

# THE DIALECTICS OF FREEDOM OF EXPRESSION AND LEGAL RESTRICTIONS ON DIGITAL PLATFORMS: AN ANALYSIS OF HUMAN RIGHTS PRINCIPLES, THE ELECTRONIC INFORMATION AND TRANSACTIONS LAW, AND CONSTITUTIONAL COURT DECISION NUMBER 105/PUU-XXII/2024

Hanafi

Faculty of Law, Islamic University of Kalimantan Muhammad Arsyad Al Banjari

Jl. Adhyaksa No.2, Sungai Miai, North Banjarmasin District, Banjarmasin City,  
South Kalimantan 70123

\*Email: [hanafiramsi@gmail.com](mailto:hanafiramsi@gmail.com)

\* Corresponding Author

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**Abstract:** *The right to freedom of expression is a fundamental aspect of human rights, guaranteed by both the Indonesian Constitution and international human rights instruments. However, this freedom is not absolute and may be subject to restrictions through regulatory frameworks such as the Electronic Information and Transactions (ITE) Law. In practice, the application of the ITE Law has sparked controversy due to the vague and overly broad language of several provisions, leading to multiple interpretations and granting excessive discretionary power to law enforcement authorities and certain parties in controlling the dissemination of electronic information. This situation has resulted in numerous cases of criminalization, raising serious concerns about the shrinking democratic space in Indonesia. This study aims to examine the legal implications of Constitutional Court Decision No. 105/PUU-XXII/2024 in relation to freedom of expression and its limitation under the ITE Law. Employing a doctrinal legal research method with a conceptual and statutory approach, the study analyzes primary legal materials and human rights theories as its analytical framework. The findings indicate that the Court's decision constitutes a critical corrective measure by limiting the subject of defamation offenses under the ITE Law solely to individuals. This interpretation strengthens the principle of lex certa (legal certainty), curtails arbitrary interpretation in law enforcement, and reinforces the protection of freedom of expression in the digital space. Moreover, it reflects a balanced approach between safeguarding individual rights and upholding the public interest in a democratic society.*

**Keywords:** *Human Rights; Freedom of Expression; Digital Platforms.*

## 1. INTRODUCTION

Freedom of expression is a fundamental human right that is inseparable from life in a democratic society. One manifestation of this right is the freedom to convey

opinions whether orally or in writing through print media, electronic media, or social media, as a means of citizen participation in public decision-making processes. This right has received universal recognition through the Universal Declaration of Human Rights (UDHR) of 1948, particularly in Article 19, which affirms that everyone has the right to freedom of opinion and expression without interference, and the right to seek, receive, and impart information and ideas through any media and regardless of frontiers. Other international instruments, such as the International Covenant on Civil and Political Rights (ICCPR) of 1966 ratified by the Government of Indonesia through Law No. 12 of 2005 concerning the ratification of the ICCPR further reinforce the status of this right by emphasizing that freedom of expression is a cornerstone of democracy, transparent governance, and respect for human dignity.

Freedom of opinion and freedom of expression are fundamental pillars of democracy. A democratic society is characterized by the protection of freedoms such as the right to assemble, the right to express opinions, and the promotion of open and inclusive public discourse (Hartono et al., 2021). Freedom of opinion is one of the rights constitutionally guaranteed by the state, as stipulated in the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution). Justice Wahiduddin Adams of the Constitutional Court of the Republic of Indonesia stated that "Freedom of opinion and expression applies to all types of ideas, including those that may be highly offensive or provocative, but must be accompanied by responsibility and may be lawfully restricted by the Government." Any limitation on the freedom of opinion and expression must be established by law in a manner that is clear and concise, so that it is understandable to all individuals (Mahkamah Konstitusi Republik Indonesia, n.d.).

Nevertheless, freedom of expression is subject to certain limitations and is therefore not absolute. Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR) explicitly stipulates that restrictions on this right may be imposed, provided they are established by law and are necessary for the protection of the rights or reputations of others, national security, public order, public health, or morals. This gives rise to a dialectical tension between the broad scope of individual rights and the state's obligation to impose restrictions that are lawful, proportionate, and rational.

The rapid advancement of information and communication technology in the 21st century has led to a significant transformation in the ways humans interact and express themselves. Various digital platforms, particularly social media such as Facebook, YouTube, TikTok, Instagram, and X (formerly Twitter), have not only eliminated geographical boundaries but also created new public spheres in cyberspace. People of all ages and backgrounds can now easily access the internet as a means of communication and information sharing, unrestricted by the limitations of space and time.

