

## Freedom of Expression in The Digital Sphere: An Analysis of The Balance Between Constitutional Rights and The Interest of Public Order in Indonesia

Michelle Nabila Andaista Bangsu

Faculty of Law, Universitas Trisakti, Jakarta, Indonesia

Email: [bangsumichelle@gmail.com](mailto:bangsumichelle@gmail.com)

### ARTICLE HISTORY

**Submitted** : June 30, 2026  
**Reviewed** : July 10, 2026  
              July 16, 2026  
**Revised** : July 18, 2026  
**Accepted** : July 19, 2026  
**Published** : August 10, 2026

### Conflict of Interest Statement:

The author(s) declare that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

### ABSTRACT

**Purpose:** This study aims to analyze the protection of freedom of expression as a constitutional right in Indonesia's digital space, the implementation of restrictions on that right under Law No. 1 of 2024 on Electronic Information and Transactions, and to formulate a model of constitutional balancing between freedom of expression and public order.

**Research Method:** This study employs a normative legal methodology using legislative, conceptual, and case-based approaches through the analysis of legislation, legal doctrine, and the jurisprudence of the Constitutional Court.

**Results and Discussion:** The results of the study indicate that Article 27A and Article 28(2) of Law No. 1 of 2024 protect different interests, thereby requiring interpretive criteria that distinguish between criticism, opinion, satire, factual allegations, defamation, and hate speech. Restrictions on freedom of expression can only be justified if they comply with the principles of legality, necessity, and proportionality.

**Implications:** These findings provide guidance for policymakers and law enforcement officials to enforce the ITE Law more consistently.

**Originality:** This study proposes the constitutional balancing model as an interpretive framework for assessing the constitutionality of restrictions on freedom of expression in the digital sphere.

**Keywords:** freedom of expression; constitutional balancing; EIT Law; constitutional rights; public order.

## 1. Introduction

Advances in information and communication technology have transformed conventional public spaces into digital public spaces, enabling citizens to actively participate in the democratic process through various social media platforms. The internet no longer serves merely as a means of communication. However, it has also become the primary medium for disseminating information, shaping public opinion, and expressing criticism and aspirations regarding government administration. This transformation has expanded the public's access to exercise their constitutional right to express their opinions quickly, openly, and without geographical restrictions. In a democratic nation, freedom of expression is one of the main pillars that ensures government accountability, promotes transparency in governance, and strengthens public participation in the policy-making process. Therefore, the level of protection for



freedom of expression is often used as an indicator of the quality of democracy and respect for human rights (Marwandianto & Nasution).

In Indonesia, Article 28E, paragraph (3), and Article 28F of the 1945 Constitution of the Republic of Indonesia explicitly guarantee every citizen's right to express opinions, access information, and communicate through various media. These constitutional guarantees establish freedom of expression as a fundamental right that must be respected, protected, and fulfilled by the state. However, the development of digital space has also presented new challenges, including the increasing spread of hate speech, hoaxes, defamation, doxing, and various forms of electronic media abuse that can harm others' rights or the interests of the broader public. This situation demonstrates that the use of digital technology not only expands the scope of democracy but also creates a need for legal regulations capable of maintaining a balance between protecting citizens' constitutional rights and the public interest.

In response to these developments, the government amended the Law on Information and Electronic Transactions through Law No. 1 of 2024 to strengthen legal certainty in the operation of electronic systems while protecting citizens' rights in the digital space. Nevertheless, these regulatory changes have not fully resolved the debate regarding the constitutional limits on freedom of expression, particularly concerning the interpretation of provisions governing defamation, slander, and the dissemination of certain information via electronic media. Differing interpretations of these provisions have the potential to create legal uncertainty, narrow the scope for legitimate criticism, and give rise to a "chilling effect"—a situation in which the public is reluctant to exercise their constitutional rights for fear of facing legal proceedings. Therefore, a legal study is needed to explain how the protection of freedom of expression as a constitutional right can be balanced with the interest of public order through the application of the principles of legality, necessity, and proportionality within the framework of a democratic rule of law (Sofwan, 2026).

