

Normative Analysis Of Defamation Provisions In The Information And Electronic Transactions Law In The Perspective Of Legal Certainty

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Abstract

Defamation through electronic media has become an increasingly complex issue amid the rapid development of information technology. Social media facilitates information dissemination but also opens opportunities for the misuse of freedom of expression that may harm others. Article 27A of Law Number 1 of 2024 on Electronic Information and Transactions (EIT Law) has sparked debate due to its ambiguous wording and potential misuse to suppress legitimate criticism. This research employs a normative juridical method by analyzing relevant legislation, legal doctrines, and court decisions. Secondary data were obtained through literature studies and qualitatively analyzed to assess the legal certainty and compatibility of Article 27A with human rights principles, particularly freedom of expression. The findings indicate that Article 27A of the EIT Law remains weak both in its drafting and implementation, especially regarding the phrase "another person," which creates ambiguity and may criminalize public criticism. Such provisions risk being used as a tool of criminalization, contradicting the principle of legal certainty and democratic values guaranteed by the 1945 Constitution. Therefore, a more precise interpretation and revision of Article 27A are necessary to ensure consistency with the principles of legality, legal certainty, and the protection of freedom of expression.

INTRODUCTION

The issue of defamation is now becoming increasingly relevant in the dynamics of people's social lives. This phenomenon does not only occur in relationships between individuals, but can also target groups and institutions. Defamation is often committed, consciously or unconsciously, for a variety of reasons—from personal reasons such as resentment and envy, to external influences such as social pressure or competition. In some cases, this action is used as a means to attract attention, gain certain advantages, or bring down other parties for personal gain.

Technological advancements, particularly the presence of the internet, have significantly changed the information landscape. Access to information that was once limited has now become very accessible. The internet also allows every individual to establish communication without geographical distance restrictions. In fact, economic activities such as buying and selling and business ventures can now be carried out online. As a global network or "network of the networks," the internet plays a role as a communication medium that supports the principle of *freedom of information* as well as freedom of communication.

In the midst of rapid technological developments, the issue of defamation has become increasingly complex, especially with the presence of social media and various other digital platforms. Social media does provide freedom of expression, but unfortunately this freedom is often abused. Without sufficient knowledge about communication ethics and the impact of disseminating information, one can quickly tarnish the reputation or good name of another party. One form of abuse that commonly occurs is the spread of false information or hoaxes, which actually worsens the condition and increases the burden due to defamation. While technology provides many benefits and conveniences, we also need to understand the risks behind it. Therefore, the use of technology—especially in terms of information sharing—must be done wisely and responsibly, especially in cyberspace.

The development of technology, especially social media, has had a great influence on changes in people's behavior, including in aspects of culture, ethics, and social norms. In Indonesia, with a very pluralistic society, the use of social media by almost all groups has become an inevitable phenomenon. Social media as a digital platform allows its users to actively create, share, and disseminate various forms of content, from text to images and videos, that can be accessed instantly without geographical and time restrictions. Platforms such as Facebook, Instagram, and Twitter have become a means of broad expression and exchange of information, but these conveniences also present risks, one of which is the increase in cases of defamation. These actions are often carried out through the dissemination of information that is not true, insulting, or damages the dignity of a person, group, or institution, and is included in the category of criminal acts because it has real legal consequences for the perpetrator. Thus, even though technology provides

various conveniences, its use must still be accompanied by responsibility and understanding of the applicable legal rules.

The consequences of defamation are very serious and can be felt in various aspects, such as psychological, social, and economic. The victim may experience mental distress in the form of stress, anxiety, depression, and trauma because his reputation is tarnished. In the social realm, victims can lose trust from those around them, experience a fracture in social relationships, or lose job and business opportunities. Material losses can also be felt, such as losing clients, declining income, or career delays. Therefore, it is important to take preventive steps, such as increasing digital awareness, understanding applicable legal regulations, and applying ethics in using social media.

Defamation itself is also listed in the Criminal Code. In Article 433 paragraph (1) of the Criminal Code, it is stated that anyone who deliberately insults the honor of others through false accusations and disseminates them in the public sphere can be subject to criminal sanctions, namely a maximum prison sentence of nine months or a fine as stipulated in the law.

From the perspective of human rights, the right to express opinions is guaranteed in Article 28E paragraph (3) of the 1945 Constitution, that every citizen has the right to express opinions, assemble, and association. Victim recovery in defamation cases includes efforts to restore their reputation and dignity, as well as providing support in coping with trauma or psychological repercussions that arise.

Defamation cases are quite frequent in Indonesia, and one of the most highlighted by the public was the case of Prita Mulyasari at the end of 2009. This case gave rise to the "Coins for Justice" movement as a form of public support for Prita who was accused of defaming Omni International Hospital through an email containing complaints against hospital services. This movement reflects public concern about inequality in the justice system, as well as a criticism of weak legal protection.