Nowadays, individuals are able to freely express opinions, disseminate ideas, and openly criticize government policies to a global audience. This phenomenon

expands the digital democratic space, promising broader public participation. However, alongside these opportunities lie significant challenges. Social media has become a conduit for the spread of hoaxes, hate speech, online radicalization, pornography, and defamation. This situation has led many countries, including Indonesia, to recognize the necessity of regulations capable of maintaining cyber order while simultaneously protecting citizens from harmful content.

In Indonesia, the government regulates aspects of digital technology usage through Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE 2008), which was subsequently revised by Law Number 19 of 2016 (UU ITE 2016), and further amended for the second time by Law Number 1 of 2024 (UU ITE 2024).

The enactment of the Information and Electronic Transactions Law serves a strategic purpose in maintaining order within the digital space, safeguarding public morality, and ensuring legal certainty for users of information technology. However, in its implementation, although initially designed to protect society, the law is often perceived as restricting individual freedom of expression. In Indonesia, several cases related to the application of Electronic Information and Transactions Law have sparked controversy, particularly concerning ambiguous provisions such as Article 27 paragraph (3) on defamation and Article 28 paragraph (2) on hate speech under Electronic Information and Transactions Law 2016. Numerous instances have seen citizens subjected to legal proceedings for social media posts deemed to violate moral norms or to insult certain parties, even though the criticisms expressed fundamentally fall within the bounds of freedom of expression.

The second revision of the Information and Electronic Transactions Law in 2024 did not eliminate the previously existing ambiguous provisions. This is evident in the replacement of the original Article 27 paragraph (3) with Article 27A, which contains highly biased and subjective wording. Consequently, this creates broader interpretative space for law enforcement officials and interested parties concerning the dissemination of information and transactions through electronic media (Munir, 2024).

The phenomenon of criminalization of expression on social media has raised concerns about the erosion of democratic space in Indonesia. Data from several human rights monitoring organizations, including Human Rights Watch and the Southeast Asia Freedom of Expression Network (SAFEnet), indicate an increasing number of reports filed against netizens under the problematic provisions of the Information and Electronic Transactions Law. Between 2013 and 2022, at least 500 individuals were reported under contentious articles of the Electronic Information and Transactions Law. The majority of complainants are public officials and parties claiming to represent institutions or organizations, who filed reports alleging violations such as defamation or hate speech committed by netizens (Aliansi Jurnalis Independen, 2023).

This has sparked a debate concerning the balance between the right to freedom of expression and the state's authority to impose restrictions. On one hand, the state has a legitimate interest in maintaining public order and protecting the rights of the community as a whole. On the other hand, disproportionate restrictions may lead to the silencing of critical voices, which fundamentally contradicts the spirit of democracy.

This issue places Indonesia in a dilemma in regulating digital platforms. At the international level, the principles outlined in the International Covenant on Civil and Political Rights (ICCPR) regarding restrictions on freedom of expression require three main conditions: legality (the restriction must be prescribed by law), legitimacy of purpose (aimed at protecting the rights of others or the public interest), and proportionality (not excessive and relevant to the intended purpose). However, in the context of the Electronic Information and Transactions Law, several provisions are considered to fail the proportionality principle due to their ambiguous interpretations and susceptibility to misuse by certain parties to suppress criticism of public policies. Such practices potentially violate the state's obligations to guarantee and respect human rights, as affirmed in General Comment No. 34 of the United Nations Human Rights Committee.

In light of this, freedom of expression is no longer absolute, as it must be accompanied by certain responsibilities, including adherence to legal restrictions. This renders freedom of expression complex, as it protects both the rights of the speaker and those of the listener. Moreover, these rights can sometimes conflict and prove difficult to harmonize. There is often a challenging tension in balancing rights related to honor, safety, and privacy. Such limitations are established precisely in response to these tensions (Kusumo et al., 2021).

In the academic realm, numerous studies have examined the normative aspects of the Electronic Information and Transactions Law or critiqued its implementation concerning freedom of expression. However, comprehensive analyses comparing international human rights principles with the restriction norms embedded in the Electronic Information and Transactions Law remain scarce. A dialectical analysis exploring the conflicts and convergences between these two legal instruments is critically needed to identify normative solutions that safeguard citizens' rights while strengthening the state's role in regulating the digital space. This necessity is even more pronounced following the Constitutional Court's Decision No. 105/PUU-XXII/2024, which significantly narrows the scope of ambiguous provisions within the Electronic Information and Transactions Law, particularly those related to defamation and insult offenses. This ruling marks a pivotal turning point in efforts to balance the protection of freedom of expression rights with the state's duty to maintain public order in the digital realm and can serve as a benchmark for assessing the legitimacy of restrictions on freedom of expression.

