

Justice in the Internet Context: The Protection of Freedom of Expression Online Post Constitutional Court Decision Number 105/PUU-XXII/2024

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Abstract

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The purpose of this study is to analyze justice on the Internet post Constitutional Court Decision Number 105/PUU-XII/2024 which provide strengthening of protection of freedom of expression on the Internet. This research is a normative legal research with a statutory, conceptual, and case approach. The results of the study found that restrictions on freedom of expression on the Internet in the Law on Electronic Information and Transaction are problematic because they are irrational, unfair, disproportionate, and tend to conflict with the 1945 Constitution of the Republic of Indonesia. Through Decision Number 105/PUU-XII/2024, the Constitutional Court has realized justice on the Internet by providing proportional protection of freedom of expression on the Internet. The decision provides freedom for everyone to express themselves on the Internet, such as conveying criticism, provided that their expression does not degrade the dignity or good name of others. Government institutions, professions, or positions are excluded from subjects that can be victims of defamation. The government can no longer prosecute citizens who criticize the policies it has taken. The decision provides guidelines for enforcing the law against violations of freedom of expression on the Internet.

1. Introduction

Freedom of expression is one of the human rights guaranteed by international and national instruments. This right is one of the main and most important characteristics of a democratic rule of law.¹ Article 19 of the Universal Declaration of Human Rights of 1948 states that "Everyone has the right to freedom of opinion and expression". This guarantee is also regulated in Article 19 paragraph (1) and paragraph (2) of the International Covenant on Civil and Political Rights of 1966 which states "1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression". Furthermore, the guarantee of freedom of expression is also regulated in Article 28 and Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945).

¹ Marwandianto Marwandianto dan Hilmi Ardani Nasution, "Hak Atas Kebebasan Berpendapat dan Berekspresi dalam Koridor Penerapan Pasal 310 dan 311 KUHP," *Jurnal HAM* 11, no. 1 (2020), <https://doi.org/10.30641/ham.2020.11.1-25>; Edi Sofwan, Muhammad Sopiyan, dan Ali Masykur Fathurrahman, "The application of the right to freedom of expression in demonstration based on principles of a democratic state," *Jurnal Civics: Media Kajian Kewarganegaraan* 19, no. 2 (2022), <https://doi.org/10.21831/jc.v19i2.53464>; Zalfa Hania Alya, "Kebebasan Berekspresi Di Negara Demokrasi Kaitannya Dengan Teori Kedaulatan Rakyat," *Sovereignty: Jurnal Demokrasi dan Ketahanan Nasional* 1, no. 2 (2022); Melodi Rindu Kristianita dan Fatma Ulfatun Najicha, "Implementation of Pancasila Democratic Values in General Elections and Freedom of Expression in Indonesia," *JUPIIS: JURNAL PENDIDIKAN ILMU-ILMU SOSIAL* 14, no. 2 (2022), <https://doi.org/10.24114/jupiis.v14i2.34190>.

Along with the development of information technology, the internet, which is a form of digital revolution, has a strategic role. The internet is not only a space for people to seek information, but also a space to interact, communicate, express opinions, and participate in various public issues. In fact, the internet is a space that has a strategic role to convey criticism of the implementation of government freely and cheaply, without being limited by space and time.² For this reason, the right to express on the internet is also a form of human rights that must be protected as part of Internet Freedom which was declared in 2012 by the United Nations Human Rights Council.

Freedom of expression online is a form of derogable rights and is therefore not absolute.³ Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia requires everyone to submit to restrictions stipulated by law solely to guarantee recognition and respect for the rights and freedoms of others, and to fulfill the demands of justice, public order, and moral values. On this basis, the state is given the authority to determine restrictions on freedom of expression online by law as an effort to balance individual rights with the rights of other individuals, the public interest, or the interests of the state.⁴

To implement this authority, Law Number 11 of 2008 concerning Electronic Information and Transaction (Law on Electronic Information and Transaction) has been enacted, which is one of the legal instruments to maintain order, legal certainty, and fairness in the use of digital space. However, the Law on Electronic Information and Transaction has received great public attention and criticism because it is considered to be able to reduce freedom of expression in the digital space which has been guaranteed by the 1945 Constitution of the Republic of Indonesia.⁵ This is because several articles in it contain vague or multi-interpretable norms. Such as Article 27 paragraph (3) concerning defamation, Article 28 paragraph (2) hate speech, and Article 29 concerning threats of violence. In fact, these articles are threatened with criminal sanctions as regulated in Article 45.

The formulation of the multi-interpretable article has the potential to be used arbitrarily, thus causing legal injustice and fear among the public in expressing their opinions online. It is not uncommon for the government to use it as a legal instrument to criminalize someone who criticizes its policies. Although the provisions of Article 27 paragraph (3) of the Law on Electronic Information and Transaction have been amended in Law Number 19 of 2016 to implement the Constitutional Court Decision Number 50/PUU-VI/2008, the article is still

² Najamuddin, Hafied Cangara, dan Muliadi Mau, "Student Criticism To Jokowi's Policy," *Jurnal Jurnalisa* 8, no. 2 (2022), <https://doi.org/10.24252/jurnalisa.v8i2.31362>.