In her case, Omni Hospital sued Prita through criminal channels for allegations of defamation and civil channels for material and immaterial losses claimed. Although the Tangerang District Court found Prita innocent, the Supreme Court overturned the verdict and sentenced him to six months in prison with one year of probation. On the other hand, the Banten High Court stated that Prita had harmed the hospital civilly and required the payment of compensation of Rp204 million. The verdict caused a strong reaction from the public who saw the injustice, to encourage the creation of a coin movement as a form of solidarity to help Prita financially.

From a juridical point of view, Prita's case illustrates the incompatibility between the implementation of the defamation article and the spirit of protection of consumers as the party who submits complaints. In this case, neither the element of contempt nor malicious intent (*mens rea*) was adequately proven, but the legal process was still

ongoing. This shows that the provisions of articles related to defamation can be used excessively if they are not controlled with the principles of legal certainty and justice.

Another example of the application of the law related to defamation in the digital realm can be seen in Decision Number: 179/Pid.Sus/2022/PN Jkt.Utr, involving Adam Deni and Ahmad Sahroni. This case began when Adam distributed Sahroni's personal documents related to the purchase of luxury bicycles. Feeling aggrieved by this action, Ahmad Sahroni reported Adam to the National Police Headquarters. In the trial process, Adam Deni was charged with violating Article 310 and Article 311 of the Criminal Code. The public prosecutor demanded a prison sentence of one year, and the court declared Adam guilty. This case is a concrete illustration of how defamation law is applied in the digital era, especially in the context of misusing social media as a means of disseminating information.

In the case of Adam Deni, law enforcement focuses more on formal aspects without paying attention to the context of disclosing information that may be related to the public interest. In fact, if the allegations submitted have relevance to the alleged irregularities, then the mechanism of clarification or reporting to the supervisory institution should be a priority, not criminalization. This case raises questions about the proportionality between freedom to voice criticism and the protection of personal reputation.

One of the cases that also attracted public attention was the case of Haris Azhar and Fatia Maulidiyanti, where both were charged for insulting Luhut Binsar Pandjaitan. The Public Prosecutor (JPU) considered that the statements made by Haris and Fatia in a video uploaded on Haris's YouTube channel had defamed and damaged Luhut's reputation. Juridically, the case of Haris and Fatia raises a dilemma between the right to express opinions and the protection of the good name of public officials. Considering that the uploaded video is part of the public discourse about the involvement of state figures in human rights issues, the statement should be included in the category of legitimate criticism. The repressive approach to criticism based on data and studies risks weakening social control over power and is contrary to the spirit of Article 28F of the 1945 Constitution. Based on this, both were charged with violating the provisions of Article 27 paragraph (3) jo. Article 45 paragraph (3) of the ITE Law, Article 14 paragraph (2) and Article 15 of Law Number 1 of 1946 concerning Criminal Law Regulations, as well as Article 310 of the Criminal Code which regulates insults.

Based on these problems, it is necessary to conduct a more in-depth study of Article 27A of the ITE Law. This article is of concern because it has the potential to cause violations of human rights principles, especially freedom of expression guaranteed in Articles 28E and 28F of the 1945 Constitution. In addition, this provision is also considered to have not provided adequate legal certainty, so it is important to study it normatively. Based on the above, this study aims to critically analyze how the regulation and application of Article 27A is related to the principle of legal certainty.

This article will discuss issues related to the application of the ITE Law to criminal acts related to insult and defamation, especially when viewed from the perspective of legal certainty. The focus of the discussion will be directed to two main questions: What is the legal arrangement regarding criminal acts that attack honor and good name in the ITE Law? Also, what are the challenges or problems that arise in the implementation of the ITE Law against defamation cases, especially when viewed from the principle of legal certainty?

Therefore, the purpose of this study is to comprehensively analyze the legal arrangements regarding the crime of insult and defamation as stipulated in Article 27A of the Electronic Information and Transaction Law (ITE Law), as well as to examine its application in legal practice in Indonesia based on the principle of legal certainty. This research also aims to identify various juridical problems and challenges that arise in the implementation of the article, as well as provide normative recommendations to realize a balance between the protection of good name and freedom of expression guaranteed by the constitution.

RESEARCH METHODS

The juridical-normative approach itself is carried out by analyzing legal principles, norms, and rules. The data used in this study is sourced from secondary legal materials, namely laws and regulations (ITE Law, Criminal Code, 1945 Constitution), Constitutional Court decisions, legal doctrine books, scientific journals, and relevant concrete case studies. The data collection technique was carried out through literature studies, then analyzed qualitatively to assess the conformity of legal norms with the principles of legal certainty and human rights protection. This research is oriented towards an in-depth study of legal principles, by examining the relationship between legal principles, legal doctrines, as well as positive legal provisions and norms that apply in society. In accordance with the juridical-normative method used, this study fully relies on secondary data as the source of legal material.

DISCUSSION

A. Regulation of Criminal Acts Attacking Honor and Good Name in the Law on Information and Electronic Transactions

Freedom to express opinions, convey ideas, and obtain information through the use of Information and Communication Technology aims to support the creation of community welfare, increase the nation's intelligence, and provide protection and security for the community or users.

