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The Paradox of Freedom of Expression: An Evaluation of the Implementation of the ITE Law from a Human Rights Perspective in Indonesia

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Abstract: This study aims to analyze the impact of the implementation of ambiguous provisions in the Electronic Information and Transactions Law (EIT Law) on freedom of expression, and to evaluate them based on human rights principles. The research method employed is a normative legal approach, with data collected through a literature review of secondary sources. The results of the study indicate that the existence of “vague” provisions such as Articles 27, 28, and 29 of the EITL creates legal uncertainty and triggers a chilling effect in society. Inconsistent law enforcement that frequently disregards the principle of due process of law leads to the criminalization of public criticism, which contradicts the international standards of the ICCPR. The conclusion of this study emphasizes the need for regulatory reform through the reconstruction of norms in accordance with the principle of *lex certa* and the prioritization of the *ultimum remedium* approach. The transformation of digital law must be able to integrate human rights values to ensure a balance between public stability and the protection of democratic aspirations.

Keywords: Freedom; Restrictions; Human Rights; *Ultimum Remedium*; ICCPR

Introduction

The digital transformation in Indonesia has precipitated fundamental shifts across multiple dimensions of social life, encompassing communication, economics, and political discourse. The proliferation of the internet, particularly across social media platforms, has engendered unprecedented spaces for public interaction, information sharing, and network building. Social media, as an online-based medium, facilitates bidirectional communication. Beyond fostering various forms of innovation, digital transformation has substantially amplified and reinforced civic engagement within democratic mechanisms, most notably in the articulation of criticism directed at government policies.¹ Nevertheless, this development has not been without adverse consequences. The digital sphere has simultaneously become a domain vulnerable to the dissemination of disinformation, hate speech, and privacy violations circumstances that compel the state to calibrate its regulatory frameworks in order to uphold order and security within the digital environment.

As a state governed by the rule of law, Indonesia bears a constitutional obligation to guarantee the protection of human rights, including the right to freedom of expression. This right, however, is not absolute, as it remains subject to limitation; the state is correspondingly obligated to preserve public stability and prevent the abuse of expressive freedoms. The role of the rule of law in the digital era has grown increasingly complex, as it must strike a balance between safeguarding freedom of expression and the imperative to regulate and discipline the digital space against illegal content, hate speech, and other

¹ Imanuel, T., Warjio, and I. Fauzan. "Analysis of Freedom of Expression in the Digital Age in the Issue of Electronic Information and Transaction Law in Indonesia." *Perspektif* 12, no. 4 (2023): 1117–1126. <https://doi.org/10.31289/perspektif.v12i4.9875>.

legal infractions.² In response to this challenge, Indonesia enacted the Law on Electronic Information and Transactions (*Undang-Undang Informasi dan Transaksi Elektronik - UU ITE*) as the principal legal instrument governing activities in cyberspace. The ITE Law is designed to cultivate a digital environment that is healthy, secure, and conducive for society. The law regulates freedom of opinion, delineates potential violations, and establishes the necessary measures to realize a digital space that is democratic, ethical, and respectful of human rights. Freedom of expression does not, by its nature, imply unconditional license. Every individual is entitled to voice their opinions; however, such entitlement must be exercised with responsibility and with due regard for the rights of others. It is precisely within this context that the ITE Law operates serving to equilibrate both imperatives by establishing the permissible boundaries of expression in cyberspace.

Meanwhile its regulatory intent, the implementation of the ITE Law in Indonesia has frequently generated significant controversy and raised legitimate concerns regarding the suppression of freedom of expression. Several provisions within the ITE Law most notably Articles 27, 28, and 29 have been widely criticized as susceptible to multiple interpretations and potentially restrictive of expressive freedoms.³ Numerous instances of criticism directed at the government and expressed through social media platforms have culminated in criminal prosecution on grounds of ITE Law violations, thereby constraining public discourse. This has given rise to serious concerns regarding the silencing of dissent, the deterioration of democratic quality, and the violation of fundamental human rights principles.⁴ Legal uncertainty and the potential for abuse inherent in the law's elastic provisions have further exacerbated the situation. One of the principal sources of controversy is the application of Article 27 paragraph (3) of the ITE Law concerning defamation, a provision widely regarded as overly flexible and frequently deployed to prosecute individuals who articulate criticism or express opinions in public forums. This dynamic has intensified apprehensions regarding the curtailment of freedom of expression particularly across social media wherein opinions are readily misconstrued as acts of defamation. A compounding issue lies in the insufficient comprehension, among both the general public and law enforcement officers, of the boundaries of freedom of expression and the protection of digital rights. Inconsistent law enforcement, compounded by a lack of transparency and accountability in the application of the ITE Law, has substantially elevated the risk of human rights violations. Accordingly, the revision and reform of the ITE Law has become an urgent imperative, so that the law may operate equitably, provide legal certainty, and continue to protect freedom of expression.⁵ Grounded in the foregoing discussion, this study aims to analyze the impact of the implementation of the ITE Law's ambiguously worded provisions on the space for freedom of expression, as well as to evaluate and offer recommendations pertaining to regulatory improvements and law enforcement practices that are consonant with human rights principles and the needs of Indonesia's digital society.

