriminalization of "minor" defamation offenses and shift them purely to the civil realm, shifting the legal focus from imprisonment to compensation. A key point in the ITE Law should not only focus on criminal penalties, but also on the obligation of digital platforms to facilitate victim remediation. This integration is key to creating a just positive law oriented toward restoring victim dignity in the digital era

4. Penutup

Based on the analysis, it can be concluded that the forms of non-material losses resulting from hoaxes and defamation cover a broad and destructive spectrum, ranging from damage to honor (eer) and good name (goede naam), psychological suffering (trauma, depression, and anxiety), to social exclusion. Although Indonesian civil law, through Article 1365 of the Civil Code (*lex generalis*), theoretically recognizes immaterial compensation, the applicable positive law, especially the ITE Law as *lex specialis*, predominantly applies a penal-centric approach. This very strong orientation in criminal law has been proven to create systemic fragmentation, where the legal focus is more on punishing the perpetrator (deterrence) through imprisonment, rather than on victim recovery (restorative). As a result, victims who suffer massive non-material losses do not automatically receive remediation and are forced to take a dual path (criminal and civil), which is inefficient and creates legal uncertainty.

A fundamental weakness in Indonesian positive law is the lack of clear legal boundaries and parameters for assessing and quantifying non-material losses. The criminal system lacks jurisdiction to assess them, while the mechanism for combining compensation (Article 98 of the Criminal Procedure Code) is narrowly interpreted to cover only direct material losses. Therefore, this study finds a legal vacuum that urgently needs to be filled through a paradigm shift toward restorative justice. The most crucial legal solution is the issuance of a specific Supreme Court Regulation (PERMA) concerning Guidelines for Assessing Non-Material Compensation, which establishes objective parameters for judges, such as the level of prevalence of slander, verified psychological impact, and the level of intent of the perpetrator, while expanding the scope of Article 98 of the Criminal Procedure Code to provide just and substantive redress for victims in the digital era.

5. Reference

- Abdullah, A. G., GP, M. A. S., & others. (2021). *Penanggulangan tindak pidana perkosaan dalam kuhp dan qanun jinayat melalui pendekatan keadilan restoratif*. Sekolah Pascasarjana UIN Syarif Hidayatullah Jakarta.
- Abramson, J. L. (2023). Hoax, Fraud, Plagiarism, Forgery. In *Oxford Research*

Encyclopedia of Literature.

- Aburaera, S., Muhadar, & Maskun. (2019). Filsafat Hukum: Teori dan Praktik. In *Sustainability (Switzerland)* (Vol. 11, Issue 1). Kencana.
- Adhari, A., Sitabuana, T. H., & Srihandayani, L. (2021). Kebijakan Pembatasan Internet di Indonesia: Perspektif Negara Hukum, Hak Asasi Manusia, dan Kajian Perbandingan. *Jurnal Konstitusi*, 18(2), 262. <https://doi.org/10.31078/jk1821>
- Adhisukmawati, I. G. A. K. H., Handayani, I. G. A. K. R., & Karjoko, L. (2023). Aspek Keadilan Pengaturan Pemberian Ganti Rugi dalam Pengadaan Tanah untuk Pembangunan bagi Kepentingan Umum. *Proceeding Legal Symposium*, 1.
- Ardianto, R. (2022). *Lawan Berita Bohong, Lolly: Bawaslu Akan Gandeng Konten Kreator untuk Sebar Informasi*. Bawaslu RI. <https://bawaslu.go.id/id/berita/lawan-berita-bohong-lolly-bawaslu-akan-gandeng-konten-kreator-untuk-sebar-informasi>
- Arfiani, A., Syofyan, S., Delyarahmi, S., & others. (2023). Problematika Penegakan Hukum Delik Obstruction Of Justice Dalam Undang-Undang Pemberantasan Tindak Pidana Korupsi. *Unes Journal of Swara Justisia*, 6(4), 516–540.
- Asmadi, E. (2021). Rumusan Delik Dan Pidanaan Bagi Tindak Pidana Pencemaran Nama Baik Di Media Sosial. *De Lega Lata: Jurnal Ilmu Hukum*, 6(1), 16–32.
- Bustani, S. (2019). Budaya Hukum Masyarakat Berdampak Terjadinya Kriminalisasi Petani yang Memanfaatkan Benih Varietas Baru (Dalam Mewujudkan Ketahanan Pangan). *Hukum Pidana Dan Pembangunan Hukum*, 1(2).
- Candra, M., & Dinata, M. R. K. (2025). Penegakan Hukum terhadap Tindak Pidana Penyebaran Berita Hoaks melalui Media Sosial. *Arus Jurnal Sosial Dan Humaniora*, 5(2), 1577–1586.
- Djafar, W. (2010). Menegaskan Kembali Komitmen Negara Hukum: Sebuah Catatan Atas Kecenderungan Defisit Negara Hukum di Indonesia. *Jurnal Konstitusi*, 7(5), 151–174.
- Fitriyani, D., & Cahyaningtyas, I. (2022). Rekonstruksi Penegakan Hukum Bagi Penyandang Disabilitas Dan Keberlakuan Keterangan Psikiater Sebagai Keterangan Ahli. *Jurnal Magister Hukum Pidana*, 11(2).
- Guntara, B., & Herry, A. S. (2022). Hak kebebasan berpendapat di media sosial dalam perspektif hak asasi manusia. *Jurnal Pendidikan Dan Konseling (JPDK)*, 4(6), 6945–6961.

