

NAVIGATING FREEDOM OF SPEECH IN SOCIAL MEDIA

Reconstruction of the Crime of Defamation in the Era of the New Criminal Code and Its Implications for Freedom of Expression on Social Media

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Article History

Received: 15 January 2026

Accepted: 4 May 2026

Keywords:

Digital Rights;

Freedom of Expression;

ITE Law;

Online Defamation;

Social Media Regulations;

ABSTRACT

The rapid expansion of social media has transformed Indonesia's public communication environment, enabling broader civic participation while simultaneously generating new legal challenges related to online defamation and digital expression. Within this evolving digital public sphere, the application of criminal defamation provisions, particularly Article 27 paragraph (3) of the Electronic Information and Transactions Law (ITE Law) and defamation provisions within the Criminal Code, has generated significant controversy due to concerns regarding overcriminalization, legal ambiguity, and chilling effects on democratic discourse. This study reassesses the coherence and proportionality of Indonesia's legal framework governing online defamation and freedom of expression in social media environments, with specific attention to Article 433 of the new Indonesian Criminal Code and the transitional regime under Law No. 1 of 2024 on the second amendment to the ITE Law. Employing a normative juridical approach supported by legislative, conceptual, case, and comparative legal analyses, the research draws on constitutional provisions, statutory regulations, judicial decisions, and international human rights instruments. The findings reveal structural problems in the current framework, including vague statutory definitions, overlapping norms between the ITE Law and the new Criminal Code, inconsistent law-enforcement practices, and limited digital forensic capacity, which collectively foster overcriminalization and a chilling effect on legitimate digital expression. To address these challenges, the study proposes the Digital Expression Regulation Framework (DERF), a multidimensional model integrating digital rights, user behavior, legal boundaries, and enforcement mechanisms to balance reputational protection with democratic freedom of expression in Indonesia's evolving digital public sphere.

INTRODUCTION

Indonesia's public communication ecosystem has undergone significant transformation due to the rapid expansion of social media usage, which has increasingly become a primary platform for interaction, information exchange, and public expression. Social media is no longer limited to entertainment functions; rather, it has evolved into an arena of public discourse where citizens debate policies, articulate opinions, build solidarity, and construct political and social identities. This transformation generates both opportunities and challenges. On the one hand, digital platforms enable broader, faster, and more accessible channels for civic participation. On the other hand, they also introduce new risks, including misinformation, hate speech, personal attacks, and escalating conflict within the digital public sphere. In response to these developments, the state has adopted various regulatory instruments, including the Electronic Information and Transactions Law (ITE Law), which governs unlawful conduct in digital environments, such as online insults and defamation. Within the latest amendment, Law No. 1 of 2024 stipulates that the ITE defamation provision (Article 27A jo. Article 45) is only applicable until the full entry into force of Law No. 1 of 2023 on the new Indonesian Criminal Code, after which defamation is primarily regulated under Articles 433–442 of the new Criminal Code. These new provisions are formulated in technologically neutral terms, so that defamatory attacks on honor or reputation committed through social media or other virtual platforms can, in principle, be subsumed under the general defamation framework, even though online defamation continues to be addressed more specifically through the ITE Law during the transitional period. However, the coexistence of a technologically neutral defamation regime under Articles 433–442 of the new Criminal Code and a special cyber-defamation provision in the ITE Law risks perpetuating overlapping criminal liability for online expression, rather than clearly narrowing or decriminalizing defamation in digital spaces. However, the application of conventional criminal law within this fluid, rapidly disseminating digital environment has created significant tensions, particularly concerning its potential implications for freedom of expression¹.

From a sociological perspective, social media can be understood as a contemporary form of public space, often conceptualized as the digital public sphere, where citizens test arguments, criticize government actions, express dissatisfaction with public or private services, and construct alternative narratives to dominant discourse. This digital public sphere expands opportunities for political participation, particularly for individuals and groups that may be marginalized in traditional institutional forums. Nevertheless, the technological architecture of social media platforms characterized by algorithmic curation, virality dynamics, and engagement-oriented platform design frequently encourages emotionally driven communication patterns that emphasize individuals rather than substantive issues. In such contexts, expressions intended as criticism, complaint, or satire may be interpreted as attacks on personal reputation or honor, particularly when directed toward public officials or institutions possessing significant political and legal resources. Consequently, expressions that could otherwise be interpreted as legitimate democratic participation may instead be processed as criminal offenses².

An additional doctrinal issue concerns the new Criminal Code's purported distinction between criticism and insult. Government statements and explanatory materials claim that

¹Subhi Subhani, "Navigating the Boundaries: The Fine Line of Subversive Speech in Public Discourse.," *IUP Law Review* 14, no. 2 (2024).

²Bashir, Sobia, Muhammad Hamza Zakir, Syed Hammad Khan, and Shazia Ibrahim. "The Impact of Social Media on Freedom of Speech and Privacy Rights." *Journal of Regional Studies Review* 4, no. 1 (March 2025): 304–15. <https://doi.org/10.62843/jrsr/2025.4a077>

the new defamation provisions draw a clear line between protected criticism, understood as analytical and public-interest-oriented evaluation of government policy, and punishable insult, defined as an attack on personal honor or reputation. In practice, however, this distinction remains conceptually vague and highly context-dependent, as the statutory text does not specify objective indicators for differentiating harsh criticism, satire, or emotional expression from unlawful insult. This ambiguity is particularly problematic in social-media environments, where expressive styles such as irony, memes, and hyperbole can easily be re-classified as insults by authorities or offended parties. Consequently, the new Criminal Code's approach risks reproducing interpretive uncertainty rather than resolving it, thereby sustaining the potential for over-criminalization and chilling effects on democratic criticism. Many of these cases attract public attention because the expressions involved consist of criticism, consumer complaints, satire, or dissatisfaction with services. This pattern indicates a growing tendency to employ criminal law as a mechanism for resolving reputational disputes in digital spaces, rather than relying on alternative mechanisms such as clarification, right of reply, mediation, or civil remedies. Moreover, the formulation of defamation offenses and the associated evidentiary standards have been widely criticized for their interpretive flexibility and limited sensitivity to the contextual characteristics of digital communication, which frequently involve irony, humor, and meme culture. When the boundary between legitimate criticism and criminal defamation remains unclear, legal uncertainty becomes unavoidable. Such uncertainty not only complicates law enforcement but also places citizens in vulnerable positions, as individuals may lack a clear understanding of which forms of expression remain legally permissible and which may lead to criminal liability³.

This chilling effect is reflected in concrete cases where citizens, activists, and public figures have faced criminal proceedings for online expression, such as the prosecution of a musician for harsh political comments in a social-media video, or the conviction of an ordinary worker for posting an edited image of the President on Facebook. Public controversy surrounding these cases, along with the steady increase of ITE-based defamation reports triggered by viral posts, encourages users to self-censor by avoiding political topics, limiting the visibility of their accounts, or refraining from sharing critical content altogether. Individuals may choose to remain silent, limit their participation to neutral content, avoid commenting on political issues, or restrict the visibility of their online accounts in order to reduce the risk of legal complaints. The chilling effect becomes more pronounced when the public observes concrete examples of individuals who face investigation or prosecution for social media posts that would ordinarily fall within the scope of democratic discourse. As a result, the digital public sphere may appear active and vibrant while the substance of public debate becomes increasingly cautious and devoid of critical engagement with power. Under such conditions, the consequences extend beyond individual rights, threatening the broader democratic function of freedom of expression as a mechanism of accountability and social oversight⁴.

Freedom of expression itself constitutes a fundamental pillar of democratic governance and an essential human right. Rooted in liberal political philosophy and embedded in international human rights law, this freedom plays a central role in facilitating public participation, encouraging civic engagement, and ensuring government accountability. The

³ Stevens, Kate I., and Edoardo Melilli. "Navigating Social Media: How to Ensure Safe Passage." *Nephrology Dialysis Transplantation* 37, no. 1 (December 2021): 5–7. <https://doi.org/10.1093/ndt/gfab273>

⁴ Ilham, Ilham, and Ahmad Rizali Pawane. "The Role of Social Media as a Medium of Democracy in Indonesia." *Journal of Contemporary Local Politics* 4, no. 1 (June 2025): 43–54. <https://doi.org/10.46507/jclp.v4i1.719>

digital era, however, has significantly altered the character, reach, and impact of expression. As social media platforms expand communicative possibilities, the boundaries between private and public communication become increasingly blurred. Moreover, freedom of expression should not be interpreted solely as verbal speech but rather as a broader concept encompassing written, symbolic, artistic, digital, and other forms of communication. Within democratic theory, freedom of expression is frequently described as an enabling right because it enables the exercise of other rights, including political participation, religious freedom, and access to information. Contemporary constitutional scholarship similarly recognizes freedom of expression as a cornerstone of procedural democracy and constitutional governance, including within the Indonesian constitutional framework⁵.

Within the international human rights regime, freedom of expression is firmly protected under Article 19 of the Universal Declaration of Human Rights (UDHR), which affirms the right to seek, receive, and impart information and ideas through any media regardless of frontiers. This protection is further elaborated under Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which guarantees the rights to hold opinions without interference and to express ideas through various forms of communication. According to General Comment No. 34 of the United Nations Human Rights Committee, the scope of Article 19 encompasses political, artistic, scientific, and even potentially controversial expression, provided that such expression does not violate legitimate legal restrictions. Consequently, the regulation of online expression including issues such as hate speech, misinformation, and digital defamation is increasingly evaluated against international human rights standards articulated in the UDHR and ICCPR⁶.