The urgency of this research is heightened by the ongoing phenomenon of digital globalization, which continuously generates new forms of expression in cyberspace. States that fail to balance the protection of human rights and legal restrictions risk falling into digital authoritarianism, wherein the law is employed as an instrument of control rather than protection. Therefore, a critical analysis of the dialectic between freedom of expression and legal limitations in the digital era is

both highly relevant and strategic. Consequently, this study is expected not only to provide theoretical contributions to the body of legal and human rights literature but also to offer practical recommendations for the reformulation of national legal policies to align with human rights standards.

The focus of this study is articulated through the research problem formulation: How is the dialectic between the right to freedom of expression as part of human rights and the legal restrictions regulated in the legal framework governing information and electronic transactions, as well as its implications following the Constitutional Court Decision Number 105/PUU-XXII/2024? This problem formulation aims to thoroughly examine and analyze the relationship between freedom of expression as a human right and the restrictions imposed by the legal regulations on information and electronic transactions (the Electronic Information and Transactions Law). Additionally, it seeks to analyze how the dialectic between these two elements shapes the balance between protecting individual rights and the state's obligations in regulating the digital space. Furthermore, this study intends to review the implications of the Constitutional Court Decision No. 105/PUU-XXII/2024 as a corrective measure against the ambiguous norms within the Electronic Information and Transactions Law, as well as to assess the extent to which this decision provides legal certainty and guarantees constitutional rights of citizens to express themselves in the era of information technology.

## 2. METHODS

This study employs a normative legal research methodology, which is a type of library-based research using primary, secondary, and tertiary legal materials. Normative research, also known as doctrinal research, conceptualizes law as a set of norms that guide appropriate human behavior (Soekanto & Mamudji, 2013) and involves the examination of legal literature and authoritative sources (Amiruddin & Asikin, 2006). The research is grounded in a comprehensive literature review, referencing applicable legal theories, statutes, and other relevant scholarly works related to the research topic.

The study adopts a conceptual approach and a statute approach. The conceptual approach is used to analyze legal theories and human rights concepts, while the statute approach focuses on examining relevant legal provisions, particularly those related to freedom of expression and the Electronic Information and Transactions Law. Legal material collection was carried out through a literature study, involving the analysis of statutory regulations, doctrines, and conceptual frameworks concerning human rights and digital expression.

The collected legal materials are analyzed qualitatively by categorizing them according to the legal issues discussed. These materials are then interpreted systematically to provide legal clarity and resolve the identified problems. The final analysis is presented in the form of written conclusions that reflect the normative framework of the study.

### 3. RESULTS AND DISCUSSION

#### 3.1. The Concept of Freedom of Expression from a Human Rights Perspective

The freedom to express opinions and articulate oneself is essential in building an advanced society and state. In democratic countries such as Indonesia, journalism based on the right to freedom of opinion and expression is regarded as the fourth pillar of the state system (Marwandianto & Nasution, 2020). Various human rights instruments, such as Article 12 of the Universal Declaration of Human Rights (UDHR) 1948, protect this freedom. According to Article 4 of Law Number 39 of 1999 concerning Human Rights, the rights to personal freedom, thought, and conscience cannot be diminished under any circumstances. Furthermore, Article 29 paragraph (1) and Article 32 of the Human Rights Law safeguard privacy, including email correspondence, which can only be interfered with upon the order of a judge or a lawful authority as established by law (Dewi, 2024). This is also regulated in the Universal Declaration of Human Rights (UDHR), promulgated by the United Nations (UN), specifically in Article 19, which states: *"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers."* This means that if an individual is prohibited or silenced from expressing their opinion, such an action constitutes a violation of that person's human rights.

Freedom of expression, recognized as a key element of democracy, was established as a fundamental human right by the United Nations (UN) even before the adoption of the Universal Declaration of Human Rights. Through Resolution No. 59, the UN General Assembly declared the right to information as a fundamental human right and affirmed it as a standard for all forms of freedom.

