



The Second Amendment of Electronic Information and Transaction Law: Pros and Cons of Human Rights Perspectives

Amandemen Kedua Undang-Undang Informasi dan Transaksi Elektronik: Pro dan Kontra dari Perspektif Hak Asasi Manusia

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Abstract

The government demands the active participation of the public in criticizing the government. However, this statement has sparked controversy among various groups. The purpose of this writing is to understand the response of students regarding the government's demand to be criticized while being threatened by the Information and Electronic Transactions Law, an Indonesian term using ITE Law. It also discusses the legal safeguards needed to protect individuals from criminal sanctions when criticizing the government. This research uses normative research methods, which involve analysing issues based on legislation and legal literature. The existence of the ITE Law has caused concerns among the public regarding giving criticism and feedback to the government through social media platforms. One of the main concerns lies in the ambiguous interpretation of certain articles, particularly Articles 27A and 27B concerning defamation of character. The lack of clear boundaries regarding the elements of defamation of character poses several challenges in the implementation of these articles, including restrictions on freedom of expression guaranteed by the constitution and human rights. In other words, the ambiguity of these articles hinders the achievement of legal objectives such as certainty, usefulness, and justice. The implementation of the latest revision of the ITE Law should be carried out fairly and transparently, ensuring legal certainty in handling cases involving the ITE Law, to alleviate excessive concerns.

Kata Kunci:

Informasi dan
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Abstrak

Pemerintah menuntut partisipasi aktif masyarakat dalam mengkritik pemerintah. Namun, pernyataan ini telah memicu kontroversi di berbagai kelompok. Tujuan tulisan ini adalah untuk memahami tanggapan mahasiswa terkait tuntutan pemerintah untuk dikritik sekaligus diancam dengan Undang-Undang Informasi dan Transaksi Elektronik (UU ITE). Tulisan ini juga membahas perlindungan hukum yang dibutuhkan untuk melindungi individu dari sanksi pidana ketika mengkritik pemerintah. Penelitian ini menggunakan metode penelitian normatif, yang melibatkan analisis isu berdasarkan legislasi dan literatur hukum. Keberadaan UU ITE telah menimbulkan kekhawatiran di kalangan masyarakat terkait pemberian kritik dan umpan balik kepada pemerintah melalui platform media sosial. Salah

satu kekhawatiran utama terletak pada interpretasi yang ambigu dari beberapa pasal, khususnya Pasal 27A dan 27B tentang pencemaran nama baik. Kurangnya batasan yang jelas mengenai unsur-unsur pencemaran nama baik menimbulkan beberapa tantangan dalam implementasi pasal-pasal tersebut, termasuk pembatasan kebebasan berekspresi yang dijamin oleh konstitusi dan hak asasi manusia. Dengan kata lain, ambiguitas pasal-pasal tersebut menghambat pencapaian tujuan hukum seperti kepastian, kegunaan, dan keadilan. Penerapan revisi terbaru Undang-Undang ITE harus dilakukan secara adil dan transparan, memastikan kepastian hukum dalam menangani kasus-kasus yang melibatkan Undang-Undang ITE, untuk mengurangi kekhawatiran yang berlebihan.

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INTRODUCTION

Background of the Problem

Currently, the global society has entered a phase where technological advancements support all forms of human activities. The world that once felt vast can now be accessed within seconds. Any form of localized information can now be disseminated globally. As the rapid development of digital technology continues, humans find it increasingly easy to access various things on the internet, such as searching for data and information, engaging in social networks, and even expanding their friendship circles. All types of work have become easier and more efficient through the advancement of digital technology (Rohadi, Danialsyah, dan Purba 2021). With the changing societal landscape that accompanies technological advancements, Indonesian society must uphold and implement the traditional values of courtesy and respect, which have been passed down through generations, in their interactions within the digital realm (Silalahi, Nugroho, dan Ariyanti 2023).

The tendency of technology usage and continuous technological advancements have significant and foreseeable impacts. Consequently, these efforts have given rise to legal instruments like the ITE Law. Considering the rapid development of the digital era, the ITE Law has undergone ongoing changes. The government continues to revise and reassess this law to adapt to the increasingly sophisticated digital landscape. The first amendment was made through Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions, while the second amendment was enacted through Law No. 1 of 2024 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions.

However, this does not automatically make the law perfect and ready for implementation. Even after undergoing revisions, it appears that there are still many ambiguous provisions within the law. These ambiguous provisions, particularly those related to defamation, have the potential to affect legal certainty and the stability of justice for the society, as the law can be misused by individuals who act wrongly and irresponsibly (Dhadha dkk. 2021). The ITE Law discusses provisions related to various aspects concerning electronics and the virtual world, as well as electronic files within the electronic system that govern the true social ethics of electronic information usage, which has become an integral part of contemporary life. This serves as evidence that the law should be able to adapt to the current social conditions. It is imaginable that without

proper legal control over the ITE Law, there would be an increase in illegal activities related to electronic information and transactions within society (Hadiyati dan Stathany 2021).

