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## CRIMINAL LAW AND FREEDOM OF OPINION IN THE ERA OF DIGITAL DEMOCRACY (CASE STUDY IN INDONESIA)

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### ABSTRACT

Freedom of opinion in Indonesia, constitutionally guaranteed as a human right, faces challenges in the digital era due to the ambiguous enforcement of the ITE Law, which initially targeted cybercrimes but expanded to regulate online speech, risking democratic expression. This study analyzes the ITE Law's evolution (2008–2024) to assess its impact on freedom of expression in digital democracy, focusing on legal shifts and enforcement practices. Using normative juridical research, the study examines secondary legal materials through qualitative analysis, including legislation, court decisions, and scholarly works. The 2024 revisions reduce penalties and limit complaints to directly affected individuals, aiming to curb repression. However, ambiguities persist in defamation provisions, and enforcement biases threaten free speech. The study underscores the need for clearer legal standards, digital literacy programs, and alternative dispute mechanisms to align the ITE Law with democratic principles. Future research should explore comparative models and the law's societal impact post-revision.

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**KEYWORDS** Law, Crime, Freedom of Opinion, Democracy, Digital



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### INTRODUCTION

As a country of law, the mindset, actions, and behavior of Indonesian citizens must be in accordance with the constitution and the rule of law. This is important so there are no law violations or abuse of power. In the state of law, the rule of law is recognized and appreciated as the main factor in the implementation of the nation's life and state towards a democratic direction. In the state of law, every action must refer to the rule of law, not just power. There are at least four basic characteristics of the state of law, including the government in carrying out state affairs has an obligation to be guided by the constitution in Indonesia, the division

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of state power, there is a legal mechanism in the form of judicial review and there is a state guarantee in exercising human rights (Lestari et al, 2023)

Criminal law is rooted in two words: *Straf* means criminal, and *Recht* means law. Criminal law is a sacrifice that is given consciously (deliberately) from the state to an individual or group as a result of a violation of a criminal law (Sriwidodo, 2019) Criminal law has two purposes, first, the preventive purpose is to make everyone afraid of committing acts or acts that violate the criminal law. Second, the purpose of repression is so that the community can accept everyone who commits criminal acts because they have admitted their mistakes (Chandra, 2022) Criminal law is divided into basic crimes (death penalty, imprisonment, imprisonment and fines) and additional crimes (forcible taking of certain goods, revoking certain rights of citizens and the consequences of decisions issued by judges)

The Indonesian government recognizes freedom of opinion freely and obtains legality through Article 28E paragraph (3), which reads "Everyone has the right to freedom of association, assembly, and expression." From a legal perspective, the constitution has regulated how the state guarantees citizens' freedom of opinion both orally and in writing. Opinion is a right protected by the state, including citizens with the right and freedom to criticize the state, state administrators, and other Indonesian people. Opinions are not interpreted orally but also in writing, including through social media, which has been rampant lately. In arguing, one must be aware of the impact and legal consequences, because that awareness helps shape public perception so that they can conclude these opinions (Puspitasari, 2016)

In the context of a democratic society, it is argued that it is part of the means of citizen expression that can be done through various means, including social media, as part of the development of the digital era. Freedom of opinion and speech, including through social media, will encourage a dynamic democratic life, progressive thinking, and ensure freedom of opinion in public (Karo, 2022). Violations of freedom of opinion and expression will lead a government to be labeled anti-democratic and totalitarian. Especially in the era of global development and the strengthening of the democratization movement, the ban on opinion will reduce the role and participation of the community. Freedom of opinion is a fundamental element in the life of a democratic country, encouraging the eradication of corruption, promoting accountability, and creating a society that puts the truth as the best way of life (Nasution, 2020)

As the most important aspect of human life, freedom of opinion is interpreted as a right exercised by individuals by carrying every interest in themselves and carrying out what is in accordance with their desires and conscience, without any reduction of these rights by the state or people around them. The fundamental meaning of freedom of opinion is the belief that a person's rights and freedoms must receive state support, because in a democratic country, the fulfillment and protection of freedom of opinion is guaranteed by the constitution, characterizing the country as a democratic state. A country that upholds democracy will protect and recognize the right of citizens to express their opinions because it is a fundamental human right in the life of every human being (Pratama et al, 2022) In article 19 of the Declaration of Human Rights, it is explained "Everyone has the right to freedom to have and express opinions; This right includes the freedom to

have opinions without interference, and to seek, receive and convey information and thoughts through any medium and without regard to boundaries." (Universal Declaration of Human Rights - Indonesian, 1948)