Despite its fundamental status, freedom of expression is not an absolute right. Article 19(3) of the ICCPR permits states to impose restrictions on expression under strict conditions: the restriction must be prescribed by law, pursue a legitimate aim, and satisfy the principles of necessity and proportionality. These legitimate aims include the protection of national security, public order, public health, public morals, or the rights and reputations of others. The United Nations Human Rights Committee further emphasizes that restrictions must be supported by clear and demonstrable evidence regarding the nature of harm and the necessity of limiting expression, while ensuring that less restrictive alternatives are considered. In addition, Article 20 of the ICCPR obliges states to prohibit advocacy of hatred that constitutes incitement to discrimination, hostility, or violence. However, these restrictions must remain narrowly interpreted to prevent their misuse as instruments for suppressing legitimate criticism or dissent⁷.

Indonesia presents a particularly significant context for examining these issues due to the rapid growth of social media usage over the past decade. Platforms such as Facebook, Instagram, TikTok, YouTube, and X (formerly Twitter) have become central arenas for public communication where citizens exchange information, express opinions, mobilize social movements, and debate political issues. Surveys indicate that Indonesian users spend several hours daily on social media platforms, making digital communication a dominant component of contemporary public discourse. However, the expansion of digital

⁵ Pratama, Alfian. "Indonesia's Social Media Landscape: Youtube, Instagram, and LinkedIn." *COMPEDIART (Communication Pedagogy & Education Arts, Research and Thought)* 1, no. 1 (2024): 1–12.

⁶ Susianto, Yusuf Eko Nahuddin, and Riski Febria Nurita. "Freedom of Speech in the Context of Constitutional Law: Maintaining the Balance Between Freedom and Public Order." *International Journal of Sustainable Law* 2, no. 1 (June 2025): 7–11. <https://doi.org/10.71131/ijbx9540>

⁷ Kusumaningtyas, Hestu Purwestri, Abunawas Abunawas, and Jamiatur Robekha. "Legal Analysis of Alleged Defamation Through Social Media Causing Harm to Others (Study of Central Jakarta District Court Decision Number 589/Pid. Sus/2024/PN Jkt. Pst)." *Jurnal Info Sains: Informatika Dan Sains* 15, no. 01 (2025): 229–40.

participation has also been accompanied by increasing risks of misinformation, harassment, cyber vigilantism, and reputational conflicts⁸.

The expansion of social media as a dominant communication medium has further intensified these regulatory tensions. While digital platforms facilitate broader participation in public debate, they also create conditions in which defamatory statements, personal attacks, and misleading information may spread rapidly through mechanisms such as virality, algorithmic amplification, and anonymity. These characteristics complicate the application of conventional legal frameworks and create substantial challenges for law enforcement authorities, particularly in relation to digital forensic investigation and evidentiary assessment⁹.

Moreover, the regulation of defamation within digital environments frequently intersects with existing power asymmetries. Reports and prosecutions under the ITE Law are often initiated by individuals or institutions possessing greater political or economic resources, while those accused of defamation frequently include ordinary citizens, activists, journalists, or consumers expressing complaints. Such patterns raise concerns regarding the potential use of criminal law as an instrument of intimidation or censorship rather than as a proportionate mechanism for protecting reputation. When criminal provisions are applied in ways that suppress criticism of powerful actors, public trust in legal institutions and democratic governance may be undermined¹⁰.

These developments raise several important legal questions. How should intent be assessed within the context of online communication? When does criticism cross the boundary into defamation? Should criminal sanctions be applied to expressive acts occurring in digital environments? How should authorities distinguish between disclosures made in the public interest and malicious accusations? To what extent should the state intervene in regulating online expression without undermining democratic freedoms? These questions are not unique to Indonesia, as governments around the world face similar challenges in balancing the regulation of harmful online content with the protection of fundamental rights.

Although many jurisdictions have gradually shifted toward civil remedies, mediation mechanisms, and restorative approaches to reputational disputes, criminal defamation provisions remain embedded within Indonesia's legal framework through both the Criminal Code and the ITE Law. This dual-layered criminalization creates overlapping legal risks and increases the possibility of inconsistent enforcement. Empirical observations indicate that investigations under Article 27 paragraph (3) frequently proceed without adequate digital forensic analysis, raising concerns regarding due process and fairness. As a result, scholars increasingly emphasize the need for a coherent regulatory framework that aligns domestic law with international human rights principles.

These challenges are further compounded by varying levels of digital literacy among internet users. Many individuals may struggle to distinguish between legitimate criticism and defamatory statements, evaluate the reliability of online information, or understand the long-term consequences of digital communication. Such limitations increase the likelihood of misinterpretation, conflict escalation, and unintended legal violations. In addition, the public

⁸ Ramsi, Hanafi. "The Dialectics of Freedom of Expression and Legal Restrictions on Digital Platforms: An Analysis of Human Rights Principles, the Electronic Information and Transactions Law, and Constitutional Court Decision No. 105/PUU-XXII/2024." *International Journal of Law, Environment, and Natural Resources* 5, no. 1 (August 2025): 57–75. <https://doi.org/10.51749/injurlens.v5i1.132>

⁹ Isam, Hishamudin. "Algospeak and Digital Culture: Navigating Social Media Challenges." *Third International Conference on Communication, Language, Literature, and Culture (ICCoLiC 2024)*, 2024, 656–69.

¹⁰ Judijanto, Loso, A. Ahmad, D. Djuhrrijani, W. Furqon, and N. Rohaya. "Post-Truth Law Analysis of the Protection of Privacy Rights in Cases of Digital Defamation Dissemination in Indonesia." *The Easta Journal Law and Human Rights* 3, no. 02 (2025): 81–88.

may not fully understand the legal implications of the ITE Law, which can lead to both unintentional criminal conduct and excessive reporting of online disputes¹¹.

The role of digital platforms also adds another layer of complexity to the regulation of online expression. Social media companies exercise substantial control over content visibility, moderation, and removal through platform policies and algorithmic systems that operate independently from national legal frameworks. Consequently, tensions may arise between platform governance mechanisms and state regulatory authority. The opacity of algorithmic decision-making such as content prioritization, shadow banning, or automated removal raises important questions regarding transparency, accountability, and ethical governance.

Given these multidimensional challenges, the regulation of freedom of expression in Indonesia cannot be examined solely through the lens of criminal law. Instead, it requires an interdisciplinary perspective that integrates legal analysis, communication studies, digital governance, and human rights frameworks. Situating the issue within broader processes of democratic development and technological transformation is therefore essential for understanding the evolving dynamics of digital expression.

Accordingly, this study aims to reassess the coherence, proportionality, and legitimacy of Indonesia's legal framework governing online defamation and freedom of expression. Through normative juridical analysis and comparative evaluation, the research examines doctrinal ambiguities within the ITE Law, the challenges faced by law enforcement in digital contexts, and the extent to which existing regulations align with international human rights standards, particularly Article 19 of the ICCPR. Furthermore, this study introduces the Digital Expression Regulation Framework (DERF) as a conceptual model for understanding the interaction between digital rights, user behavior, legal boundaries, and enforcement mechanisms. By mapping these interactions, the research seeks to contribute to ongoing debates regarding legal reform, digital rights protection, and the development of a regulatory framework capable of balancing freedom of expression with reputational protection within Indonesia's evolving digital public sphere.

METHODOLOGY

This study employs a normative juridical research approach, which conceptualizes law as a system of norms and examines legal rules through statutory provisions, constitutional guarantees, judicial interpretations, legal doctrines, and scholarly opinions. This method is particularly appropriate for analyzing the regulation of freedom of expression and online defamation in Indonesia, as the boundaries of digital speech are primarily shaped by constitutional interpretation and statutory frameworks. The normative juridical approach is complemented by legislative, conceptual, case, and comparative approaches in order to evaluate digital expression within its constitutional, theoretical, and international contexts¹². Primary legal materials include constitutional provisions under Articles 28E(3) and 28F of the 1945 Constitution, the Electronic Information and Transactions Law particularly Article 27(3) in conjunction with Article 45 and defamation provisions within the Indonesian Criminal Code, including Articles 310–311 of the former Criminal Code and the reformulated provision under Article 433 of the new Indonesian Criminal Code (Law No. 1 of 2023). Judicial decisions of the Constitutional Court and Supreme Court, as well as international instruments such as Article 19 of

¹¹Setyawan, Adisti Puspa, Antonius Sambodo Adi A, I. Dewa BS Wirantaya, Pina Mustika, and William Gomarga. "Indonesia's Electronic Information and Transactions Law: History, Impact, and Challenges." *Journal Research of Social Science, Economics, and Management* 4, no. 12 (July 2025): 2154–65. <https://doi.org/10.59141/jrssem.v4i12.899>

¹²Maulana, Alfian, Titi Atiyatul Alawiyah, and Firman Adi Candra. "Metode Penelitian Hukum Normatif Dalam Menjawab Tantangan Dinamika Peraturan Perundang-Undangan." *Jurnal Penelitian Ilmiah Interdisipliner* 9, no. 11 (2025).

the International Covenant on Civil and Political Rights (ICCPR) and General Comment No. 34 of the United Nations Human Rights Committee, are also used as normative references.