The second amendment of the ITE Law includes changes to several articles, namely Article 13, Article 16A, Article 27, Article 28, Article 29, Article 40A, Article 43, and Article 45. One notable change is the removal of Article 27, paragraph (3), which previously regulated the criminalization of defamation or slander through electronic channels. However, the second amendment of the ITE Law replaces it with Article 27A and Article 27B, which are considered by various parties as new ambiguous provisions (without clear legal references) within the ITE Law (Setiawan 2021). Another noteworthy amendment is Article 28, paragraph 2, which prohibits the dissemination of hatred. In the new provision, there is no specific mention of groups or categories, such as political groups and the like. However, conflicts often arise based on categorizations. This leads to a normative vacuum as the article fails to address the need to resolve conflicts.

In addition, another revision in the ITE Law is the inclusion of Article 40A between Article 40 and Article 41, which grants the government the authority to order electronic system providers to adjust or take specific actions in fulfilling their responsibilities. Violations can result in administrative sanctions, such as written warnings, administrative fines, temporary suspension, and termination of access. The revision of Article 45 in the ITE Law provides exceptions to sanctions for violations related to decency and defamation when done in the public interest, self-defence, or within the context of art, culture, sports, health, and science. However, the specific categories are not clearly defined by Rahmawati et al., (2021). These problematic articles will extend the threats to the public's access to information and their freedom of expression in Indonesia. The lack of transparency poses significant risks that could potentially result in regulations that benefit the elite at the expense of human rights protection (Septiani 2020).

This research conducts a comparison with three previous studies that share a similar topic to test the authenticity of this research. The first study titled "Legal Study of Article 27 Paragraph 3 of the Information and Electronic Transactions Law on Freedom of Expression in Society" aims to understand and examine the impact of Article 27 Paragraph 3 of the ITE Law on freedom of expression in society and to examine the legal protection of the guarantee of freedom of expression in Indonesia. The second study titled "Impact of the Information and Electronic Transactions Law on Legal and Social Changes in Society" aims to determine the extent of the role, influence, and effectiveness of Law No. 11 of 2008 concerning Information and Electronic Transactions on society. The third study titled "Article Rubber of the ITE Law and Resolution of Digital Conflicts in Indonesia" aims to explore the conflicts arising from the ITE Law and how the ITE Law should resolve conflicts that occur in the digital realm. What distinguishes this research from previous studies is the focus on the pros and cons of the ITE Law after the Second Revision from the perspective of human rights, specifically examining the changes in its articles that impact freedom of expression. This indicates the need to understand the changes in the ITE Law after the Second Revision and their impact on human rights, particularly freedom of expression.

Problem Identification

Indonesia's Electronic Information and Transactions Law (UU ITE), particularly after its second revision, presents various problems related to freedom of expression and the protection of human rights. One key issue is the ambiguity of several articles, such as Article 27A and Article 27B, which have the potential to lead to ambiguous

interpretations in their application. This raises concerns about restrictions on freedom of expression in the digital realm, which is supposedly protected by the Indonesian constitution and international human rights treaties. Furthermore, articles that authorize the government to cut off access to information or electronic content are also subject to abuse, risking limiting the space for legitimate criticism of the government and public officials. The existence of articles considered flexible (rubber articles) further exacerbates legal uncertainty and adds to the tension between the protection of freedom of expression and the state's efforts to control content online.

Problem Formulation

The second revision of Indonesia's Electronic Information and Transactions Law (UU ITE) raises profound questions about the balance between regulating freedom of expression and protecting human rights in the digital age. While this law aims to maintain order in cyberspace, the ambiguity of several articles, such as Articles 27A and 27B, raises concerns about excessive restrictions on freedom of expression. The uncertainty in the formulation of these articles, which are sometimes "rubber articles," can open up opportunities for abuse of power and negatively impact democracy, particularly when it comes to criticizing the government.

In this regard, several fundamental issues need to be addressed to further understand the implications of this revised law and how these changes affect freedom of expression and human rights protection. Some questions that need to be answered to delve deeper into this issue are as follows:

1. What impact do the changes to the articles in the second revision of the ITE Law have on freedom of expression in Indonesia, particularly in the context of the right to criticize the government?
2. How can ambiguity in new articles such as Articles 27A and 27B affect the application of the law and create legal uncertainty for the public?
3. What are the human rights implications of these articles granting the government broad authority to regulate and restrict access to information or electronic content?
4. How can the application of the principles of proportionality and legal responsiveness in the ITE Law reduce the risk of abuse of power in restricting freedom of expression online?