Method

This study employs a normative juridical research method. As elaborated in the seminal work *Legal Research Methodology*, the normative juridical approach constitutes a research method that places primary emphasis on the examination of legal norms and prevailing statutory regulations. This approach was selected on the grounds that the issues under investigation are intrinsically linked to the consistency

² Alvina, H., L. Julianti, A. A. P. W. Sugiantari, and I. W. W. W. Udytama. "The State of Digital Freedom in Indonesia an Assessment of Online Censorship, Privacy, and Free Expression." *Journal of Digital Law and Policy* 1, no. 3 (2022): 141–152. <https://doi.org/10.58982/jdlp.v1i3.301>.

³ Afisa, A., Z. Qodir, A. Habibullah, and U. Sugiharto. "Analysis of the ITE Law on Digital Rights and Democratic Values in Indonesia." *The Journal of Society*

⁴ Anak Agung Ayu Nanda Saraswati. "The Need to Protect Freedom of Expression on the Internet Through a Human Rights-Based Approach in Indonesia." *ASEAN Journal of Legal Studies* 2, no. 1 (2019): 55–69.

⁵ Sufripto, E., Z. Lubis, and N. S. S. Siregar. "Analysis of the Implementation of the Electronic Information and Transactions Law, as Revised, by the Indonesian National Police in North Sumatra." *Perspektif* 13, no. 4 (2024): 956–963. <https://doi.org/10.31289/perspektif.v13i4.12011>.

between positive legal norms, constitutional principles, and law enforcement practices. A statutory approach is applied to analyze a range of pertinent regulations, including the 1945 Constitution of the Republic of Indonesia as well as the ITE Law and its subsequent amendments. Furthermore, case study analysis is conducted on cases involving ITE Law violations that have had demonstrable implications for freedom of expression. The data collection technique employed in this study is a systematic literature review, involving the identification and processing of research materials drawn from secondary data sources. Such secondary sources encompass a broad array of scholarly and reference materials, including books, academic literature, peer-reviewed journals, articles, papers, and other relevant publications.

Findings and Discussion

The discussion aims to answer the research problems and questions, narrate how the findings were obtained, explain the meaning of the research results, how the research results can solve the problems and the possibility of its development. In addition, the discussion must address the issues and research goals.

The Function of the Rule of Law in Harmonizing the Protection of Freedom of Opinion and Public Stability in Cyberspace

The concept of the Rule of Law positions juridical norms as the foundational pillar underpinning governance and social life, wherein every act of authority and every action taken by members of society must be grounded in legal provisions in order to realize a just, orderly, and stable social order. Nevertheless, the advent of the digital era has introduced novel challenges that test the capacity of the rule of law information technology has engendered a digital space that substantially facilitates public access to information and freedom of expression. Simultaneously, however, this digital space has opened avenues for potential abuse, including the proliferation of disinformation, hate speech, and privacy violations. The rule of law is thus compelled to strike a balance between the protection of freedom of expression and the imperative to maintain public stability within the digital realm.⁶

Three cardinal principles are embedded within every Rule of Law system, referred to collectively as "The Rule of Law":

First: Supremacy of Law-all governmental actions and conduct of citizens must be grounded in applicable law. Accordingly, no power supersedes the law, and its enforcement must be carried out equitably and without discrimination.

Second: Due Process of Law-every individual is entitled to fair legal treatment, encompassing the right to be heard, the right to a defense, and the right to a transparent and accountable legal process. This principle has become increasingly essential in the digital era, as law enforcement frequently operates with greater speed and relies heavily on technology.

Third: Protection of Human Rights the rule of law obligates the state to safeguard the fundamental rights of its citizens, including freedom of expression, the right to privacy, and the right to access information. In the context of the digital era, the protection of human rights has grown increasingly critical, as rights violations may occur on a massive, rapid, and cross-border scale.

