





# Gema Wiralodra

Publication details, including instructions for authors and subscription information:  
<https://gemawiralodra.unwir.ac.id>

	<b>Gema WIRALODRA</b>
	Editor-in-Chief: Yudhi Mahmud
	 Publisher: Universitas Wiralodra

**Criminal penalties for individuals who create stickers with other people's faces**

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**To cite this article:**

Kurniawan, D.A. (2024). Criminal penalties for individuals who create stickers with other people's faces. *Gema Wiralodra*, 15(1), 145-150.

**To link to this article:**

<https://gemawiralodra.unwir.ac.id/index.php/gemawiralodra/issue/view/24>

**Published by:**

Universitas Wiralodra  
Jln. Ir. H. Juanda Km 3 Indramayu, West Java, Indonesia

## Criminal penalties for individuals who create stickers with other people's faces

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### Abstract

The crime category is people who edit stickers with other people's faces that are distributed via online media. This study uses a legal-normative research method. Data was collected using a literature study on related legal materials and analyzed descriptively. The research results are based on the Information and Electronic Transactions Law (UU ITE) and the Copyright Law. ITE Law Article 32 Paragraph (1) Article 32 Paragraph (1) of the ITE Law states that making WhatsApp stickers with a person's face without permission, which can insult, harass, or harm the individual's reputation, can be considered a violation of this article. Violations of this article may be subject to criminal penalties and/or fines under the provisions of the ITE Law Article 48 Paragraph (1). Article 48 Paragraph (1) regulates criminal sanctions for violations included in the offense of complaints. If proven to violate and offend the person in the photo, they can be subject to sanctions under the ITE Law, according to Article 27 paragraph (3) of the ITE Law, namely under Article 45 paragraph (1) The ITE Law, which states that you can be punished with imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of IDR 1,000,000,000. Implications include increased scrutiny of digital content and potential policy revisions to strengthen legal protections for individuals who are victims of unauthorized use of their faces.

**Keywords:** Accountability, Editing People's Face Stickers

### 1. Introduction

Rapid advances in technology and information allow objects that were initially ordinary to have a benefit and usefulness for a person or company, as well as portraits that initially only started from a selfie, which later, because of the rise of the internet and social media allowed a portrait to generate a profit for someone, because of the many new business activities that run or use the internet and social media as a medium that Making a portrait is needed and valuable in the implementation process such as advertising or promotional media in a product. Usefulness emerges from a portrait and generates profit coffers (Khaqiqi et al., 2020). Information technology has a very important role in the present and future. Information technology is believed to bring great benefits and interests to countries in the world (Raharjo, 2002).

In today's modern times, the internet and electronic media cannot be separated from the life of modern society to access information. Many electronic media now compete to provide readers and viewers with new information and news. Some electronic media currently widely accessed by the public are YouTube, Facebook, Blog, Twitter, Instagram, WhatsApp, Line, etc.

In the end, people can now access information freely and easily with the internet and electronic media. Information is fundamental in everyday life to know what is happening around it and to meet the needs and lack of knowledge to answer an unknown question. The term information means illumination, notification, news, or news about something (Ministry of National Education, 2008).

The sticker feature is not new in a chat or social media application. Currently, the sticker feature has been launched by several other large social media applications, such as Line Telegram and Facebook, which have already added sticker features in their applications; it is not surprising considering WhatsApp is a company that Facebook has acquired. The sticker feature on WhatsApp is one of the complements to a conversation in expression in addition to emojis and GIFs that already exist in this instant messaging service, which can provide excitement considering the dominance of WhatsApp users in similar applications.

The freedom and ease of obtaining information for the public has been regulated in article 28F of the Law of the Republic of Indonesia Year 1945 (UUD NRI 1945), which reads: Everyone has the right to communicate and obtain information to develop his personal and social environment, and has the right to seek, obtain, possess, store, process, and convey information using all types of available channels.

Based on the description of the article above, the community can access, obtain, and convey information to others to meet the needs for knowledge, which is known that people are currently hungry for existing information. Because many electronic media make it easier for people to get information, as we know, before the existence of electronic media that developed rapidly, information - information can only be obtained through television news shows, radio, verbal, and print media (Soesilo, 2011).