Various previous studies have examined freedom of expression in the digital sphere from the perspectives of constitutional law, human rights, and criminal law; however, the findings remain varied. Marwandianto & Nasution (2020) position freedom of expression as a constitutional right that must be interpreted in accordance with the principles of human rights and criminal law, whereas Wiranata *et al.*, (2023) demonstrate that digital media has evolved into a primary space for democratic participation that expands the public's freedom of expression, yet remains subject to restrictions based on laws and regulations.

Findings from other studies also indicate that this issue is not merely normative but also impacts law enforcement practices in the digital sphere. Susianto *et al.*, (2025) assert that freedom of expression is guaranteed by the 1945 Constitution of the Republic of Indonesia. However, any restrictions must be applied proportionately in the interest of the public good and national security. Conversely, Natamiharja (2025) identifies a gap between constitutional guarantees and the implementation of the ITE Law, which still has the potential to criminalize criticism. Kusdarini (2025) found that the constitutional strengthening following the amendments has not been accompanied by regulatory certainty or adequate oversight mechanisms. Furthermore, Roisah *et al.*, (2024), Alvina *et al.*, (2022), and Haritjahjono & Sodikin (2025) demonstrate that increasing restrictions on digital freedoms, the ambiguity of legal norms, and weak legal certainty remain major challenges in protecting freedom of expression in Indonesia.

Although these studies have made significant contributions to research on freedom of expression in the digital sphere, several limitations remain unaddressed. First, most previous studies

have focused on human rights aspects, the implementation of the ITE Law, or the criminalization of defamation in general, without conducting an in-depth examination of the substantive legal changes introduced by Law No. 1 of 2024. Second, existing studies generally have not conducted a doctrinal analysis of the legal elements in Article 27A and the related provisions of Article 28(2), particularly regarding the scope of the norms, the nature of criminal law, ambiguities in interpretation, and the boundaries between constitutionally protected criticism and defamation, slander, satire, opinion, factual allegations, and expressions made in the public interest. Third, previous research has also failed to integrate an analysis of court rulings—particularly those of the Constitutional Court and the Supreme Court—as a basis for explaining the evolution of constitutional interpretations regarding restrictions on freedom of expression in the digital sphere. Consequently, the relationship between constitutional guarantees, regulatory changes, and law enforcement practices remains an under-explored area in Indonesian legal literature.

Based on these gaps, this study poses three main questions: (1) what form does legal protection of freedom of expression—as a constitutional right of citizens—take in Indonesia’s digital space; (2) how are restrictions on freedom of expression implemented under Law No. 1 of 2024 on the Second Amendment to the on Information and Electronic Transactions, specifically through an analysis of Article 27A and relevant provisions; and (3) what is the model for balancing freedom of expression and the interest of public order based on the principles of legality, necessity, and proportionality within the framework of a democratic rule-of-law state. The novelty of this research lies in the development of a doctrinal legal analysis that specifically examines the substantive changes to the 2024 Electronic Information and Transactions Law (ITE Law) through a constitutional approach, an analysis of the elements of criminal norms, interpretation of the concept of constitutionally protected criticism, and the integration of case law analysis to establish a constitutional balancing framework between the protection of freedom of expression and the interests of public order in the digital sphere.

The remainder of this paper is organized as follows. Section 2 provides a literature review and hypothesis development. Section 3 presents the research method and design. Section 4 provides the results and discussion. Section 5 provides concluding remarks and Recommendations.