There are eight (8) out of nine (9) core international human rights instruments that have been ratified by Indonesia, namely:(Sari & Widyastuti, 2021)

1. *Convention on the Elimination of All Forms of Discrimination Against Women;*
2. *Convention on the Rights of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography ;*
3. *Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment;*
4. *International Convention on the Elimination of All Forms of Racial Discrimination, 1965;*
5. *International Covenant on Economic, Social, and Cultural Rights;*
6. *International Covenant on Civil and Political Rights;*
7. *Convention on the Rights of Persons With Disabilities;*

8. *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.*

Every individual inherently possesses the need to express opinions and articulate personal views. Freedom of opinion and expression is of critical importance for several reasons, namely: (Sari & Widyastuti, 2021)

1. This freedom enables individuals to develop themselves and realize their full potential.
2. Freedom of expression plays a crucial role in the pursuit of truth and the advancement of knowledge, as individuals must remain open to diverse perspectives, consider alternative viewpoints, and critically evaluate their opinions against differing views to broaden their understanding.
3. This freedom is also essential for enabling society to participate in decision-making processes, particularly in the political realm.

Freedom of expression, as stipulated in the Human Rights Law, constitutes a fundamental right that protects every individual in expressing opinions, ideas, and beliefs without fear of unfair actions or sanctions. The principle of non-intervention asserts that the government must not unlawfully interfere with this right, and that freedom of expression must be granted equally and without discrimination. However, the concept of human rights that emphasizes freedom is often perceived as potentially conflicting with the principles of the rule of law. As a state governed by law, Indonesia has adopted various international legal instruments that safeguard freedom of expression. Moreover, the Indonesian Constitution explicitly guarantees this right, thereby ensuring that expressions of criticism against the government cannot be classified as unlawful conduct (Kusuma, 2023).

Freedom of speech constitutes one of the fundamental elements in the protection of human rights and serves as a crucial pillar for the realization of substantive democracy in Indonesia. This right is constitutionally recognized and guaranteed in the 1945 Constitution of the Republic of Indonesia, particularly in Article 28E paragraph (3), which states: *"Every person shall have the right to the freedom of association, assembly, and expression of opinion"*. From a human rights perspective, freedom of expression falls under the category of civil and political rights that are considered non-derogable, as stipulated in Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which has been ratified by Indonesia through Law Number 12 of 2005.

Nevertheless, the implementation of freedom of speech at the societal level continues to face various obstacles. Several regulations such as provisions on hate speech, defamation, and the dissemination of information that may cause public unrest are often viewed as ambiguous and subject to misuse by certain actors as instruments to restrict freedom of expression. This situation potentially contradicts

the rule of law, under which the law should serve as a safeguard for individual rights against the abuse of power. As John Stuart Mill asserted in *On Liberty*, freedom of expression is a prerequisite for the pursuit of truth and societal progress; therefore, any restriction must be imposed with caution and in a proportionate manner (Mill, 2002).

Through Law Number 39 of 1999 on Human Rights, Article 3 paragraph (2) states: *"Every person shall have the right to hold, express, and disseminate opinions by their conscience, either orally or in writing, through printed or electronic media, with due regard to religious values, morality, public order, public interest, and the integrity of the nation"*. This article indicates that the right to freedom of expression is recognized as a fundamental right of every individual; however, its implementation is not absolute as it is subject to obligations to respect religious values, morality, public order, public interest, and national integrity. Such restrictions represent the manifestation of the limitation clause principle in human rights law, which allows the state to impose certain limitations on rights and freedoms to protect the rights of others and ensure social order. In the international legal framework, this principle aligns with Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR), which states that freedom of expression may be subject to restrictions as necessary for respecting the rights or reputations of others, and for the protection of national security, public order, public health, or morals. Thus, Article 3(2) of the Human Rights Law not only guarantees freedom of expression but also underscores the need to maintain a balance between individual rights and the collective interests of society in a democratic rule of law state.

Nevertheless, such restrictions have the potential to be misused by state authorities as a tool to silence legitimate criticism and arbitrarily restrict public discourse (Human Rights Watch, 2010). Therefore, the implementation of restrictions must be strictly supervised and subject to the principle of proportionality, and must be reviewed through an independent judicial mechanism to prevent violations of human rights (Nowak, 2005).

Restrictions on freedom of speech may hinder the development of a society that is capable of expressing opinions freely, openly, and diversely. The inability to express oneself freely also reinforces power imbalances between the elite and the general public, as well as between the government and its citizens. Therefore, effective legal reforms and law enforcement efforts are necessary to protect the public including journalists and activists who seek to express their views. In addition, this measure is crucial to raising public awareness about the importance of freedom of expression as a fundamental pillar of a strong democracy.

Article 70 of the Indonesian Human Rights Law stipulates that the limitation of human rights may be imposed based on three main considerations, namely:

1. Implemented through statutory law;

2. Aimed at ensuring the recognition and respect for the rights and freedoms of others; and
3. Intended to meet the just demands based on moral considerations, security, and public order within a democratic society.