The many features provided by the social media application that aim to make it easier and more useful in its use, such as when sharing or seeing people's posts, are very pampering for us as users. However, it is also inseparable from vulnerability to misuse of features that have been provided and uses that are not reasonable or not under what should be.

The main attraction of users on WhatsApp stickers is the feature to add their stickers, one of which can use face photos as stickers. Reporting from the WhatsApp page explained that WhatsApp not only provides access intended for developers to make stickers, but WhatsApp also gives users access to make stickers of their work by using photos they have or want. They also give users instructions on how to make WhatsApp stickers if they want to do so. Users can do so by packaging the WhatsApp sticker into the form of an application on the Play Store and AppStore services from there, allowing other users to download and use it directly from their WhatsApp, whether they share it for free or paid, on the Google Playstore There are several methods to generate profits from our applications, namely through several methods, including: App-Purchased, In App-Purchases, In App-Adver-Tising (niagahoster.co.id, 2023).

The act of editing someone's face without permission is a criminal offense of insult contained in Article 315 of the Criminal Code if the person in question feels offended. In essence, insult (which includes defamation) is an act of attacking someone's honor or good name, so that the person's good name is tainted or damaged. The tainting or damage to a person's good name can only be judged by the person concerned.

This research aims to investigate and examine in depth the legal implications for makers of stickers with other people's faces that are distributed via online media, focusing on violations of the Information and Electronic Transactions (ITE) Law and the Copyright Law. This research aims to understand the details of criminal sanctions that may be applied and compare ITE sanctions and the Criminal Code (KUHP) regarding insulting acts involving the creation of WhatsApp stickers.

## 2. Method

The research method used in this study is normative juridical, which uses legal positivist, which states that laws are identical to written norms made and promulgated by authorized institutions or officials. In addition, this conception views law as a normative system that is autonomous, closed, and independent of people's lives. The approach method used is the Legislation, Case, and Analysis Approach. In this study, researchers will use primary, secondary, and tertiary legal materials to obtain objective results. Primary legal materials and secondary legal materials of this research were obtained from literature searches from various books, literature, and papers that support research, and based on data from browsing on the internet related to prisons in Indonesia and the techniques used by researchers are quoting, both directly and paraphrasing.

## 3. Result and Discussion



## **The crime category of people who edit stickers with other people's faces that are spread through online media**

The portrait is a copyrighted work that arises or is born because of human intellectual abilities where this is the essence of intellectual property rights, in producing portraits must have the ability of mind, imagination, dexterity, skill, or expertise in creating portraits. In making WhatsApp stickers, of course, through several stages, one of which is the modification stage, which is the stage where the attacker already has an image that will then be given some writing or unique images to produce a funny sticker and be able to show the user's expression when using it in a chat, because a portrait or image according to Law No. 28 of 2014 is included in the category of copyrighted works, therefore Of course, a portrait contains rights in it as a copyrighted work, namely moral rights and economic rights, including Law number 28 of 2014 article 5 letters c and e explains a) Changing his creation under propriety in society b) Defending his rights in the event of distortion of the Creation, mutilation of the Creation, modification of the work or things that are detrimental to his self-honor or reputation.

After the modification or editing stage, stickers with writings or images are converted into WhatsApp stickers, which can later be used to send chat messages. According to article 9 of the UUHC, a portrait has the right to modify or transfer its copyrighted work into another form or transform it into a new copyrighted work.

Article 9 of Law No. 28 of 2014 related to economic rights includes (a) publication of inventions, (b) multiplicity of creation in all its forms, (c) translation of inventions, (d) adaptation, segmentation, or transformation of Creation, (e) Distribution of the Work or copies thereof, (f) Creation Show, (g) Creation Announcement, (h) Invention Communication and, (i) Rental of inventions.

Regarding the commercial use of copyrighted works containing human objects, Law no. 28 of 2014 article 12 paragraph 1 explains:

“Any Person shall not make Commercial Use, Copying, Announcement, Distribution, and/or Communication of Portraits made by him for commercial advertising or advertising without the written consent of the person photographed or his heirs.”