A sense of security for information technology users can be realized through legal protection against various types of criminal acts, both verbal, visual, and those

involving direct physical contact. However, the breadth of private space in social media activities and the lack of adequate prevention standards are significant challenges in tackling digital crime.

It is important to understand that freedom of opinion is a major pillar in the development of civilization and human quality, especially in democratic systems. Democracy cannot run without freedom of opinion—without it, public discussion as a means of control over government policies will not materialize. Even the existence of institutions such as the House of Representatives is highly dependent on this freedom. Even so, freedom still has limits. These boundaries can come from internal values such as morals and ethics, as well as from external ones such as social pressures and legal provisions.

The legal provisions that regulate and codify criminal acts related to freedom of opinion, including defamation, are listed in the ITE Law. Criminal acts that attack honor or good name, or better known as defamation, are clearly regulated in Article 310 of the Criminal Code and Article 27 paragraph (3) of the ITE Law. This criminal act includes statements or accusations submitted, with the intention of damaging a person's dignity or reputation in the eyes of the public.

In the Criminal Code, Article 310 explains that defamation can be done orally or in writing. Paragraph (1) stipulates that verbal insult to a person's honor can be subject to a maximum prison sentence of nine months or a fine of up to Rp4.5 million. Meanwhile, paragraph (2) adds that insults committed through writings, images, or other media disseminated to the general public are threatened with imprisonment for a maximum of one year and four months or a fine of Rp4.5 million.

Meanwhile, in the ITE Law, Article 27 paragraph (1) regulates acts carried out through electronic systems. Some of the important terms in this article include: "broadcast", "distribute", "transmit", and "make accessible" all of which refer to the activity of disseminating electronic information. In addition, this article also contains provisions regarding violations of morality and the meaning of the phrase "publicly known", namely information that can or has the potential to be accessed by many people who do not know each other, in accordance with the social standards of society at the time and place of the act.

Although it aims to maintain ethics and order in the digital space, Article 27 paragraph (1) jo. Article 45 paragraph (4) of the ITE Law is often the subject of debate because it is considered problematic in its application. Many parties consider that the provision contains duplicate norms and is multi-interpreted (rubber articles), and is even considered to be more vague than the Criminal Code. Article 27 paragraph (3) of the ITE Law also received a sharp spotlight because it was considered to open up

space for law enforcement officials to arbitrarily ensnare individuals for accusations of defamation in cyberspace, which could ultimately threaten freedom of expression in the digital era.

Defamation is a form of criminal act of insult that has been expressly regulated in Article 310 of the Criminal Code and Article 27 paragraph (3) of the ITE Law. The purpose of this arrangement is to protect the honor, dignity, and reputation of the individual, including the dignity of a person. However, in practice, the implementation of laws related to defamation is often not in line with normative provisions, especially in the judicial stages that involve subjective considerations from judges.

In today's digital era, similar cases often occur through social media platforms such as Facebook, Instagram, and Twitter. Perpetrators generally convey statements that are offensive or detrimental to other parties—either explicitly or implicitly—which are generally influenced by a lack of understanding of the law, low levels of education, and social environmental factors. Allegations made without clear evidence or basis often cause real harm, including psychological impact on the victim.

Juridically, the act of spreading statements that degrade a person's dignity through social media can be subject to criminal sanctions under the ITE Law. Therefore, freedom of expression in the digital space is not absolute. Every form of opinion submitted must consider social norms, communication ethics, and applicable legal rules so as not to violate the rights of other parties.

Legal reports for alleged defamation are usually filed when a person or an institution feels that their image or reputation has been damaged through widespread digital content. The form of content can be in the form of writing, images, videos, or other digital forms that are disseminated intentionally. Victims who feel aggrieved by the content have the legal right to file charges against the perpetrator.

Article 27A in the ITE Law states that anyone who deliberately attacks the honor or good name of another party through accusations intended to be known to the public through an electronic system can be subject to criminal sanctions. This provision is an adjustment to Article 433 of the Criminal Code as stated in the ITE Law. The formulation of Article 27A tends to be general in defining acts of insult committed through electronic media. However, the term "other person" in the article creates legal ambiguity, as it can be interpreted as an individual or group, thus creating uncertainty in its application.

The criminal sanction for this act is regulated in Article 27A juncto Article 45 paragraph (4) of the ITE Law, which is a prison sentence of up to two years and/or a

fine of IDR 400 million. Such actions include insults, slander, or accusations that degrade a person's dignity and cause harm.

Meanwhile, the dissemination of digital content containing elements of hatred based on SARA is regulated in Article 28 paragraph (2) juncto Article 45A paragraph (2) of the ITE Law. Under this provision, individuals who knowingly and without rights disseminate information that is provocative based on their identity may be subject to criminal sanctions.

It should be emphasized that defamation, both based on Article 310 of the Criminal Code and Article 27A jo. Article 45 paragraph (4) of the ITE Law is a complaint complaint. This means that the legal process can only run if the victim actively reports the act to law enforcement officials.