³ I. Gede Pasek Eka Wisanjaya dan Putri Bella Rosy Widodo, "Freedom of Expression on Social Media in Indonesia: Why are the limitations imposed?," *Udayana Journal of Law and Culture* 8, no. 1 (2024), <https://doi.org/10.24843/UJLC.2024.v08.i01.p06>; Herlambang Perdana Wiratraman dan Sébastien Lafrance, "Protecting Freedom of Expression in Multicultural Societies: Comparing Constitutionalism in Indonesia and Canada," *Yuridika* 36, no. 1 (2021), <https://doi.org/10.20473/ydk.v36i1.24032>.

⁴ Arie Elca Putra et al., *Dinamika Hukum Tata Negara Indonesia: Refleksi terhadap Praktik Ketatanegaraan dan Pemilu dalam Negara Hukum Demokratis* (Depok: Rajawali Pers, 2025).

⁵ Antonius O. Lapu Hamanduna dan Putut Widjanarko, "Discourse network on the revision of Indonesian information and electronic transaction law," *Jurnal Studi Komunikasi (Indonesian Journal of Communications Studies)* 7, no. 2 (2023), <https://doi.org/10.25139/jsk.v7i2.5496>; Triono Eddy dan Onny Medaline, "The Right to Freedom of Opinion and Expression in Public Spaces in View of Human Rights," *International Journal of Research and Review* 10, no. 11 (2023), <https://doi.org/10.52403/ijrr.20231131>.

used by the Government to silence criticism.⁶ This can be seen in several cases, namely (1) the case of reporting Rocky Gerung in 2023 for insulting President Joko Widodo⁷, (2) the case of Hariz Azhar and Fatia who were reported for insulting the Coordinating Minister for Maritime Affairs and Infrastructure in 2021 who were acquitted by the East Jakarta District Court in 2024⁸, (3) the case of Zikria Dzatil in 2020 for insulting the Mayor of Surabaya Tri Rismaharini⁹, and (4) other cases.

Due to various objections raised by the public, the Law on Electronic Information and Transaction was amended for the second time with Law Number 1 of 2024. Article 27 paragraph (3) was repositioned as Article 27A in Law Number 1 of 2024. Article 27A a quo stipulates that "Any person who intentionally attacks the honor or good name of another person by accusing them of something, with the intention that this matter becomes public knowledge in the form of Electronic Information and/or Electronic Documents carried out through an Electronic System". Then the article is threatened with criminal penalties in Article 45 paragraph (4) of Law Number 1 of 2024. Although the formulation of Article 27A is better when compared to Article 27 paragraph (3) Law on Electronic Information and Transaction, the formulation still gives rise to multiple interpretations and has the potential to be used by the government to reduce freedom of expression in the digital space.

For this reason, Article 27A has been submitted for judicial review by Daniel Frits Maurits Tangkilisan, an environmental activist, who is a victim of the application of defamations in the digital space. The applicant filed a request for the phrase "other people" and the phrase "something" in Article 27A which were formulated in a multi-interpretable manner. After an examination, the Constitutional Court through decision Number 105/PUU-XII/2024 stated that both phrases in Article 27A were conditionally unconstitutional. For this reason, the phrase "other people" must be interpreted as "except for government institutions, groups of people with specific or certain identities, institutions, corporations, professions or positions". While the phrase "something" must be interpreted as "an act that degrades the honor or good name of a person".¹⁰

The Constitutional Court Decision Number 105/PUU-XII/2024 provides significance to the protection of freedom of expression in the digital space which has so far been debated. This decision provides limitations on freedom of expression in the digital space proportionally and

⁶ Dona Budi Kharisma, "Kepatuhan Dan Kesadaran Hukum Kritis: Kajian Putusan Mahkamah Konstitusi Nomor 50/PUU-VI/2008," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 11, no. 1 (2022), <https://doi.org/10.33331/rechtsvinding.v11i1.832>.

⁷ Larissaa Huda, "Rocky Gerung Dilaporkan Pakai UU ITE karena Diduga Hina Jokowi, Pakar: Pasalnya Sudah Dihilangkan," *Kompas.com*, 2023, <https://megapolitan.kompas.com/read/2023/08/03/10211071/rocky-gerung-dilaporkan-pakai-uu-ite-karena-diduga-hina-jokowi-pakar>.

⁸ Fathiyah Wardah, "MA Tolak Kasasi Jaksa, Haris dan Fatia Tetap Divonis Bebas," *VOA Indonesia*, 2024, <https://www.voaindonesia.com/a/ma-tolak-kasasi-jaksa-haris-dan-fatia-tetap-divonis-bebas/7799288.html>.

⁹ Amir Baihaqi, "Kasus Netizen Hina Risma, Polisi Akan Panggil Ahli Bahasa dan ITE," *Detik News*, 2020, <https://news.detik.com/berita-jawa-timur/d-4875519/kasus-netizen-hina-risma-polisi-akan-panggil-ahli-bahasa-dan-ite>.