Because publishing applications that contain WhatsApp stickers on the Google Play Store or app store often find advertising elements contained in the application, which is one of the methods used by an application maker in generating profits from his application, so the use of photos of other people or models is a form of violation without written permission from the person whose face is used as a WhatsApp sticker.

In the ever-growing digital age, stickers on messaging platforms like WhatsApp have become popular among smartphone users. However, remember that creating and using stickers that use someone's face without permission can have serious legal consequences in Indonesia. Related to this practice is based on the Electronic Information and Transaction Law (ITE Law) and the Copyright Law. Article 32 Paragraph (1) of Article 32 Paragraph (1) of the ITE Law states that everyone is prohibited from disseminating electronic information that has content that violates decency. Creating a WhatsApp sticker with someone's face without permission that could insult, harass, or harm that individual's reputation may violate this article.

Violation of this article may be subject to criminal and/or fines under the provisions of the ITE Law. Article 48 Paragraph (1) of the ITE Law Article 48 Paragraph (1) regulates criminal sanctions for violations included in the complaint offense. If the owner of the face used in the sticker feels aggrieved, they can file a report with the authorities. The perpetrator may be subject to criminal sanctions under the ITE Law if violations are found and proven.

So, if everyone who fulfills the elements as referred to in Article 32 paragraph (1), can be subject to a criminal offense with a prison sentence of 8 (eight) years and/or a maximum fine of Rp 2,000,000,000 (two billion rupiah). Copyright Law In addition to the ITE Law, the

Copyright Law also has relevance in this context. Using an image of someone's face without permission in a sticker may be considered copyright infringement, especially if the image is owned by that individual.

It is understood that the crime category of people who edit stickers with other people's faces is disseminated through online media, based on the Electronic Information and Transactions Law (ITE Law) and the Copyright Law. Article 32 Paragraph (1) of Article 32 Paragraph (1) of the ITE Law states that creating WhatsApp stickers with someone's face without permission that can insult, harass, or harm the individual's reputation can be considered a violation of this article. Violation of this article may be subject to criminal and/or fines under the provisions of the ITE Law. Article 48 Paragraph (1) of the ITE Law Article 48 Paragraph (1) regulates criminal sanctions for violations included in the complaint offense. If the owner of the face used in the sticker feels aggrieved, they can file a report with the authorities. The perpetrator may be subject to criminal sanctions under the ITE Law if violations are found and proven.

### **Criminal liability of people who edit Stickers with people's faces distributed through online media**

Copyright is a right that is only explicitly granted to the creator or copyright holder of his copyrighted work, it is based on Article 1 paragraph 1, namely, copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in tangible form without prejudice to restrictions under the provisions of laws and regulations. Article 17, paragraph 1, economic rights to work remain in the hands of the creator or copyright holder as long as the creator or copyright holder does not transfer all economic rights from the creator or copyright holder to the recipient of the transfer of rights to the work.

The act of editing people's faces into memes for jokes includes modifying the work. It is very likely to be done without the permission of the portrait owner or the creator/copyright holder of the portrait. Every creation contains moral rights and economic rights. One of the moral rights is the right of the creator to allow or not allow modification of his work that is detrimental to his self-honor or reputation as reflected in Article 5 paragraph (1) letter e of the Copyright Law. So, legally, the perpetrator must obtain permission to modify the work.

If the Sticker with the person's face contains a person's data (including names, writings, and/or images that can identify a person), then the dissemination of the conversation through electronic media, either carried out by parties outside the conversation or by parties in the conversation must be carried out with the consent of the person concerned.

According to the Explanation of Article 26 paragraph (1) of the ITE Law, consent must be made because in the use of information technology, personal data protection is one part of privacy rights, where personal rights contain the following meanings:

1. Personal rights are the right to enjoy a private life and be free from all kinds of interference.
2. Personal rights are the right to be able to communicate with others without spying.
3. Privacy rights are the right to monitor access to information about a person's private life and data.