Furthermore, Article 73 of the Human Rights Law (Law No. 39 of 1999) affirms a similar principle, stating that: *"The rights and freedoms regulated in this Law may only be limited by and based on statutory law, solely to ensure the recognition and respect for the human rights and fundamental freedoms of others, morality, public order, and the interests of the nation"*.

Within the framework of human rights law, limitations on individual rights are recognized in two forms: restrictions and limitations, particularly concerning *"derogable rights."* Restrictions refer to specific limitations on certain rights that are permissible provided they meet the criteria of legality, necessity, and proportionality, as stipulated in Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR). For instance, freedom of expression may be subject to restrictions to protect national security, public order, public health, public morals, or the rights of others. In contrast, limitations refer to general constraints inherently attached to nearly all rights from the outset, given that rights are not absolute. Therefore, states may impose legal limitations to safeguard collective interests.

In Indonesia, the legal basis for such limitations is found in Article 28J paragraph (2) of the 1945 Constitution, which mandates that every individual, in exercising their rights, must submit to legal restrictions aimed at ensuring the recognition and respect of the rights of others, and to meet the requirements of morality, religious values, security, and public order in a democratic society. The Constitutional Court has also affirmed that the human rights provisions under Chapter XA of the 1945 Constitution are subject to Article 28J, except for certain non-derogable rights enshrined in Article 28I. Therefore, any restrictions imposed by the state must be proportional, non-discriminatory, and must not be used as a tool to diminish the essence of human rights (Hadi, 2022).

According to Theo Huijbers, if human rights are regarded as an integral part of fulfilling life since humans become aware of their roles and responsibilities in the world, the meaning of these rights becomes clearer. Cultural evolution is closely related to moral, social, and political life through the application of law. As an essential component of the legal system, law develops concepts that underlie the recognition of human beings as legal subjects. Because the state is committed to protecting human rights, the legal system acknowledges and safeguards those rights (Nizam Tazmi, 2025). According to Bahder Johan Nasution, from the perspective of human rights regulation, governmental power can be limited by fundamental human rights. On the other hand, the government is permitted to impose restrictions on basic human rights through its regulatory and control functions (Wahyuni & Sharfina Desiandri, 2024). Although certain limitations may be imposed under specific

circumstances, such restrictions must be reasonable, prescribed by law, and necessary for the protection of the rights and reputations of others, national security, public order, public health, or public morals (Andriansyah & Kusnadi, 2024). A precise interpretation of each clause concerning state action is essential to safeguard fundamental rights. Any form of restriction must be carefully understood and assessed in light of the specific right being contested. This principle underscores that such rights shall not be arbitrarily limited. Fundamentally, it is both the duty and obligation of a democratic state to guarantee freedom of expression. To ensure the proper functioning of democracy, the active participation of the people in the process of governance by the people, from the people, and for the people must be protected and encouraged (Nizam Tazmi, 2025).

### **3.2. Restrictions on Freedom of Expression in the Indonesian Electronic Information and Transactions Law**

The presence of legal regulation in the field of electronic information and transactions in Indonesia represents a legal policy designed to address the increasingly rapid challenges of the digital era. Legal policy constitutes a formulation that may take the form of criminalization or legal reform by establishing new regulations, or by amending and revising existing ones. In general, criminal law reform can be undertaken comprehensively across the entire scope of criminal law or partially, either within general criminal law or special criminal law. One aspect of special criminal law that emerges as a product of such legal policy formulation is cybercrime, which is regulated under the Electronic Information and Transactions Law (Sahid, 2018). The formulation of legal policy is designed to ensure effective implementation. The enforcement of law cannot be separated from society, as both legal effectiveness and societal effectiveness are highly dependent on the social conditions and the environment in which the law is applied (Hidayat et al., 2023).

The Electronic Information and Transactions Law serves as a regulatory instrument to balance the rapid advancement of information technology. This law provides a legal framework to prevent the misuse of technological progress by society. Its enactment aims to establish legal certainty and protection in the use of information technology, thereby encouraging responsible and secure technology usage. The Electronic Information and Transactions Law is designed not only to anticipate the negative impacts of digital development but also to support the advancement of current technologies. Furthermore, the law defines specific acts that are categorized as criminal offenses in the field of electronic information and transactions, outlines the elements of fault, and identifies forms of attack that fall within the scope of such offenses.

The impact of the Electronic Information and Transactions Law on freedom of expression on social media has become a widely discussed issue, sparking both support and opposition within society. Initially designed to regulate electronic

activities and prevent cybercrime, the Electronic Information and Transactions Law is now often regarded as a “double-edged sword.” On the one hand, the law prohibits users of information technology or social media from engaging in certain acts and imposes criminal sanctions on those who violate its provisions. On the other hand, freedom of expression as a fundamental human right is intended to guarantee that individuals and groups can express their opinions and views freely, as long as such expressions do not cause harm to public welfare, public order, or social justice.