LITERATURE REVIEW

The Theory of the Rule of Law and Legal Certainty

Indonesia constitutionally affirms itself as a state based on law (*rechtsstaat*), as explicitly stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The principle of the rule of law implies that all exercise of state power, whether by the executive, legislative, or judicial branches, must be based on law and must not be exercised arbitrarily. Within this framework, the law functions not only as an instrument of control over power, but also as a means of protecting the fundamental rights of citizens, including the right to freedom of expression.

One fundamental element of a rule of law is legal certainty. Legal certainty requires that legal norms be formulated clearly, firmly, and without multiple interpretations, so that they can be understood and predicted by the public. Laws that lack certainty will create uncertainty in their application, open up the opportunity for inconsistent law enforcement, and potentially lead to injustice. Therefore, the formulation of laws and

regulations must take into account clarity of norms, the definition of elements of crimes, and the mechanisms for their implementation to avoid instilling fear or excessive criminalization of citizens.

Gustav Radbruch argued that ideal law must embody three fundamental values: justice, legal certainty, and utility. These three values must be in proportional balance. Legal certainty without justice can lead to rigid and repressive laws, while justice without legal certainty has the potential to create uncertainty and subjectivity in law enforcement (Borowski 2024). In this context, legal norms that are ambiguous, elastic, or lack clear normative boundaries contradict the principles of the rule of law, as they open up room for excessive interpretation by law enforcement officials and potentially lead to abuse of power.

In relation to the Second Amendment to the Electronic Information and Transactions Law (UU ITE), the principle of legal certainty is a central issue. The elimination of Article 27 paragraph (3), which previously regulated defamation, does not completely eliminate the normative problems, as this provision has been replaced by Articles 27A and 27B. The formulation of the norms in these new articles is considered to still leave room for broad interpretation, particularly regarding the element of "attacks on honor or reputation" and the boundary between legitimate criticism and criminal acts. The unclear elements of this offense have the potential to instill fear in the public about expressing opinions or criticism, especially of the government or public officials.

Therefore, from the perspective of the theory of the rule of law and legal certainty, the revision of the ITE Law should be aimed at strengthening the clarity of norms and providing balanced protection between the interests of maintaining public order and respecting human rights. Without the formulation of clear and firm norms, the ITE Law risks contradicting the principle of *rechtsstaat* and failing to fulfill the legal objectives as stated by Radbruch in Peter (2023), particularly in ensuring legal certainty and justice for society in the digital age.

Human Rights Theory and Freedom of Expression

Human rights (HAM) are fundamental rights inherent in every individual from birth as a gift from God Almighty, and therefore their existence is not dependent on state recognition (Murthada dan Sulubara 2022). In modern human rights doctrine, human rights are viewed as universal, inalienable, and applicable to everyone without discrimination. States have a primary obligation to respect, protect, and fulfill human rights through policies, regulations, and law enforcement practices that are in accordance with human rights principles.

One of the fundamental rights within the human rights regime is freedom of expression. This right is internationally recognized in Article 19 of the Universal Declaration of Human Rights (UDHR), which states that everyone has the right to freedom of opinion and expression, including the freedom to seek, receive, and impart information and ideas through any media without interference. A similar guarantee is affirmed in Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which Indonesia ratified through Law Number 12 of 2005. With this ratification, Indonesia is legally bound to align its laws and regulations with international standards for protecting freedom of expression.

At the national level, freedom of expression is constitutionally guaranteed in Article 28E paragraph (3) of the 1945 Constitution, which states that everyone has the right to freedom of association, assembly, and expression, and in Article 28F of the 1945 Constitution, which guarantees the right to communicate and obtain information. This

constitutional guarantee affirms that freedom of expression is a crucial element of Indonesia's democratic system and serves as a means of social control over the exercise of state power.

However, freedom of expression is not an absolute right. Under human rights law, the state is permitted to impose restrictions on freedom of expression as long as such restrictions meet three main principles: legality, legitimate aim, and necessity and proportionality. The principle of legality requires that any restrictions be clearly regulated in law. The principle of legitimate aim requires that restrictions may only be imposed for legitimate purposes, such as protecting public order, national security, public morals, or the rights and reputations of others. Meanwhile, the principles of necessity and proportionality require that such restrictions be truly necessary and implemented proportionally, not excessively, and not negate the essence of the right to freedom of expression itself.