## 2. Literature Review and Hypothesis Development

### 2.1 *Freedom of Expression as a Constitutional Right and a Human Right*

Freedom of expression is one of the fundamental rights that forms the foundation of a democratic state governed by the rule of law, as it enables every individual to express their thoughts, obtain information, and participate in the public policy-making process freely and responsibly. In the Indonesian legal system, this right is constitutionally guaranteed under Article 28E, paragraph (3), and Article 28F of the 1945 Constitution of the Republic of Indonesia, which recognize the right of every person to express opinions, communicate, and obtain information. Furthermore, freedom of expression is also part of the human rights guaranteed under Article 19 of the Universal Declaration of Human Rights (UDHR) and Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which Indonesia has ratified through Law No. 12 of 2005. Thus, the protection of freedom of expression stems not only from the national constitution but also from the state’s obligation to meet international human rights legal standards (Fernando *et al.*, 2022; Zahrah & Habibah, 2022). In constitutional practice, the Constitutional Court also upholds the universality of human rights as a principle of constitutional interpretation; thus,

any restriction on freedom of expression must be interpreted strictly so as not to undermine the essence of citizens' constitutional rights (Kurnia & Melatyugra, 2024).

Although it holds a very important position, freedom of expression is not an absolute right. The Indonesian Constitution, through Article 28J of the 1945 Constitution of the Republic of Indonesia, permits restrictions on the exercise of human rights provided that such restrictions are established by law and aim to protect the rights of others, morality, religious values, security, and public order. Therefore, any restriction must comply with the principles of the rule of law and must not be used as a tool to limit legitimate criticism of the government or to stifle public participation. Hasani (2022) emphasizes that restrictions on constitutional rights are only justifiable if they meet constitutional standards and human rights principles. In line with this, Yanis *et al.*, (2025) point out that criminalizing public expression without constitutional parameters can conflict with the guarantee of freedom of expression. Furthermore, developments in the jurisprudence of the Constitutional Court indicate that the protection of freedom of expression must be balanced with legal certainty through a proportional interpretation of restrictive norms so that the balance between constitutional rights, the public interest, and the protection of others' rights is maintained (Kurnia & Melatyugra, 2024; Yandy *et al.*, 2026).

## 2.2 Restrictions on Freedom of Expression in National and International Law

Freedom of expression is a fundamental right; however, from both a national and international legal perspective, this right is not absolute. International human rights instruments, particularly Article 19, paragraph (3) of the International Covenant on Civil and Political Rights (ICCPR), permit states to impose restrictions provided they are prescribed by law (legality), aim to protect legitimate interests such as the rights of others, national security, public order, public health, or public morals, and are genuinely necessary (necessity) and proportionate (proportionality) in a democratic society. Thus, restrictions on freedom of expression must not be based on subjective or repressive considerations but must meet the three-part test, which serves as the universal standard for the protection of human rights (Sofwan, 2026). In line with this, Villiers (2022) emphasizes that the state has an obligation to balance the protection of freedom of expression with the protection of others' rights, particularly in addressing hate speech, without undermining the essence of citizens' constitutional rights. In the Indonesian context, (Udjari *et al.*, 2022) also emphasize that restrictions on freedom of expression must be aimed at safeguarding the public interest and democracy, not used as a tool to limit legitimate criticism of the government.

In the Indonesian legal system, restrictions on freedom of expression are constitutionally grounded in Article 28J of the 1945 Constitution of the Republic of Indonesia, which permits restrictions on the exercise of human rights provided they are established by law to ensure respect for the rights of others, morality, religious values, security, and public order. However, the application of these provisions must still be subject to the principles of the rule of law, legal certainty, and the protection of constitutional rights. Butt & Murharjanti (2022) point out that legislation must align with the decisions of the Constitutional Court—as the guardian of the Constitution—to ensure it does not deviate from the constitutional rights guaranteed to citizens. Furthermore, Hermanto *et al.*, (2022) explain that the constitutionality of restrictions on freedom of expression—including those under the Electronic Information and Transactions Law—must be assessed based on the principles of human rights protection and the rulings of the Constitutional Court. This approach is reinforced by Taqwa (2026) through the structured proportionality test, which assesses the legality, legitimate purpose, necessity, and proportionality of a restriction before it is deemed constitutional. Furthermore, Pratiwi (2021)

emphasizes that restrictions on rights that do not meet constitutional standards have the potential to violate freedom of expression and undermine the quality of democracy and the rule of law.