Freedom of opinion has a strategic value in supporting the functioning of the democratic system in Indonesia, because a person's opinions, attitudes, and expressions cannot be criminalized as long as they do not contradict the existing rules. As the first human right in the main, because it is related to the civil dimension of politics, where freedom of opinion makes a human being have civil rights and political rights to determine the extent to which a political order will support democratic life and the enforcement of the rule of law with justice. The state has regulated the free context in electronically conveying information through a legal mechanism, namely regulations in the form of the Electronic Information and Transaction Law. With legal regulations that bind the state, it seeks to protect citizens and prevent various negative impacts amid the recent emergence of information technology. This legal product wants to anticipate the various forms, varieties, and types of crimes that appear in cyberspace. The Government of Indonesia also ratified the International Convention on Civil and Political Rights through Law Number 12 of 2005 concerning the International Covenant on Civil and Political Rights Ratification. The legal consequence of the ratification is the obligation of the Indonesian government to provide protection, guarantee, and fulfillment of human rights and freedom of opinion, which is absolute and mandatory to be carried out by the state (Lonto et al, 2015)

Although there is support for the freedom to express income, it is limited by the rule of law, where when referring to article 19 paragraph 3 of the ICCPR it is stated that "Freedom of opinion must respect the rights or good name of others and not pose a threat to national security, order, health, and public morals" In Law Number 9 of 1998 concerning Freedom of Expression in Public where Article 1 paragraph (1) states "Freedom of Expression convey thoughts orally, in writing and so on freely and responsibly in accordance with the provisions of the applicable law". Positive Law guarantees the protection of human rights regarding freedom of opinion in public is contained in Law Number 39 of 1999 concerning Human Rights there are several articles, including Article 14 paragraphs (1) and (2), then in Article 23 paragraph (2) which contains the right to communicate and manage information as well as freedom of opinion through print and electronic media.

This means that expressing one's views in public is prohibited from violating freedom of opinion and harming the human rights of others. Restrictions on expressing opinions from a legal perspective aim to make everyone subject to the rule of law. In addition, restrictions can guarantee justice, legal morality, welfare, and recognition of freedoms where restrictions are necessary so that everyone can express their opinions freely and responsibly, without harming the rights of others. (Wiranata et al, 2023)

The rule of law and freedom of opinion have evolved over time. Philosopher Plato said that to create ideal power and government, laws are needed to regulate society, because the existence of laws follows the dynamics that develop with the emergence of society (Marzuki, 2008) Meanwhile, Aristotle said that law and constitution are very important in society, but for justice to arise in the law, we must

be able to be fair from the mind. In its development, the concept of power developed into monarchy, aristocracy and politea (constitutional state), where the concept of politea aspires to a just society and state of law (Huda, 2011) The conception of politea is very characteristic of a democratic state, where society is guaranteed and protected by human rights, because the object or target protected by law is society itself. (Natsif, 2019)

From this point of view, the concept of basic thinking about democracy develops, which is interpreted as the concept of sovereignty that affects the way of life, openness to compromise, tolerance, awareness of accepting the views of others who are different (aspirations, understandings and ideologies), and living in egalitarianism (Yuniarto, 2018) In order for democracy to run well, several important conditions and principles are needed in democracy, including freedom of opinion, the emergence of a free attitude in choosing and being part of an organization, freedom to make choices in political contests, the right of individuals to gain power in the public sphere, freedom to access various sources of information, opportunities in the form of the right of leaders to get support from the public, freedom to hold elections fairly and honestly, and finally freedom in forming a state organization in accordance with the aspirations of the people as seen from the success of the election democratic (Dahl, 1992)