In the context of the Electronic Information and Transactions Law (ITE Law), restrictions on freedom of expression through criminal provisions must be tested against these principles (Rauf, Ahamd, dan Moh. Rivaldi Moha 2025). Provisions that are vaguely formulated or open to interpretation have the potential to create a "chilling effect," where individuals are reluctant to express legitimate opinions, criticisms, or expressions for fear of criminalization. This effect is particularly dangerous in a democratic state, as it can weaken public participation, hinder academic freedom, and limit the space for criticism of government policies and actions.

Therefore, from a human rights perspective, the regulation of freedom of expression in the ITE Law must be formulated firmly, proportionally, and oriented toward rights protection, rather than solely a repressive approach. The state is obliged to ensure that the restrictions imposed are not used as a tool to silence legitimate criticism, but rather as a last resort (ultimum remedium) to protect legitimate interests that are truly important in a democratic society.

Limitations of Rights and the Principle of Proportionality

In human rights doctrine, restrictions on citizens' basic rights can only be implemented under certain conditions and through legally valid mechanisms. The theory of limitations of rights asserts that the state does not have absolute authority to limit human rights but must adhere to strict legal principles to prevent abuse of power. One of the main principles in limiting human rights is the principle of proportionality, which serves as a test for assessing whether a limitation of rights is justifiable in a democratic society.

The principle of proportionality requires a balance between the objectives sought by the state and the degree of restriction imposed on individual rights. In legal literature, this principle generally consists of several stages of testing: (1) legitimacy of the objective, namely that the restriction must be aimed at a legitimate interest such as maintaining public order, national security, or protecting the rights of others; (2) suitability, namely whether the restriction can rationally achieve the intended objective; (3) necessity, namely whether there are no other, less restrictive alternatives; and (4) a fair balance between the benefits gained by the state and the losses experienced by the individual as a result of the restriction (Rifa'i dan Azizah 2025).

In the context of national law, the principle of proportionality is also reflected in Article 28J paragraph (2) of the 1945 Constitution, which states that restrictions on human rights may only be imposed by law and solely to guarantee recognition and respect for the rights and freedoms of others, and to meet demands for justice in accordance with considerations of morality, religious values, security, and public order. This provision

emphasizes that restrictions on human rights must be rational, measured, and not exceed the intended objectives.

In the context of the second revision of the Electronic Information and Transactions Law (ITE Law), the principle of proportionality becomes particularly relevant in assessing government authority as stipulated in Articles 40 and 40A. These provisions authorize the government to terminate access, restrict, or control certain electronic systems and/or electronic content. Normatively, this authority aims to maintain public order and prevent the dissemination of unlawful content. However, without clear boundaries and effective oversight mechanisms, this authority has the potential to be overused and exceed its original purpose.

If the authority to terminate access is exercised without a need-to-know basis and without a judicial oversight mechanism, such action could become a repressive instrument that disproportionately limits freedom of expression. Unilateral and administrative restrictions, without a transparent and accountable legal process, risk eliminating space for public criticism and strengthening state censorship. This situation contradicts the principles of human rights protection and democratic values that uphold freedom of expression.

Therefore, from the perspective of the theory of rights restrictions and the principle of proportionality, the implementation of Articles 40 and 40A of the ITE Law should be accompanied by strict oversight mechanisms, such as authorization or review by a judicial institution, clarity on the criteria for content that can be restricted, and guarantees of legal remedies for aggrieved parties. Without such mechanisms, restrictions on freedom of expression have the potential to violate the principle of proportionality and undermine the state's commitment to protecting human rights in the digital space.

Responsive Law

The theory of responsive law was put forward by Philippe Nonet and Philip Selznick as a critique of repressive and autonomous legal models (Oktavia 2025). In their view, law should not be understood solely as an instrument of social control used by the state to regulate and restrict societal behavior, but rather as a means capable of responding to evolving needs, aspirations, and social dynamics. Responsive law places the values of substantive justice, public participation, and the protection of human rights as the primary orientations in the formation and enforcement of law.

Nonet and Selznick distinguish three legal typologies: repressive law, autonomous law, and responsive law (Dermawan, Yaswirman, dan Eva 2024). Repressive law tends to treat law as a tool of power that emphasizes compliance and sanctions, while autonomous law focuses on certainty and formal procedures without in-depth consideration of social impacts. Different from both, responsive law seeks to bridge legal certainty with substantive justice by opening up space for dialogue between the state and society and making law a mechanism for solving social problems, rather than simply a tool of coercion.

Within the framework of responsive law, public participation is a crucial element. The legal development process ideally involves the aspirations of the public, civil society groups, and other stakeholders so that the resulting regulations reflect real needs on the ground. Furthermore, responsive law demands transparency in the formulation and implementation of legal policies, as well as accountability mechanisms that enable the public to monitor and correct the exercise of state power. Thus, the law not only protects order but also guarantees respect for citizens' rights.