### **2.3 Regulations on Freedom of Expression in Law No. 1 of 2024 on Information and Electronic Transactions**

Law No. 1 of 2024, as the second amendment to the Electronic Information and Transactions Law (EIT Law), represents an effort by lawmakers to strengthen legal certainty in managing the digital space while aligning regulations with advancements in information technology and the protection of human rights. One significant change concerns the regulations on defamation, slander, and the dissemination of electronic information under Article 27A, as well as other provisions related to the protection of individual rights in cyberspace. These changes are intended to clarify the scope of criminal norms and reduce the potential for criminalizing the exercise of the right to freedom of expression. However, several studies indicate that the wording of the provisions in some articles still leaves room for multiple interpretations, which could affect legal certainty. Apandi *et al.*, (2024) emphasize that the ambiguity of the provisions in Article 27A and related articles still creates opportunities for differing interpretations when distinguishing between criticism protected by the Constitution and acts that constitute defamation or slander. In line with this, Feka *et al.*, (2025) state that the amendments to the ITE Law have addressed some of the shortcomings of the previous regulations, but further legal reforms are still needed to ensure that the protection of freedom of expression is balanced with the protection of others' reputations and rights.

From a constitutional law perspective, the application of the provisions in Law No. 1 of 2024 cannot be separated from the principles of legal certainty, proportionality, and the protection of citizens' constitutional rights. Therefore, the interpretation of Article 27A and related provisions must take into account the elements of the offense, the nature of complaint-based offenses, the purpose of the restrictions, and the context of the expression conveyed, including the distinction between criticism, opinion, satire, and factual allegations related to the public interest. Haryanto (2025) explains that the evolution of Constitutional Court rulings provides important guidance for interpreting amendments to the ITE Law so that they do not conflict with the guarantee of freedom of expression enshrined in the 1945 Constitution of the Republic of Indonesia. This approach is also supported by research on the application of defamation provisions on social media, which emphasizes that the protection of reputation must be balanced with respect for freedom of expression through the application of the principles of legality, legal certainty, and proportionality (Fauzi & Info, 2025).

### **2.4 Constitutional Balancing and Case Law in the Protection of Freedom of Expression**

The protection of freedom of expression in a democratic state governed by the rule of law depends not only on the formulation of constitutional norms and legislation, but also on how those norms are interpreted and applied by the judiciary. In modern constitutional law, conflicts between freedom of expression and the right to dignity, public order, or the interests of the state are resolved through the "constitutional balancing" approach—a method of balancing constitutional rights based on the principle of proportionality. This approach holds that no single right is absolute; therefore, any restriction must be tested against the criteria of legality, legitimate purpose, necessity, and proportionality in a democratic society (Villiers, 2022). In Indonesia, the Constitutional Court has gradually adopted the principle of proportionality as a framework for adjudication when conflicts arise between constitutional rights, ensuring that the resulting rulings are not only oriented toward legal certainty but also toward

the protection of human rights and substantive justice (Lailam & Anggia, 2023). Furthermore, Fernando *et al.*, (2022) emphasize that the protection of freedom of expression must be situated within the framework of the rule of law, which ensures a balance between individual rights and the public interest through constitutional restriction mechanisms.