Democracy is a thought that wants to create equality and justice in human life. The development of democracy is running fast, including in the digital realm. Digital democracy develops with its own rules, lives through virtual public spaces with internet mediation, and has values and practices that are related to connectivity, attractiveness and anonymity (Hartley, 2010) The presence of digital democracy cannot be separated from the presence of new media that has been rampant recently, including social media that creates digital convergence. Social media creates a democracy that leads to digital with the characteristics of being easily manipulated, networked, or internet, controlled by computers and sophisticated mobile phones (McQuail, 2011)

The impact of digital democracy in Indonesia is very significant in affecting lives, especially the relationship between citizens and the state. As a regulator and executor of state duties, the government has a close relationship with the people, assisted by a digital democratic system. Even so, the relationship between the two did not always go well, as the implementation of the nation's life and the state often disappointed the Indonesian people. Various regulations are created without considering the needs and aspirations of the community, thus inviting scathing criticism from the public through social media. On the one hand, in a democracy, criticism is interpreted as a form of freedom of opinion where everyone has the right to express their views, including through social media. As part of the guarantee of human rights, the state does not have the right to criminalize citizens who criticize state policies.

Many criticisms of the state and state officials are conveyed through various destructive behaviors that lead to provocation, hate speech, and targeting the personal lives of state officials. This creates a sense of insecurity and comfort as an individual carries out state duties. Criticism that is delivered irresponsibly creates social noise and chaos, especially in cyberlife, which is digital and has a negative

impact on real life. This condition encourages the presence of the Electronic Information and Transaction Law, which provides criminal guarantees in relations in the digital world.

The research aims to determine the extent of criminal law in freedom of expression in Indonesia, specifically in the era of digital democracy, by referring to the development and implementation of the ITE Law. The current research builds upon prior studies by offering a comprehensive analysis of the 2024 revision of Indonesia's ITE Law, which introduces critical modifications to balance cybercrime regulation and freedom of expression—a gap not thoroughly explored in earlier works (Budiman et al., 2021; Widodo et al., 2016). While previous research highlighted the repressive potential of the ITE Law's "rubber articles" (Selian & Melina, 2018; Wiratraman et al., 2016), this study uniquely examines how the 2024 amendments address these issues through lighter sanctions, complaint-based prosecution, and narrowed defamation claims (Tsabitah et al., 2023). Additionally, it contextualizes the law's evolution within digital democracy, linking enforcement trends to Indonesia's democracy index—a perspective absent in prior literature (Nasution, 2020; Pratama et al., 2022). The research also proposes future directions, such as comparative studies and alternative dispute resolution, to mitigate the law's "chilling effect" on free speech, advancing beyond critiques of earlier versions (Hamzani et al., 2023; Karo, 2022).

## **RESEARCH METHOD**

This research uses library research with a normative juridical law research approach. The method employed is normative legal research, where legal studies related to the problem are conducted to analyze and draw legal conclusions. The data obtained uses secondary and tertiary legal materials, including basic norms, legislation, scientific research results, and books. The data collection technique involves documentation and literature studies. The collected data is then grouped and analyzed qualitatively to provide a comprehensive view of the facts regarding freedom of opinion in the context of cyberspace development in Indonesia, particularly on social media.

## **RESULT AND DISCUSSION**

### **The Phenomenon of Freedom of Opinion in Digital Democracy**

The ITE Law was originally known as the Cyberlaw Bill, which regulates the protection of personal rights, e-commerce, unfair business competition, intellectual property rights, and cybercrimes. In legal dynamics, the problem is the emergence of civil legal cases due to the behavior of e-commerce trade transactions developing in a wider spectrum globally. Along with the development of information technology and the vast digital space in Indonesia, real legal rules are needed against criminal acts. Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE) as amended by Law Number 19 of 2016 and amended for the second time by Law No. 1 of 2024 concerning Information and Electronic Transactions is an effective way for the state to create legal guarantees and recognize the freedom of view of every individual, both in line with and contrary to existing policies. The essence of the ITE Law's legal product is the

creation of comfort, health, and security in the digital space from various negative threats to the security of citizens in the digital realm.

The ITE Law was amended by Law Number 19 of 2016 concerning Electronic Information and Transactions (ITE), but there are still unclear and problematic articles. Although in this change, there are changes in terms of leniency of punishment or criminal sanctions related to legal issues of defamation of others. The Indonesian Legal Aid Foundation, as one of the civil society organizations, has criticized Article 27, paragraph 3 of the ITE Law. They asked that the existing punishment be reduced and the complaint be absolute. In the lawsuit, it is also questioned that Article 28, paragraph 3, be added regarding fake news that causes violence-oriented chaos. In addition, article 40 in the same law is problematic because the government often uses it as an authoritative legal reference in blocking, cutting off internet access, and public content that is critical of the government.