It follows, therefore, that the ITE Law must not be formulated with provisions susceptible to multiple interpretations, as normative ambiguity would undermine legal certainty the foundational bedrock of the Rule of Law.⁷

The central challenge confronting the rule of law in the digital age lies in the velocity of information dissemination, which is at times disproportionate to the quality of fair law enforcement. Regulations such as the ITE Law in Indonesia reflect the state's endeavor to contain potential threats to public order in the

⁶ Austin, L. M. "Digital Power and Law's Rule." *Law and Philosophy* (2024). <https://doi.org/10.1007/s10982-024-09500-9>.

⁷ Syafitri, M., and A. J. Santos. "Tantangan dan Solusi Penerapan Prinsip Rule of Law dalam Sistem Hukum Indonesia." *Karimah Tauhid* 4, no. 4 (2025): 2248–2257. <https://doi.org/10.30997/karimahtauhid.v4i4.18674>.

digital space. However, the presence of ambiguously worded norms paradoxically generates legal uncertainty and risks constraining freedom of expression. The definitional obscurity and potential for abuse embedded in such provisions engender apprehension and uncertainty among the public. The urgency of evaluating the function of the rule of law becomes increasingly apparent when examined against the empirical data on trends of digital criminalization in Indonesia. According to monitoring records⁸, there has been a significant escalation in the utilization of problematic provisions, with more than 65% of cases processed under the ITE Law pertaining to defamation offenses targeting criticism of public policy.

The critical problem extends beyond ambiguous norms to encompass inconsistencies in law enforcement, commonly referred to as selective enforcement. Legal proceedings that frequently disregard the principle of due process of law reveal a tendency toward the repressive instrumentalization of law in the service of maintaining superficial political stability.⁹ Criticism directed at those in power is prosecuted criminally at a disproportionately higher rate than other forms of expression devoid of political dimensions a phenomenon that constitutes a systemic deviation, given that the application of law must be carried out in a neutral and non-discriminatory manner. The enforcement of the ITE Law continues to be marred by disparities in case handling and the intrusion of non-legal factors into the enforcement process.¹⁰ Compounding this, the limited transparency in investigative and prosecutorial proceedings exacerbates legal uncertainty, as the public is denied adequate access to the reasoning underlying the decisions of law enforcement authorities. This situation erodes the principle of due process of law and diminishes public trust in legal institutions.¹¹

In light of the foregoing, the function of the rule of law in harmonizing the protection of freedom of opinion with public stability in cyberspace is of paramount importance. An ideal legal framework must prioritize substantive justice, wherein the protection of human rights is maintained while simultaneously imposing constraints on state power to prevent arbitrariness.¹² The concepts of Rechtsstaat and the rule of law must be adapted to the advancement of information technology without sacrificing foundational principles such as the supremacy of law, due process, and the protection of human rights. Furthermore, the integration of human rights values into technology regulation is essential to harmonizing these competing imperatives. Legal reform in the digital era must be capable of accommodating the pace of technological change without subordinating the principles of the Rule of Law. Balance can be achieved when the state establishes clear and transparent regulations, ensuring that public stability is upheld through public confidence in a just legal system not through the suppression of expressive freedom.

The Impact of the Implementation of Ambiguously Worded Provisions of the ITE Law on the Space for Freedom of Expression and Efforts at Evaluation Based on Human Rights Principles

Freedom of expression constitutes a fundamental right guaranteed within the international human rights framework, most notably in the International Covenant on Civil and Political Rights (ICCPR), which Indonesia has ratified through Law Number 12 of 2005. This principle is further affirmed in Article 28E of the 1945 Constitution. However, this freedom is not absolute, as it may be subject to limitation provided that the principles of legality, necessity, and proportionality are duly satisfied. Problems began to emerge in the implementation of the ITE Law particularly in relation to provisions concerning

⁸ SAFEnet. "Southeast Asia Freedom of Expression Network (SAFEnet)." Accessed 2021. <https://safenet.or.id/id/tentang/>.

⁹ Sinaga, H., and A. C. Irawati. "Penerapan Undang-Undang Tentang Informasi dan Transaksi Elektronik (UU ITE) Dalam Kebebasan Berpendapat dan Berekspresi." *Jurnal Hukum* 7, no. 1 (2026): 172–180.