From this perspective, the revision of the Electronic Information and Transactions Law (ITE Law) should not only focus on regulating the digital space and preventing the misuse of information technology, but also ensure the creation of a healthy, safe, and democratic space for freedom of expression (Gustryan dan Hoesein 2025). Responsive laws in the information technology sector must adapt to the dynamic, participatory, and open-to-criticism nature of the digital society. Therefore, regulations governing expression in the digital space must be designed in such a way as not to instill fear, excessive criminalization, or the silencing of legitimate criticism.

The existence of provisions in the ITE Law that are still elastic, known as "rubber articles," indicates that the regulation does not fully reflect the character of responsive law. Norms with multiple interpretations tend to reinforce a repressive approach to law enforcement, as they provide excessive discretion for law enforcement officials. This contradicts the spirit of responsive law, which demands clear norms, protection of human rights, and a balance between state interests and citizen freedoms.

Therefore, from the perspective of responsive legal theory, the ideal ITE Law is a regulation that adaptively responds to technological developments and the aspirations of the digital community, guarantees legal certainty without sacrificing substantive justice, and places freedom of expression as an integral part of democratic life (Gustryan dan Hoesein 2025). Without this responsive orientation, the law risks losing social legitimacy and being perceived as a tool to restrict freedom, rather than as a means of protecting public rights and interests.

METHODOLOGY

This research employs a juridical-normative legal research method that focuses on the examination of positive legal norms within legislation. This approach was chosen because the research aims to critically analyze the provisions of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law) from a human rights perspective, specifically regarding freedom of expression, legal certainty, the principle of proportionality, and the character of responsive law. Normative research allows researchers to assess the consistency of national legal norms with constitutionally and internationally recognized legal principles and human rights standards.

The approaches used in this research include a legislative approach, a conceptual approach, and a human rights approach. The legislative approach is carried out by systematically examining the provisions of the Second Amendment to the ITE Law, particularly articles directly related to restrictions on freedom of expression and state authority in the digital space. The conceptual approach is used to examine and apply the theory of the rule of law, legal certainty, human rights, the principle of proportionality, and responsive law as the basis for normative analysis. A human rights approach is used to examine the compliance of the provisions of the ITE Law with human rights guarantees as stipulated in the 1945 Constitution and international human rights instruments, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which have been ratified by Indonesia.

The legal materials used in this study are secondary data obtained through literature review. Primary legal materials include the 1945 Constitution, Law Number 1 of 2024 concerning the Second Amendment to the ITE Law, Law Number 12 of 2005 concerning the Ratification of the ICCPR, and other related laws and regulations. Secondary legal materials include legal textbooks, scientific journal articles, previous research results, and opinions of legal experts relevant to the issues of freedom of expression and cyber

law. Tertiary legal materials, such as legal dictionaries and legal encyclopedias, are used to clarify the legal concepts and terminology used.

The analysis of the legal materials is conducted qualitatively and normatively, employing grammatical, systematic, and teleological interpretations. The provisions of the ITE Law are analyzed by linking them to legal theory and human rights principles, which serve as the theoretical framework for the study (Fadli 2021). The analysis results are presented descriptively and analytically to explain the normative issues, the pros and cons of amending the articles of the ITE Law, and their implications for legal certainty and freedom of expression in the digital space. The research conclusions are drawn deductively to produce legal arguments that are logical, systematic, and scientifically justifiable.

The validity of the data in this study is ensured through the triangulation of legal materials and the consistency of normative analysis. Triangulation is carried out by comparing and confirming primary legal materials with secondary and tertiary legal materials to ensure consistency between legal norms, doctrines, and academic perspectives. Furthermore, the validity of the analysis is strengthened through the use of authoritative, relevant, and up-to-date legal sources, as well as the consistent application of legal theory and human rights principles in assessing each analyzed provision. With these techniques, the research results are expected to have academic validity and sufficient argumentative strength in assessing the ITE Law from the perspective of human rights protection.

RESULT AND DISCUSSION

Pros and Cons of New Articles in the Second Revision of the ITE Law

The existence of ITE Law is a regulatory framework that governs the use of electronic technology, both directly and indirectly, on social media platforms, to ensure compliance and prevent chaos and legal issues in the use of electronic media in Indonesia. It is known that the use of electronic media in Indonesia is not limited by age, which necessitates accountability for the information shared by individuals on these platforms. This accountability is not unrelated to responsibility but rather pertains to the content of the electronic information, often involving defamation and defamation of character, which can harm others (Putra dan Tantimin 2022). This is one of the negative impacts of using electronic media, which, without specific regulations, can lead to legal issues within society. Ironically, the second revision of the ITE Law, recently passed by the DPR, still contains problematic articles such as defamation and character attacks, hate speech, false information, and access termination. These problematic articles will further threaten the public's access to information and their freedom of expression in Indonesia (Bagiastra 2023).