The problem is that the government authority is considered too large, so it is considered to have the potential to suppress freedom of opinion and kill people's critical reasoning towards the state. YLBHI's demands refer to data exposure, where, from 2020 to 2022, it received complaints about 190 problems with freedom of opinion and expression that were blocked by the state. Two cases that are quite crowded are the unilateral termination of internet access by the Government of Indonesia to the Papuan people and efforts to criminalize research conducted by Haris Azhar and Fathia Maulidiyanti, two human rights activists who are critical of the friction of public officials' interests related to the exploration of mining resources in Eastern Indonesia, especially Papua Province. The two cases are critical assessments of the ITE Law, which can hinder democratic freedom in Indonesia and create societal fear.

The controversy over the ITE Law began in 2008 with the news of the case of Prita Mulyasari, a hospital patient. In her complaint, Prita questioned the services of OMNI International Hospital Alam Sutra Tangerang through an e-mail entitled "Omni International Hospital Alam Sutera Tangerang Fraud" Prita criticized the services of Omni International Hospital which is filled with the splendor of big names and smart doctor services, but provides unprofessional patient services, drugs and injections (Sidabuke, 2014). For the complaint, Prita was reported with allegations of defamation. In the course of this case, the Court ruled that Prita was guilty and violated Law Number 11, Article 27, paragraph 3 of 2008 concerning the Electronic Information and Transaction Law (ITE). The article in Chapter VII concerning Prohibited Acts states that "Every person deliberately and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have insulting and/or defamatory content". This defamation refers to the Criminal Code in Articles 310 to 321 of the Criminal Code as attached in decision No. 22/PK/Pid.Sus/2011.

Prita's case caused a polemic in the community, prompting the Indonesian government to hold a draft amendment to the ITE Law. In 2015, President Joko Widodo officially presented the ITE Law Bill's new text, which was passed in 2016. The ITE Law of 2016 provides additional explanations and regulates several new provisions. In article 27, paragraph 3, an explanation of the legal provisions related to defamation is regulated, where irrelevant content is considered not to include

these two important things. Other changes in the 2016 ITE Law include the article being considered a complaint offense and reducing the threat of criminal imprisonment to four years from the previous six years.

The existence of the ITE Law in 2008 in the context of protecting the right to freedom of expression of views, opinions, and expressions of the Indonesian people is considered a step backward in the legal system in Indonesia. This is due to Article 43, paragraph 6 of the 2008 ITE Law, where the obligation of investigators through the public prosecutor related to the determination of the head of court regarding the right to arrest and detain suspects has changed. The change in question is that the authority is returned to the Criminal Procedure Code, which tends to lack strict control over the rules for arresting and detaining suspects. In its implementation, the regulation is an alternative that supports each other with the threat of imprisonment for more than five years under criminal law. This is a big problem because it threatens the freedom of individuals in Indonesia to give opinions, both criticism and suggestions, to others, including the state.

The existence of the ITE Law in 2016 related to the phrase "unlawful content" is a means for the state to determine violations of the law by citizens, so that they have the right to decide access to digital devices unilaterally, block internet access, and create policies that often create abuse of power. This causes everyone to feel afraid and cause trauma in the community to the enactment of the ITE Law because it poses a threat to the community who give their views as a form of democratic independence according to the constitution where Article 27 paragraph 1 of the 1945 Constitution states "All citizens have the same position in the law and government and are obliged to uphold the law and government without exception". According to Selian & Melina (2018), the enactment of the ITE Law limits freedom of opinion because the ITE Law does not clearly define the restriction of defamatory phrases. In addition, the delivery of freedom of opinion is threatened by the non-fulfillment of the elements that are requirements for defamation. Another factor is that several legal rules of the ITE Law do not meet the provisions related to the standardization of laws and regulations, and the threat of their implementation, which often harms the community under the pretext of certain interests.