The ITE Law has undergone changes through revisions passed by the Government, which are now outlined in the ITE Law. This revision continues to be the subject of debate among civil society, including NGOs, academics, and legal practitioners, as a number of its provisions are still considered to limit the space for freedom of expression—a right expressly guaranteed by the 1945 Constitution. One of the important changes in the revision is the deletion of Article 27 paragraph (3), which is now replaced by Article 27A in Law Number 1 of 2024.

In determining whether an upload on social media can be categorized as defamation, consideration is needed to consider the content and background (context) of the upload. The assessment of whether a person's honor or reputation has been tarnished is highly subjective, as only individuals who feel aggrieved can state that an electronic information or digital document has been defamed.

B. The Problem of the Electronic Information and Transaction Law on the crime of Attacking Honor and Good Name is associated with legal certainty

Indonesia is known as a country of law, which is reflected in the various regulations that make up the national legal system. Almost all aspects of people's lives are regulated through a firm and clear legal apparatus. The existence of the law allows the government to regulate and create order in social life, so as to create more organized social conditions. In the legal system, there are three main elements that must be contained as part of the legal identity itself, one of which is the principle of legal certainty.

The principle of legal certainty is understood as the existence of laws and regulations that are formulated and promulgated clearly and definitely. This is important because legal certainty serves to avoid ambiguity or double interpretation, so as not to give rise to conflicts between norms in society.

Gustav Radbruch argued that legal certainty is an essential part of the law itself. In his view, legal certainty is one of the results of the legal process, or more specifically, it is the result of the formation of laws and regulations.

An event can be categorized as defamation if it meets a number of elements, including:

1. the existence of false accusations that attack the honor and dignity of the individual,
2. there is an element of insult or harassment,
3. use of unauthorized or false identities,
4. the dissemination of the allegations openly to the public, and
5. the occurrence of losses both material and immaterial to the aggrieved party.

The formulation of Article 27A is considered to have editorial weaknesses because it contains ambiguities that allow law enforcement officials to interpret broadly and subjectively. As a result, anyone can be charged with this article, both ordinary individuals and public officials who feel that their good name is defamed. This article also has the potential to create legal uncertainty and can ignore the human rights of perpetrators, who even though they are suspected of committing violations, must still be treated as protected subjects of law.

If this condition of legal uncertainty continues, it can reduce public trust in the legal system and its enforcement institutions. Situations like this should not be allowed. In this context, legal certainty is absolute, because every action of a citizen should be based on the applicable legal rules.

Basically, every individual has a fundamental right to convey information through the various technology platforms available. If freedom of expression, especially in public spaces, is disproportionately restricted, then it is contrary to the constitution, namely Article 28F of the 1945 Constitution, which guarantees the right of everyone to obtain, convey, and access information.

Based on the explanation of Article 27A in the 2024 ITE Law, what is meant by an act of attacking honor or good name is an act that degrades or damages a person's reputation and dignity to the point of causing harm to that person, including acts of blasphemy and/or slander. To understand the application of this article, there are several elements that need to be considered in determining the existence of a criminal act of defamation:

1. The subject of the law, namely "everyone" in question, is the disseminating party who can be held criminally responsible. Therefore, it is important to carefully analyze who is the main disseminator of the content in question.

2. Intentionality, that is, the act is done deliberately, which can be proven through whom the information is disseminated and with what purpose. Whether the purpose is solely to bring down someone personally, or in order to convey the allegation of a criminal act.
3. An attack on honor is carried out by conveying an accusation or something that is detrimental to someone's good name.
4. The purpose of disseminating it to the public is to make the information known to the wider community.

For example, in the case involving Haris Azhar and Fatia Maulidiyanti. This case shows that Article 27A in the 2024 ITE Law is a provision that has the potential to be interpreted in various ways or known as the "rubber article". This provision is considered to be contrary to Article 27 paragraph (1) of the 1945 Constitution which guarantees the protection of the human rights of all citizens. Therefore, the application of this article by law enforcement officials must be carried out carefully and balanced, while still prioritizing the principle of respect for individual constitutional rights.

Defamation through electronic media is a form of unlawful acts, because it is contrary to written law, social ethics, and can be morally and materially harmful. However, there needs to be certainty that the implementation of the ITE Law, especially Article 27A, is not used as a tool to criminalize critical groups or victims of criminal practices that actually voice the truth. Article 27A has drawn criticism from various circles such as academics, legal practitioners, civil society organizations, and non-governmental organizations, because it is considered subjective and prone to abuse by law enforcement officials and those who feel aggrieved by news through electronic means. Therefore, a judicial review mechanism is needed for provisions that are considered to limit the freedom of expression of civil society.

In the context of criminal law, the elements of PMH include acts that expressly violate the law, are carried out without lawful authority, and are contrary to the general principles of the applicable legal system.

There are several main challenges and controversies in the application of the law to defamation cases through social media in Indonesia, including:

1. **Difficulty in identifying the perpetrator:**

Defamers often hide their identities through fake or anonymous accounts, making the law enforcement process difficult and requiring complex tracking efforts.