Secondary legal materials consist of academic literature including textbooks, peer-reviewed journals, policy reports, and legal commentaries, while tertiary materials include legal dictionaries and official explanatory documents. The analysis applies qualitative legal methods through grammatical, systematic, teleological, and historical interpretation to examine statutory provisions and judicial reasoning, alongside legal construction and qualitative content analysis to identify doctrinal ambiguities and enforcement challenges. In addition, a comparative legal approach is used to examine regulatory frameworks in selected jurisdictions including the United States, the United Kingdom, the European Union, Australia, and Canada in order to identify best practices relevant to the Indonesian context. Although this study is normative and does not involve empirical field data, this methodology provides a systematic and comprehensive basis for evaluating Indonesia's evolving legal framework governing digital expression and defamation in the social media environment.

RESULTS AND DISCUSSION

The Practice of Freedom of Speech on Indonesian Social Media

The practice of freedom of expression on Indonesian social media reflects a complex and ambivalent dynamic. On the one hand, digital platforms such as X, Instagram, TikTok, Facebook, and WhatsApp have become important arenas for citizens to articulate political opinions, express dissatisfaction with public services, share corporate reviews, and discuss identity or religious issues. In this sense, social media functions as a contemporary digital public sphere that enables broader civic participation and facilitates the exchange of diverse viewpoints. On the other hand, this expanding space of expression is accompanied by growing concerns regarding regulatory pressure, digital harassment, and the potential legal consequences of online speech. Empirical studies indicate that while users actively employ social media to voice criticism and construct counter-narratives, they simultaneously adopt various forms of self-censorship, such as avoiding direct references to officials, employing satire, or using coded language to reduce the risk of legal reporting or prosecution.

For example, a 2025 public opinion survey revealed that around 71 percent of respondents did not feel completely safe expressing their opinions on social media, while about one quarter perceived digital platforms as neither free nor secure spaces.

These findings illustrate the deterrent effect associated with the threat of legal complaints under the Electronic Information and Transactions Law (ITE Law), the prevalence of online reporting culture, and coordinated digital attacks by organized online actors. Consequently, freedom of expression in Indonesia's digital environment often becomes a continuous negotiation between individual creativity, political courage, and the perceived risks of legal or social repercussions¹³.

The dynamics of digital activism further illustrate how social media has transformed patterns of political participation in Indonesia. Research on contemporary social movements demonstrates that hashtag campaigns, online petitions, live streaming, and short-form video content have emerged as influential tools through which citizens particularly younger generations articulate political positions and mobilize collective support without relying on traditional institutional structures. Campaigns related to policy criticism, anti-corruption movements, human rights advocacy, and gender equality demonstrate how social media can facilitate rapid and cross-class mobilization. Nevertheless, such digital activism is frequently accompanied by countermeasures such as cyber harassment, doxxing, and coordinated

¹³ Guru, G. Sanjay, and K. Dhivyabharathi. "Navigating Digital Rights in the Recent Era: Promoting the Freedom and Safety." *MediaSpace: DME Media Journal of Communication* 6, no. 2 (2025): 11–16.

delegitimization campaigns conducted through anonymous or organized accounts. Reports by civil society organizations, including SAFENet, document multiple cases in which citizens, activists, journalists, and workers were prosecuted under the ITE Law after publishing criticism directed at public officials, state institutions, or corporations. For instance, the prosecution of a worker who criticized wage conditions on social media illustrates how expressions related to public interest concerns may be transformed into criminal disputes. Furthermore, research on digital policy indicates that Indonesia ranks among countries with a high level of content restriction requests directed toward global platform providers, as government authorities frequently request the limitation or removal of online content. These developments demonstrate that the regulation of freedom of expression on social media is shaped not only by constitutional and human rights principles but also by the interaction between national legal frameworks, platform governance policies, and the practical implementation of law enforcement mechanisms¹⁴.

From a criminal law perspective, these developments also raise questions about the proportionality of using criminal sanctions to address defamation and insult on social media. While the protection of reputation is a legitimate aim, the severity of criminal penalties and the broad scope of conduct captured by existing provisions are often not calibrated to the actual seriousness of the harm caused by online expression, especially in cases involving non-violent speech, consumer complaints, or political criticism. In many instances, reputational injury could be adequately addressed through less intrusive mechanisms such as civil remedies, rights of reply, or platform-based moderation, which are more consistent with the *ultima ratio* principle of criminal law. The routine use of criminal defamation provisions in digital contexts therefore risks violating the requirement of proportionality under international human rights law, particularly Article 19 paragraph 3 of the ICCPR, and undermines the normative expectation that criminal punishment should be reserved for the most serious forms of wrongful conduct.

The Problem of Defamation

The regulation of defamation in Indonesia constitutes one of the most contested issues in contemporary debates on freedom of expression, particularly within the context of digital communication. Historically, defamation has been regulated through Articles 310–311 of the former Criminal Code and Article 27 paragraph (3) of the Electronic Information and Transactions Law (ITE Law). Although these provisions were intended to protect reputational interests, their application in the digital environment has generated significant controversy. Normative and empirical studies indicate that the current legal configuration produces three closely interconnected problems: the expansion of criminal liability for ordinary expression, the existence of ambiguous and multi-interpretable legal formulations, and the emergence of a strong chilling effect within society. These factors collectively transform reputational disputes that could be addressed through civil remedies, mediation, or the right of reply into criminal proceedings involving the possibility of imprisonment. Such developments create increasing tension with international human rights standards, which generally encourage the decriminalization of defamation and emphasize proportional responses to reputational harm, particularly in digital communication contexts¹⁵.

¹⁴ Rehman, Ali. "Political Campaigning In The Digital Sphere: Navigating Media, Populism, And Censorship." *Global Media and Social Sciences Research Journal* 5, no. 1 (2024): 1–10.

¹⁵ Akpanke, Akwagiobe Richard, and Aminu Bakori Mohammed. "Legal Issues in Journalism: Navigating Free Speech and Privacy." *RESEARCH INVENTION JOURNAL OF CURRENT ISSUES IN ARTS AND MANAGEMENT* Учредители: *International Digital Organization for Scientific Research* 4, no. 1 (2025): 31–34.

At a more fundamental level, defamation and insult are inherently subjective concepts, because the feeling of being offended depends on individual sensitivities, social status, and cultural context. In Indonesia, these perceptions are further shaped by diverse regional customs and honor codes, where expressions considered acceptable criticism in one community may be regarded as deeply insulting in another. When such relative and context-dependent notions are translated directly into criminal provisions with vague wording, they effectively grant wide interpretive discretion to law-enforcement authorities and courts, thereby amplifying the risks of overcriminalization and selective enforcement. This structural subjectivity reinforces the need for narrow, precise legal definitions and for defamation law to be applied as a measure of last resort, rather than as a routine response to perceived affronts to personal or institutional dignity.

One of the most frequently identified problems is the tendency toward overcriminalization in the enforcement of defamation provisions. Criminal law is often used to address expressions that fall within the ordinary scope of public communication, including criticism, complaints, and the disclosure of alleged wrongdoing by public officials or private institutions. Reports by international organizations highlight that despite several revisions to the ITE Law, the formulation of defamation provisions remains broad and capable of encompassing a wide range of digital expressions. The International Commission of Jurists (ICJ), for example, has argued that criminal sanctions for reputational disputes are not always necessary to achieve legitimate objectives such as reputational protection, particularly when less restrictive mechanisms such as civil remedies or mediation are available. Empirical data further illustrate this pattern. Amnesty International Indonesia reported that at least 758 individuals were prosecuted under the ITE Law between 2018 and mid-2025, with a substantial proportion of cases related to defamation or hate speech provisions. Similarly, the SAFEnet digital rights report for 2023–2024 demonstrates that disputes originating from consumer complaints, personal disagreements, or criticism of public policy are frequently escalated into criminal proceedings, thereby transforming defamation law into a mechanism of repression rather than a proportionate instrument for protecting reputation¹⁶.

A significant structural cause of this phenomenon lies in the ambiguous formulation of defamation elements within Article 27 paragraph (3) of the ITE Law. Legal scholars often describe this provision as a “rubber article” because its terminology allows broad and flexible interpretation. Normative analysis indicates that the law does not clearly define the threshold of what constitutes an insult or an attack on honor and reputation, nor does it establish criteria related to serious harm or public-interest considerations. Furthermore, the statutory language employs broad verbs such as “transmit,” “distribute,” and “make accessible,” which may encompass a wide range of digital actions, including original publication, reposting, commenting, or simply sharing links. As a consequence, different forms of digital communication may be interpreted as equivalent criminal conduct. Research examining the implementation of this provision shows that similar expressions are frequently treated differently across jurisdictions and cases, generating disparities in investigation and prosecution. Such uncertainty undermines the principles of legal certainty and equality before the law. International legal observers have also noted that overly broad legal formulations may conflict with the requirement under Article 19 paragraph (3) of the ICCPR that

¹⁶ Iftikhar, Hamza, Umelaila Shah, Uzair Hashmi, Inayatullah Inayatullah, and Sanaullah Khan. “Navigating the Intersection of Technology, Disinformation, and Human Rights: Balancing Freedom of Expression and Speech.” *Jurnal Cita Hukum* 13, no. 2 (2025): 537–60.

restrictions on expression must be “provided by law,” meaning that they must be formulated with sufficient precision to enable individuals to foresee legal consequences¹⁷.

