

THE FREEDOM OF OPINION EXPRESSION THROUGH SOCIAL MEDIA AND THE IMPACT OF ACTS OF DEFAMATION TO THE PERPETRATOR

Ario Setra Setiadi

Universitas Bina Nusantara, Indonesia,
ariosetrasetiadi@yahoo.com

Abstract

This study aims to conduct a juridical review of Article 27 Paragraph (3) of Law Number 11 of 2008 concerning Information and Electronic Transactions relating to freedom of expression and acts of defamation through social media. This study uses a normative legal research method with a literature study approach. The effectiveness of Article 27 Paragraph (3) of Law Number 11 of 2008 concerning Information and Electronic Transactions jo. Law Number 19 of 2016. Law Number 11 of 2008 in protecting freedom of opinion and overcoming acts of defamation through social media is still limited. Some of the obstacles faced include unclear regulations, limited law enforcement capacity in dealing with cases of defamation on social media, and problems in gathering legal and acceptable electronic evidence in court. Several recommendations to increase the effectiveness of Article 27 Paragraph (3) in overcoming acts of defamation through social media are; further clarification regarding the provisions of Article 27 Paragraph (3) ITE so can be interpreted clearly and do not leave room for different interpretations, increasing the capacity of law enforcement, regulations regarding the collection of electronic evidence that is valid and admissible in court needs to be clarified, wider outreach to the public regarding the risks and legal consequences of acts of defamation through social media and periodic evaluation of the implementation of Article 27 Paragraph (3) of ITE in dealing with defamation cases through social media. Therefore, continuous efforts are needed to increase understanding, awareness, and law enforcement regarding Article 27 Paragraph (3) in overcoming acts of defamation through social media so that freedom of expression can be exercised in a balanced way by avoiding actions that violate the law.

Keywords: *Freedom of Expression; Defamation; Social Media*

1. INTRODUCTION

The use of communication technology is an unavoidable necessity in the global era marked by various conveniences that can be chosen by the public to access various useful information. The influence on social behavior occurs because of the transition from the industrialization era to the information age which then gave birth to an information society. The information society is a society in which the majority of the workforce are workers in the information sector, and information has become an element that is considered the most important in life.

Advances in information technology have driven human activities toward efficiency in the political, economic, and cultural fields. Several companies in the field of information technology or using information technology have experienced a lot of marketing improvements and the community has also gained open and easy access to various products and has become a place to express themselves. It's just that the progress of information technology does not only have a good impact on human life, because of the principle of freedom (liberalism) that lies behind the use of this information technology. Therefore, even though the user is given an agreement (terms and conditions) when accessing and using information technology such as YouTube, Instagram, and Facebook, there is no application that can detect disrespectful or criticism statements written by a user and carry out preventive measures before sharing their statements, so that someone thinks of having freedom of expression by easily spread and provoke someone, defame or commit other disgraceful acts.

Social media is one of the most essential things in society because everyone on social media has the freedom to express opinions, but it is also necessary to know that this freedom of opinion has several challenges faced by the community in expressing their opinions, so we need some boundaries that can help deal with these challenges as well as challenges in the future regulations and restrictions can help everyone to take care of what is said what is written guarding the feelings of others maintaining ethics in opinion and also protecting the interests of others faced is often bullying or bullying which tends to judge hate speech hoaxes reduce time efficiency and concentration in work and study as well as declining norms and ethics in today's society features and functions of social media have developed rapidly sending short messages using browsing content can be done in expressing daily life looking for new friends to trade and some things that can be done very quickly short, but with all the convenience and benefits, almost everyone uses social media.

When freedom of expression on social media is used to spread information that is detrimental to the reputation of other people or certain entities, especially if the information is inaccurate or unfounded, it can be considered defamation. Therefore, there are legal limitations on freedom of expression on social media that must be respected, such as laws against slander, criticisms, or the dissemination of false information that can damage the reputation of others.