Many community groups consider the existence of the ITE Law as a restraint on freedom of opinion, because if we examine further the freedom of opinion and expression, which is also an instrument of Human Rights, is contained in Law Number 39 of 1999 Article 14 paragraph (1) states that "Everyone has the right to communicate and obtain the information necessary to develop their personal and social environment". Article 14 Paragraph (2) states "Everyone has the right to seek, obtain, possess, store, process and convey information using all types of available means". Meanwhile, article 23 Paragraph (2), states "Everyone is free to have, issue and disseminate opinions according to his or her conscience, orally or in writing through print and electronic media about religious values, morality, order, public interest and the integrity of the state" Freedom to express one's views as a basic human right should be respected both by individuals and groups (Wiratraman et al, 2016). The provisions of the above article can be interpreted as stipulated in Law Number 9 of 1998, letter b, which states, "The freedom of every

citizen to express his opinion in public, which is the embodiment of democracy in the order of society, nation, and state."

### **Comparison of Criminal Elements of the 2008 ITE Law, the 2016 ITE Law, and the 2024 ITE Law**

The amendment to the ITE Law ran twice due to public protests, which considered that the ITE Law was vulnerable to abuse by the authorities. The number of articles in the ITE Law has multiple interpretations and heavier criminal sanctions than the Criminal Code. The 2008 ITE Law regulates many criminal laws, human rights, and criminal policies that are multi-interpreted compared to the fundamental issue of negative access to the internet, cyberspace, the online realm, and other digital spaces. In fact, in the academic text, the design and formulation of the ITE Law in the initial phase aims to protect business behavior, e-commerce, and digital business traffic, which is increasingly rampant in Indonesia. This should be in accordance with the ITE Law's initial purpose, which is to respond to social phenomena in Indonesia by being influenced by national legal rules and global legal provisions regarding the diversity of cybercrimes, such as the Convention on Cybercrime. Of course, ratified international legal rules must adapt to the Indonesian context due to the differences in the legal system formed and affecting the habits of Indonesian society (Budiman et al, 2021).

However, in its application, the 2008 ITE Law tends to regulate more criminal acts than what is contained in the Convention on Cybercrime. The Convention regulates child pornography, while the ITE Law 2008 has a wide scope, including in Article 27 paragraph (1) it is stipulated "Every Person deliberately and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have content that violates morality". The phrases "transmit" and "the content of moral values in society" are broad and have multiple interpretations. They also give broad access and authority to law enforcement in detaining people who are considered guilty unilaterally.

Other rules regarding defamation, as contained in Article 27 paragraph (3), state, " Every Person deliberately and without the right to distribute and/or transmit and/or make accessible electronic information and/or electronic documents that have insulting and/or defamatory content." This article is vulnerable to abuse and has similarities with articles 310 and 311 of the Criminal Code.

Fake news results in consumer losses in Article 28 paragraph (1): "Every person deliberately and without the right to spread false and misleading news that results in consumer losses in electronic transactions". Duplicate articles from Article 11, Article 17, up to Article 62 of Law Number 8 of 1999 concerning Consumer Protection. Regarding the content of the SARA issue, it is contained in Article 28 paragraph (2) "Every Person deliberately and without the right disseminates information intended to cause hatred or hostility to certain individuals and/or groups of society based on ethnicity, religion, race, and intergroup (SARA)" This provision is a duplicate article in the Criminal Code articles 156-157 but with a higher criminal penalty.

Listening to the various provisions above, we can see how the regulation of legal mechanisms regulated in the ITE Law of 2008 leaves problems in multiple interpretations, broad interpretations, and tends to ignore the principles developed

in the criminal law system enforced in Indonesia. We see, for example, how the article regarding the spread of content that violates moral values in a society with a non-specific legal interpretation tends to contradict the Law on Pornography, namely Law Number 44 of 2008. Even though the Pornography Law has regulated violations of moral values in society. In contrast to the case of child pornography regulated by the Convention on Cybercrime, where definitions, prohibitions, right and wrong regarding child pornography have been given clear, detailed, and specific definitions, restrictions, and criminal punishments that have not been fully accommodated by the ITE Law (Widodo et al, 2016)

In the life of a democratic nation, the role of citizens is needed in supporting the state to accommodate the community's needs for policies that favor the community. In this case, the public or citizens of the state need to convey their views, aspirations, and opinions to prevent state administrators from experiencing abuse of power that is detrimental to the community. However, freedom of opinion and the aspirations of citizens also need to be specifically regulated through the rule of law, not to cause social chaos, because, without supervision, freedom of speech can create horizontal conflicts among fellow citizens. In this case, the state and citizens suffer losses that interfere with the ideals of realizing a democratic state.