¹⁰ Mahkamah Konstitusi Republik Indonesia, "MK Mempertegas Pemaknaan Unsur-Unsur Pencemaran Nama Baik dalam UU ITE," *Mahkamah Konstitusi Republik Indonesia*, 2025, <https://www.mkri.id/index.php?page=web.Berita&id=23133>.

fairly between the interests of individuals and the interests of other individuals. This decision also provides legal certainty regarding the extent to which criticism is protected by law and which can be categorized as defamations in the digital space.

This research is a research that has a fairly high value of originality and novelty. The object of research related to freedom of expression in the digital space has previously been studied by several researchers, such as that conducted by Vita Jahrin Jahriyah with the title "Freedom of Expression in Electronic Media in the Perspective of Article 27 Paragraph (3) of Law Number 19 of 2016 Amendment to Law Number 11 of 2008 Concerning Information and Electronic Transaction Services (UU ITE)".¹¹ The study examines freedom of expression in electronic media specifically based on Article 27 paragraph (3) of the Law on Electronic Information and Transaction, this study examines freedom of expression on the internet after the Constitutional Court Decision No. 105/PUU-XXII/2024. Then the research conducted by Vonny Kristanti Kusumo, et al. with the title "The Influence of the ITE Law on Freedom of Expression on Social Media".¹² The study examines freedom of expression on social media after the Law on Electronic Information and Transaction. This study examines and analyzes freedom of expression in the digital space after the Constitutional Court Decision No. 105/PUU-XXII/2024. Finally, the study conducted by Zariah Nur and Mahzaniar entitled "Implementation of the Electronic Transaction Law (UU ITE) Reviewed Based on the Criminal Code (KUHP) Against Public Freedom of Expression on Social Media".¹³ The study examines limited implementation of the Law on Electronic Information and Transaction reviewed based on the Criminal Code on people's freedom of expression on social media, while this study specifically examines freedom of expression on the internet after the Constitutional Court Decision No. 105/PUU-XXII/2024. Looking at the three previous studies as above, this study is different from previous studies. Therefore, this study has a fairly high value of originality and novelty.

2. Methods

This is normative legal research with a statute, conceptual, and case approach. The legal materials used are primary and secondary legal materials. Primary legal materials are collected using the inventory and categorization method, while secondary legal materials are collected using the literature study method. Then, the primary and secondary legal materials are identified, classified, and systematized according to their sources and hierarchies. After that, all legal materials are reviewed and analyzed using legal reasoning with the deductive method.

¹¹ Vita Fajrin Jahriyah et al., "Kebebasan Berekspresi di Media Elektronik Dalam Perspektif Pasal 27 Ayat (3) Undang- Undang Nomor 19 Tahun 2016 Perubahan Atas Undang- Undang Nomor 11 Tahun 2008 Tentang Informasi dan Pelayanan Transaksi Elektronik (UU ITE)," *Sosio Yustisia: Jurnal Hukum dan Perubahan Sosial* 1, no. 2 (2021), <https://doi.org/10.15642/sosyus.v1i2.96>.

¹² Vonny Kristanti Kusumo et al., "Pengaruh UU ITE Terhadap Kebebasan Berekspresi Di Media Sosial," *Prosiding SENAPENMAS*, 2021, <https://doi.org/10.24912/psenapenmas.v0i0.15141>.

¹³ Zariah Nur dan Mahzaniar, "Implementasi Undang-Undang Transaksi Elektronik (UU ITE) Ditinjau Berdasarkan Kitab Undang-Undang Hukum Pidana (KUHP) Terhadap Kebebasan Berekspresi Masyarakat Di Media Sosial The Implementation of the Electronic Transactions Law (Uu Ite) Reviewed B," *Jurnal Smart Hukum* 1, no. 1 (2022).

3. Results and Discussion

3.1. Freedom of Expression on the Internet as a Human Right

Freedom of expression is a right inherent in human existence. Therefore, freedom of expression is one of the fundamental rights guaranteed, both in international instruments and in national instruments. Article 19 of the Universal Declaration of Human Rights states, "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".¹⁴ The guarantee of freedom of expression is also stated in Article 19 paragraph (1) and paragraph (2) of the International Covenant on Civil and Political Rights as ratified in Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights.¹⁵ The article states that "1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". This provision is the basis that freedom of expression is one part of human rights whose existence must be guaranteed. Freedom of expression is one of the rights inherent in every human being.¹⁶ Freedom of expression is not limited to space and time, either through non-digital space or digital space. Thus, freedom of expression is one of the human rights that must be guaranteed and protected.

The affirmation that freedom of expression is part of one of the human rights is not only regulated in international instruments, but also regulated and guaranteed in national instruments. Starting from the 1945 Constitution of the Republic of Indonesia as the supreme law of the land¹⁷ to being guaranteed and regulated at the several law. The guarantee of freedom of expression at the 1945 Constitution of the Republic of Indonesia can be seen in the provisions of Article 28, Article 28E paragraph (2) and paragraph (3), and Article 28F of the 1945 Constitution of the Republic of Indonesia.¹⁸ Article 28 of the 1945 Constitution of the Republic of Indonesia emphasizes that, "Freedom of association and assembly, expressing thoughts verbally and in writing and so on is determined by law". While Article 28E paragraph

¹⁴ Emily Howie, "Protecting the human right to freedom of expression in international law," *International Journal of Speech-Language Pathology* 20, no. 1 (2018), <https://doi.org/10.1080/17549507.2018.1392612>.