- Hadiwinata, L. N., Murtiningsih, B. S. E., & Berto, A. R. (2023). Analisis Teks Dan Jaringan Promosi Media Sosial Youtube Mobil Listrik Ioniq 5 Menggunakan Metode Sna. *Perspektif Komunikasi: Jurnal Ilmu Komunikasi Politik Dan Komunikasi Bisnis*, 7(1), 1–18.
- Hasan, I. N. (2020). *Upaya Penegakan Hukum Pengembalian Kerugian Negara oleh Komisi Pemberantasan Korupsi akibat Tindak Pidana Korupsi*.
- Husein, Y., & others. (2019). *Penjelasan hukum tentang perampasan aset tanpa pemidanaan dalam perkara tindak pidana korupsi*. Pusat Studi Hukum dan Kebijakan Indonesia.
- Irfani, N. (2020). Asas Lex Superior, Lex Specialis, dan Lex Posterior: Pemaknaan, Problematika, dan Penggunaannya dalam Penalaran dan Argumentasi Hukum. *Jurnal Legislasi Indonesia*, 16(3), 305–325.
- Kartika, F. B., Yanti, E. D., Balya, T., Hermansyah, K. N., Putri, S. S., & Shafanuha, D. (2025). Hukum Penanganan Penyebaran Berita Hoaks di Ruang Digital: Studi Kasus Ratna Sarumpaet. *Lex Justitia*, 7(2), 22–32.
- Kewenangan, R., Kepegawaian Penghubung Komisi Yudisial, dan, Penguatan Pengawasan Perilaku Hakim di Daerah Zaki Priambudi, U., Rico Pambudi, B., Intania Sabila, N., Kalimantan No, J., Timur, K., & Timur, J. (2022). Reformulasi Kewenangan, Kelembagaan, dan Kepegawaian Penghubung Komisi Yudisial: Upaya Penguatan Pengawasan Perilaku Hakim di Daerah. *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan*, 13(1), 21–40. <https://doi.org/10.22212/JNH.V13I1.2906>
- Khalyubi, W., & Perdana, A. (2021). Electoral Manipulation Informationally on Hoax Production in 2019 Presidential and Vice Presidential Election in Indonesia. *Journal of Government and Political Issues*, 1(2), 87–99.
- Kirana, Y. (2023). Regulasi Yang Mengatur Secara Khusus Terkait Perlindungan Data Pribadi Di Indonesia Tentang Hoaks Dan Kerawanan Media Sosial (Undang-Undang No. 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik (ITE). *Jurnal Ilmiah Hukum Dan Keadilan*, 10(1), 101–114.
- Kurniawan, A. (2019). *Pengaruh fanatisme dan kontrol diri terhadap agresinya verbal pada pendukung calon presiden dan wakil presiden 2019 di Kota Malang*. Universitas Islam Negeri Maulana Malik Ibrahim.