However, the digital world and virtual and cyber environments influenced by technological developments positively impact the advancement of knowledge and people's welfare. But its negative effects also result in illegal activities that violate the law and harm others. Therefore, unlawful acts require supervision and action through legal mechanisms so as not to have a bad impact on others and further damage the legal foundations of the life of the nation and state. In this case, the process of sending and disseminating information through digital realms such as print, electronic, and social media must have legal rules that govern it. Article 2, paragraph (1), Decree Number 9 of 1998 explains that citizens individually and in groups are free to give views on the state in encouraging democratization in Indonesia. But keep in mind that freedom is bound by rules so that it can be accounted for, and in accordance with Pancasila, the 1945 Constitution, does not violate Human Rights and the laws and culture that develop in society.

Restrictions on citizens' freedom of opinion in a democratic country are absolute when it is against the law. In this case, the prohibition and dissolution of organizations by the government becomes an obligation when the organization violates the values of justice and law that prevail in the country and damages the constitutional level (Issacharoff, 2006) However, a country that claims to be a democracy must be able to ensure that the principles of democracy run well and in accordance with the rules of the applicable constitution. Freedom must be exercised in a balanced manner and prohibited from harming the free rights of other individuals (Selian & Melina, 2018)

To prevent freedom of opinion that violates the rule of law, the constitution in the form of a law must be created and supported by morality in society, and various actions to carry out the social and political order. Legal regulations need to be made to provide binding, coercive limits and mutually agreed upon so that other individuals do not violate individual rights. Toby Mendel (Pratama et al., 2022) explained that a democratic country needs to ensure freedom of opinion as the basis

for democracy, an effective effort to prevent corruption, encourage accountability and transparency of state administrators, and as the highest effort in finding truth and justice. Although freedom of opinion is developing in society, it is still necessary to be reminded of the limits so as not to create freedoms that violate the human rights of others, and this legal belief must be a limit that every citizen must obey.

Pasal 19 Declaration of Human Rights menyatakan: “(1) Everyone has duties to the community in which alone the free and full Development of his personality is possible. (2) in the exercise of his rights and freedom, everyone shall be subject to such limitations as are determined by law solely to secure due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, and the welfare in a democratic society” Ahmadjayadi (2004) explained that the development of digital technology affects human communication patterns, including issues related to the law, thus creating a digital age that requires humans to adapt to the law in the modern era.

### **ITE Law and the Government's Efforts to Maintain the Guarantee of Freedom of Opinion**

Freedom of opinion is recognized in Indonesia and legally guaranteed by the guarantee of freedom of opinion from citizens to the state, both oral and written. But the reality is that the public often abuses freedom of opinion with various interests accompanying it. Free and directionless access to social media results in a pattern of social interaction creating social polarization, especially if it is associated with certain political momentum or targeting certain public figures. In the context of elections over the past few years (2014, 2019, and 2024), due to differences in political interests, netizens in cyberspace have denounced and insulted each other, resulting in social divisions that destroy national unity. Meanwhile, cases of bullying in cyberspace often also occur, involving public figures and state officials, so it is necessary to have legal regulations that are binding and create penalties that have a deterrent effect on perpetrators of bullying in the virtual environment.

One of the legal products that regulates freedom of opinion in Indonesia is Law Number 11 of 2008 concerning Information and Electronic Transactions which was amended to Law Number 19 of 2016 and finally amended by Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law). The ITE Law prevents and prosecutes crimes against various electronic transactions in cyberspace, thereby creating legal certainty. But in the process, the implementation of this legal product leads to the imposition of authoritarianism of power or the state against citizens. Often, differences of opinion in the digital realm involving social media lead to prison sentences for those criticizing the state.