2. **Unclear legal limitations:**

The ITE Law is considered to have an unclear formulation of norms in regulating the boundary between legitimate criticism and insult. This opens up different interpretations and has the potential to cause legal uncertainty, as well as allow abuse by those in power.

3. Criticism of applicable regulations:

Human rights activists, journalists, and civil society groups argue that these regulations are vulnerable to being used to restrict freedom of expression in the digital space. In practice, the articles in the ITE Law are considered to be able to be used as a tool to silence criticism.

This phenomenon is an increasingly concerning issue in today's digital era. The rapid development of social media and the internet makes it easier for individuals to disseminate information widely and quickly, both accurate and misleading information. This condition confirms the importance of a comprehensive understanding of how the law regulates this problem. The urgency of this analysis lies not only in the aspect of law enforcement, but also in order to ensure the protection of individual rights in the midst of the ever-evolving complexity of the digital space.

Technological advances demand an adequate legal framework to protect society from defamation in the digital space. Understanding legal accountability in the ITE Law is important to increase public legal awareness and encourage regulatory updates to be more responsive to social media dynamics.

There are several points of difference and similarities that are worth paying attention to:

1. ITE Law Number 1 of 2024

The ITE Law also emphasizes the responsibility of digital platforms in preventing and handling content that contains defamation.

2. Criminal Code (KUHP)

The Criminal Code covers forms of defamation both orally, in writing, and electronically. The proof mechanism also follows general criminal procedures without a special approach to digital media.

The case of Meila Nurul Fajriah is one example that has caused public concern. Many people consider that the case reflects inequality in the application of the law. Meila, an advocate from LBH Yogyakarta who is carrying out assistance tasks for victims of sexual violence, was actually reported for alleged defamation. In fact, as stipulated in Article 29 of the Sexual Violence Crime Law (TPKS Law), victim companions—including

psychologists, social workers, advocates, and paralegals—cannot be subject to criminal or civil charges while carrying out assistance duties.

In Meila's case, her statement in the Zoom Meeting forum—which should be categorized as a form of opinion or defense in the legal process—was actually considered defamation. This shows that the application of Article 27A of the ITE Law is still very problematic and opens up a gap in criminalization against parties who should be protected by law. The case can be a reflection for the public to understand the boundaries between criticism, opinion, and defamation. Thus, this case has an important educational value in building public legal awareness in the wise use of information technology.

The unclear formulation of Article 27A in the ITE Law raises various problems in practice, especially when someone submits complaints or criticisms to the government or public services that are considered unsatisfactory. The criminal law policy in Indonesia, which still maintains the insult article in the Criminal Code, aims to uphold the value of justice, arguing that insult, which is in the form of defamation, can be considered as *character assassination*. In addition, defamation is considered not in line with the values of Indonesian society. Therefore, defamation is categorized as *rechtdelicten* (an act that is considered a violation of justice before it is regulated in the law) and not *wetdelicten* (an offense because it is contrary to the law). In the social and religious context, defamation is considered to violate the norms of decency, especially if it contains elements of defamation.

The right to freedom of expression and opinion has been widely recognized, both in national and international law. At the international level, this right is guaranteed in Article 19 of the *Universal Declaration of Human Rights* (UDHR) of 1948. Thus, Indonesia has an adequate legal basis to guarantee the right to freedom of opinion, because this right is a human right of every individual that must be protected. The government itself has made changes to the ITE Law. This change is expected to answer the needs of the community and reduce legal polemics that often arise regarding freedom of opinion in the digital space.

However, changes in the article on insult or defamation, especially Article 45 paragraph (4) juncto Article 27A of Law No. 1 of 2024, actually raise new concerns. This formulation is considered to still open a gap for criminalization of opinions, facts, criticisms, or expressions conveyed on social media.

Although the article also includes an exception that such actions are not considered criminal acts if they are carried out for self-defense or in the public interest (Article 45 paragraph 7), in fact, if an opinion or reality is considered not in accordance with certain norms, the perpetrator can still be punished. This is considered contrary to the Decree of the Three Ministers on Guidelines for the Implementation of the ITE Law, which states

that the submission of facts, opinions, or even criticism is not a criminal act. Therefore, many people consider that Article 45 paragraph (4) of the latest version of the ITE Law not only limits freedom of opinion, but also contradicts the 1945 Constitution and other regulations that guarantee the right to expression.

If reviewed from the editorial of Article 45 Paragraph (4) jo. Article 27A of the ITE Law appears to be similar to Article 310 of the Criminal Code. In the provisions of Article 310 paragraph (2) of the Criminal Code, it is stated that if the act of desecration is carried out through written media or images that are disseminated, shown, or pasted in public spaces, then the perpetrator can be subject to a maximum of 1 year and 4 months in prison or a fine of up to Rp4.5 million. Therefore, Article 45 Paragraph (4) jo. Article 27A of the ITE Law of 2024 is basically a duplication of the provisions of Article 310 paragraphs (1) and (2) of the Criminal Code, with almost the same substance in terms of defamation through electronic media. However, there is a significant difference in the threat of punishment—namely 2 years in prison in the ITE Law compared to 1 year and 4 months in the Criminal Code—which ultimately raises legal uncertainty for the social media user community.