One noticeable change in the second revision of the ITE Law is the removal of criminal offenses related to defamation or defamation of character through electronic channels. The previous provision, Article 27 paragraph (3), which regulated these offences, has been eliminated. However, the second revision of the ITE Law replaces it with Articles 27A and 27B, which many consider to be vague articles within the ITE Law. The new articles regarding defamation and extortion of reputation in the revised ITE Law include Articles 27A and 27B, which deal with defamation or extortion of reputation. Article 27A addresses attacks on the honour or reputation of others through electronic information, while Article 27B deals with the distribution and transmission of electronic information that unlawfully harms individuals (Permana dan Khomsah t.t.).

Furthermore, Article 28 paragraph (3) introduces a new provision that prohibits the dissemination of electronic information or documents known to contain false news that may incite public unrest. The fourth revision of the ITE Law, between Articles 40 and 41, includes Article 40A, which grants the government the authority to order electronic system providers to adjust or take certain actions to fulfil their responsibilities. Violations can result in administrative sanctions such as written warnings, administrative fines, temporary suspension, and access termination. However, exceptions to the penalties are made for offences related to decency and defamation of character. Article 45 of the revised ITE Law provides exceptions to the sanctions for offences related to decency and defamation of character that are carried out for the public interest, self-defence, or within the context of art, culture, sports, health, and science (Surya 2023).

The effectiveness of Article 27A and Article 27B has sparked debates among various parties, especially among the public who possess freedom and are protected by the Human Rights Law. Human rights, which are inherent to individuals and cannot be revoked until their death or the termination of their ownership rights, are at the core of this issue. In this context, the importance of upholding the freedom of expression, a right granted and safeguarded by the Human Rights Law, cannot be understated. However, it is essential to recognize that every individual also possesses human rights that must be protected. If someone engages in actions or behaviours that hinder or harm others, the victims are entitled to equal protection, both in terms of tangible and intangible losses (Ningrat dan Nulhaqim 2023).

As mandated by Article 28 of the 1945 Constitution, every individual has the right to freedom of association, assembly, and expression. Therefore, Article 27B of the ITE Law contradicts this principle, leading to ineffective implementation. In a democratic country, the freedom of expression serves as a benchmark to establish a democratic state. The more freedom the society has in expressing their opinions, the higher the value of democracy in that country (Rahmad dkk. 2023). In the context of freedom of expression in the era of technology, the ease of access to information and data dissemination provided by technology allows individuals to freely express their opinions. This contributes to the improvement and enhancement of freedom of expression.

In principle, freedom of expression adheres to a universal principle where every individual in society has the freedom to express their opinions. However, this freedom must come with fair limitations and align with norms, moral values, and public order to prevent harm to others (Rohmy, Suratman, dan Nihayaty 2021). Therefore, freedom of expression is a special right granted to every individual in every country. Universally, freedom of expression aims to facilitate the exchange of ideas, inspiration, and knowledge regarding information or policies within a nation.

Meanwhile, in Indonesia itself, as mandated in the 1945 Constitution, the meaning of freedom of expression is considered a goal of the country as a democratic state. Freedom of expression can be exercised by anyone and is not limited by any specific group or faction. Expressing opinions can take the form of criticism, opinions, or constructive suggestions that are positive and do not contain negative elements such as spreading fake news or defaming someone, which are prohibited by law (Dunan dan Mujiyanto 2022). In line with this, Article 40 of the second revised ITE Law serves as a barrier for individuals to express their opinions, as the government has the authority to restrict access to electronic information. Article 40 grants the government significant power to cut off access to information that is deemed to disrupt public order and violate the law.

Regarding access cut-off, the government needs to note that the content that can be restricted is limited to content that is explicitly prohibited or constitutes a criminal

offense as regulated by the law. This is important to consider as limitations on the right to express opinions and ideas can only be imposed through legislation (Indriyana, Trisiana, dan Amelia 2021). It means that Article 40 paragraph (2c) should be strictly interpreted within the scope of the law and should not include regulations below the law. If necessary, regulations under the law can govern the technical aspects of implementing the government's authority under Article 40 and Article 40A, but they should not redefine what content should be restricted or prohibited. It is advisable to clarify this provision in a specific article (Suharto, Parulian, dan Ruben 2020).