In practice, ensuring freedom of speech on social media while avoiding defamation can be a challenge. Therefore, it is important to maintain ethics in communicating on social media by checking the accuracy of information before sharing it, using polite language and respecting the privacy rights and reputation of others, and avoiding spreading information that is malicious or harmful to others. If you feel you have been the victim of defamation on social media, steps you can take include reporting the incident to the authorities, seeking legal advice and taking appropriate action to protect your reputation and rights

Freedom of speech and defamation are two issues that are often linked in the context of social media. On the one hand, freedom of speech is the right of every individual to express

their opinions, views and ideas freely without any pressure or illegal restrictions. Freedom of opinion is considered one of the fundamental values in a democratic society, including in the digital era where social media is an important platform for communicating and sharing information. On the other hand, defamation is an act that harms the reputation of a person or an entity through the spread of misinformation, slander, or criticisms on social media. Defamation can harm the targeted individuals or entities, both personally and professionally, and can have a negative impact on their lives.

Freedom of giving an opinion on social media is a natural thing considering that currently freedom of opinion is regulated in Article 28 paragraph 3 of the 1945 Constitution, freedom of expression which is actually a human right listed in Law Number 39 of 1999 articles 14 to 32, states that every individual is free to express opinions both orally, in writing and others as also stated in article 1 paragraph 1 UUD Number 9 of 1998 concerning independence and express opinions in public, even though the purpose of freedom of opinion is for the advancement of the nation but the wrong use of the right to freedom of opinion, will be a threat to the unitary state of the Republic of Indonesia.

It can be said that freedom of opinion on social media has no boundaries so that people can easily spread negative things and most citizens, whether old, teenagers, children, political figures, ordinary people, educated or uneducated people, anyone can lose control in their actions. express feelings and thoughts. Several other challenges caused by this problem have finally surfaced. This can be related to the level of nationalism, literacy and tolerance between one and another which needs to be studied about freedom of expression and Indonesian social media. In general, this study also aims to determine the impact and freedom of expression and the use of Indonesian social media so that the real challenges and limitations that limit social media activities in Indonesia can be identified.

The use of social media can change behavior patterns for some people, one of which becomes consumptive, due to increasing progress in the field of consumerism, the level of consumerism for each individual tends to increase, especially coupled with the emergence of various kinds of applications that are supported by sophisticated features that can facilitate this consumptive behavior. Consumptive behavior is defined as the behavior of consuming goods and services that are relatively expensive with increasing intensity, in order to get something new, more and better, and tends to exaggerate actual needs just to get a higher social status than others. and satisfaction with ownership.

Based on several surveys, it cannot be denied that at this time technological advances in social media are no longer hindered by time and place limitations. One of the real impacts is the behavior of each individual to carry out shopping activities, in order to fulfill their daily needs, which can be done online through social media. But this sometimes becomes ironic, because most people who are too consumptive actually don't really need the things they want to have. More towards inner satisfaction. Therefore, the impact of this through social media, which does not necessarily have a good impact, needs to be known before they express opinions and use social media. It is also necessary to study the need for restrictions on giving opinions and conducting social media activities in Indonesia. Therefore, restrictions in the form of regulations are something that is necessary and essential, especially the regulations that apply in Indonesia regarding freedom of

expression and social media and whether or not restrictions on freedom of opinion and social media are necessary for Indonesia.

Even though the purpose of freedom of opinion is for the progress of the nation, the wrong right to freedom of opinion on social media will make it easy for people to spread negative things and anyone can lose control in expressing their feelings and thoughts. Several other challenges caused by this problem have finally surfaced. This could be related to the level of nationalism, literacy, and tolerance, among other things, to examine this matter. In general, this research also aims to determine the impact and freedom of expression and the use of Indonesian social media so that the real challenges and limitations that limit social media activities in Indonesia can be identified.