Since the enactment of the first generation of the ITE Law in 2008, various problems related to the implementation of criminal sanctions have begun to emerge. The revision in 2016, as a second generation, has also not been able to overcome the problem of multiple interpretations that cause controversy. With the birth of the third generation through the second change in 2024, it is hoped that the problems that existed before can be corrected. One of the important steps is to harmonize the criminal provisions in the ITE Law with Law Number 1 of 2023 concerning the Criminal Code. This harmonization is crucial because the National Criminal Code aims to unify and update the criminal law as a whole.

The National Criminal Code has deleted several criminal provisions in the ITE Law, such as those related to decency, insults, hate speech, illegal access, illegal wiretapping, and the imposition of punishment due to material losses. However, because the National Criminal Code will only take effect from 2026, the Government has adjusted the prohibition material in the ITE Law to be as close as possible to the spirit of the National Criminal Code. Thus, the changes stipulated in Law Number 1 of 2024 will only be valid for approximately two years.

However, the author argues that freedom of opinion and expression cannot be exercised absolutely without limits. The 2024 ITE Law has accommodated the need for restrictions on these freedoms. However, legal certainty related to the crime of defamation is still a complex issue. Therefore, there is a need for objective and measurable criteria in handling defamation cases, especially those that occur in the digital space, so that there is no abuse of authority or legal injustice

The crime of defamation through electronic media can be recognized through several indicators. First, the act is carried out by utilizing information technology. Second, the main target is information or electronic documents. Third, the information is disseminated or transmitted through digital networks so that it can be accessed by other parties. Fourth, the content of the information or document aims to damage the reputation or honor of a certain individual. Finally, the action causes harm to the legal interests of the other party.

In summary, defamation is an act that attacks a person's dignity or honor. In other words, a good name is a social award given by society to individuals based on their position in the social environment. Legally, the crime of defamation is regulated in various laws and regulations. However, in practice confusion often arises when defamation is carried out without explicitly stating the identity of the victim or there is no direct statement directed at a specific individual. This makes it difficult to determine who exactly is a victim of pollution and who has the right to report the case.

According to Jan Michiel Otto, legal certainty has a juridical dimension, although it only applies within the limits of the five conditions mentioned earlier. Otto also stated that the law must be enforced by institutions that are indeed tasked with ensuring legal certainty, in order to maintain order and justice in society.

Sudikno Mertokusumo stated that legal certainty is a guarantee so that the law can be applied appropriately and appropriately. With legal certainty, a person who has rights is those whose rights have been determined through a valid legal decision.

Article 27A refers to Article 433 of the Criminal Code as stipulated in Law Number 1 of 2023. The criminal threat in this article is in the form of imprisonment for a maximum of two years and/or a fine of up to IDR 400 million, with the scope of acts including insult, slander, or other actions that defame a person. This criminal act is a complaint, so the legal process can only be carried out based on reports from the victim directly.

Normatively, the ITE Law upholds the principles of legal certainty, prudence, utility, good faith, and freedom in the use of information technology. The main goal is to ensure a sense of security and justice for users and operators of electronic systems. However, its implementation often poses problems because multi-interpreted articles are often used to silence expression, intimidate, or as a means of revenge.

The lack of clarity in the redaction in certain articles is contrary to the principle of legality, which requires clarity and legal certainty in every criminal regulation. This also violates the principle of clarity of formulation as stipulated in Article 5 of Law Number 12 of 2011 concerning the Formation of Laws and Regulations, which emphasizes the importance of legal structure and language that does not give rise to double interpretation.

In line with this view, the second revision of the ITE Law must pay attention to its formation process. Fuller's *Theory of Morality of Law* emphasizes that effective law must be easy for society to understand and consistent so as not to create uncertainty.

The ITE Law has accommodated provisions in the National Criminal Code to protect internet users. This law explicitly states that content of artistic, cultural, sports, and scientific or health-related values is not included in the category of moral violations. In addition, a person cannot be criminally charged if he spreads insulting or defamatory content either for the public interest or in the context of self-defense.

This law also regulates additional protections for internet and social media users. Social media organizers must be in the form of Indonesian legal entities and domiciled in the country. This is important so that they can be held legally accountable according to Indonesian regulations. One of the services they can provide is digital signatures.

In Decision Number 105/PUU-XXII/2024, the Constitutional Court stipulates that the provisions of insult in the ITE Law do not apply to government institutions, community groups, or business entities. In its consideration, the Constitutional Court stated that the provisions in Article 27A of the ITE Law regarding defamation must be interpreted in a limited way to prevent abuse.

First, the Court emphasized that the phrase "other person" listed in Article 27A and Article 45 paragraph (4) of the ITE Law only refers to individuals. Thus, entities such as government institutions, groups with certain identities, institutions, corporations, professions, or positions cannot be reported parties in alleged defamation. The reason behind this restriction, according to the Court, is because in a democratic state system, criticism of government institutions or public institutions is part of the supervision and form of public participation in providing input on matters related to the public interest.