For parties who feel their privacy rights are violated, can file a civil lawsuit for losses caused to the infringing party. So, if the sticker with the person's face contains the personal identity of the sticker editor, then it is included as an invasion of privacy against the sticker editor. If someone feels aggrieved, they can sue the sticker editor. The criminal sanctions for sticker editors who commit the above actions are a maximum of 8 (eight) years imprisonment and/or a maximum fine of Rp. 2 billion. Then if the sticker editor intentionally and without rights or against the law commits the act referred to in Article 32 paragraph (1) of the ITE Law to cause harm to others, it can be punished with a maximum prison sentence of 12 years and/or a maximum fine of Rp. 12 billion.

The meaning of distributing, transmitting, and making accessible according to the explanation of Article 27 of Law 19/2016 is:

1. Distributing is sending and/or disseminating electronic information and/or electronic documents to many people or various parties through electronic systems.
2. Transmitting is sending electronic information and/or electronic documents addressed to one other party through an electronic system.
3. Making accessible is all acts other than distributing and transmitting through electronic systems that cause electronic information and/or electronic documents to be known to other parties or the public.

Criminal responsibility of people who make stickers with other people's faces that are spread through online media Sanctions in the ITE Law that ensnare WhatsApp sticker makers who attack someone's personal which is regulated in article 27 paragraph (3) of the ITE Law. Criminal sanctions against WhatsApp sticker makers who attack someone personally according to Article 27 paragraph (3) of the ITE Law are under Article 45 paragraph (1) of the ITE Law, which states that they can be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah). However, if the judge brings it into the regulation of the Criminal Code, it includes a penalty because the sanctions given are very light. As stipulated in Article 310 paragraph (1) of the Criminal Code, the sanctions given are only imprisonment for a maximum of nine months or a maximum fine of four thousand five hundred rupiahs, and according to article 310 paragraph (2) of the Criminal Code, the sanctions given are imprisonment for a maximum of one year and four months or a maximum fine of four thousand five hundred rupiahs. In addition, article 315 of the Criminal Code, which also regulates insults, provides sanctions in the form of imprisonment for a maximum of four months and two weeks or a maximum fine of four thousand five hundred rupiahs.

#### 4. Conclusion

The crime category of people who edit stickers with other people's faces disseminated through online media is based on the Electronic Information and Transaction Law (ITE Law) and the Copyright Law. Article 32 Paragraph (1) of Article 32 Paragraph (1) of the ITE Law states that creating WhatsApp stickers with someone's face without permission that can insult, harass, or harm the individual's reputation can be considered a violation of this article. Violation of this article may be subject to criminal and/or fines under the provisions of the ITE Law. Article 48 Paragraph (1) of the ITE Law Article 48 Paragraph (1) regulates criminal sanctions for violations included in the complaint offense. If the owner of the face used in the sticker feels aggrieved, they can file a report with the authorities. The perpetrator may be subject to criminal sanctions under the ITE Law if violations are found and proven.

Criminal liability of people who make stickers with people's faces that are distributed in online media if proven to violate and offend the person in the photo can be subject to sanctions in the ITE Law, which ensnares WhatsApp sticker makers who attack someone personally, which is regulated in article 27 paragraph (3) of the ITE Law. Criminal sanctions against WhatsApp sticker makers who attack someone personally, according to Article 27 paragraph (3) of the ITE Law, are under Article 45 paragraph (1) of the ITE Law, which states that they can be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah). However, if the judge brings it into the regulation of the Criminal Code, it includes a penalty because the sanctions given are very light, as stipulated in Article 310 paragraph (1) of the Criminal Code, the sanctions given are only imprisonment for a maximum of nine months or a maximum fine of four thousand five hundred rupiah, and according to article 310 paragraph (2) of the Criminal Code the sanctions given are imprisonment for a maximum of one year and four months or a maximum fine of four thousand

five hundred rupiah. In addition, article 315 of the Criminal Code which also regulates insults provides sanctions in the form of imprisonment for a maximum of four months and two weeks or a maximum fine of four thousand five hundred rupiah.

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