The Information and Electronic Transactions (ITE) Law in Indonesia, like many similar laws in various countries, is intended to regulate and balance the rights and responsibilities in the digital realm, including the realm of freedom of expression. While it's important to understand that the law has both protective and restrictive aspects, it is designed to help maintain certain standards and protect various rights in the digital space. In Indonesia, legal cases of defamation on social media are quite complex issues. Defamation is an act that damages or denigrates a person's reputation through social media or other online platforms. Here is some information about legal defamation cases on social media in Indonesia:

1. **Legal Basis:** Cases of defamation on social media in Indonesia are regulated in Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law). Article 27 paragraph (3) of the ITE Law states that anyone who intentionally and without rights causes information that is stated or spread in an electronic system to harm other people, can be charged with a maximum criminal penalty of 6 years in prison and/or a maximum fine of 1 billion Rupiah.
2. **Investigation and Prosecution:** Cases of defamation on social media usually involve an investigative process by the police. If there are reports from parties who feel their reputation has been defamed, the police can carry out investigations and investigations. If sufficient evidence is found, the prosecutor can sue the perpetrator in court.
3. **Punishment:** The perpetrators of defamation on social media can be punished with imprisonment and/or a fine. The sentence given depends on the severity of the case and the losses suffered by the victim. However, in practice, sometimes the punishments given are not always consistent and often become controversial.
4. **Freedom of Expression Perspective:** The ITE Law has also become controversial because it is considered that it can be used to limit freedom of expression. Some argue that the ITE Law is often excessively applied to silence criticism of the government or individuals, and several cases on social media are seen as a form of censorship or silencing of free speech.
5. **Out-of-Court Settlements:** Sometimes, social media defamation cases can also be settled out of court through mediation or alternative dispute resolution, such as amicable settlements or family-level settlements.

In cases of defamation on social media in Indonesia, it is important to understand that there are various factors that need to be considered, including the legal basis, the process of investigation and prosecution, possible penalties, perspectives on freedom of expression, and options for settlement outside the court. Controversy over the law on freedom of expression and demands for defamation on social media in Indonesia involve several complex issues and are often debated. Some of the controversies that may arise include:

1. **Limitations on Freedom of Expression:** Some argue that the ITE Law, which is used as a legal basis in defamation cases on social media, can limit freedom of opinion and expression. Some defamation suits on social media are seen as an attempt to silence criticism of the government or individuals and may limit the space for open speech on social media or other online platforms.
2. **Ambiguous Definition of Defamation:** The ITE Law does not provide a clear definition of what is considered defamation. Therefore, in practice, the use of defamation articles in the ITE Law is often applied subjectively and can result in various interpretations. This can be a source of controversy, as the line between legitimate criticism and unlawful defamation can be blurred.
3. **Excessive Sentences:** Several defamation suits on social media in Indonesia have been criticized as sentences deemed excessive. The ITE Law provides for quite severe criminal penalties, including imprisonment and high fines. In some cases, the punishments given were considered disproportionate to the violations committed, giving rise to controversy and criticism of the disproportionality of the sentences applied.
4. **Protection of Victims:** On the other hand, some argue that defamation suits on social media are important to protect victims who feel aggrieved by acts of defamation. In the fast-paced and viral environment of social media, acts of defamation can easily damage reputations and result in harm to individuals or groups. Therefore, protection for victims of defamation is considered important in preventing the spread of information that is detrimental and degrading to individuals or groups.
5. **Consistent Law Enforcement:** Controversy can also arise due to inconsistent law enforcement in cases of defamation on social media. Some argue that law enforcement in this case often depends on factors such as social status, power or influence of the individuals involved in the case, which can result in injustice or unequal treatment in handling defamation cases on social media.

In the era of digital and social media that is increasingly developing, there are often acts of defamation or criticisms against someone through social media. This could involve spreading false information, slander, or comments that damage one's reputation through electronic media. Actions like this can harm the right to freedom of opinion and harm a person's good name.

Article 27 Paragraph (3) of Law Number 11 of 2008 can be used to protect victims of defamation through social media. Actors who intentionally and without rights access, damage, modify, delete, add, create, or transmit Electronic Information and/or Electronic Documents in Electronic Systems belonging to Others, may be subject to criminal

sanctions.