One of the important provisions in the Court's decision is the exclusion of government institutions, corporations, professions, and positions from legal subjects that can report defamation in the ITE Law. The Court affirmed that only individuals (individuals) with the status of victims are authorized to file a report in the case.

This decision is contained in the Constitutional Court Decision Number 105/PUU-XXII/2024, which partially granted the request for a material review submitted by Daniel Frits Maurits Tangkilisan, a resident of Karimunjawa, Jepara Regency, against Article 27A of the ITE Law. Therefore, to ensure legal certainty as guaranteed in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the phrase "other persons" in Article 27A of Law 1/2024 is declared conditionally unconstitutional if it is not interpreted as "excluding government institutions, groups with a certain identity, institutions, corporations, professions, or positions."

This ruling is a step forward in ensuring the protection of freedom of expression, but its implementation on the ground still faces challenges. The author is of the view that even though the Court has clarified the interpretation of the article, concrete implementation instruments are still needed, such as implementing regulations or technical guidelines for law enforcement officials so that there are no deviations in interpreting the phrase "other person". In addition, it is necessary to strengthen the understanding of the authorities on constitutional principles so that the principle of proportionality is maintained when dealing with allegations of defamation in the digital world.

The author is of the view that this restriction should be really applied by law enforcement officials so that there is no criminalization of legitimate forms of expression. A statement or electronic information can only be charged with the law if it actually contains elements of sedition based on a certain identity, is done intentionally, is conveyed openly, and has the potential to cause discrimination or violence.

CONCLUSION

1. Because the National Criminal Code will only be enforced in 2026, the government is trying to adjust the prohibition provisions in the ITE Law to be in line with the National Criminal Code. This means that the amendment to Law Number 1 of 2024 as the second revision of Law Number 8 of 2008 concerning Information and Electronic Transactions will only be valid for approximately two years. According to the author, the freedom to express opinions and expression cannot be exercised absolutely without limits. The ITE Law of 2024 has set certain limits on this freedom. However, legal certainty in defamation cases remains a complicated problem. There is a need for clear and objective criteria in handling defamation cases, especially those that occur on social media platforms, so that there are no irregularities in the application of the law or injustice to the community.
2. Indonesia has a strong legal basis to guarantee freedom of opinion as a human right. However, Article 27A of Law Number 1 of 2024 is considered a rubber article that has the potential to contradict the 1945 Constitution, so it needs to be reviewed and applied carefully. Defamation through electronic media is a violation of the law that is contrary to ethics, justice, and social norms.

BIBLIOGRAPHY

- Abdul Hakim G. Nusantara, Luhut M.P. Pangaribuan, Mas Achmad Santosa, KUHAP; Code of Criminal Procedure and Implementing Regulations, Djambatan, Jakarta, 1986.
- Al Araf, Anton Aliabbas et al, Papuan Sekuritas: The Implications of the Security Approach to Human Rights Conditions in Papua, Imparsial, Jakarta, 2011.
- Aulia Fitri, TNI-Polri and the National Vaccination Program. A Brief Study of Actual and Strategic Issues, Vol. XIII, No.4/II/Puslit/February/2021. Research Center of the Expertise Body of the House of Representatives of the Republic of Indonesia.
- Armunanto Hutahaean, The Application of Restorative Justice by the National Police of the Republic of Indonesia to Realize Legal Goals, To-ra Law Journal: Law to Regulate and Protect Society, Volume 8 Issue 2, 2022.
- CDC, "Severe Acute Respiratory Syndrome (SARS) and Update on SARS Cases United States and Worldwide,(<https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5249a2.html>)," accessed on March 5, 2022, at 14:37 WIB.
- Fajria Anindya Utami. Corona Pandemic, <https://www.wartaekonomi.co.id> (accessed on: June 16, 2022, at 11.25 WIB).
- Fitrianto, I. (2024). Critical Reasoning Skills: Designing an Education Curriculum Relevant to Social and Economic Needs. *International Journal of Post Axial: Futuristic Teaching and Learning*, 245-258
- Fitrianto, I. (2024). Innovation and Technology in Arabic Language Learning in Indonesia: Trends and Implications. *International Journal of Post Axial: Futuristic Teaching and Learning*, 134-150.
- Fitrianto, I. (2024). Strategi Guru Pai Dalam Mengatasi Kesulitan Belajar Pada Mata Pelajaran Hadis Kelas 8 MTS Ibadurrahman Subaim. *IJER: Indonesian Journal of Educational Research*, 356-363.
- Fitrianto, I. (2025). Beyond Competence: Rethinking Education for Holistic Well-Being and Happiness. *International Journal of Post Axial: Futuristic Teaching and Learning*, 1-11.
- Fitrianto, I., & Abdillah, F. M. (2018). MODEL PEMBELAJARAN PROGAM PEMANTAPAN BAHASA ARAB DAN SHAHSIAH (KEMBARA) KE 4 MAHASISWA KOLEJ UNIVERSITI ISLAM ANTAR BANGSA SELANGOR (KUIS) TAHUN 2018. *University of Darussalam Gontor* 15-16 September 2018, 121.