It is crucial to supervise the execution of Article 40 of the ITE Law. Hence, it is imperative to establish a process that allows for obtaining court authorization before implementing access termination. The provisions of Article 40A, which control the government's power to modify Electronic Systems and/or carry out specific activities, can likewise be subject to this procedure (Elan dan Girsang 2022). Upon obtaining the court's authorization, the government's activities, as stipulated in Article 40 and Article 40A, may undergo pretrial proceedings, and the government may be held liable if any flaws are discovered in its execution (Prasetyo 2021). It is imperative to include a section that specifically deals with this matter to prevent any unlawful content from being unnoticed, while simultaneously safeguarding the right to freedom of speech. The second amended ITE Law, with its modifications, demonstrates the Indonesian government's endeavour to adapt to the ever-changing digital landscape, while simultaneously upholding a harmonious equilibrium between the right to freedom of expression and the legal safeguarding of society (Hartanto 2021).

Normative Analysis of the Second Amendment to the ITE Law from the Perspective of Human Rights and the Principle of Proportionality

The research findings indicate that the Second Amendment to the ITE Law has not fully addressed the fundamental issue of legal certainty in regulating freedom of expression in the digital space. Despite attempts at normative improvement through the elimination and replacement of several provisions, particularly Article 27 paragraph (3), Articles 27A and 27B still contain elastic norms that are open to multiple interpretations. This situation creates legal uncertainty because the boundaries between legitimate criticism, the expression of opinion, and acts deemed unlawful are not clearly defined, thus opening up room for subjective interpretation in law enforcement.

From the perspective of the rule of law and legal certainty, these findings indicate a tension between the goal of regulating the digital space and the state's obligation to provide clear and predictable legal protection. Undefined norms have the potential to shift the function of law from a means of protecting rights to a tool of repressive social control. This contradicts the principle of *rechtsstaat*, which demands certainty, justice, and limitations on state power through law.

Furthermore, the analysis from a human rights perspective indicates that the restrictions on freedom of expression in the ITE Law are not fully in line with national and international human rights standards. Criminal provisions governing expression in the digital space have the potential to have a chilling effect, particularly against public criticism of the government and public officials. In practice, the threat of criminal sanctions encourages self-censorship, ultimately weakening the function of freedom of expression as a means of social control in a democratic state.

From the perspective of the theory of rights restrictions and the principle of proportionality, the government's authority under Articles 40 and 40A of the Electronic

Information and Transactions (ITE) Law to terminate access to or control electronic systems is a crucial finding in this study. Normatively, this authority is intended to protect the public interest and prevent the misuse of information technology. However, without clear criteria, a judicial oversight mechanism, and guaranteed legal remedies for injured parties, this authority has the potential to be applied disproportionately and exceed its intended purpose. This demonstrates that the principles of necessity and proportionality have not been optimally implemented in this regulation.

From the perspective of responsive legal theory, the research findings indicate that the revised ITE Law still tends to maintain the law's repressive character and is not fully responsive to the dynamics of digital society. The existence of "rubber articles" and the dominant penal approach indicate that the law functions more as an instrument of regulation than as a means to respond to public aspirations for safe and responsible freedom of expression. The lack of meaningful public participation in norm formulation and weak accountability mechanisms for law enforcement further reinforce the impression that the ITE Law does not fully reflect the responsive character of law.

Thus, this discussion confirms that the Second Amendment to the ITE Law still leaves structural problems in protecting freedom of expression and human rights in the digital space. The findings of this study contribute to the development of legal studies by demonstrating that regulatory improvements cannot be achieved simply through wording changes but require a paradigm shift from a repressive approach to one based on rights, proportionality, and legal responsiveness. These findings also provide a normative basis for policy recommendations to strengthen legal certainty, clarify the limits of rights restrictions, and ensure that digital space regulations align with the principles of the rule of law and democracy.

The research finding that the Second Amendment to the ITE Law still leaves structural problems in protecting freedom of expression and human rights in the digital space is in line with various previous studies that show that the ITE Law, including the revised articles, remains ambiguous, open to multiple interpretations, and has the potential to cause a chilling effect on public participation and digital democracy (Dewi 2024). Previous studies highlighted that articles such as 27, 28, and now 27A–27B are often used to limit expression and even criminalize activists, journalists, and citizens who convey criticism, thereby eroding the principles of the rule of law and democracy (Arifin, Fernando, dan Handayani 2025; Devi dkk. 2024; Lukum dan Hukumu 2025; Suhandry Aristo Sitanggang, Tajul Arifin, dan Ine Fauzia 2025). Various studies also agree that the existing legal framework emphasizes the logic of restrictions and criminalization rather than the protection of rights, with weak points in the unclear formulation of norms, the absence of clear measures for the limits of rights restrictions, and the weak guarantee of legal certainty for users of the digital space (Nyoman Gede Antaguna dan Anak Agung Sagung Laksmi Dewi 2023; Raudhina Oktia Ayu 2025; Salsabila 2022; Sinta Sumarhati dan Irawan 2024).