If viewed in depth, the threat of criminal punishment regulated in Article 45 paragraph (3) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, is a maximum prison sentence of 4 (four) years and/or a maximum fine of Rp. 750,000,000.00 (seven hundred and fifty million rupiah). The provisions of Article 27 paragraph (3) in Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions have been deleted

and replaced with the provisions of Article 27 A. Many legal experts criticize the imposition of this crime contrary to the spirit of freedom of opinion in Indonesia. The regulation of the ITE Law is also considered to be contrary to Article 28E paragraph (3) of the Constitution of the Republic of Indonesia of 1945 (1945 Constitution). The criminal rules in Article 27, paragraph 3 of the ITE Law are considered an interpretation that leads to a rubber article because it fails to distinguish between free speech and hate speech. This is especially imposed on actors who are critical of regulations, policies, and various interests created by the state against Indonesian citizens. So, there is pressure to restore the basic legal principle that justice must be upheld regardless of differences of opinion, especially between the state and its citizens. The article effectively allows the state to create fear among people who want to express their opinions, views, and expressions of a public policy (Tsabitah et al, 2023).

The existence of the ITE Law is also considered less adaptive to global legal developments, considering that currently, as many as 50 countries have adopted legal rules regarding insulting others, spreading fake news, and defamation of others. These negative actions were initially subject to criminal law; now, they have become part of civil legal cases. In addition, several countries have eliminated the legal provisions regarding the negative actions above, considering the difficulty of proving the law, and, from a legal perspective, it tends to have subjective value (Atmaja, 2014)

Through the Ministry of Communication and Information, the government strives to avoid errors in interpreting the implementation of the ITE Law so as not to experience legal irregularities that weaken the quality of democracy in the country. To ensure justice and legal certainty as well as democratic national life, the government strengthens the rule of law through the issuance of a Joint Decree related to the Implementation of the ITE Law as an alternative legal policy before the emergence of its successor constitution. The emergence of the ITE Law Decree is also directed so that illegal, negative, and unproductive content has a guarantee that legal action can be taken.

However, the government has serious concerns that the legal products of the ITE Law do not experience legal misinterpretations in the community and become a place to attract the interests of various parties who try to take advantage of the legal loopholes behind the ITE Law, both at the central and regional levels. Although it is admitted that changing and revising the law is not easy, the development of technology and traffic in the digital space is faster than the duration of the change in the law. The existence of legal guarantees through the ITE Law is an effective way for the state to ensure that the community's needs are met in the digital space without violating national and global legal rules and upholding customs, culture, ethics, values, and legal interests.

The 2024 ITE Law is no longer a rubber article that has always been a scourge in Indonesian society. However, as a wise citizen, the government still provides clear boundaries for every Indonesian citizen, explaining why actions are allowed and prohibited in behavior and association in the digital environment of Indonesian people. In addition, the ITE 2024 Law regarding article 27 paragraph 3

is not only a complaint, which can only be about defamed people. It cannot also be represented by the board.

In addition, the second revision of the ITE Law is considered the government's best step to increase the effectiveness of law enforcement, as well as an effort to protect the Indonesian people from the adverse effects of the spread of fake news that has the potential to create riots and conflicts. Through the ITE Law, the government continues to encourage the creation of a virtual environment and digital world that is filled with a sense of justice, transparency, responsibility, meets the security elements of the user and can create innovations without reducing freedom of opinion and expression, so that Indonesia's democracy index does not continue to decline.

## CONCLUSION

This study concludes that while Indonesia's ITE Law was initially designed to secure e-commerce and combat cybercrime, its expansion into regulating online speech, through provisions on defamation, hoaxes, and hate speech, has raised concerns over repressive interpretations and threats to freedom of expression. The 2014 and 2024 revisions aimed to mitigate these risks by reducing penalties (e.g., lighter sanctions, complaint-based prosecution limited to directly affected individuals) to balance legal protections with democratic expression. Future research could explore comparative analyses of ITE Law enforcement in other countries, assess the impact of the 2024 revisions on digital democracy, examine judicial interpretations and biases, investigate the law's "chilling effect" on free speech, evaluate alternative dispute resolution mechanisms, and analyze the role of digital literacy in preventing legal violations. These studies would help refine cyber laws to safeguard security and democratic freedoms in Indonesia's digital space.