Article 27 paragraph (3) of the Information and Electronic Transactions (ITE) Law in Indonesia pertains to criminal liability for individuals or entities that disseminate or transmit electronic information that violates the law, including defamation, hate speech, or false information. This provision is aimed at regulating and penalizing online activities that can cause harm to individuals or society. The term "SKB" or a Joint Ministerial Decree, which is a regulation issued collaboratively by multiple ministries or government agencies. A Joint Ministerial Decree can be used to provide specific guidelines, interpretations, or procedures for implementing existing laws. To elaborate Article 27 paragraph (3) of the ITE Law with the SKB UU ITE, it's important to understand that SKB UU ITE may be issued by relevant government agencies to provide more detailed guidance on how the law should be implemented. This guidance can include definitions, procedures, and criteria for determining what constitutes a violation of the ITE Law. SKB UU ITE may specify the types of content that are considered defamatory, the procedures for reporting and investigating violations, and the penalties or sanctions for individuals or entities found in violation of the law. It may also clarify the roles and responsibilities of government agencies in enforcing the ITE Law.

If the ITE Law did not exist, it does not necessarily guarantee absolute freedom of expression in Indonesia. Freedom of expression is a fundamental right, but it is not an absolute right. In democratic societies, freedom of expression is typically subject to limitations or restrictions under certain circumstances. These limitations often include protecting national security, public order, public health, and the rights and reputations of others, among other considerations. Without specific laws like the ITE Law, it might be more challenging to regulate and address the misuse of digital communication and online platforms, which can lead to various forms of harm, such as defamation, hate speech, cyberbullying, or dissemination of false information. In such a scenario, freedom of expression might need to be balanced against the need to protect individuals and society from harm.

The existence of laws like the ITE Law is intended to provide a legal framework for addressing these challenges and defining the limits of freedom of expression in the digital context. While it's crucial to have legal safeguards to prevent abuse and protect individuals' rights, it's also essential that such laws are applied in a way that respects the principles of proportionality, legality, and respect for human rights, and the absence of such a law does not guarantee absolute freedom of expression. The balance between freedom of expression and protecting individuals and society from harm is a complex and ongoing challenge that requires thoughtful legal frameworks and their responsible implementation.

The analysis that Article 27 paragraph (3) of the ITE Law will be abolished and replaced by the Criminal Code (Law 1/2023) which will take effect on January 2, 2026, see Article 622 paragraph (1) of the Criminal, but additionally, legal amendments can have far-reaching implications, so it's important to understand the context and reasoning behind such changes and how they affect individual rights, freedom of expression, and other legal aspects. In this case, perpetrators who commit defamation through social media can be prosecuted based on these provisions if their actions meet the elements regulated in that

article.

It is important that freedom of opinion in a legal and responsible form is still recognized and guaranteed by law. It is important to understand the applicable legal provisions and uphold the principle of freedom of expression while remaining responsible in the use of social media and information technology.

In the era of digital and social media that is increasingly developing, there are often acts of defamation or criticisms against someone through social media. This could involve spreading false information, slander, or comments that damage one's reputation through electronic media. Actions like this can harm the right to freedom of opinion and harm a person's good name.

Based on above mentioned this study aims to conduct a juridical review of Article 27 Paragraph (3) of Law Number 11 of 2008 concerning Information and Electronic Transactions relating to freedom of expression and acts of defamation through social media.

Freedom of opinion in a legal and responsible form is still recognized and guaranteed by law. Therefore, the use of this article must still pay attention to the principle of freedom of opinion regulated in applicable laws, including the limitations regulated in Law Number 11 of 2008 itself and other laws that apply in Indonesia. Such is the juridical review regarding the relationship between Article 27 Paragraph (3) of Law Number 11 of 2008 concerning Information and Electronic Transactions with freedom of expression and acts of defamation through social media. It is important to understand the applicable legal provisions and uphold the principle of freedom of expression while remaining responsible in the use of social media and information technology.

2. RESEARCH METHOD

The methodology used in this research is a normative legal research method with a literature study approach. The research was conducted by analyzing literature, laws, regulations, and court decisions relating to Article 27 Paragraph (3) of Law Number 11 of 2008 concerning Information and Electronic Transactions, freedom of expression, and acts of defamation through social media.