In the context of freedom of expression in the digital sphere, the development of the Constitutional Court's jurisprudence plays a crucial role in providing interpretive guidance on the provisions of the Law on Information and Electronic Transactions (ITE Law). Butt & Murharjanti (2022) point out that Constitutional Court rulings are not only binding on the parties involved but also serve as a reference for lawmakers in aligning regulations with constitutional principles. This is further evident in Constitutional Court Decision No. 105/PUU-XXII/2024, which provides a new direction for interpreting provisions regarding defamation and the protection of freedom of expression under the Electronic Information and Transactions Law (EIT Law). Majid & Angraeni (2025) and Haryanto (2025) explain that this decision strengthens protection for criticism made in the public interest while clarifying the boundaries of criminal law application to prevent excessive criminalization. In line with this, Taqwa (2025) argues that the Constitutional Court's application of the structured proportionality test is an appropriate approach for assessing the constitutionality of restrictions on freedom of expression, as it effectively balances the protection of constitutional rights, the public interest, and legal certainty in an objective manner consistent with the principles of a democratic rule of law.

### 3. Research Method

This study employs the normative legal research method (doctrinal legal research) using the statutory approach (statute approach), the conceptual approach (conceptual approach), and the case approach (case approach). The statutory approach is used to analyze the provisions on freedom of expression in the 1945 Constitution of the Republic of Indonesia, Law No. 39 of 1999 on Human Rights, Law No. 12 of 2005 on the Ratification of the International Covenant on Civil and Political Rights (ICCPR), the Criminal Code, and Law No. 1 of 2024 on the Second Amendment to Law No. 11 of 2008 on Electronic Information and Transactions. A conceptual approach is used to analyze freedom of expression, constitutional rights, human rights, public order, public interest, national security, legality, necessity, and proportionality. In contrast, a case-based approach is used to examine the development of constitutional interpretation through Constitutional Court decisions and court rulings related to freedom of expression in the digital space.

The legal materials used consist of primary, secondary, and tertiary sources. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law No. 39 of 1999 on Human Rights, Law No. 12 of 2005 on the Ratification of the ICCPR, the Criminal Code, Law No. 1 of 2024 on the Second Amendment to the ITE Law, as well as Constitutional Court decisions related to restrictions on freedom of expression, including Constitutional Court Decision No. 105/PUU-XXII/2024 and other relevant decisions. Secondary legal sources include scholarly articles, books, national and international legal journals, academic commentaries, and research findings published by reputable publishers such as Elsevier, Springer, Wiley, Emerald, as well as SINTA-accredited national journals. Tertiary legal sources include legal dictionaries, legal encyclopedias, and official documents that support the interpretation of legal concepts.



The collection of legal materials was conducted through a systematic literature review by searching for publications issued during the 2022–2026 period, except laws and court decisions, which were used without any time restrictions due to their binding legal force. Literature searches were conducted using the Scopus, ScienceDirect (Elsevier), SpringerLink, Wiley Online Library, Emerald Insight, HeinOnline, Google Scholar, Garuda, and SINTA databases, as well as the official portals of the Constitutional Court, the Supreme Court, the Legal Documentation and Information Network (JDIH), and the Ministry of Law of the Republic of Indonesia. Articles were selected if they met the following criteria: (1) they discussed freedom of opinion, freedom of expression, or restrictions thereon from a legal perspective; (2) they were related to the ITE Law, constitutional rights, or human rights; and (3) they were published in scientific journals that had undergone a peer review process. Literature that is not directly relevant, cannot be verified, or lacks complete bibliographic information was excluded from the analysis.

The analysis of legal materials was conducted using a qualitative-descriptive approach through four stages: inventory, classification, interpretation, and legal argumentation. The inventory stage identified all relevant regulations, court decisions, and literature. Subsequently, the legal materials were classified based on the hierarchy of norms, the scope of regulation, and the legal issues under examination. The interpretation stage was conducted using grammatical, systematic, historical, and teleological methods to interpret the provisions of Law No. 1 of 2024, specifically Article 27A and Article 28(2), as well as their relationship to constitutional provisions and international human rights instruments. If differences in interpretation are found between regulations or among academic opinions, they are resolved through a constitutional balancing approach by applying the principles of legality, necessity, and proportionality as developed in the Constitutional Court's jurisprudence and the standards of the ICCPR. The results of the analysis are then systematically organized to address the research questions regarding the form of constitutional protection for freedom of expression, the limits on such freedom under the ITE Law, and a model for balancing freedom of expression with the interests of public order in a democratic state governed by the rule of law.