¹⁵ Andreas Kulick, "Meta's Oversight Board and Beyond - Corporations as Interpreters and Adjudicators of International Human Rights," *Law and Practice of International Courts and Tribunals* 22, no. 1 (2022), <https://doi.org/10.1163/15718034-12341496>; Thiago Dias Oliva, "Content moderation technologies: Applying human rights standards to protect freedom of expression," *Human Rights Law Review* 20, no. 4 (2020), <https://doi.org/10.1093/hrlr/ngaa032>.

¹⁶ Mimin Mintarsih, Bambang Sukamto, dan Ritawati, "Natural Rights in Relation to Freedom of Democracy," 2020, <https://doi.org/10.2991/aebmr.k.200226.019>.

¹⁷ Baharuddin Riqiey dan Syofyan Hadi, "Constitutional Imperatives: Examining the Urgency of Term Limits for Members of the House of Representatives," *Mimbar Keadilan* 17, no. 1 (16 November 2023): 1-16, <https://doi.org/10.30996/mk.v17i2.9635>.

¹⁸ Suparto dan Admiral, "Comparison of Regulations on Human Rights in the Constitution of 1945 and the Constitution of Medina," 2020, <https://doi.org/10.2991/assehr.k.201209.334>; Muhammad Roqib et al., "Hak Atas Kebebasan Berekspresi Dan Berpendapat Di Indonesia Dengan Di Amerika Serikat," *Perspektif Hukum* 20, no. 1 (2020), <https://doi.org/10.30649/phj.v20i1.238>.

(2) and paragraph (3) of the 1945 Constitution of the Republic of Indonesia emphasizes that, "Everyone has the freedom to believe in beliefs, express thoughts and attitudes, according to his conscience", "Everyone has the right to freedom of association, assembly, and expression of opinions". Article 28F of the 1945 Constitution of the Republic of Indonesia states that, "Everyone has the right to communicate and obtain information to develop their personality and social environment, and has the right to seek, obtain, possess, store, process, and convey information using all available channels". The four provisions above are the basis that confirms that freedom of expression in Indonesia is part of one of the human rights whose existence is guaranteed. The guarantee of freedom of expression includes oral and written forms, both directly in public or indirectly via the internet in the form of social media. In addition to Article 28, Article 28E paragraph (2) and paragraph (3), and Article 28F of the 1945 Constitution of the Republic of Indonesia, the guarantee of freedom of expression is also regulated in Article 23 paragraph (2), Article 25, and Article 44 of Law Number 39 of 1999 concerning Human Rights. These three provisions essentially affirm that everyone is free to express, either verbally or in writing, published in print or electronic media, aimed at everyone or at the government, while still paying attention to religious values, morality, order, public interest and the integrity of the nation.

Along with the development of technology and information, the guarantee of freedom of expression in international instruments, the 1945 Constitution of the Republic of Indonesia and the laws and regulations also apply in the digital space, although not expressly regulated. This means that everyone has the right to freely express in digital space, such as conveying opinions, criticism, and other forms of expression. To strengthen the guarantee of protection for freedom of expression in digital space, in 2012 the United Nations Human Rights Council declared Internet Freedom, which is an integral part of human rights. Internet Freedom is a general terminology consisting of digital rights, freedom of information, the right to access the internet, freedom from internet censorship, and provider neutrality. One form of digital rights is the right to express on the internet. Base on these, the state, in accordance with the provisions of Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia, is obliged to provide protection and fulfillment.¹⁹

The guarantee of freedom of expression (i.e. on the internet) is also inseparable from a democratic rule of law.²⁰ In the context of a democratic rule of law, freedom of expression (i.e. on the internet) is one of the main and most important characteristics. It can be said that freedom of expression (i.e. on the internet) is the spirit of a democratic rule of law. Without the guarantee of protection and fulfillment of freedom of expression (i.e. on the internet), it is impossible for a democratic rule of law to be realized. This is because freedom of expression (i.e. on the internet) provides space for individuals to express their opinions and ideas without fear of oppression or criminalization. In a democratic rule of law system, this freedom (i.e. on the internet) not only protects the individual's right to speak, but also functions as a

¹⁹ Haura Salsabiela El Sabrina Nazar dan Nabella Rezkika Putri, "Mural: Jaminan dan Batasan Kebebasan Berekspre di Indonesia dalam Perspektif Hukum," *Jurnal Restorasi Hukum* 5, no. 2 (2022), <https://doi.org/10.14421/jrh.v5i2.2381>.

²⁰ Blayne Haggart dan Clara Iglesias Keller, "Democratic legitimacy in global platform governance," *Telecommunications Policy* 45, no. 6 (2021), <https://doi.org/10.1016/j.telpol.2021.102152>.

mechanism for monitoring government power. With freedom of expression (i.e. on the internet), the public can critically assess public policies, express dissatisfaction, and participate in constructive discussions on social and political issues. This allows for transparency and accountability in government, where decisions taken can be debated and evaluated by civil society.²¹ Without freedom of expression (i.e. on the internet), the space for public dialogue will shrink, and the potential for abuse of power by the government will increase, threatening the principles of democracy and rule of law itself.