The steps in this research methodology include:

- a. Data collection: Conducted by collecting literature, laws and regulations, and court decisions that are relevant to the research topic.
- b. Data analysis: Performed by analyzing and evaluating data that has been collected in accordance with the research objectives, namely a juridical review of Article 27 Paragraph (3) of Law Number 11 of 2008 concerning Information and Electronic Transactions relating to freedom of expression and acts of defamation through social media.
- c. Discussion: Conducted by discussing the results of data analysis, relating them to legal theory and the concept of freedom of opinion, and explaining the implications and effectiveness of Article 27 Paragraph (3) in dealing with acts of

defamation through social media.

- d. Conclusion: It is a summary of the results of the discussion and provides an assessment of the effectiveness of Article 27 Paragraph (3) in overcoming acts of defamation through social media based on the juridical review that has been carried out.

Normative law research methods are used to analyze laws and court decisions that are relevant to the research topic, while the literature study approach is used to access literature and legal sources related to Article 27 Paragraph (3) and other research topics. The research objectives related to the juridical review of Article 27 Paragraph (3) of Law Number 11 of 2008 concerning Information and Electronic Transactions which are associated with freedom of expression and acts of defamation through social media may vary, but some general objectives that may be achieved in this research among others:

3. ANALYSIS AND DISCUSSION

Information and communication technology has changed the behavior of society and human civilization globally¹ with the advent of the internet, a new type of world emerged that had never before been known to humans, namely a world called the virtual world. The emergence of the virtual world has changed the habits of many people, especially those who are used to using the internet. The development of information and communication technology causes world relations to become borderless and causes significant and rapid socio-economic and cultural changes, which in fact give rise to a new crime²

In the virtual world, people commit various evil acts that cannot be done in the real world, these crimes are committed by using electronic information facilities as a means to commit crimes. conventional to be a professional or sophisticated crime with an all-sophisticated *modus operandi* as well.³ In the legal system, cultural substances are needed, as well as special techniques and procedures to reveal crime postings on social media so that they can end up in the realm of law if they do not pay attention to legal corridors because the post is involved with legal offenses in accordance with article 27 paragraph 3 of the ITE Law, which is acts that are against the law with criminal sanctions which are also referred to as crimes. Article 27 paragraph 3 of the ITE Law is also used by many groups to report writing and status on social media.

The rapid development of science and technology and technology has become a reality and has even become a non-negotiable demand from society. the goal of science and technology development should be a change in the future of human life that is better, easier, cheaper, faster, and safer, but there are also negative impacts from the development of this virtual world, which cannot be avoided in the life of modern society today and in the future. The emergence of the current and future information technology revolution not only has an impact on technological developments but also affects aspects of life such as

¹ Ahmad M. Ramli, *Cyberlaw and HAKI in the Indonesian Legal System* (Jakarta: PT Refika Aditama, 2014), 1.

² Edmon Makarim, *Kompilasi Hukum Telematika* (Jakarta: Raja Grafindo Persada, 2014), 38.

³ Dani Krisnawati and Eddy O. S. Hiariej, *Bunga Rampai Hukum Pidana Khusus* (Jakarta: Pena Pundi Aksara, 2006), 3.

religion, culture, social, politics, personal life, society, and others.

Today's cybercrimes are experiencing rapid development without recognizing borders anymore (Borderless State), because the technological advances used by the perpetrators are quite sophisticated. In their crimes, hackers and crackers can do it across countries, even in developing countries, the ability of hackers and crackers to access the internet is also increasingly reliable, to destroy and destroy data. They are quickly able to keep up with new technological developments and even create several strategies or moves to break into the victim's confidential data or create a destructive virus that was not known before. This action will cause great harm to the victims which is difficult to prove in a short time considering that virus antibodies are not easy for computer software makers to find.

Crime by utilizing information technology is increasingly widespread and this development is difficult to stop, especially with advances in computer technology so that the crime does not become more repeated, but on the contrary, cyberspace or cyberspace is a new development in the history of human civilization which makes law enforcement difficult in accordance with the rules the applicable method or Criminal Justice system

In the world of computer networks, especially information technology, which has developed, the number of criminals with the photo engineering mode is increasing, therefore it is very important to prevent it from falling to unauthorized parties. Efforts to secure information systems that can be done are