In its implementation, the Electronic Information and Transactions Law has often been criticized for restricting freedom of expression, particularly when its provisions are used to prosecute individuals who express opinions in cyberspace, including criticism of the government and public policies. This has led to a decline in the level of freedom of expression in Indonesia, as many people fear that their opinions may result in legal sanctions (Rahmawati et al., 2021). This situation is largely attributed to several provisions within the Electronic Information and Transactions Law that are considered to contain ambiguous and multi-interpretable legal norms, thereby creating opportunities for misuse by certain parties. These provisions include those regulating defamation, the dissemination of hatred, and threats of violence, which are frequently used as legal grounds to target public criticism on social media. Such practices have raised concerns about potential violations of citizens' constitutional rights. In this context, these provisions are commonly referred to as rubber articles due to their flexible and overly broad nature, which makes them susceptible to arbitrary interpretation and abuse. A rubber article refers to a legal provision that lacks clear or objective standards (Nanda & Hariyanta, 2022). The following are several provisions under the 2016 Electronic Information and Transactions Law that contain ambiguous and multi-interpretable legal norms:

1. Article 27 paragraph (3) reads:

*"Any person who intentionally and without legal authority distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents containing content that is defamatory and/or insulting in nature".*

The phrase “defamatory and/or insulting content” is overly broad and deviates from the more specific provisions of the Indonesian Penal Code (Kitab Undang-Undang Hukum Pidana, or KUHP), particularly Articles 310 to 311. This lack of precision gives rise to legal uncertainty and opens the door to potential misuse, allowing the criminalization of journalists, activists, or ordinary citizens who voice criticism.

2. Article 28 paragraph (2) reads:

*"Any person who intentionally and without legal authority disseminates information aimed at inciting hatred or hostility toward individuals and/or specific groups of people based on ethnicity, religion, race, or inter-group affiliation (SARA)".*

The phrase "inciting hatred or hostility... based on ethnicity, religion, race, or inter-group affiliation (SARA)" lacks sufficient clarity and specificity, rendering it vulnerable to misapplication, particularly against identity-based criticism.

3. Article 29 reads:

*"Any person who intentionally and without legal authority sends Electronic Information and/or Electronic Documents containing threats of violence or intimidation directed at an individual".*

The phrase "threats of violence or intimidation directed at an individual" is not clearly defined, creating room for vague interpretation. As a result, extreme expressions or forms of sarcasm may be subject to criminal prosecution, thereby posing a threat to freedom of expression.

Specifically, Article 27 paragraph (3) of the 2016 Electronic Information and Transactions Law not only contains ambiguous language but is also significantly more vague compared to similar provisions under Articles 310-311 of the Indonesian Criminal Code. This opens the door to the practice of overcriminalization a concept that describes the excessive use of criminal law to address social issues that should not be subject to criminal sanctions. One study reported that as of October 2020, 209 out of 324 cases prosecuted under the Electronic Information and Transactions Law involved Article 27(3) (Dyah, 2021). This clearly illustrates the high potential for misuse of this article to silence criticism and suggests that vague legal norms create opportunities for the law to be weaponized against public dissent or social complaints (*self-censorship*). From a legal-cultural perspective, the chilling effect theory becomes particularly relevant. In this context, the threat of vague and overly broad criminal sanctions discourages individuals from expressing their opinions, out of fear that they may be accused of defamation. Ultimately, this may suppress healthy public discourse and obstruct the development of deliberative democracy in the digital age (Hamid, 2019).

The enactment of the 2024 Electronic Information and Transactions Law, as the second amendment to the 2008 Electronic Information and Transactions Law, has also sparked significant controversy, particularly due to the retention of ambiguous and multi-interpretable provisions. This is evident in Article 27A, which states: *"Any Person who intentionally attacks the honor or reputation of another person by accusing someone, with the intention that such accusation becomes*

*publicly known in the form of Electronic Information and/or Electronic Documents conducted through an Electronic System*". The formulation of Article 27A refers to Article 433 of Law Number 1 of 2023 concerning the Indonesian Criminal Code. However, Article 27A tends to generalize acts that portray individuals as perpetrators under electronic information and transactions offenses. In legal terminology, when the subject refers to "another person", it implies a plural meaning. This is where the terminological problem arises the phrase "another person" contains semantic ambiguity, leading to interpretive uncertainty.