## REFERENCES

- Ahmadjayadi, C. (2004). *Cyberlaw sebagai sarana sangat penting bagi perkembangan sistem informasi nasional berbasis teknologi komunikasi dan informasi*. Jakarta: Laporan Forum Dialog Nasional Bidang Hukum dan Non Hukum BPHN.
- Budiman, A. A., Maya, G. A. K. S., Rahmawati, M., & Abidin, Z. (2021). *Mengatur ulang kebijakan pidana di ruang siber: Studi tentang penerapan UU ITE di Indonesia*. Jakarta: Institute for Criminal Justice Reform (ICJR).
- Chandra, T. Y. (2022). *Hukum pidana*. Jakarta: PT. Sangir Multi Usaha.
- Dahl, R. A. (1992). *Demokrasi dan para pengkritiknya*. Jakarta: PT. Yayasan Obor Indonesia.
- Hamzani, H., Irwan, A., Widyastuti, T. V., Khasanah, N., & Rusli, M. H. M. (2023). Legal research method: Theoretical and implementative review. *International Journal of Membrane Science and Technology*, 10(2), 3610–3619.
- Huda, N. (2011). *Dinamika ketatanegaraan Indonesia dalam putusan Mahkamah Konstitusi*. Yogyakarta: FH UII Press.
- Issacharoff, S. (2006). *Fragile democracies*. New York University Public and Legal Theory: Working Papers, (40).

- Karo, R. K. (2022). Hate speech: Penyimpangan terhadap UU ITE, kebebasan berpendapat dan nilai-nilai keadilan bermartabat. *Jurnal Lemhanas RI*, 10(4), 52–65.
- Lestari, S. A., Sadida, M. R., Maharani, R. P., & Andini, I. W. (2023). Analisis tantangan negara hukum dalam menegakkan hukum tata negara di era digital. *JRP: Jurnal Relasi Publik*, 1(2), 29–43.
- Marzuki, P. M. (2008). *Pengantar ilmu hukum*. Jakarta: Kencana.
- Natsif, F. A. (2019). Perlindungan hak asasi manusia dalam perspektif negara hukum Indonesia. *Ar-Risalah*, (1), Mei.
- Nasution, L. (2020). Hak kebebasan berpendapat dan berekspresi dalam ruang publik di era digital. *Adalah: Buletin Hukum dan Keadilan*, 4(3), 37–48.
- Pratama, I. P., Rahman, A., & Bachmid, F. (2022). Kebebasan berpendapat dan berekspresi di media sosial dalam perspektif hak asasi manusia. *Qawanin: Jurnal Ilmu Hukum*, 3(1), 1–16.
- Puspitasari, D. N. (2016). Kebebasan berpendapat dalam media sosial. *Buletin Konsorsium Psikologi Ilmiah Nusantara (KPIN)*, 2(14).
- Selian, D. L., & Melina, C. (2018). Kebebasan berekspresi di era demokrasi: Catatan penegakan hak asasi manusia. *Lex Scientia Law Review*, 2(2), 185–194.
- Sriwidodo, J. (2019). *Kajian hukum pidana Indonesia: Teori dan praktek*. Yogyakarta: Penerbit Kepel Press.
- Tsabitah, J. S., Sihombing, A., & Nuraeni, Y. (2023). Ancaman pidana terhadap kebebasan berpendapat sebagai pelanggaran hak asasi manusia berdasarkan Undang-Undang Nomor 1 Tahun 2024 tentang Perubahan Kedua atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik. *SALAM: Jurnal Sosial dan Budaya Syar-i*, 10(6), 1895–1918.
- Widodo, S., et al. (2016). *Catatan dan usulan masyarakat sipil atas RUU Perubahan UU ITE (versi 16 April 2015)*. Jakarta: Institute for Criminal Justice Reform (ICJR).
- Wiranata, K., Khamin, M., & Asmarudin, I. (2023). Kebebasan berekspresi melalui media digital dan penerapannya di Indonesia. *Pancasakti Law Journal (PLJ)*, 1(2), 205–218.
- Wiratraman, H. P., et al. (2016). *Kebebasan berekspresi di Indonesia: Hukum, dinamika, masalah dan tantangannya*. Jakarta: ELSAM.