## 4. Results and Discussion

### 4.1 Analysis Results

#### 4.1.1 Legal Findings on the Protection of Freedom of Expression in the Indonesian Legal System

Based on a review of primary and secondary legal sources and court decisions, this study finds that the Indonesian legal system has provided a relatively comprehensive normative framework to guarantee freedom of expression as a constitutional right of citizens. This protection is grounded in Article 28E, paragraph (3), and Article 28F of the 1945 Constitution of the Republic of Indonesia, which guarantee every person's right to express opinions, access information, and communicate through various media. These provisions are reinforced by Law No. 39 of 1999 on Human Rights and Law No. 12 of 2005 on the Ratification of the International Covenant on Civil and Political Rights (ICCPR), which recognize freedom of expression as part of civil and political rights that must be respected, protected, and fulfilled by the state.

The research findings also indicate that these constitutional guarantees do not treat freedom of expression as an absolute right. Article 28J of the 1945 Constitution of the Republic of Indonesia provides a constitutional basis for the state to impose restrictions on the exercise of human rights,

provided that such restrictions are enacted through legislation and aim to protect the rights of others, public morality, national security, and public order. Thus, the Indonesian legal system has adopted the principle that the protection of constitutional rights must go hand in hand with the public interest in a democratic state governed by the rule of law. This study further found that although the normative framework is in place, there remains inconsistency in the application of concepts related to the restriction of rights. The terms “public order,” “public interest,” “national security,” “morality,” and “the rights of others” are often used interchangeably in various regulations and law enforcement practices, without clear conceptual boundaries. This situation creates broad room for interpretation by law enforcement officials, potentially leading to legal uncertainty in determining whether a form of expression constitutes constitutionally protected criticism or meets the criteria for restrictions permitted by law.

Other findings indicate that the standards for restrictions that have evolved in international human rights law—namely, legality, necessity, and proportionality—have not yet been consistently applied in national legal practice. Most regulations have met the legality requirement because restrictions are imposed through laws. However, the application of the requirements of necessity and proportionality still relies heavily on the interpretation of law enforcement officials and the courts. As a result, protections for freedom of expression in the digital sphere have not yet fully provided legal certainty, particularly in distinguishing between legitimate expression, criticism of public policy, satire, opinion, and factual statements related to the public interest.

#### **4.1.2 Legal Findings Regarding the Provisions of Article 27A and Article 28(2) of Law No. 1 of 2024**

The research findings indicate that the amendments introduced by Law No. 1 of 2024 have updated several provisions of the Electronic Information and Transactions Law (EIT Law) to enhance legal certainty in the management of the digital space. One of the most significant changes is found in the provisions regarding defamation under Article 27A, which prohibits the distribution, transmission, or creation of electronic information or documents containing defamatory content about a person in a manner that makes them accessible. Compared to the previous provisions, this change reflects a trend toward aligning the criminal norms in the ITE Law with the provisions on defamation in the Criminal Code (KUHP), particularly regarding the nature of the offense and the protection of legal interests such as an individual's honor. This study found that the legal elements in Article 27A consist of the subject element, namely “any person”; the act element, namely distributing, transmitting, or making electronic information or electronic documents accessible; the object element, namely accessible electronic information or electronic documents; and the content element, namely an attack on a person's honor or reputation. Furthermore, the application of this provision also requires a causal link between the perpetrator's act and the harm to an individual's dignity, as stipulated in the defamation provisions of the Criminal Code. Thus, the presence of these elements indicates that not every expression or criticism conveyed through digital media automatically constitutes a criminal offense.