The principle of *lex certa* in criminal law theory emphasizes the importance of legal certainty as a fundamental objective of the law. The core tenet of *lex certa* is that the formulation of criminal offenses must not be vague or ambiguous in meaning. This certainty reflects two concurrent functions of criminal law: first, to protect individuals from arbitrary actions by the authorities in the absence of clearly defined regulations; and second, to ensure that the state is obliged to take action against all forms of antisocial behavior without exception. Therefore, legal certainty is crucial, as it is directly related to the protection of human rights and individual freedoms (Yacob, 2024). The vagueness of the wording in Article 27A violates this principle, resulting in legal uncertainty that ultimately harms the general public about their right to freedom of expression and opinion.

### **3.3. The Implications of Constitutional Court Decision Number 105/PUU-XXII/2024 on Freedom of Expression in Digital Platforms.**

On April 29, 2025, the Constitutional Court of the Republic of Indonesia issued Decision Number 105/PUU-XXII/2024 concerning the judicial review of several provisions of the Electronic Information and Transactions Law, including Article 27A, Article 28 paragraph (2), Article 45 paragraph (4), and Article 45A paragraph (2). In its ruling, the Court declared that Article 27A which states: "*Any Person who intentionally attacks the honor or reputation of another person by accusing something, with the intention that such accusation becomes publicly known in the form of Electronic Information and/or Electronic Documents conducted through an Electronic System*" cannot be applied to government institutions, community groups, or legal entities. Accordingly, the phrase "*another person*" within the meaning of this article refers specifically to natural persons (*individuals*), and not to legal entities, institutions, groups, professions, or official positions.

The Constitutional Court's legal reasoning for providing such interpretation is based on the conflict between the wording of the article and two fundamental principles enshrined in the 1945 Constitution of the Republic of Indonesia. First, the principle of legal certainty as guaranteed under Article 28D paragraph (1), which states that "*every person shall have the right to recognition, guarantees, protection, and fair legal certainty, as well as equal treatment before the law.*" Second, the guarantee of freedom of expression as stipulated in Article 28E paragraph (3), which provides that "*every person shall have the right to freedom of association, assembly,*

*and expression of opinion.*” The Court emphasized that the vagueness of the wording in Article 27A of the Electronic Information and Transactions Law renders the provision susceptible to misuse. Furthermore, in its reasoning, the Court referred to Article 433 paragraph (1) of the 2023 Criminal Code (KUHP), which is set to take effect in 2026 and explicitly excludes government institutions and groups of people from being considered victims of defamation. This illustrates a regulatory inconsistency that may lead to legal uncertainty during the transitional period between the Electronic Information and Transactions Law and the new Criminal Code.

The Constitutional Court held that the provision contained in Article 27A of the Electronic Information and Transactions Law, which regulates defamation through electronic systems, must be interpreted narrowly to prevent misuse and arbitrary actions by law enforcement authorities. This underscores that criminal provisions concerning defamation, insult, and hate speech must be applied strictly to individuals as legal subjects, and cannot be used to protect state institutions, corporations, or public figures. The Court further emphasized that honor and dignity, as objects of criminal law protection, may only be attributed to human beings as natural persons, not to legal entities, institutions, or corporations, which lack moral consciousness or personal dignity in the context of criminal law (Nanda & Hariyanta, 2022).

Furthermore, the Constitutional Court asserted that the suppression of the right to freedom of opinion and expression would erode the essential oversight function that serves as a safeguard against abuse of power in governance. This view is consistent with international human rights standards, which recognize that public officials must tolerate a higher degree of criticism compared to private individuals who do not hold public office.

Within the framework of a rule of law (*rechtstaat*), the existence of criminal offenses must adhere to the principle of *lex certa* (*legal certainty*). Vague or ambiguous legal norms may conflict with this principle, as they create uncertainty for citizens in determining the boundaries of prohibited conduct. Therefore, through this decision, the Constitutional Court has effectively narrowed the scope of application for such provisions, ensuring that criticism directed at the government, public officials, or corporations can no longer be prosecuted under the Electronic Information and Transactions Law. This ruling aligns with John Stuart Mill’s harm principle, which posits that restrictions on individual freedom are only justifiable to the extent that they prevent actual harm to others (Bell, 2021). Accordingly, public criticism and protest directed at state institutions’ policies or conduct cannot be criminalized unless they result in harm or constitute an attack on the specific rights of individuals. John Stuart Mill’s harm principle is thus relevant as a normative benchmark for assessing the legitimacy of restrictions on freedom of expression.