Although freedom of expression (i.e. on the internet) is a fundamental right²² of every human being or has significance for realizing a democratic rule of law, freedom of expression (i.e. on the internet) is not an absolute right (non-derogable rights) as regulated in Article 4 paragraph (2) of the International Covenant on Civil and Political Rights of 1966 in conjunction with Article 28I paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Therefore, freedom of expression (i.e. on the internet), if seen from its nature, falls into the category of derogable rights or rights that can be reduced. Based on this argument, the state is given the authority to impose restrictions on freedom of expression. This authority is stipulated in Article 4 paragraph (1) of the 1966 International Covenant on Civil and Political Rights which stipulates "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin". In line with this provision, Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia also stipulates "In exercising his rights and freedoms, every person must submit to the restrictions established by law with the sole purpose of guaranteeing recognition and respect for the freedom of others and to meet just demands in accordance with moral considerations, religious values, security and public order in a democratic society". Therefore, Article 28J paragraph (2) of the 1945 Republic of Indonesia Constitution can be said to be a form of digital constitutionalism regarding freedom of expression on the internet.

The state's authority to impose restrictions on freedom of expression (i.e. on the internet) can be carried out as long as it is stipulated by law and does not conflict with the justice and the principles stipulated in the 1945 Constitution of the Republic of Indonesia.²³ Restrictions

²¹ Syofyan Hadi et al., "Implementation of Minister of Home Affairs Regulation Number 111 of 2014 concerning Technical Guidelines for Village Regulations (Study in Bedahlawak Village, Jombang Regency)," *DiH: Jurnal Ilmu Hukum* 20, no. 1 (2024), <https://doi.org/https://doi.org/10.30996/dih.v20i1.9589>; Syofyan Hadi et al., *Teknis Penyusunan Peraturan di Desa* (Yogyakarta: Jejak Pustaka, 2023).

²² Andryka Syayed Achmad Assagaf, "Legal analysis of freedom of expression and online humour in Indonesia," *The European Journal of Humour Research* 11, no. 3 (2023), <https://doi.org/10.7592/ejhr.2023.11.3.807>; Ahmad Jamaludin, "Freedom Of Speech Para Demonstran: Bukan Sekedar Dilema Perlindungan Hukum?," *JURNAL PEMULIAAN HUKUM* 3, no. 2 (2021), <https://doi.org/10.30999/jph.v3i2.1441>.

²³ hera Alvina Et Al., "The State Of Digital Freedom In Indonesia An Assessment Of Online Censorship, Privacy, And Free Expression," *Journal Of Digital Law And Policy* 1, No. 3 (2022), <https://doi.org/10.58982/Jdlp.V1i3.301>; Sholahuddin Al-Fatih Et Al., "Academic Freedom Of

on freedom of expression (i.e. on the internet) are only intended to guarantee recognition and respect for the rights and freedoms of others and to fulfill just demands in accordance with moral considerations, religious values, security and public order in a democratic society. Although restrictions on freedom of expression (i.e. on the internet) can be carried out as above, the Constitutional Court in Constitutional Court Decision Number 011-017/PUU-I/2003 has also emphasized that restrictions on rights must be based on a strong, reasonable, proportional basis and not violate the law.²⁴ This is also in line with the provisions of Article 19 paragraph (3) of the International Covenant on Civil and Political Rights which stipulates "The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals". Restrictions on freedom of expression on the internet with these strict conditions are necessary because theoretically, as stated in the considerations of Constitutional Court Decision Number 105/PUU-XII/2024 which states that "the concept of freedom is a harm principle, where state intervention in individual freedom is only valid if the expression causes a real and imminent danger to the rights or interests of other people".

3.2. Problems of Regulation of Freedom of Expression on the Internet in the Law on Electronic Information and Transaction

Although freedom of expression on the internet has been guaranteed by international instruments and national instruments, in practice various problems have been found. These problems arise because of the existence of regulations containing restrictions on freedom of expression on the internet that are irrational, unfair, disproportionate, and tend to conflict with the 1945 Constitution of the Republic of Indonesia as stipulated in the Law on Electronic Information and Transaction and its amendments. These problems arise because of the provisions of Article 27A, Article 28 paragraph (3), Article 45 paragraph (4), and Article 45A paragraph (3). When viewed from the theory of legislation, the formulation of legal norms in these provisions is vague and open to multiple interpretations. Such formulations provide broad discretionary authority to law enforcers, so they have the potential to be misused. Meanwhile, when viewed from the principle of legality in criminal law, the formulation of legal norms in these provisions is not in accordance with the principles of *lex certa* and *lex stricta*.²⁵ Therefore, these articles raise concerns about the potential for misuse and its impact on freedom of expression on the internet. Although the purpose of this law is to regulate and protect everyone in using the internet, however, in implementation, it often sacrifices the rights of individuals to express themselves freely on the internet. In some cases, it is even used by the government as an instrument to criminalize individuals who criticize its policies.

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²⁴ Dewi Haryanti et al., "Fulfillment Of Passive Voting Rights Of Coastal Communities In Regional Legislative Elections In Indonesia," *Journal of Law and Sustainable Development* 12, no. 3 (2024), <https://doi.org/10.55908/sdgs.v12i3.3297>.