1. Secrecy is a service used to keep information from any unauthorized party to access
2. Data integrity which is a service to prevent changes in information by unauthorized parties three authentication
3. Services related to the identification of parties who want to access information systems or entity authentication
4. The absence of denial or non-repudiation, namely services that function to prevent denial of an action carried out by information system actors

In today's society, there are legal relations that arise as a result of the legal actions of the subject, which is the beginning of the birth of legal relations which are interactions between legal subjects that have legal relevance or have legal consequences. The law functions as a protection of human interests and so that human interests are protected, the law must be implemented. The implementation of the law must be able to run normally and peacefully, but violations of the law can also occur when certain legal subjects do not carry out their obligations or because they violate the rights of other legal subjects. Legal subjects whose rights have been violated must receive legal protection. The function of law as a regulatory instrument and an instrument of protection, in addition to other functions, as mentioned, is to create an atmosphere of legal relations between legal subjects, harmoniously balanced, peaceful, and justice,

Government legal actions are actions that by their nature give rise to the most important characteristic legal consequences.⁴ Legal actions taken by the government are government decisions and decrees that are unilateral in nature and are said to be unilateral in nature,

⁴ Ridwan HR, *Hukum Administrasi Negara* (Yogyakarta: UII Press, 2002), 210.

whether or not a government legal action is carried out depends on the will of the government and does not depend on the will of other parties and does not require conformity with the wishes of other parties.⁵

Defamation is basically an ordinary conventional form of crime, this crime is in the criminal law book regulated in Article 310 paragraphs 1, 2, and 3 as well as Article 311 of the Criminal Code with punishments that vary according to each crime.

Article 310 states that

1. Any person who intentionally attacks a person's honor or reputation by showing something that is clearly meant so that it is known, is threatened with defamation by a maximum imprisonment of 9 months or a maximum fine of Rp.4,500.
2. If it is done by means of writing or depiction which is broadcast, demonstrated, or displayed in public, then the threat of written defamation is punishable by imprisonment for a maximum of 1 year and 4 months or a fine of up to Rp.4,500
3. Does not include criticism or criticising in real writing, that the perpetrator did it in the public interest or because he was forced to defend himself

Another article related to the criminal act of defamation according to criminal law is Article 311 paragraphs 1 and 2 of the Criminal Code which reads. If the person committing the crime of defamation or written defamation is permissible, it is permissible to prove that what is being accused is true without proving it and the purpose of the act is contrary to what is known, then he is threatened with committing slander with a maximum imprisonment of 4 years. Revocation of rights under Article 35 numbers 1 to 3 can be imposed. Prior to the enactment of RI Law Number 11 of 2008 concerning information and electronic transactions, criminal acts of defamation committed through internet media still used the provisions contained in the articles in the Criminal Code above in article 310 paragraph 1 of the Criminal Code, the person affected by the offense of defamation must meet the following elements

1. An act was done intentionally
2. The object or target is an individual person
3. The act committed clearly attacks or damages a person's honor and reputation
4. The act was carried out with the intention of making it public and public
5. Must exist or contain a specific purpose

According to Article 27 paragraph (3) of the ITE Law, "any person who knowingly and without authority distributes and/or transmits and/or causes to be accessible Electronic Information and/or Electronic Documents with contents of affronts and/or defamation." Based on the explanation of Article 27 paragraph (3) of the ITE Law, the provision in this paragraph refers to the provision of defamation and/or slander as regulated in the Criminal Code (KUHP). If proven to be against the law, under Article 45 paragraph (3) of the ITE Law, the perpetrator will be punished with imprisonment for a maximum of 4 (four) years and/or a maximum fine of Rp750.000.000,00 (seven hundred and fifty million rupiah). Based on the results of the author's research, Article 27 paragraph (3) has been subjected to two judicial reviews at the Constitutional Court

⁵ Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar* (Yogyakarta: Liberty, 1996), 140.

(In Indonesia: Mahkamah Konstitusi/MK). First, Decision No. 50 / PUU-VI / 2008 which was decided on May 4, 2009, with a ruling stating that it “rejected” the application in its entirety. The Constitutional Court Decision No. 50 / PUU-VI / 2008 provides an interpretation of a good name. (“That a person’s good name, dignity, or honor is one of the legal interests protected by criminal law because it is part of the constitutional rights of citizens guaranteed by the 1945 Constitution and international law, and therefore if the criminal law provides the threat of certain criminal sanctions against the act that attacks someone’s good name, dignity or honor, it is not against the 1945 Constitution”).