The impact of this Constitutional Court decision carries significant legal implications for the protection of the public’s right to freedom of expression and for

upholding the integrity of democratic governance in Indonesia. Before the enactment of this ruling, the legal framework created a climate of fear among citizens in expressing criticism, contributing to an environment that restricted freedom of expression. It also left room for misinterpretation of legal provisions that had not been strictly defined, thereby creating opportunities for abuse due to the ambiguity of elements contained in the relevant articles of the Electronic Information and Transactions Law. As such, the absence of this Constitutional Court decision has resulted in substantial legal consequences for society at large (Haryanto, 2025).

Normatively, this decision represents a significant advancement in the implementation of Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which has been ratified by Indonesia. This article guarantees freedom of expression as a fundamental human right that may only be restricted under limited, proportionate, and legitimate circumstances. Accordingly, the Constitutional Court underscores the importance of safeguarding the right to express opinions, particularly in the context of holding state power and corporate entities accountable. This is especially relevant in the digital age, where the public increasingly utilizes social media as a platform to express views and monitor government performance. Overall, the Constitutional Court's decision provides greater legal clarity, strengthens the protection of citizens' constitutional rights, and serves as a critical foundation in preventing the silencing of dissent and the criminalization of freedom of expression in Indonesia (Fedira et al., 2025).

Nevertheless, the Constitutional Court's ruling does not annul all provisions related to insult or defamation under the Electronic Information and Transactions Law. These provisions remain applicable in cases concerning the honor and reputation of individuals, provided that their enforcement is carried out with caution and in a proportional manner. This is essential to ensure that the constitutional rights of other citizens are not violated, thereby maintaining a balanced approach between the protection of personal dignity and the right to freedom of expression within the legal framework.

#### **4. CONCLUSION**

The right to freedom of expression constitutes one of the fundamental pillars of a democratic system and the implementation of human rights, as guaranteed under Article 28E of the 1945 Constitution of the Republic of Indonesia, as well as various international instruments such as the International Covenant on Civil and Political Rights (ICCPR). Nevertheless, this right is not absolute and may be subject to limitations, provided such restrictions are prescribed by law and are intended to protect public interests, order, morality, and the rights and reputations of others.

In Indonesia, one of the primary legal instruments that restricts freedom of expression in the public sphere particularly in the digital domain is the Law on Electronic Information and Transactions. Although this law was originally intended to

maintain order and provide legal protection, several of its provisions particularly those concerning defamation and hate speech have been widely criticized for being overly broad and vague, thereby creating the potential for arbitrary interpretation and repressive application. This has led to a chilling effect, in which individuals refrain from expressing criticism or opinions due to fear of criminalization.

In the context of the ongoing dialectic between the protection of freedom of expression and its legal limitations under the Electronic Information and Transactions Law, Constitutional Court Decision No. 105/PUU-XXII/2024 marks a significant corrective milestone. The Court explicitly limited the scope of legal subjects entitled to invoke the defamation clause under the Electronic Information and Transactions Law, restricting it to natural persons (individuals) and excluding state institutions and corporations. This ruling carries several crucial implications. First, it narrows the potential for misuse of vaguely worded provisions that have often been exploited as tools of repression by vested interests. Second, it reinforces legal certainty and affirms the application of the *lex certa* principle in limiting human rights, thereby minimizing interpretive bias. Third, it empowers citizens to voice opinions, criticisms, and complaints regarding public policy and services without fear of criminal prosecution, so long as the rights to privacy and human dignity of others are respected.

Accordingly, Constitutional Court Decision No. 105/PUU-XXII/2024 not only strengthens the protection of freedom of expression in Indonesia but also establishes a critical judicial precedent that affirms the necessity for any human rights limitation particularly concerning freedom of expression to be precisely, proportionately, and unambiguously regulated by the *lex certa* principle, to prevent potential abuse of power. This decision plays a vital role in promoting digital democratization and achieving a balance between individual liberty and the protection of others' human rights within an increasingly open and critical society.

Moving forward, constructive steps are required to ensure the effective implementation of this decision. These include advocating for a comprehensive revision of the Electronic Information and Transactions Law to clarify vague provisions and developing technical guidelines for law enforcement officials to align their practices with human rights protection standards. Moreover, public education regarding the boundaries of freedom of expression and the availability of non-litigation dispute resolution mechanisms such as mediation or the right of reply is essential to foster public awareness and responsible use of digital platforms. Such efforts must be supported by independent oversight from state institutions and civil society to ensure that Indonesia's public sphere remains a healthy arena for civic criticism and participation, free from intimidation or criminalization that may hinder substantive democracy.

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