²⁵ Mario Truu, "The European Court of Human Rights and the Principle of Foreseeability (*Lex Certa* and *Stricta*): How to Determine Whether an Offence Is Clearly Defined in Criminal Law," *Juridica International* 31 (2022), <https://doi.org/10.12697/ji.2022.31.07>.

Article 27A of Law No. 1 of 2024 is a reposition of the provisions of Article 27 paragraph (3) of the in implementation. This article stipulates that "Any person who intentionally attacks the honor or good name of another person by accusing something, with the intention that this matter be known to the public in the form of Electronic Information and/or Electronic Documents carried out through an Electronic System". This article regulates the prohibition of defamations carried out in the digital space, which in principle has been regulated in Article 310 of the Criminal Code (Article 433 of the National Criminal Code). In practice, this provision has created ambiguity. This ambiguity lies in the phrase "other people" and the phrase "something". This ambiguous phrase gives law enforcement the authority to interpret the phrase broadly. So that in practice it is used by the government to criminalize individuals who convey criticism on the internet, such as in the case of the reporting of Rocky Gerung in 2023 because he was considered to have defamed President Joko Widodo or other cases.²⁶ This can cause many individuals to be afraid to express freely in the digital space, especially criticizing government policies, thus limiting public discourse.

Article 28 paragraph (3) of Law No. 1 of 2024 stipulates that, "Any person who intentionally disseminates Electronic Information and/or Electronic Documents that he knows contain false information that causes unrest in society". This article regulates the prohibition on spreading false news in digital space that causes unrest in society. This article is in principle also regulated in Article 263 paragraph (1) of the National Criminal Code. This provision is also problematic when implemented. The reason is, in this provision there is the phrase "riot". Although in the explanation of this article it is emphasized that what is meant by "riot" is a condition that disrupts public order in physical space, not conditions in digital/cyber space, however, in practice, these provision can be used to criminalize anyone who causes unrest in digital/cyber space. Therefore, this provision was reviewed materially at the Constitutional Court. Regarding this, the Constitutional Court through Decision Number 115/PUU-XXII/2024 reaffirmed that the meaning of "riot" in this article is as stated in the explanation of this article.

Article 45 paragraph (4) of Law No. 1 of 2024 states that, "Any person who intentionally attacks the honor or good name of another person by accusing something, with the intention that the matter be known to the public in the form of Electronic Information and/or Electronic Documents carried out through the Electronic System as referred to in Article 27A shall be punished with imprisonment for a maximum of 2 (two) years and/or a maximum fine of IDR 400,000,000.00 (four hundred million rupiah)". This provision is part of the form of criminal sanctions if he provisions of Article 27A of Law No. 1 of 2024 violated. The problem in the provisions of Article 45 paragraph (4) of Law No. 1 of 2024 lies in the phrase "other people" and the phrase "something". The same as the problem with Article 27A of Law No. 1 of 2024 above. The imposition of this sanction creates an atmosphere of fear among internet users, where many individuals feel threatened to express opinions or share information that may be considered sensitive. In this context, freedom of expression, which should be protected, is actually threatened, and society loses the opportunity to participate in healthy public discussion.

²⁶ Huda, "Rocky Gerung Dilaporkan Pakai UU ITE karena Diduga Hina Jokowi, Pakar: Palsanya Sudah Dihapus."

Finally, Article 45A paragraph (3) of Law No. 1 of 2024. This article is also part of the problems regarding freedom of expression in digital space. The reason is, this provision states that, "Any person who intentionally distributes Electronic Information and/or Electronic Documents that he knows contain false notifications that cause unrest in society as referred to in Article 28 paragraph (3) shall be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah)". The problem that arises from this provision lies in the phrase "riot". Although the explanation of the article emphasizes that what is meant by "riot" is a condition that disrupts public order in physical space, not conditions in digital/cyber space, however, in practice, these provision can be used to criminalize anyone who causes unrest in digital/cyber space. Therefore, this provision was reviewed materially at the Constitutional Court. In this regard, the Constitutional Court through Decision Number 115/PUU-XXII/2024 reaffirmed that the meaning of "riot" in the article is as stated in the explanation of the article.

Of all the provisions above, these provisions cause problems regarding the guarantee of freedom of expression on the internet in Indonesia. These provisions provide disproportionate restrictions on freedom of expression on the internet which are contrary to the 1945 Constitution of the Republic of Indonesia and the principles of a democratic rule of law. Freedom of expression on the internet, either verbally or in writing, is one of the rights that must be protected and upheld in a democratic state of law.²⁷ Therefore, freedom of expression on the internet in Indonesia should be respected, protected, and fulfilled by the state and society.

3.3. Ratio Decidendi Constitutional Court Decision Number 105/PUU-XXII/2024

The formulation of the provisions of Article 27A in conjunction with Article 45 paragraph (4) of Law No. 1 of 2024 has been subject to material reviewing at the Constitutional Court because there are phrases that give rise to ambiguity and multiple interpretations. The Constitutional Court, as with the authority it has, has the authority to review the constitutionality of a statutory norm. The Constitutional Court can assess whether a statutory norm being reviewed is in conflict with the 1945 Constitution of the Republic of Indonesia or not. In this case, the provisions of Article 27A in conjunction with Article 45 paragraph (4) of Law No. 1 of 2024 are suspected of being in conflict with Article 27 paragraph (1), Article 28D paragraph (1), Article 28E paragraphs (2) and (3), Article 28G paragraph (1), Article 28I paragraphs (2) and (4), and Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia which regulates constitutional guarantees for freedom of expression and the right to recognition, guarantee, protection, and certainty of fair law and equal treatment before the law.