The interaction between expansive criminalization and ambiguous legal formulation contributes directly to the emergence of a chilling effect within Indonesia’s digital public sphere. The fear of legal reporting or prosecution encourages individuals to restrict their own expression, even when their statements relate to legitimate public interests. The SAFEnet digital rights report for 2024 indicates that although the government has publicly claimed that revisions to the ITE Law aim to eliminate problematic provisions, the persistence of broadly formulated articles continues to generate perceptions of legal risk among internet users. Public opinion surveys conducted in 2025 show that approximately 71 percent of respondents feel unsafe expressing opinions on social media, primarily due to fears of being reported under the ITE Law, targeted by coordinated online attacks, or experiencing social and professional repercussions. International human rights organizations including the ICJ and the United Nations Human Rights Committee have consistently emphasized that criminal sanctions for non-violent expression produce disproportionate chilling effects, as individuals may choose silence or self-censorship even when discussing matters of public concern. Field research on law enforcement practices further indicates that cyber patrol activities, public campaigns encouraging citizens to “report to the police,” and rapid investigative responses to complaints from influential actors reinforce this climate of caution and fear, particularly among journalists, activists, and workers¹⁸.

Concrete case studies further illustrate how these structural issues operate in practice. Amnesty International Indonesia documented the case of a resident in Keerom, Papua, who was convicted after posting criticism on social media regarding alleged misuse of education funds at a local high school. The same individual had previously been prosecuted for criticizing a gubernatorial candidate, demonstrating a recurring pattern in which defamation provisions are applied to expressions closely related to public oversight and political accountability. Civil society organizations have similarly reported cases involving workers, consumers, and activists who faced criminal complaints after publishing criticisms regarding wages, corporate practices, or public services. For example, a worker was convicted after criticizing a company that allegedly paid below the minimum wage, while a consumer was reported for posting a negative review of healthcare services. These examples illustrate a structural imbalance in which defamation provisions are more frequently invoked by actors possessing greater political, economic, or institutional power, thereby transforming criminal law into a mechanism of intimidation rather than a balanced tool for reputational protection¹⁹.

Recent constitutional developments have attempted to address some of these concerns. Decisions issued by the Constitutional Court in the period 2024–2025 began narrowing the scope of defamation provisions under the ITE Law by emphasizing that public institutions and government officials should not use these provisions to report citizens for criticism related to public interest issues. The Court also clarified the importance of interpreting the element “without rights” and distinguishing between legitimate criticism and malicious personal attacks. Human Rights Watch and other international observers have welcomed

¹⁷Bugeja, Giulia. “Human Rights Considerations in Navigating AI Content Moderation : Safeguarding Freedom of Expression in the Age of Social Media.” Master’s Thesis, University of Malta, 2024.

¹⁸Gladwin, Oscar. “Navigating Ethical Dilemmas in AI Content Moderation: Balancing Privacy, Free Speech, and Fairness.” Retrieved February, 2025.

¹⁹Omoniyi Bukola Akinola, “Navigating The Thin Line Between Freedom OF”, *African Journal of Law, Ethics and Education*, 2024, 174–211.

these rulings as an important step toward strengthening freedom of expression²⁰. However, scholars emphasize that doctrinal clarification at the judicial level must be accompanied by reforms in investigative and prosecutorial practices in order to produce meaningful changes in enforcement. As long as broad statutory formulations, punitive enforcement orientations, and a culture of legal reporting remain prevalent, the problems of overcriminalization, interpretive ambiguity, and chilling effects are likely to persist. These developments therefore highlight the continuing urgency of legal reform and policy realignment aimed at ensuring that defamation regulation in Indonesia aligns with the principles of proportionality, legal certainty, and freedom of expression recognized under international human rights law.

Ambiguities in Legal Definitions Under Article 27(3) of the ITE Laws

Doctrinal analysis shows that the formulation of legal terms in Article 27 paragraph (3) of the Electronic Information and Transactions Law (ITE Law) remains overly broad and imprecise for regulating contemporary forms of digital communication, particularly within social media environments. The provision employs expansive verbs such as “to distribute,” “to transmit,” and “to make accessible,” but it does not define these concepts or distinguish clearly between original authorship and secondary dissemination, so reposting, commenting, or merely sharing links may all be treated as equivalent criminal conduct. This open-ended language gives investigators, prosecutors, and judges wide interpretive discretion and allows different forms of digital behavior, with varying levels of intent and harm, to be subsumed under the same defamation offense²¹.

To better understand the regulatory challenges posed by digital communication, it is necessary to distinguish between traditional defamation and its contemporary manifestations in online environments. Social media platforms fundamentally alter the dynamics of communication by enabling rapid dissemination, global reach, and long-term accessibility of information. As illustrated in Table 1, the characteristics of online defamation differ substantially from conventional forms of defamation governed under the Criminal Code.

Table 1. Differences Between Offline and Online Defamation

Aspect	Offline Defamation	Online Defamation (Social Media)
Medium	Spoken or printed statements (physical).	Digital posts, comments, videos, memes, captions.
Speed of Spread	Slow; limited to physical circulation.	Extremely fast; viral within minutes.
Audience Scope	Restricted and localized.	Global, borderless, persistent.
Evidence	Witness testimony, printed materials.	Screenshots, metadata, logs, digital footprints.
Anonymity	Rare; identities usually known.	High; anonymous or pseudonymous accounts.
Impact Duration	Temporary; fades with time.	Permanent; searchable and shareable indefinitely.

²⁰Umenweke, “An Examination Of The Impact Of Social Media On Defamation Law: Challenges And Solutions By Prof. M. N. Umenweke ”, *Chukwuemeka Odumegwu Ojukwu Univeristy Journal Of Commercial And Property Law* 5, no. 2 (2025): 45–55.

²¹ Rajagopal, R., M. Senbagavalli, Deepak Raj DM, Riya Kumari, Deepanshu Gupta, and Anusha Gupta. “Navigating the Interplay of Privacy, Security and Ethics on Social Media.” 2024 2nd World Conference on Communication & Computing (WCONF), 2024, 1–6.

Legal Complexity	Traditional criminal/civil law.	Requires cyber-forensics, platform cooperation, digital analysis.
Reputational Damage	Localized, community-based.	Amplified due to virality and algorithmic boosts.
Regulatory Framework	Criminal Code Articles 310–311.	ITE Law Article 27(3) + platform policies.

To the extent that online defamation differs structurally from traditional, offline defamation through rapid virality, borderless audiences, persistent digital traces, and a higher degree of anonymity Article 27 paragraph (3) fails to set clear boundaries on which forms of expression should attract criminal liability. Individuals cannot reasonably predict whether criticism, satire, consumer complaints, or political commentary on social media might be prosecuted, which undermines the principle of legal certainty under Article 28D paragraph (1) of the 1945 Constitution. In contrast, several other jurisdictions have introduced safeguards such as serious-harm thresholds and public-interest defences in order to prevent the criminalization of trivial or good-faith speech.²² Because Article 27 paragraph (3) does not adopt comparable thresholds or explicitly differentiate between attacks on private individuals and criticism of public officials, Indonesia’s regulatory framework remains vulnerable to overbroad application and continues to sit uneasily alongside international human rights standards that discourage criminal defamation and favor proportionate, non-criminal remedies for reputational harm.²³

Tension Between Constitutional Rights and Criminal Defamation Provisions

Indonesia’s constitutional framework recognizes freedom of expression as a fundamental right that plays a central role in democratic governance. Article 28E paragraph (3) of the 1945 Constitution guarantees the right of every individual to express opinions, while Article 28F affirms the right to seek, obtain, possess, process, and disseminate information through any available medium. Together, these provisions establish freedom of expression as a normative pillar of Indonesia’s constitutional order, enabling public participation, political oversight, and democratic accountability. At the international level, these guarantees align closely with Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which recognizes freedom of expression as essential for democratic participation and the exchange of ideas in society. Contemporary legal scholarship published between 2021 and 2025 also emphasizes that freedom of expression functions not only as an individual liberty but as a structural safeguard for democratic governance and public scrutiny of power.

Despite these constitutional guarantees, a persistent tension remains within Indonesia’s legal framework because defamation continues to be criminalized under the Electronic Information and Transactions Law and the new Indonesian Criminal Code, even after several provisions have been revised or partially invalidated by legislative amendments and Constitutional Court decisions. The coexistence of strong constitutional protections and expansive criminal provisions governing reputational harm creates a normative imbalance in

²² Irfan, Asad, Nibras Hussain, Dr. Muhammad Zakir, and Syed Hamza Javaid Bukhari. “Hate Speech, Misinformation, and Free Speech: Navigating Legal Challenges in The Digital Age.” *Research Journal for Social Affairs* 3, no. 5 (July 2025): 105–18. <https://doi.org/10.71317/RJSA.003.05.0308>.