According to the Constitutional Court, the interpretation of norms mentioned in Article 27 paragraph (3) of the ITE Law regarding affront and/or defamation cannot be separated from the norms of criminal law as mentioned in Chapter XVI concerning defamation mentioned in Article 310 and Article 311 of the Criminal Code. Therefore, the basic legal norms (*genus delict*) derive from the Criminal Code, whereas the legal norms in Article 27 paragraph (3) of the ITE Law are provisions for the specific application of this law. Second, the Constitutional Court Decision No. 2 / PUU-VII / 2009, which was decided on May 4, 2009, with the consideration of a decision stating that the applicant’s petition was “unacceptable”.

The Constitutional Court concluded that the norms in Article 27 paragraph (3) of the ITE Law are constitutional and do not contradict democratic values, human rights, and the principles of the rule of law.

According to the Constitutional Court, freedom of expression, speech, expression, and opinion does not mean freedom as freely as possible, because freedom as freely as possible can lead the executor to become a *supra* power that is untouchable for anybody. In this case, the ITE Law is not intended as a repressive device to shackle freedom of expression, speech, expression of thoughts and opinions, but rather to keep the *a quo* freedom from entering the *supra* power circle⁹. The ITE Law has determine that Article 27 paragraph (3) is an offense on complaint, more precisely an offense on the absolute complaint. Therefore, the victim himself must complain if the victim suspects his good name, honor, and dignity have been harmed by the alleged perpetrator either due to information from social media or printed media.

In practice, the implementation of these theories may vary depending on each country's legal jurisdiction and applicable regulations. In some cases, the limitations and obligations on freedom of expression and the protection of reputation on social media can be the subject of debate and change as technology advances and social change evolves.

1. The criminal act of defamation is a criminal act that attacks a good name, in the form of words, sentences, and media that attacks the honor of others and can reduce the self-esteem and dignity of the party who is defamed. Or accusing someone of having done something and spreading it to the wider community.
2. Disturbances or violations that lead to a person's reputation in the form of false statements, slander, defamation, ridicule, and humiliation.
3. Criminal acts of defamation, have elements namely elements of intentionality, elements of attacking honor and good name, and elements in public.

Whereas in Indonesia there are several criminal acts that are categorized as criminal acts of defamation, namely:

1. Accuse something orally of Article 310 paragraph 1 of the Criminal Code,
2. Accusing something by writing or depicting what was published in Article 310 paragraph of the Criminal Code,
3. Slander article 311 of the Criminal Code and article 36 paragraph 5 of the Law. No. 32 of 2002 concerning broadcasting,
4. Complaints of slander Article 317 of the Criminal Code,
5. Distributing and/or transmitting and/or making electronic information and/or electronic documents accessible that contain criticisms and/or defamation Article 27 paragraph 3 of the ITE Law.

Regulation of criminal acts in Indonesia is caused by the principle of legality, commonly known in Latin as "*Nullum Delictum Nulla Poena Sine Praevia Lege Poenali*" (a principle which applies to a crime in which there is no such act may be punished except for the strength of the criminal rules in the legislation that existed before the act was committed). The principle of legality basically boils down to the values of legal certainty which has implications for the effectiveness of criminal law enforcement and can override expediency and justice.

Because sociologically changes in society are often faster than changes in the law. Its effectiveness is highly dependent on the extent to which the sensitivity of legal normative rules is able to anticipate the social changes that occur, lifestyles, culture, and human desires, both positive and negative from every individual in society to take advantage of the results of these technological advances, which should be able to be anticipated by rule of law.