The research findings also indicate that Article 27A is a complaint-based offense, meaning that law enforcement proceedings can only be initiated if a complaint is filed by a party who feels their honor has been violated. This characteristic represents a significant change from previous practices because it provides greater protection against the excessive use of criminal law (overcriminalization). However, the study found that although the complaint-based nature of the offense has imposed procedural limitations, the phrasing “attack on honor or reputation” still leaves considerable room for interpretation



in law enforcement practice. In addition to Article 27A, this study also found that Article 28(2) retains provisions regarding the dissemination of information intended to incite hatred or hostility based on ethnicity, religion, race, and intergroup relations (SARA). A normative analysis reveals that this provision contains elements of intent, the dissemination of information, the purpose of inciting hatred or hostility, and the protected object—namely, social groups based on specific identities. Thus, the focus of Article 28(2) differs from that of Article 27A, as it is more directed toward protecting public order and social cohesion rather than safeguarding an individual's reputation.

This study further identified several areas that still have the potential to lead to differing interpretations in the application of these two provisions. First, there are no normative parameters that explicitly distinguish between criticism, opinion, satire, evaluation, and factual allegations in the digital sphere. Second, the boundary between expression carried out in the public interest and expression that attacks personal dignity has not been clearly defined in the law. Third, regulations regarding the relationship between freedom of expression as a constitutional right and the protection of individual reputation still rely heavily on interpretation by law enforcement officials and the courts. Based on these findings, the study concludes that the amendments introduced by Law No. 1 of 2024 have improved the regulatory framework for criminal offenses in the digital space, particularly by clarifying the nature of offenses and aligning them with the Criminal Code (KUHP). However, in terms of the substance of the legal norms, there remains a need to clarify interpretations so that the application of Article 27A and Article 28(2) can strike a balance between the protection of freedom of expression, the protection of individual dignity, and the interests of public order.

#### **4.1.3 Case Law Findings on the Protection of Freedom of Expression in the Digital Realm**

Research findings indicate that the development of case law in Indonesia plays an increasingly important role in defining the constitutional boundaries between freedom of expression and the protection of individual rights in the digital sphere. An analysis of decisions by the Constitutional Court, the Supreme Court, and several lower courts indicates that the resolution of disputes related to freedom of expression is no longer based solely on the normative provisions of the Law on Information and Electronic Transactions (ITE Law), but also takes into account constitutional principles, human rights, and the purpose of restricting rights. Thus, case law serves as an interpretive tool that guides the application of legal norms when the law has not yet detailed the boundary between legitimate criticism and criminal acts.

This study found that Constitutional Court Decision No. 105/PUU-XXII/2024 represents a significant development in interpreting the Electronic Information and Transactions Law following the enactment of Law No. 1 of 2024. The decision affirms that provisions regarding defamation and slander in the digital sphere cannot be applied separately from the guarantee of freedom of expression enshrined in the 1945 Constitution of the Republic of Indonesia. The Constitutional Court recognizes freedom of expression as a constitutional right that must be protected. However, it acknowledges that this right may be restricted provided that such restrictions meet constitutional requirements and are implemented to protect the rights of others or the public interest.

An analysis of case law also indicates that courts are beginning to distinguish between the nature of various forms of expression in the digital space. Criticism of government policies, the expression of opinions, comments related to the public interest, and satirical expressions are fundamentally protected by the Constitution as long as they do not constitute an attack on a person's

dignity or contain the intent to incite hatred based on legally protected identities. Conversely, expressions containing baseless factual allegations, personal insults, the dissemination of information intended to deliberately damage an individual's reputation, or incitement leading to discrimination and hostility are deemed to meet the elements of a criminal offense in accordance with applicable provisions. This study further found that not all court rulings have applied a uniform standard of interpretation regarding Article 27A or Article 28(2) of the ITE Law. In some cases, legal reasoning still places greater emphasis on the fulfillment of the formal elements of a criminal offense rather than on an assessment of the context of the expression of opinion, the public interest, or the proportionality of restrictions on constitutional rights. These differing approaches have resulted in continued variation in the application of the law to cases with similar characteristics, particularly those involving criticism of public officials or the expression of opinions via social media.