¹⁰ Pahotan Gultom. "Penerapan UU ITE Dalam Kebebasan Berekspresi dan Berpendapat di Masyarakat." *Badan Pembinaan Hukum Nasional*, 2025. <https://rechtsvinding.bphn.go.id/articles/1023>

¹¹ Jabar, S., and A. Frinaldi. "Akuntabilitas dan Transparansi Dalam Perspektif Hukum Administrasi Negara." *Gudang Jurnal Multidisiplin Ilmu* 2 (2024): 720–728

¹² Putri, D. R. E. "Perlindungan Hak Asasi Manusia Dalam Sistem Hukum Tata Negara Indonesia dan Perspektif Hukum Islam." *Jurnal Ilmu Pertahanan, Politik dan Hukum Indonesia* 2, no. 3 (2025).

defamation and hate speech-which have been deemed to fail to meet these three criteria. Normatively, the ITE Law was formulated on the basis of the principles of legal certainty, good faith, and freedom in the utilization of technology.¹³ This matter was scrutinized in Constitutional Court Decision Number 50/PUU-VI/2008, wherein the Court declared that defamation provisions under the ITE Law remain constitutional, yet must be construed as complaint-based offenses (*delik aduan*) and interpreted with reference to the Criminal Code. In its ratio decidendi, the Court emphasized that the protection of reputation must not disproportionately compromise freedom of expression. The Constitutional Court further reaffirmed the importance of this interpretive boundary in Decision Number 2/PUU-VII/2009, underscoring that defamation provisions ought not to be applied arbitrarily, and that criticism expressed in the public interest must not be categorically treated as a criminal act.

Notwithstanding these constitutional pronouncements, the enforcement of the ITE Law has demonstrated a tendency to deviate from the interpretive boundaries established by the Constitutional Court. A report by Tempo (2023) reveals that the application of defamation provisions under the ITE Law has disproportionately been invoked within contexts characterized by power imbalances particularly when complaints are lodged by parties occupying superior social or political positions against individuals voicing criticism. This pattern indicates a potential departure from the principle of equality before the law within the human rights framework, a concern further substantiated by the findings of SAFEnet (2021), which documented a significant surge in ITE Law complaints filed against activists, journalists, and civil society members particularly in cases involving criticism of the government or public institutions.

This problem is further reflected in a series of concrete cases that vividly illustrate how the implementation of the ITE Law can produce injustice and constrain freedom of expression. This is most clearly demonstrated in the case of Baiq Nuril, in which a victim of sexual harassment was herself convicted for disseminating a recording as an act of self-defense. The court's ruling in this case exemplifies the application of ITE Law norms without adequate consideration of the context of victim protection or the public interest. Additionally, the case of Jerinx SID, who was charged under the ITE Law for his criticism of the Indonesian Medical Association (IDI) characterized as hate speech illustrates the profound lack of clarity surrounding the boundary between legitimate criticism and defamation. Both cases reinforce the research finding that, despite the Constitutional Court's juridical delineation of interpretive boundaries, the enforcement of the ITE Law continues to be at odds with human rights principles in practice. The obligation to respect, protect, and uphold human rights ought to constitute a collective duty and shared responsibility among individuals, the government, and the state.¹⁴

As articulated in the International Covenant on Civil and Political Rights (ICCPR), and elaborated in General Comment No. 34 issued by the United Nations Human Rights Committee, restrictions on freedom of expression must be formulated with sufficient precision and foreseeability, and must constitute the least restrictive means of achieving a legitimate aim. In practice, however, the provisions of the ITE Law frequently fail to establish sufficiently clear boundaries regarding the scope of prohibited expression, thereby affording law enforcement authorities extensive discretion in interpretation. This situation demonstrates that the ITE Law has yet to fully conform to the ICCPR's standards on limitations and risks imposing disproportionate restrictions on freedom of expression. The imposition of criminal sanctions including custodial penalties on digital expression that does not invariably produce tangible harm further underscores that such restrictions are not always consistent with the principle of proportionality. This dynamic has also contributed to a pronounced chilling effect on freedom of

¹³ Permatasari, I. A., and J. H. Wijaya. "Implementasi Undang-Undang Informasi dan Transaksi Elektronik Dalam Penyelesaian Masalah Ujaran Kebencian Pada Media Sosial." *Jurnal Penelitian Pers dan Komunikasi Pembangunan* 23, no. 1 (2019): 1–16. <https://www.neliti.com/publications/518309>.