- Fitrianto, I., & Farisi, M. (2025). Integrating Local Wisdom into 21st Century Skills: A Contextual Framework for Culturally Relevant Pedagogy in Rural Classrooms. *International Journal of Post Axial: Futuristic Teaching and Learning*, 109-121.
- Fitrianto, I., & Layalin, N. A. (2025). The Paradigm of Physical Punishment from the Perspective of Islamic Education and Its Implementation in Indonesia and Malaysia. *International Journal of Post Axial: Futuristic Teaching and Learning*, 147-156.
- Fitrianto, I., & Saif, A. (2024). The role of virtual reality in enhancing Experiential Learning: a comparative study of traditional and immersive learning environments. *International Journal of Post Axial: Futuristic Teaching and Learning*, 97-110.
- Fitrianto, I., Al-Faruqi, M. R., & Hanifah, N. A. (2025). The Contributions of Ibn Malik to Arabic Language Education: A Historical and Pedagogical Analysis. *IJAS: International Journal of Arabic Studies*, 1-11.
- Fitrianto, I., Hamid, R., & Mulalic, A. (2023). The effectiveness of the learning strategy" think, talk, write" and snowball for improving learning achievement in lessons insya'at Islamic Boarding School Arisalah. *International Journal of Post Axial: Futuristic Teaching and Learning*, 13-22.
- GPH. Haryomataram, *Humanitarian Law*, Rajawali, Jakarta, 1984.
- Harizaldi, Rahmanidar & Isfandir Hutasoit, *The Role of the Police in Preventing and Breaking the Chain of the Spread of Covid-19 in the Jurisdiction of the Bareleng Police*, Law Study Program, Faculty of Law, University of Riau Islands, 2021.
- <http://www.padk.kemkes.go.id/article/read/2020/04/23/21/hindari-lansiadari-covid-19.html> Retrieved 03/03/2022
- <https://hasanaguero.wordpress.com/2012/05/14/berpikir-induktif-dan-deduktif/> accessed on March 4, 2022.
- <https://kopolnas.go.id/tugas-polri-semakin-berat-di-masa-pandemi/> accessed on 04/03/2022
- Huala, Adolf, *International Dispute Settlement Law*, Sinar Grafika, Jakarta, 2012.
- Idah Wahidah, Muhammad Andi Septiadi et al. Covid-19 Pandemic: "Analysis of Government and Community Planning in Various Prevention Efforts". *Journal of Management and Organization* Vol. 11 No. 3 December 2020.

- Presidential Instruction Number 4 of 2020 concerning Refocussing activities, budget reallocation and procurement of goods and services in order to accelerate the handling of Corona Virus Disease 2019
- Instruction of the Minister of Home Affairs No. 01 of 2021 concerning the Implementation of Activity Restrictions for the Control of the Spread of Corona Virus Disease 2019.
- Marissa Elvia, "The Role of the Police in Combating Crime", Journal of the Faculty of Law UNILA, October 07, 2019 accessed on March 03, 2022
- Monika Freshlini Patiyati Daur, "Correlation between Student Health During the Covid-19 Pandemic on Students' Motivation to Learn Physics", Hanata Dharma University Yogyakarta, Thesis.
- Great Dictionary of Indonesian Language, Balai Pustaka, Jakarta.
- Great Dictionary of Indonesian Online. 2016. <http://kbbi.kemdikbud.go.id> (accessed on: June 16, 2022, at 11.22 WIB).
- Presidential Decree Number 7 of 2020 concerning the Task Force for the Acceleration of Handling Corona Virus Disease 2019
- Presidential Decree Number 9 of 2020 concerning Amendments to Presidential Decree Number 7 of 2020 concerning the Task Force for the Acceleration of Handling Corona Virus Disease 2019.
- Decree of the Minister of Health Number HK. 01.07/Menkes/382/2020 concerning Health Protocols which include regulating policies on hand washing, maintaining distance and wearing masks,
- Presidential Decree Number 11 of 2020 concerning the Determination of the Covid-19 Public Health Emergency, Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disasters of the Spread of Corona Virus Disease 2019 as a National Disaster
- Criminal Code
- Government Regulation No. 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease
- Regulation of the Minister of Health Number 9 of 2020 which specifically regulates Large-Scale Social Restrictions (PSBB)
- Government Regulation No. 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease

Center for Health Determinant Analysis. Avoid the elderly from COVID19.
www.padk.kemkes.go.id (accessed on: June 18, 2022, at 13.29 WIB).

Sadjijono, Polri in the Development of Law in Indonesia, Laksbang Pressindo, Yogyakarta, 2008.

Soejono Soekanto and Sri Mamudji, Normative Law Research: A Brief Overview, Rajawali Press, Jakarta, 2006.

Constitution of the Republic of Indonesia 1945

Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia

Law No. 6 of 2018 concerning Health Quarantine

www.polri.go.id accessed on June 03, 2022 at 21:59