²³ Guru, G. Sanjay, and K. Dhivyabharathi. “Navigating Digital Rights in the Recent Era: Promoting the Freedom and Safety.” *MediaSpace: DME Media Journal of Communication* 6, no. 2 (2025): 11–16.

which the protection of reputation may, in certain circumstances, override the protection of expressive freedoms. In digital environments where communication occurs rapidly, reaches broad audiences, and often involves criticism of public officials or institutions, this imbalance becomes particularly visible and raises recurring questions about the boundary between legitimate criticism and unlawful attacks on reputation.

Table 2. Main Legal Problems in Article 27(3) of the ITE Law

Legal Issue	Description	Impact
Vagueness of Terms	“Distribute”, “transmit”, and “insulting content” are not clearly defined.	Inconsistent interpretation; legal uncertainty.
Overbreadth	Covers diverse digital acts without proportional thresholds.	Risk of criminalizing legitimate criticism.
Double Criminalization	Overlap with Criminal Code Articles 310–311.	Redundant charges; excessive penalties.
Lack of Public-Figure Distinction	No differentiation between public officials and private individuals.	Public criticism may be treated as criminal defamation.
Strict Criminal Penalties	Imprisonment for non-violent expressive acts.	Violates proportionality principles under ICCPR.
Law Enforcement Discretion	Highly subjective police interpretations.	Unequal justice, misuse for political or personal interests.

As illustrated in Table 2, key structural weaknesses in the defamation framework include vague statutory language, broad coverage of diverse digital activities, overlapping criminal provisions, and the absence of a clear distinction between public officials and private individuals. These features collectively expand the discretionary power of law-enforcement authorities, undermine legal certainty, and heighten the risk that legitimate public discourse may be chilled by the threat of criminal prosecution. Legal studies conducted between 2021 and 2025 increasingly indicate that criminal sanctions for defamation are frequently disproportionate to the harm involved and tend to produce chilling effects that discourage citizens from participating in democratic debate.

International human rights bodies have repeatedly stressed that criminal defamation rarely satisfies the necessity and proportionality requirements under Article 19 paragraph (3) of the ICCPR, and many jurisdictions have shifted toward civil remedies, mediation, and restorative approaches to reputational disputes. In Indonesia, the Constitutional Court has upheld the constitutionality of defamation provisions while emphasizing that criminal law must operate as an *ultima ratio* and that expressions involving criticism of public officials should be interpreted with particular caution. However, empirical and doctrinal analyses show that these safeguards are not consistently reflected in investigative and prosecutorial practice, where punitive orientations, reporting culture, and uneven application of the law continue to prevail. As a result, constitutional protection of freedom of expression remains coherent at the normative level but vulnerable in practice, especially within the contemporary social-media environment.²⁴

²⁴ Subhani, Subhi. “Navigating the Boundaries: The Fine Line of Subversive Speech in Public Discourse.” *IUP Law Review* 14, no. 2 (2024).

Digital Behavior, Virality, and the Nature of Online Expression

Recent studies indicate that social media platforms possess structural and technological characteristics that fundamentally transform the nature of expression and its legal implications, particularly in relation to online defamation. Features such as rapid dissemination and virality enable individual posts, comments, images, or videos to reach large and heterogeneous audiences within a short period of time. As a result, personal expression in digital environments may quickly evolve into mass communication with amplified reputational consequences. Platform algorithms further intensify this dynamic by prioritizing engagement-based metrics, which often promote emotionally charged, controversial, or sensational content. At the same time, the persistence of digital archives ensures that online statements remain searchable and accessible long after their original communicative context has disappeared²⁵.

These technological conditions significantly alter the way expression circulates in the digital public sphere and consequently reshape the legal assessment of defamation in social media environments.

Table 3. Digital Behavior Factors Contributing to Online Defamation Cases

Factor	Explanation	Risk of Defamation
Online Disinhibition Effect	Users express harsher opinions online than offline.	Increased likelihood of insults and defamatory remarks.
Virality and Algorithmic Boost	Platforms promote high-engagement (often negative) content.	Harmful statements spread rapidly before retraction.
Anonymity	Fake accounts hide user identity.	Encourages reckless, abusive posts.
Context Collapse	Mixed audiences misunderstand tone, humor, or intent.	Statements interpreted as defamatory.
Echo Chambers	Users engage with like-minded groups.	Reinforces harassment or mob behavior.
Low Digital Literacy	Misunderstanding of legal boundaries and online etiquette.	Users unintentionally commit defamatory acts.

As illustrated in Table 3, several behavioral and sociotechnical factors contribute to the emergence and escalation of online defamation disputes. Anonymity and pseudonymity reduce social accountability and enable harsher forms of expression to circulate widely within digital environments. In addition, the absence of traditional editorial gatekeeping allows users to publish content instantly without verification or contextual moderation. Psychological and sociological research further indicates that online communication environments often encourage impulsive expression and stronger language use compared with offline interactions. Statements intended for limited audiences may therefore be exposed to broader publics with different interpretive perspectives, creating a phenomenon known as context collapse.

These risks are further intensified by the presence of echo chambers and varying levels of digital literacy. Within homogeneous online communities, users tend to interact primarily with individuals who share similar views, which can reinforce misinterpretation, polarization,

²⁵ Bashir, Sobia, Muhammad Hamza Zakir, Syed Hammad Khan, and Shazia Ibrahim. "The Impact of Social Media on Freedom of Speech and Privacy Rights." *Journal of Regional Studies Review* 4, no. 1 (March 2025): 304–15. <https://doi.org/10.62843/jrst/2025.4a077>.

and collective hostility. At the same time, limited digital literacy may prevent users from understanding the legal and ethical boundaries of online communication, thereby increasing the likelihood of unintentional defamatory statements. Algorithmic governance compounds these dynamics, as automated ranking and recommendation systems actively structure the visibility and circulation of content across digital platforms.

Consequently, potentially defamatory content may spread far beyond the control or original intention of the speaker. These behavioral and technological conditions complicate legal evaluations of intent (*mens rea*) in digital environments and challenge traditional assumptions underlying defamation law, which historically relied on identifiable speakers, stable contexts of communication, and predictable audience interpretation. Regulatory approaches that rely solely on punitive sanctions against individual users therefore fail to address the systemic drivers of reputational harm in digital communication. Instead, contemporary legal scholarship increasingly emphasizes the need for a proportional, rights-based regulatory framework that incorporates digital behavior, platform architecture, and algorithmic amplification as integral components of online expression governance²⁶.

Law-Enforcement Challenges in Online Defamation Cases

The enforcement of Article 27 paragraph (3) of the Information and Electronic Transactions Law (ITE Law) reveals persistent institutional and procedural challenges that undermine legal certainty and proportionality in Indonesia's regulation of online defamation. Although Article 433 and related provisions are formulated in medium-neutral terms and can, in principle, be applied to defamatory speech on social or virtual media, empirical research between 2021 and 2025 shows that similar forms of online expression from consumer complaints and social criticism to political commentary continue to be treated inconsistently across regions, with some cases pursued as criminal defamation while others are filtered through higher thresholds of harm or intent. This interpretive variation, combined with limited digital-forensic capacity, premature resort to criminal investigation, and the persistent overlap between the ITE Law and the new Criminal Code, indicates that the core problems of discretionary enforcement and overcriminalization in online defamation cases remain largely unresolved despite the formal reform of substantive provisions²⁷.

Moreover, there classification of many defamation offenses in the new Criminal Code as complaint-based (*delik aduan*) does not, by itself, eliminate the structural risks identified under the ITE Law regime. While requiring a formal complaint from the aggrieved party is intended to prevent over-zealous prosecution, in practice it may simply shift the initiative to actors who possess greater political, economic, or institutional resources and are therefore more capable of mobilizing the criminal justice system in response to criticism circulated on social media. In the absence of clear, operational standards distinguishing public-interest criticism from personal attacks, and without robust screening at the investigative stage, complaint-based defamation provision can still facilitate the criminalization of digital expression, particularly when used by powerful complainants against journalists, activists, workers, or consumers. Consequently, the move toward *delik aduan* in the new Criminal Code must be accompanied by rights-oriented enforcement guidelines and effective prosecutorial discretion if it is to function as a genuine safeguard rather than a merely formal reform.

²⁶ Stevens, Kate I., and Edoardo Melilli. "Navigating Social Media: How to Ensure Safe Passage." *Nephrology Dialysis Transplantation* 37, no. 1 (December 2021): 5–7. <https://doi.org/10.1093/ndt/gfab273>.

²⁷ Ayuso, Marina Munoz. "Balancing Freedom: Navigating the Nuances of Speech Regulation for Equality and Justice." *MenschenRechtsMagazin* 29, no. 2 (2024): 94–107.

This variation illustrates the absence of uniform enforcement standards and highlights the vulnerability of digital expression to discretionary interpretation within the criminal justice system.

Table 4. Comparison of Indonesian Framework with International Standards

Dimension	Indonesia (ITE Law)	International Best Practice (ICCPR, EU, UK, US)
Defamation Type	Criminal, imprisonment possible.	Mostly civil; imprisonment discouraged.
Harm Threshold	No serious-harm requirement.	“Serious harm” (UK) or “actual malice” (US).
Public-Interest Defense	Weak, unclear.	Strong protections for public speech.
Proportionality	Criminal sanctions often applied.	Civil remedies prioritized; restorative models.
Platform Liability	Heavy government pressure on platforms.	Safe-harbor protections and due process.
Enforcement	Inconsistent across regions.	Independent oversight, clear standards.