The existence of the phrase "other people" and "something" in Article 27A in conjunction with Article 45 paragraph (4) of Law No. 1 of 2024 has given rise to various interpretations, which in practice could threaten the right to freedom expression on the internet. In Constitutional Court Decision Number 105/PUU-XXII/2024, the Court emphasized that the

²⁷ Eko Agustinus, "Individual Freedom in the Legal Discourse in Indonesia," *Indonesia Media Law Review* 1, no. 1 (2022), <https://doi.org/10.15294/imrev.v1i1.56677>; WooJeong Ko, "A Comparative Study on Legal System for Basic Rights of Democracy in South Korea and Indonesia," *Sungshin Women's University Center for East Asian Studies* 28, no. 2 (2022), <https://doi.org/10.56022/ceas.2022.28.2.33>.

ambiguity in these phrases could result in disproportionate restrictions on individual freedom of expression. This provision, which should protect society, can actually be misused to silence critical voices that dare to highlight important issues in the administration of government.

The phrase "others" in this context has the potential to create uncertainty about who is considered the aggrieved party. This ambiguity allows for broad interpretation, where any criticism or opinion expressed can be considered a violation of the rights of others or even the government. This creates an atmosphere of fear among the community, where individuals feel threatened to speak or express their opinions because of the potential legal sanctions they may face. Thus, the right to freedom of expression that should be guaranteed in a democratic rule of law is threatened, and the community loses the space to discuss openly.

Therefore, the Constitutional Court through Decision Number 105/PUU-XXII/2024 emphasized that what is meant by the phrase "other people" in Article 27A in conjunction with Article 45 paragraph (4) of Law No. 1 of 2024 is an individual or private person. The Constitutional Court stated:

"In this regard, according to the Court, in order to avoid arbitrary action by law enforcement officers in applying the phrase "other people" in Article 27A of Law 1/2024, it is important for the Court to emphasize that the phrase "other people" means an individual or a person. Therefore, it is excluded from the provisions of Article 27A of Law 1/2024 if the victim of defamation is not an individual or a person but a government institution, a group of people with a specific or certain identity, an institution, a corporation, a profession or a position. However, this exception does not rule out the possibility of the excluded party filing a lawsuit using civil legal means".

Based on the ratio decidendi, the Constitutional Court in the decision stated "Thus, to guarantee legal certainty as regulated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, Article 27A of Law 1/2024 must be declared conditionally unconstitutional as long as the phrase "other people" is not interpreted as "except for government institutions, groups of people with specific or certain identities, institutions, corporations, professions or positions". Based on this, the phrase "other people" does not apply to government institutions, groups of people with specific or certain identities, institutions, corporations, professions or positions. Thus, government institutions and others, cannot use the provisions of Article 27A in conjunction with Article 45 paragraph (4) of Law No. 1 of 2024 to criminalize someone. However, in his capacity as an individual or person, he can still use the provisions of this article if there is an attack on his honor as an individual. This affirmation has a fairly good impact in a democratic rule of law, where freedom of opinion and expression is a right that is guaranteed in essence.

In addition, the phrase "a thing" also provides room for very broad interpretation, which can include various forms of expression, whether oral, written, or digital. This very broad interpretation has implications for the unclear implementation of the norm. Meanwhile, in criminal law, the principle of *nullum crimen sine lege certa* is known, which means that every criminal provision must be formulated clearly and not cause ambiguity. This ambiguity can have fatal consequences in practice, where law enforcement can be carried out carelessly without considering the context and intention of the expression. This is very dangerous for the

democratic climate, because it can erode public participation in discussions on government policies and practices that should be transparent and accountable.

In this regard, the Constitutional Court emphasized that, what is meant by the phrase "something" in Article 27A in conjunction with Article 45 paragraph (4) of Law No. 1 of 2024 must be declared conditionally unconstitutional as long as the phrase "something" is not interpreted as "an act that degrades the honor or good name of a person". This affirmation is important, because it also concerns the existence of freedom of expression in Indonesia. With this affirmation, the Constitutional Court is able to provide clear guidelines, especially regarding the provisions of Article 27A in conjunction with Article 45 paragraph (4). So that in the future, there is no possibility for government institutions, groups of people with specific or certain identities, institutions, corporations, professions or positions, to abuse their power in the administration of government.

In addition, the Constitutional Court Decision emphasizes the importance of protecting freedom of expression as part of human rights. With this multi-interpretable provision, the function of public control and supervision of the government is hampered. One of the important pillars of a democratic rule of law is the existence of an effective oversight mechanism, where the public has the right to criticize and provide input on the implementation of government. If this provision is allowed to continue, there will be a great risk of potential abuse of power by certain parties in government.