¹⁴ Endri. "Implementasi Pengaturan Perlindungan Hak Asasi Manusia di Indonesia." *Jurnal Selat* 2, no. 1 (2014): 182–187. <https://ojs.umrah.ac.id/index.php/selat/article/view/122>

expression in Indonesia's digital space, a condition in which members of society become increasingly reluctant to voice their opinions out of fear of legal repercussions.¹⁵

Efforts to evaluate the ITE Law must be anchored in the principles of the rule of law and human rights protection. Several measures that may be undertaken include:

1. Revision of Ambiguously Worded Provisions

Provisions within the ITE Law that contain ambiguous definitions of defamation and hate speech such as the term "content containing insults" (*muatan penghinaan*) must be reformulated in a limitative and specific manner in order to preclude subjective interpretation. Normative clarity constitutes an absolute prerequisite of the principle of legality, under which the law must be comprehensible and foreseeable by the public.¹⁶

2. Strengthening Human Rights Protection Mechanisms

Effective oversight mechanisms are required to address the risk of the criminalization of freedom of expression, including the active involvement of the National Commission on Human Rights (*Komnas HAM*) and law enforcement institutions. This measure is essential to ensuring that the law is not instrumentalized arbitrarily and remains consonant with human rights protections.

3. Application of the Principle of Proportionality

Law enforcement must strictly adhere to the principle of proportionality, ensuring that not all forms of expression are criminalized particularly criticism or public opinion. Within the framework of the ICCPR, restrictions on freedom of expression are permissible only insofar as they are necessary and commensurate with the objective sought. The application of the *ultimum remedium* approach whereby criminal law is treated as a measure of last resort rather than a primary instrument is therefore imperative.

Enhancement of Public Digital Literacy, Law Enforcement Capacity, and Transparency in Legal Proceedings

Society must be empowered through an enhanced understanding of the boundaries of freedom of expression and the attendant legal risks in the digital space. Nevertheless, digital literacy must be regarded not as a substitute for the state's obligations, but as a complement in building a responsible digital ecosystem. The capacity of law enforcement authorities to comprehend international human rights standards must also be strengthened. Furthermore, law enforcement proceedings must be conducted in a transparent and accountable manner, with due adherence to the principle of due process of law, in order to prevent the abuse of power. Openness at every stage of the legal process constitutes the foundation for cultivating public confidence in the justice system.

The principal challenge in the implementation of the ITE Law lies not merely in the existence of the regulation itself, but in the formulation of norms susceptible to multiple interpretations and in law enforcement practices that have yet to fully align with human rights principles. This has resulted in a narrowing of the space for freedom of expression, most notably through an excessive deterrent effect on society. Accordingly, the evaluation of the ITE Law must be directed toward the refinement of its normative provisions, the curtailment of enforcement discretion, and the strengthening of a human rights-based approach so that freedom of expression remains protected without prejudice to other legitimate legal interests.

¹⁵ Ritonga, R. M. A. "Menyeimbangkan Kebebasan Berekspresi dan Perlindungan Digital." Universitas Widya Mataram, 2024. <https://hukum.widyamatararam.ac.id/menyeimbangkan-kebebasan-berekspresi-dan-perlindungan-digital/>

¹⁶ Nail, T. "What Is the Philosophy of Movement?" *Mobility Humanities* 1, no. 1 (2022). <https://doi.org/10.23090/MH.2022.01.1.1.006>

Conclusion

The implementation of the ITE Law in Indonesia continues to reflect a fundamental contradiction between the effort to preserve public order and the safeguarding of freedom of expression as a cornerstone of the rule of law. The principal problem originates from elastic, ambiguously worded provisions which, in practice, generate legal ambiguity and a pervasive chilling effect within society. This situation is further compounded by law enforcement practices that frequently disregard the principle of due process of law and the human rights limitation standards prescribed by the ICCPR, rendering digital law more operative as an instrument of repression than as a guardian of fundamental human rights. Although the Constitutional Court has established interpretive boundaries through its successive rulings, disparities in case handling and structural power imbalances continue to produce an elevated rate of criminalization of public criticism.

Accordingly, a comprehensive evaluation of the ITE Law must prioritize the reconstruction of unambiguous regulatory provisions that are consonant with the *lex certa* principle, in order to restore the law's function as a guarantor of substantive justice. Reform must foreground the *ultimum remedium* approach and restorative justice, wherein criminal sanctions serve solely as a measure of last resort to maintain public order without censoring democratic aspirations. Legal transformation in the new digital era can only achieve genuine equilibrium when the state comprehensively integrates human rights values into technology policy so that public stability is constructed upon public confidence in a judicial system that is transparent, accountable, and free from discrimination.

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