As illustrated in Table 4, Indonesia’s enforcement framework differs significantly from international best practices that prioritize proportionality, clear harm thresholds, and strong public-interest protections. International standards derived from the ICCPR and comparative legal systems commonly require demonstrable harm or malicious intent before reputational disputes can justify legal intervention. In contrast, Article 27 paragraph (3) does not clearly incorporate such operational thresholds, which increases the likelihood that ordinary digital communication including criticism, satire, or consumer feedback may be treated as criminal conduct.

Enforcement challenges are further exacerbated by limitations in digital forensic capacity. Investigators often face significant technical difficulties in identifying anonymous accounts, retrieving deleted content, or verifying authorship through reliable metadata. As a consequence, law-enforcement authorities frequently rely on secondary forms of evidence, such as screenshots, which may lack sufficient evidentiary reliability in judicial proceedings²⁸. These technical limitations are compounded by disparities in technological infrastructure and training among investigators across different regions, resulting in uneven enforcement outcomes that may conflict with the principles of equality before the law and due process.

Procedural inefficiencies also remain evident in the early stages of case handling. Despite official policy guidelines issued by the Ministry of Communication and Informatics and the Indonesian National Police that encourage mediation and restorative approaches, many online defamation cases continue to proceed directly to criminal investigation without thorough preliminary verification or proportionality assessment. The limited use of mediation or non-penal mechanisms increases the likelihood that reputational disputes will escalate into criminal proceedings even when less punitive solutions may be more appropriate.

When viewed in a comparative perspective, global regulatory trends increasingly emphasize civil remedies, public-interest safeguards, and restorative dispute resolution as more balanced approaches to reputational harm. Indonesia’s continued reliance on criminal

²⁸ Isam, Hishamudin. “Algospeak and Digital Culture: Navigating Social Media Challenges.” Third International Conference on Communication, Language, Literature, and Culture (ICCoLLiC 2024), 2024, 656–69.

sanctions for non-violent expressive acts therefore contrasts with broader international developments in freedom of expression governance. The combination of interpretive inconsistency, forensic limitations, procedural weaknesses, and a predominantly punitive orientation places additional strain on the criminal justice system and increases the risk that legitimate expression will be suppressed. Consequently, recalibrating law-enforcement practices toward coherent, evidence-based, and rights-oriented standards consistent with international human rights norms has become an urgent necessity within Indonesia's evolving digital communication landscape²⁹.

Misalignment Between Indonesian Law and International Human Rights Standards

International human rights law establishes a strict normative framework governing permissible restrictions on freedom of expression. Article 19 paragraph (3) of the International Covenant on Civil and Political Rights (ICCPR) permits limitations on expression only when such restrictions are clearly prescribed by law, pursue legitimate objectives such as the protection of the rights or reputations of others, and satisfy the cumulative requirements of necessity and proportionality. These standards function as fundamental safeguards to ensure that state regulation of expression does not unnecessarily interfere with democratic discourse. Within this framework, criminal sanctions are generally considered an extreme measure that should only be applied when less restrictive alternatives are insufficient. However, the enforcement of online defamation laws in Indonesia frequently demonstrates inconsistencies with these principles, particularly when criminal penalties are imposed for non-violent expressive conduct that could be addressed through civil remedies, mediation, or restorative mechanisms.

Table 5. Law-Enforcement Challenges in Online Defamation Cases

Category	Challenge	Implication
Forensics	Limited digital-forensics capabilities.	Weak evidence, wrongful prosecutions.
Technical Complexity	Difficulty verifying authorship, metadata loss.	Investigations rely on screenshots.
Procedural Issues	Premature criminalization without mediation.	Escalates minor disputes into criminal cases.
Interpretive Variations	Different regions interpret law differently.	Unequal treatment before the law.
Resource Limitations	Lack of trained cyber-investigators.	Slow, inaccurate case handling.

As illustrated in Table 5, several institutional and procedural limitations contribute to the inconsistent enforcement of online defamation provisions in Indonesia. Limited digital-forensic capacity, technical challenges in verifying authorship and metadata, and procedural tendencies toward premature criminalization frequently undermine due-process guarantees. These conditions are further compounded by interpretive variations across different jurisdictions and the limited availability of trained cyber-investigators, resulting in uneven enforcement outcomes. In practice, these weaknesses increase the likelihood that expressions involving criticism of institutions or public officials may be reclassified as criminal defamation. Such outcomes raise concerns regarding the legitimacy of criminal law when it

²⁹ Isam, Hishamudin. "Algospeak and Digital Culture: Navigating Social Media Challenges." Third International Conference on Communication, Language, Literature, and Culture (ICCoLLiC 2024), 2024, 656–69.

functions to suppress dissent rather than to protect narrowly defined reputational interests³⁰. International human rights bodies have repeatedly cautioned against the use of criminal defamation laws due to their potential to generate chilling effects on public discourse. Authoritative guidance from the United Nations Human Rights Committee, including General Comment No. 34 and subsequent reports published between 2021 and 2025, emphasizes that imprisonment for defamation is rarely compatible with the requirements of necessity and proportionality under Article 19 of the ICCPR. These reports consistently warn that criminal sanctions may discourage individuals from engaging in legitimate public-interest expression, particularly in digital environments characterized by rapid dissemination and heightened public visibility³¹. Comparative legal developments further demonstrate a global trend toward the decriminalization or limitation of defamation offenses. Many jurisdictions have introduced serious-harm thresholds, strengthened public-interest defenses, and adopted safe-harbor protections for digital intermediaries in order to balance reputational protection with freedom of expression. In contrast, Indonesia continues to maintain a dual regulatory structure through both the Criminal Code and the ITE Law. Comparative scholars increasingly characterize this approach as an anomaly within contemporary human-rights practice, particularly in the context of digital communication governance³².

The persistence of this regulatory gap between domestic law and international standards produces significant normative tension within Indonesia's legal framework. Legal uncertainty, inconsistent enforcement, and the potential for external scrutiny collectively highlight the importance of aligning national regulation with internationally recognized principles of freedom of expression. In this context, adherence to ICCPR standards should not be viewed merely as a policy preference but as a legal obligation arising from Indonesia's commitment to international human rights law. Aligning domestic defamation regulation with these principles is therefore essential for safeguarding democratic expression within Indonesia's evolving social media landscape.

Social Consequences of Overcriminalization

In this context, the term over criminalization refers primarily to the excessive use and scope of criminal law to regulate ordinary forms of digital expression, rather than solely to these verity of penalties. At the same time, concerns about disproportionate or overly harsh sanctions sometimes described as over-penalizational so arise where imprisonment is imposed for non-violent, reputation-related speech that could be addressed through less restrictive measures. The expansion of criminal liability for online expression has generated significant social consequences, particularly in the form of a chilling effect on public discourse. Legal scholarship published between 2021 and 2025 indicates that the threat of criminal prosecution discourages citizens from participating in communicative practices that are essential to democratic life, including citizen journalism, criticism of public officials, reporting of corruption, whistleblowing, and political commentary³³. This deterrent effect arises not only from the possibility of conviction but also from the broader procedural and social consequences associated with criminal investigations, police reports, and prolonged legal uncertainty. These processes impose reputational stigma and psychological pressure

³⁰ *Ibid*

³¹ Rehman, Ali. "Political Campaigning In The Digital Sphere: Navigating Media, Populism, And Censorship." *Global Media and Social Sciences Research Journal* 5, no. 1 (2024): 1–10.

³² Guru, G. Sanjay, and K. Dhiyyabharathi. "Navigating Digital Rights in the Recent Era: Promoting the Freedom and Safety." *DME Media Journal of Communication* 6, no. 2 (2025): 11–16.

³³ Iftikhar, Hamza, Umelaila Shah, Uzair Hashmi, Inayatullah Inayatullah, and Sanaullah Khan. "Navigating the Intersection of Technology, Disinformation, and Human Rights: Balancing Freedom of Expression and Speech." *Jurnal Cita Hukum* 13, no. 2 (2025): 537–60.

that may discourage individuals from expressing opinions on matters of public interest. Empirical studies further demonstrate that journalists, activists, and ordinary social media users increasingly avoid discussing sensitive public issues due to concerns about potential legal repercussions. From a socio-legal perspective, this pattern illustrates how criminal defamation law may operate as a structural constraint on lawful and socially valuable expression rather than merely as a mechanism for protecting legitimate reputational interests³⁴. Together, the broad criminalization of everyday digital speech and the threat of custodial penalties for non-violent expression illustrate how both overcriminalization and over-penalization can operate simultaneously in the field of online defamation.

Another significant social consequence involves the strategic use of defamation provisions by actors possessing institutional or structural power. Contemporary research indicates that Article 27 paragraph (3) of the ITE Law is frequently invoked by public officials against activists, by corporations against consumers who publish negative reviews, and by political actors against opponents during electoral periods³⁵. Quantitative analyses conducted by civil-society organizations between 2021 and 2024 reveal that many online defamation cases involve substantial power imbalances between complainants and defendants. In such contexts, criminal law may function less as a neutral instrument of justice and more as a mechanism of intimidation. This pattern risks eroding public confidence in the legal system and reinforces perceptions of selective enforcement when criminal proceedings appear to serve private or political interests rather than broader societal protection.