However, compared to many studies that stop at criticism of "rubber articles" and recommendations for technical normative revisions, the findings of this study confirm that the problems of the ITE Law after the Second Amendment are structural and require a more fundamental paradigm shift: from an approach repressive approach towards a rights-based, proportional, and responsive approach to law 124811. Thus, this study not only strengthens the previous conclusion that reform of the ITE Law is necessary to guarantee freedom of expression, but also offers a more systemic normative basis for policy formulation, namely the importance of restructuring the design of digital space regulations to align with the principles of the rule of law and democracy, emphasizing the limits of rights restrictions, and ensuring that electronic law enforcement is no longer

a tool of criminalization, but rather an instrument for protecting citizens' constitutional rights.

CONCLUSION AND RECOMENDATION

Conclusion

The revision of the ITE Law can be seen as a step towards enhancing law enforcement effectiveness in addressing cybercrimes, such as the spread of fake news or online defamation. The stricter regulations in the ITE Law can be seen as an effort to protect public safety from potential threats arising from the dissemination of information that can incite riots or conflicts. However, public opinion on the ITE Law remains diverse. Some consider the ITE Law as a tool to restrict freedom of expression. Others believe that the second revised ITE Law can be abused to suppress criticism of the government. However, some argue that the ITE Law is necessary to protect society from the spread of false and harmful information. There is a view that the implementation of this revised ITE Law gives excessive authority to the government to restrict freedom of speech and expression. Especially when its articles are interpreted broadly, and the ambiguity in the wording of certain articles can be a source of concern. The public hopes that the implementation of the latest revision of the ITE Law can be applied fairly and transparently, with legal certainty in handling cases involving the ITE Law, to alleviate excessive concerns.

The findings of this study have significant practical and academic implications for the development of legal policy in the field of information technology. Practically, the results of this study can serve as a basis for evaluation by legislators and law enforcement officials in implementing the provisions of the ITE Law more carefully, proportionally, and oriented towards protecting human rights, particularly freedom of expression in the digital space. This study emphasizes the importance of formulating clearer and more restrictive norms, strengthening oversight mechanisms for state authority in controlling digital content, and placing criminal law as a last resort (*ultimum remedium*). However, this study has limitations because it uses a juridical-normative approach that focuses on the analysis of regulatory texts and legal doctrine, thus not yet empirically describing the practice of enforcing the ITE Law in the field. Therefore, further research is recommended to combine normative approaches with empirical ones, such as analysis of court decisions, interviews with law enforcement officials, or case studies of victims of criminalization, to obtain a more comprehensive picture of the impact of the implementation of the ITE Law on freedom of expression and digital democracy. Furthermore, comparative studies with regulations in other countries can also be conducted to enrich perspectives and formulate more contextual and applicable policy recommendations.

Recomendation

Based on the research findings, several policy recommendations need to be considered to improve the implementation of the revised Electronic Information and Transactions (ITE) Law. First, the government needs to ensure that each article in the ITE Law, particularly those related to freedom of expression and information protection, is clearly drafted and leaves no room for ambiguous interpretation. This is crucial to clearly delineate the line between legitimate criticism and violations of the law. Furthermore, strengthening oversight mechanisms for the implementation of the ITE Law is essential, particularly regarding articles that grant the government broad authority to restrict access to information or delete content administratively. Any restrictive action must be

accompanied by a transparent process, with approval from a competent judicial institution, to prevent abuse of authority. Furthermore, law enforcement must be carried out in a balanced manner, adhering to the principle of proportionality, which means no more than is necessary to achieve legitimate objectives, such as protecting national security or public order. Policy development related to the ITE Law must also involve public participation, including civil society groups, academics, and legal practitioners, to ensure that the resulting policies reflect democratic values and human rights protection. Finally, it is crucial for the government and relevant institutions to increase public education regarding freedom of expression in the digital world, as well as the limitations stipulated in the ITE Law, to prevent the criminalization of legitimate criticism. This recommendation aims to balance the need to protect the public from digital crimes with citizens' constitutional rights to express their opinions, while ensuring that freedom of expression in the digital space is maintained.

AUTHOR CONTRIBUTION STATEMENT

Ardina Khoirun Nisa is solely responsible for the conceptualization, methodology, formal analysis, investigation, writing the original draft, and writing and editing this article. She also contributed to the data visualization used in this study and ensured the accuracy and depth of the analysis presented in this article.

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