- Kurniawan, R. (2018). Perbuatan Melawan Hukum terhadap Wewenang Pelayanan Bidan Praktik Mandiri Berdasarkan Peraturan Perundangundangan di Indonesia. *Scientia Journal*, 7(1), 119–131.
- Lu'luil Maknun, N. (2018). Pembagian Harta Bersama Dalam Hukum Islam dan Hukum Positif Bagi Istri Yang Bekerja. *Mabahits*, 4(01), 47–56.
- Mahadewi, K. J. (2022). Implikasi Penyebaran Berita Hoaks Kaitannya Dalam Penegakan Hukum Di Indonesia. *Jurnal Publika Pengabdian Masyarakat*, 4(01), 7–17.
- Marzuki, P. M. (2017). *Penelitian Hukum: Edisi Revisi*. Prenada Media.
- Natasya, D. P., & Andriasari, D. (2023). Penegakan Hukum terhadap Tindak Pidana Penyebaran Konten Kejahatan Pornografi Balas Dendam (Revenge Porn) di Media Sosial Ditinjau dari UU ITE dan UU Pornografi. *Jurnal Bandung Conference Series: Law Studies*, 3(1).
- Noya, M., Toule, E. R. M., & Tuhumury, C. (2021). Penerapan Proses Restorative Justice Melalui Pendekatan Restorative Conferencing Initiatives Di Indonesia. *TATOHI: Jurnal Ilmu Hukum*, 1(4), 312–318.
- Ridha, N. A. N., Andriyani, W., Kurniawan, E., Afriyanti, L., Maipauw, M. M., Amri, S. R., Wijayati, I. W., Arsyad, A. A. J., Nugroho, F. A., Nugrahani, A. G., & others. (2025). *Masyarakat Digital dan Kebebasan Berpendapat: Integrasi Perspektif Hukum, Etika, dan Literasi Teknologi*. Penerbit Widina.
- Riswandie, I. (2023). Perlindungan Hukum Bagi Masyarakat Marginal Dalam Perspektif Asas “Equality Before The Law.” *Sultan Adam: Jurnal Hukum Dan Sosial*, 1(2), 298–310. <https://doi.org/10.71456/sultan.v1i2.545>
- Romandona, R., & Yasin, B. (2024). Analisis Hukum Asas Mens Rea Dan Actus Reus Dalam Kasus Pembunuhan Brigadir Nofriansyah Yosua Hutabarat (Studi Kasus Dalam Putusan Pn Jakarta Selatan No. 796/Pid. B/2022/Pn Jkt. Sel). *JUSTITIABLE-Jurnal Hukum*, 6(2), 1–12.
- Sabrina, A. R. (2018). Literasi digital sebagai upaya preventif menanggulangi hoax. *Communicare: Journal of Communication Studies*, 5(2), 31–46.
- Sajid, Z., da Silva, M. A. B., & Danial, S. N. (2021). Historical analysis of the role of governance systems in the sustainable development of biofuels in Brazil and the United States of America (USA). *Sustainability*, 13(12), 6881.
- Sangalang, A. A. (2012). *Kajian Terhadap Ganti Rugi Atas Tanah Dalam Pengadaan*

- Tanah Bagi Pembangunan Untuk Kepentingan Umum Guna Mewujudkan Kepastian Hukum, Perlindungan Hukum, Dan Keadilan Berdasarkan Peraturan Presiden Nomor 36 Tahun 2005 Dan Peraturan Presiden Nomor 65 Tahun . UAJY.*
- Sari, I. (2021). Perbuatan Melawan Hukum (PMH) Dalam Hukum Pidana Dan Hukum Perdata. *Jurnal Ilmiah Hukum Dirgantara*, 11(1).
- Satrih, S. (2018). Penggabungan Perkara Dalam Penyelesaian Ganti Rugi Tumpahan Minyak Di Laut Sebagai Upaya Optimalisasi Penerapan Blue Economy. *Bina Hukum Lingkungan*, 2(2), 249–263.
- Septian, R., Pangestika, M. W., & Rawis, I. (2022). Studi Kasus Terhadap Hak Asuh Anak dalam Putusan Nomor 1365/Pdt.G/2021/PA.Bpp di Pengadilan Agama Balikpapan. *Jurnal Lex Suprema*, 4(Perkawinan, Anak, Hak Asuh Anak), 839–854.
- Setiawan, A., & others. (2021). *Konsep Permaafan Hakim (Rechterlijk Pardon) dalam Pembaharuan RUU KUHP dan RUU KUHP.*
- Sirait, T. M. (2022). The Global Criminal Law Enforcement Policy on False Information Bomb Hoax. *J. Legal Ethical & Regul. Isses*, 25, 1.
- Sokal, A. (2010). *Beyond the hoax: Science, philosophy and culture*. OUP Oxford.
- Subekti, V. S. (2008). Menyusun konstitusi transisi: pergulatan kepentingan dan pemikiran dalam proses perubahan UUD 1945. (*No Title*).
- Tarantang, J., Awwaliyah, A., Astuti, M., & Munawaroh, M. (2019). Perkembangan sistem pembayaran digital pada era revolusi industri 4.0 di indonesia. *Jurnal Al-Qardh*, 4(1), 60–75.
- Terok, M. S. (2023). AKIBAT HUKUM Bagi Konten Kreator Yang Melanggar Copyright Menurut Undang-Undang Republik Indonesia Nomor 22 Tahun 2014 Tentang Hak. *LEX PRIVATUM*, 11(4), 1–11.
- Yunanto, H. (2009). *Pertanggungjawaban dokter dalam transaksi terapeutik*. program Pascasarjana Universitas Diponegoro.