Overcriminalization also interacts with the structural characteristics of social media platforms, which are shaped by algorithmic amplification and echo-chamber dynamics. In such contexts, criminal law may function less as a neutral instrument of justice and more as a mechanism of intimidation, combining the overcriminalization of critical and public-interest speech with disproportionate sanctions or over-penalization that are difficult to justify under human-rights-based proportionality standards. These technological conditions may intensify reputational conflicts and contribute to the emergence of digital vigilantism, including coordinated harassment, public shaming, and character attacks. Punitive legal responses are often limited in their ability to address these sociotechnical dynamics because they focus primarily on individual liability while neglecting the broader communicative environment that enables and sustains online hostility. Consequently, excessive reliance on criminal sanctions may exacerbate polarization rather than resolve underlying disputes. These developments highlight the importance of adopting regulatory approaches that are proportionate, rights-oriented, and socially responsive in order to balance the protection of reputation with the preservation of democratic expression in digital environments³⁶.

Conceptual Model for Regulating Digital Expression (DERF)

Building upon doctrinal analysis, comparative legal evaluation, and contemporary digital-rights scholarship, this study proposes the Digital Expression Regulation Framework (DERF) as a multidimensional conceptual model for regulating online expression in Indonesia. The framework is grounded in the premise that legal outcomes in digital defamation cases cannot be explained solely through statutory interpretation. Instead, regulatory outcomes emerge from the interaction between legal norms, technological

³⁴ Bugeja, Giulia. "Human Rights Considerations in Navigating AI Content Moderation : Safeguarding Freedom of Expression in the Age of Social Media." Master's Thesis, University of Malta, 2024.

³⁵ Simon Butt and Tim Lindsey, *Indonesian Law* (Oxford University Press, 2018).

³⁶ Oscar Gladwin, "Navigating Ethical Dilemmas in AI Content Moderation: Balancing Privacy, Free Speech, and Fairness," *Retrieved February*, 2025.

infrastructures, patterns of user behavior, and institutional enforcement practices. In order to capture these interdependent dynamics, DERF integrates four analytical dimensions: digital rights, user behavior, legal boundaries, and enforcement mechanisms.

The digital-rights dimension situates freedom of expression within a broader ecosystem of human rights protections that includes privacy, data protection, and safeguards against arbitrary interference. Within this dimension, freedom of expression operates as a normative constraint on regulatory power, ensuring that limitations on speech remain consistent with constitutional guarantees and international human rights obligations. The user-behavior dimension focuses on sociotechnical dynamics that shape online communication, including virality, anonymity, and the online disinhibition effect. Empirical research demonstrates that these factors significantly influence how digital content is produced, interpreted, and amplified within social media environments. Consequently, assessments of online defamation must account not only for the content of expression but also for the communicative context in which it circulates.

The legal-boundaries dimension reflects the normative structure governing the permissible limits of expression. This dimension incorporates constitutional protections, the distinction between criminal and civil liability, and the principle of proportionality in restricting speech. Comparative legal studies consistently indicate that excessive reliance on criminal sanctions may create tensions with democratic freedoms and international human-rights standards. Finally, the enforcement-mechanisms dimension highlights the role of institutional practices in shaping the application of defamation law. In practice, case outcomes are often influenced by factors such as digital-forensic capability, prosecutorial discretion, and judicial interpretation, which may significantly affect how legal norms are applied within specific contexts³⁷.

Table 6. Digital Expression Regulatory Framework (DERF)

Category	Challenge	Implication
Forensics	Limited digital-forensics capabilities.	Weak evidence, wrongful prosecutions.
Technical Complexity	Difficulty verifying authorship, metadata loss.	Investigations rely on screenshots.
Procedural Issues	Premature criminalization without mediation.	Escalates minor disputes into criminal cases.
Interpretive Variations	Different regions interpret law differently.	Unequal treatment before the law.
Resource Limitations	Lack of trained cyber-investigators.	Slow, inaccurate case handling.

As illustrated in Table 6, the practical implementation of defamation law is shaped by a combination of institutional and technological constraints. Limited digital-forensic capabilities, technical challenges in verifying authorship and metadata, procedural tendencies toward premature criminalization, and interpretive variation across jurisdictions collectively influence the real-world enforcement of online defamation provisions. In addition, resource limitations within law-enforcement institutions often hinder the development of specialized cyber-investigation expertise, further complicating the handling of digital-expression disputes.

³⁷ Rajagopal, R., M. Senbagavalli, Deepak Raj DM, Riya Kumari, Deepanshu Gupta, and Anusha Gupta. "Navigating the Interplay of Privacy, Security and Ethics on Social Media." 2024 2nd World Conference on Communication & Computing (WCONF), 2024, 1–6.

These findings demonstrate that the regulation of digital expression cannot rely exclusively on criminal prohibition as the primary regulatory mechanism. Instead, the DERF model emphasizes the importance of a rights-based, context-sensitive, and multidimensional regulatory approach that recognizes the complex interaction between technology, social behaviour, legal norms, and institutional practice. By integrating these dimensions, DERF provides a conceptual framework for understanding how digital-expression governance can better balance the protection of reputation with the preservation of democratic freedom of expression in Indonesia's evolving digital public sphere³⁸.

Need for Legal Reform and Policy Realignment

The findings of this study indicate a clear need for comprehensive legal reform and policy realignment in the regulation of online expression in Indonesia. Doctrinal ambiguities in defamation provisions, inconsistent law-enforcement practices, and persistent misalignment with international human rights standards collectively demonstrate that the current regulatory framework does not adequately address the sociotechnical realities of digital communication³⁹. In the context of rapidly evolving social media environments, regulatory approaches that rely predominantly on criminal sanctions have proven insufficient to balance the protection of reputation with the preservation of democratic expression. Contemporary legal scholarship increasingly emphasizes that regulatory reform is not merely a legislative preference but a normative necessity for maintaining democratic participation, legal certainty, and institutional legitimacy in digital public spheres⁴⁰.

The findings of this study indicate a clear need for legal reform and policy realignment in the regulation of on line expression in Indonesia, even after the introduction of Article 433 and related defamation provisions in the new Criminal Code. Although these provisions are drafted in medium-neutral terms and can, in principle, cover defamatory speech on social media and other virtual platforms, they neither resolve the doctrinal ambiguities in herited from the ITE Law nor fully address the risks of over criminalization and chilling effects identified in digital environments. The continued absence of serious-harm thresholds, explicit public-interest defences, and clear distinctions between criticism of public officials and attacks on private reputation shows that the new Criminal Code still falls short of international human-rights-based standards on freedom of expression⁴¹.

Table 7. Policy Recommendations Summary

Category	Challenge	Implication
Legislative Reform	Redraft Article 27(3), harmonize with KUHP, introduce serious-harm tests.	Legal clarity, reduced misuse.
Law Enforcement	Standardized guidelines, improve forensic skills, mediation-first policy.	More proportional, fair enforcement.
Platform Governance	Transparency reports, appeal systems, safe-harbor rules.	Balanced co-regulation of digital content.

³⁸Joy Mathew And Deborah Adesokan, "Can The Law Travel?: Examining Nigeria Legal Position On Cross-Border Defamation In A Social Media Era," 2023.

³⁹*Ibid*

⁴⁰Ramalina Ranaivo, Mikea Manitra, and Adya Paramita Prabandari, "A Proposal for Decriminalisation of Online Defamation in Indonesia : Towards a Human Rights- Based Approach," *Cogent Social Sciences* 12, no. 1 (2026), <https://doi.org/10.1080/23311886.2026.2613959>

⁴¹Amechi Kamsiyochukwu Eileen Ngoma, "Balancing The Tort Of Defamation And The Right To Freedom Of Expression: A Comparative Analysis Of Nigerian And European Legal Frameworks," 2022.

Digital Literacy	Nationwide literacy programs, public awareness campaigns.	Reduced misinformation and impulsive posting.
Human Rights Alignment	Adopt ICCPR standards, avoid criminal penalties.	Protection of democratic freedoms.
Institutional Structure	Create independent oversight body, strengthen agency coordination.	Better monitoring, reduced political misuse.

As summarized in Table 7, the proposed reforms encompass legislative revision, improvements in law-enforcement capacity, enhanced platform governance, broader digital-literacy initiatives, institutional restructuring, and stronger alignment with international human rights principles. Legislative reform should clarify the scope of defamation provisions and harmonize existing statutes with the evolving structure of Indonesia’s criminal law. At the same time, law-enforcement institutions require standardized investigative guidelines and improved digital-forensic capabilities to ensure consistent and evidence-based case handling. Transparent governance mechanisms for digital platforms and stronger public digital-literacy programs are also necessary to address the broader sociotechnical environment in which online expression occurs⁴².

Accordingly, reform efforts must not only harmonize the ITE Law with the new Criminal Code, but also refine the formulation of defamation offenses so that online expression is regulated through precise legal definitions, proportionate sanctions, and robust safe guards for democratic criticism. This requires coordinated change sacross multiple dimensions, including statutory redrafting, rights-oriented enforcement guidelines, improved digital-forensic capacity, and clearerco-regulation mechanisms with social-media platforms, so that criminal law genuinely functions as an ultima ratio rather than a routine tool for managing reputational conflicts in the digital public sphere⁴³.