Timelines on social media are the most potent means of committing cyber crimes. "Internet is borderless, perpetrators can commit crimes anywhere and anytime." The main problems in the cyber legal system in Indonesia are; There are still many obstacles to maintaining legal certainty in the legal system in Indonesia, The mastery of cyber law in Indonesia is still limited; Human resources who have the ability to deal with cyber law are still limited. Therefore, mastery of cyber law in Indonesia must spread to all regions of Indonesia

Efforts to spread hoaxes in the political field are very intensively carried out, as happened in the 2018-2019 post-conflict local election for DKI Jakarta province. The very rapid technological advances and human resources that are not ready to accept progress in the field of ICT it has an impact on the order in society. In the law on broadcasting, the criminal act of defamation is explained in article 36 paragraph 5, which contains the following, prohibited broadcast content, namely containing slander, inciting or misleading or fake news, featuring elements of violence, obscenity, gambling, drug abuse, and illegal drugs or against ethnicity, religion, race and between groups.

The existence or absence of a specific law like the Information and Electronic Transactions (ITE) Law does not guarantee or necessarily hinder freedom of expression in Indonesia or any other country. Freedom of expression is a fundamental human right, often

protected by national constitutions and international human rights agreements. It's essential to understand that freedom of expression is a complex and multi-faceted right. Even without specific laws like the ITE Law, freedom of expression may still be subject to certain limitations and considerations. These limitations are typically in place to balance freedom of expression with other fundamental rights and the broader interests of society. In democratic societies, the right to freedom of expression is not absolute. It may be limited or restricted under certain circumstances, such as for the protection of national security, public order, public health, and the rights and reputations of others. These limitations are often subject to legal tests of necessity and proportionality.

The absence of specific laws like the ITE Law does not mean that freedom of expression is guaranteed without any restrictions. Legal frameworks and safeguards are in place to protect individuals from harm, including defamation, hate speech, and other forms of speech that can cause damage or infringe on the rights of others. Freedom of expression is a fundamental human right, but its exercise can be subject to limitations, even without specific laws like the ITE Law. Legal systems are designed to balance individual freedoms with the protection of the public interest and the rights of others. The specifics of how this balance is achieved can vary from one jurisdiction to another.

If Article 27 paragraph (3) of the ITE Law is indeed scheduled to be abolished and replaced by a provision in the Criminal Code (Law 1/2023) with an effective date of January 2, 2026, it represents a significant legal change in Indonesia. However, the specific implications and details of the new provision in the Criminal Code would need to be examined to understand how it will impact freedom of expression and other legal aspects. Legal changes of this nature can have a profound impact on the legal landscape, so it's important for legal practitioners, scholars, and individuals to carefully study the new provisions and their implications for individual rights and freedoms.

4. CONCLUSION

In this research, it is explained that Article 27 Paragraph (3) ITE provides legal provisions which prohibit any person from deliberately and without rights causing the information he obtains from an electronic system or electronic transmission to be notified to other people which may harm other people. This article aims to protect the good name of individuals from being defamed through social media. In 2016 the ITE Law was amended by adding norms and explanations regarding criminal acts of defamation in Law No. 19 of 2016 concerning changes to Law No. 11 of 2008 concerning information and electronic transactions.

However, this research also shows that the effectiveness of Article 27 Paragraph (3) in overcoming acts of defamation through social media is still limited. Some of the obstacles faced include unclear regulations, limited law enforcement capacity in dealing with cases of defamation on social media, and problems in gathering legal and acceptable electronic evidence in court. Therefore, as not to violate the laws, freedom of opinion on social media must be implemented, to respect the human rights of others as well. Social media is used for positive things, criticism conveyed on social media should be

delivered politely, according to facts, and valid and accountable data.

REFERENCES

- Ramli, Ahmad M. *Cyberlaw and HAKI in the Indonesian Legal System*. Jakarta: PT Refika Aditama, 2014.
- Krisnawati, Dani, and Eddy O. S. Hiarij. *Bunga Rampai Hukum Pidana Khusus*. Jakarta: Pena Pundi Aksara, 2006.
- Makarim, Edmon. *Kompilasi Hukum Telematika*. Jakarta: Raja Grafindo Persada, 2014.
- Mertokusumo, Sudikno. *Mengenal Hukum: Suatu Pengantar*. Yogyakarta: Liberty, 1996.
- HR, Ridwan. *Hukum Administrasi Negara*. Yogyakarta: UII Press, 2002.