Following the Constitutional Court Decision Number 105/PUU-XXII/2024, freedom of expression in Indonesia is expected to experience significant revitalization, with an emphasis on stronger protection of human rights. This decision provides new hope for the public to be able to express opinions and criticisms as well as express themselves freely without fear of disproportionate sanctions, especially related to the provisions considered open to multiple interpretations above. With clarity and stricter limitations on phrases in the law, it is hoped that the public will be able to express themselves well in the direct world or in digital space, because freedom of expression is an important element in a healthy democracy. Therefore, the next challenge is to ensure consistent and fair implementation of this decision, so that freedom of expression can be maintained and strengthened as a fundamental pillar in the life of the nation and state.

3.4. Protection of Freedom of Expression Online Following Constitutional Court Decision Number 105/PUU-XXII/2024 as a Form of Justice in the Internet Context

The Constitutional Court Decision Number 105/PUU-XXII/2024 has significance for the realization of justice in the use of the internet (justice in the internet context). This is because the decision has transformed legal protection for freedom of expression in the digital space as a form of digital rights guaranteed by international and national instruments.

Justice in the internet context which is realized through the Constitutional Court Decision Number 105/PUU-XXII/2024 can be seen in several ways:

1. This decision provides fair legal certainty by interpreting the phrase "other people" which was previously used by various parties to restrict and criminalize freedom of expression on the internet. With the Constitutional Court Decision, the phrase "other people" who can be victims of defamations in digital space is limited to individuals. For this reason, the Constitutional Court excludes government institutions, groups of people with specific or

certain identities, institutions, corporations, professions or positions as victims of defamations in digital space. With the legal certainty of this phrase, at least the government can no longer criminalize anyone who provides criticism in digital space. In other words, this article can no longer be used by the government as an instrument to silence criticism of individuals who are in different positions. Of course, this can provide true justice in protecting freedom of expression on the internet, so that anyone can freely criticize the government without fear of being prosecuted.

2. This decision also provides fair legal certainty by interpreting the phrase "something" which according to the Constitutional Court is a "trash can article", "mulur mungkre", "rubber article" (catch-all provision) which can cause legal uncertainty. So that it can cause injustice to the protection of freedom of expression on the internet. For this reason, the Constitutional Court provides limitations on the meaning of the phrase "something" namely "an act that degrades the honor or good name of a person". This means that an expression can be categorized as defamation if the expression degrades the honor or good name of the victim. If the expression does not degrade the honor or good name of the victim, then it cannot be categorized as a defamation. With the legal certainty of the phrase, at least any form of expression as long as it does not degrade the honor or good name of the victim is protected by law and can be punished with the offense of defamation through digital space. Of course this can provide real justice in the protection of freedom of expression on the internet, so that anyone can express themselves freely without fear of being prosecuted.
3. This decision provides proportional justice by emphasizing the need for protection of expression on the internet for everyone as part of digital rights. However, this freedom of expression is not absolute, because it must still respect the rights of others. For this reason, the Constitutional Court did not revoke all of Article 27A and Article 45 paragraph (4) of Law No. 1 of 2024, but only provided proportional limitations to prevent arbitrary restrictions imposed by the state. Thus, everyone is free to express themselves on the internet but with content of expression that does not degrade the dignity or good name of others. If the expression violates the limitations determined by the Constitutional Court, the individual in question can be punished in accordance with the provisions of Article 45 paragraph (4) of Law No. 1 of 2024.
4. This decision also provides guidelines for law enforcers to enforce the law fairly. With the interpretation given by the Constitutional Court, it reduces the potential for law enforcers' discretion to interpret the article. The implication is that law enforcers can enforce the law fairly and equally.

4. Conclusions

Freedom of expression on the internet is part of the human rights that are guaranteed and protected as regulated in the 1945 Constitution of the Republic of Indonesia and other legal instruments. As a derogable right, freedom of expression on the internet has been limited by the Law on Electronic Information and Transaction, but the restrictions are irrational, unfair, disproportionate, and tend to conflict with the 1945 Constitution of the Republic of Indonesia as stipulated in Article 27A, Article 28 paragraph (3), Article 45 paragraph (4), and Article 45A paragraph (3). Through decision Number 115/PUU-XII/2024 concerning the

judicial review of Article 27A, and Article 45 paragraph (4) of Law Number 1 of 2024, the Constitutional Court declared the phrase "other people" and the phrase "something" conditionally unconstitutional. The phrase "other people" must be interpreted as "except for government institutions, groups of people with specific or certain identities, institutions, corporations, professions or positions". While the phrase "something" must be interpreted as "an act that degrades the honor or good name of a person". Constitutional Court Decision Number 105/PUU-XXII/2024 realize justice in internet usage (justice in internet context) by strengthening legal protection for freedom of expression in digital space. The decision provides fair legal certainty because those who can be victims of defamations in digital space are limited to individuals (not government institutions, groups of people with specific or certain identities, institutions, corporations, professions or positions) and forms of expression that are categorized as defamation are limited to actions that degrade a person's honor or good name. The decision also provides proportional justice by providing protection to everyone's freedom of expression on the internet while still having to respect the rights of others. In addition, this decision also provides guidelines for law enforcers to enforce the law fairly.

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