Reconstruction of Defamation Offenses under the New Indonesian Criminal Code

The enactment of the new Indonesian Criminal Code through Law No. 1 of 2023 introduces significant changes to the regulation of defamation offenses in Indonesia. The reformulation of defamation provisions, particularly under Article 433, represents an important development in the national criminal law system and has direct implications for the regulation of freedom of expression in digital environments. While earlier regulatory debates primarily focused on the interaction between Article 27 paragraph (3) of the ITE Law and Articles 310–311 of the former Criminal Code, the introduction of the new Criminal Code requires a reassessment of the normative structure governing reputational offenses. This reform not only modifies the legal formulation of defamation but also affects the nature of the offense, the structure of criminal sanctions, and the relationship between criminal law and freedom of expression in contemporary communication environments⁴⁴.

One of the most notable aspects of this reform concerns the reconstruction of the elements of the offense. Under the previous Criminal Code, defamation was defined primarily as an act of attacking a person’s honor or reputation through accusation. However, the formulation of these elements was frequently criticized for its vagueness and its susceptibility to broad interpretation in both offline and digital contexts. The new Criminal

⁴²M B Adewusi-bakare, “Re-Examining The Challenges Of The Law Of Defamation In Nigeria”, *African Journal of Law, Ethics and Education*, 2023, 105–25.

⁴³Rapuluchukwu E. Nduka, “Rethinking Remedies: The Civil Pathway For Victims of Cyber Defamation In Nigeria” 3, no. January (2026): 125–36.

⁴⁴Loso Judijanto et al., “Post-Truth Law Analysis of the Protection of Privacy Rights in Cases of Digital Defamation Dissemination in Indonesia,” *The Easta Journal Law and Human Rights* 3, no. 02 (2025): 81–88, <https://doi.org/10.58812/eslhr.v3i02>.

Code attempts to clarify the structure of the offense by emphasizing the protection of reputation while simultaneously recognizing the need to differentiate between unlawful attacks on honor and legitimate expressions of criticism. This distinction is particularly relevant in the digital public sphere, where criticism of public officials, institutions, or corporate actors often forms part of democratic discourse⁴⁵.

Another important development concerns the nature of the offense (*delik aduan*). Under the previous legal framework, defamation was generally treated as a complaint-based offense, yet in practice it was often interpreted broadly and could still lead to extensive criminal prosecution once a complaint had been filed. The new Criminal Code explicitly reinforces the complaint-based nature of defamation offenses, thereby limiting the automatic initiation of criminal proceedings. This modification reflects a growing recognition that reputational disputes are frequently personal in nature and may be more appropriately addressed through civil remedies, mediation, or restorative mechanisms rather than criminal punishment⁴⁶.

The reform also introduces adjustments to criminal sanctions. Under the previous Criminal Code, Article 310 provided imprisonment penalties of up to nine months for defamation, while Article 311 allowed imprisonment of up to four years for false accusations. Although criminal liability remains present in the new Criminal Code, the revised framework seeks to introduce clearer gradations of sanctions and emphasizes proportionality in the application of criminal punishment. This shift is consistent with broader international developments that increasingly discourage the use of imprisonment for non-violent expressive acts⁴⁷.

From the perspective of freedom of expression, these reforms represent an attempt to recalibrate the balance between reputational protection and democratic speech. The reconstruction of defamation offenses under the new Criminal Code may potentially reduce the risk of overcriminalization by clarifying the elements of the offense and reinforcing the complaint-based nature of prosecution. However, the effectiveness of these reforms will depend largely on how the new provisions interact with existing digital communication regulations, particularly the ITE Law, which continues to regulate online defamation and electronic dissemination of content. Therefore, evaluating the relationship between the new Criminal Code and digital-expression regulation remains essential for understanding the future trajectory of freedom of expression in Indonesia's social media landscape⁴⁸.

The comparison between the previous and current legal frameworks is summarized in Table 8.

Table 8. Comparison of Defamation Regulation: Old Criminal Code vs New Criminal Code

Aspect	Old Criminal Code (Articles 310–311)	New Criminal Code (Article 433)
Legal Formulation	Criminal defamation defined as attacking someone's honor through accusation	Reformulated with clearer structure and emphasis on reputational harm

⁴⁵Anisha Sonwal and Bharti Yadav, "Viral Words , Real Consequences : Defamation In The Social Media Era" 6, no. 9 (2025): 1–6.

⁴⁶Rohit Ray, "Defamation And Social Media : The Parcel That Cyber Defamation : An Introduction" 8, no. 3 (2023): 71–85.

⁴⁷Sri Herlina, "Criminal Defamation Through Social Media And Its Legal Implications In Indonesia," *International Journal of Law Environment and Natural Resources* 5 (1) :83-98

⁴⁸Lily Solichul Mukminah, "Legal Review Regarding the Application of Criminal Sanctions for Acts of Defamation Through Social Media" 3, no. 1 (2024): 1–5.

Nature of Offense	Generally treated as complaint-based offense (delik aduan) but often broadly interpreted	Explicitly reinforced as complaint-based offense, limiting automatic prosecution
Scope of Application	Applies to verbal and written accusations including digital dissemination	Maintains protection of reputation with clearer structural formulation
Criminal Sanctions	Imprisonment up to 9 months (Art. 310) and up to 4 years for false accusation (Art. 311)	Revised sanction structure emphasizing proportionality
Relation with Digital Context	Not originally designed for digital communication	Interacts with contemporary digital regulation such as the ITE Law
Implication for Freedom of Expression	High risk of overcriminalization and interpretive ambiguity	Intended to clarify boundaries between criticism and defamation

Implications of the New Criminal Code for Freedom of Expression in Digital Spaces

The introduction of the new Indonesian Criminal Code through Law No. 1 of 2023, particularly there formulation of defamation offenses in Article 433 and related provisions, has important implications for free domofexpression in digital environments. In principle, the more structured and complaint-based design of these offenses can strengthen legal certainty and offers a medium-neutral framework that is capable of encompassing defamatory speech disseminated via social media and other virtual platforms. Normatively, this reflects an effortt or ecalibrate the balance between reputational protection and democraticex pression in line with comparative trends that favour complaint-based procedures and non-custodial responses to reputational disputes.⁴⁹

However, the implications of this reform remain ambivalent when viewed in the context of Indonesia's broader regulatory framework. The continued operation of the ITE Law's defamation provision during the transitional period, combined with the absence of serious-harm thresholds, explicit public-interest defences, and clear distinctions between criticism of public officials and attacks on private reputation in the new Criminal Code, means that overlapping regulation and the risk of over criminalization persist in digital cases. In social-media environments shaped by virality, algorithmic amplification, and anonymity, the lack of context-sensitive interpretive standards further complicates the assessment of intent and harm, and may allow legitimate criticism, satire, or whistle blowing to be reclassified as criminal defamation⁵⁰.

View edthroughthe Digital Expression Regulation Framework (DERF) proposed in this study, these development sunder score that legislative reform alone is insufficient. Protecting freedom of expression in Indonesia's digital public sphere requires coherent harmonization between the ITE Law and the new Criminal Code, rights-oriented enforcement practices,

⁴⁹Fuadi Isnawan, "Police and Social Media: Law Enforcement Against Defamation and Libel in Social Media Comment Sections" 4, no. 1 (2022): 173–89.

⁵⁰Olaoluwa Emmanuel Genesis, "The Effect Of Social Media On Defamation Law: The Balance Between Freedom Of Expression And Protection Of Reputation In Nigeria Defamation Laws", Alex-Ekwueme Federal University Faculty Of Law LL.B Projects, nigerianjournalonline, 2025.

and regulatory approaches that take seriously the socio technical dynamics of online communication⁵¹.

CONCLUSION/CONCLUDING REMARKS

Indonesia's rapidly expanding social media ecosystem has intensified tensions between constitutional guarantees of freedom of expression and the continued criminalization of defamation. The study shows that vague legal definitions, overlapping provisions between the ITE Law and the new Criminal Code, and inconsistent, often punitive enforcement practices have broadened criminal liability for ordinary online speech, producing legal uncertainty, power-imbalanced prosecutions, and chilling effects on democratic participation. Although the formulation of defamation offenses in the new Criminal Code (including Article 433 and the complaint-based structure) formally modernizes the doctrine and is medium-neutral enough to reach digital expression, it does not introduce key safeguards such as serious-harm thresholds, explicit public-interest defenses, or clear distinctions between criticism of public officials and attacks on private reputation, and it operates along side a still-problematic ITE regime. Against this background, the Digital Expression Regulation Framework (DERF) proposed in this paper under scores that meaningful reform must simultaneously refine statutory norms, align them with international human rights standards, recalibrate law-enforcement practices, and account for the socio technical dynamics of social media, so that criminal law truly functions as an ultima ratio and reputational protection is balanced with robust democratic freedom of expression in Indonesia's digital public sphere.

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⁵¹Abdul xBasir Mohamad and Nurbazla Ismail, "Structural Discrimination in Online Defamation Enforcement : A Hybrid Analysis of Malaysian Criminal Law and Islamic Jurisprudence," 2025.

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