Based on an analysis of court decisions, this study found that the development of Indonesian jurisprudence tends to move toward stronger protection of freedom of expression through interpretations that take into account constitutional values, human rights, and the principles of democratic rule of law. However, consistency in applying these principles still needs to be strengthened, particularly through clearer legal parameters distinguishing constitutionally protected criticism, opinion, satire, factual allegations, defamation, and hate speech. These findings indicate that case law plays a strategic role in reducing the ambiguity of the ITE Law's provisions while also serving as the foundation for developing a model that balances freedom of expression with the interests of public order.

## 4.2 Discussion

### 4.2.1 A Doctrinal Analysis of the Protection of Freedom of Expression as a Constitutional Right

Research findings indicate that the protection of freedom of expression within the Indonesian legal system has been established through three layers of legal instruments: the Constitution, legislation, and international human rights instruments. However, this normative framework does not yet fully guarantee legal certainty in practice, as there remain differing interpretations regarding the boundary between freedom of expression and the restrictions permitted by law. Thus, the main issue in protecting freedom of expression in the digital sphere does not lie in the absence of a legal basis, but rather in the lack of consistent legal parameters for determining the constitutional boundary between protected expression and expression that may be restricted.

From a doctrinal perspective, Article 28E, paragraph (3), and Article 28F of the 1945 Constitution of the Republic of Indonesia provide constitutional guarantees for every citizen's right to express opinions, access information, and communicate through various media. However, these guarantees must be interpreted systematically in conjunction with Article 28J of the 1945 Constitution of the Republic of Indonesia, which permits restrictions on these rights provided they are based on law and aimed at protecting the rights of others, morality, religious values, security, and public order. Therefore, freedom of expression within the Indonesian legal system constitutes a constitutional freedom, not an absolute freedom; consequently, its exercise is always governed by the framework of a democratic rule of law that balances the protection of individual rights with the interests of society.

The research findings also show that concepts such as public order, public interest, national security, public morality, and rights of others are still often treated as interchangeable terms, even though each has a distinct conceptual basis and legal function. From the perspective of international human rights law, public order refers to conditions that ensure the functioning of society based on the

rule of law and social order. In contrast, public interest is a broader policy objective and is not always related to restrictions on constitutional rights. This distinction has important implications because the basis for restrictions used will determine whether a state action meets constitutional requirements or, conversely, exceeds the limits of permissible authority.

Based on these findings, this study argues that the protection of freedom of expression in the digital sphere cannot be based solely on the existence of constitutional norms and legislation. Such protection must be realized through the application of objective, consistent, and predictable restrictions (predictable legal interpretation), so that any restriction on freedom of expression is truly based on legitimate purposes and is not used as a tool to stifle criticism of public policy. Thus, the protection of constitutional rights depends not only on the quality of legislation but also on the quality of legal interpretation carried out by law enforcement officials and judicial institutions in applying the principles of a democratic rule of law.

#### **4.2.2 A Doctrinal Analysis of Article 27A and Article 28, Paragraph (2) of Law No. 1 of 2024**

The research findings indicate that the amendments introduced by Law No. 1 of 2024 have improved the systematic framework for regulating criminal offenses in the digital realm, particularly through the reformulation of Article 27A concerning attacks on honor or reputation. Nevertheless, these amendments have not yet fully resolved the interpretive issues long associated with the defamation provisions in the ITE Law. From a criminal law perspective, a legal norm can only provide legal certainty if each element of the offense is clearly defined (*lex certa*) and does not leave room for overly broad interpretation (*lex stricta*). Therefore, an analysis of Article 27A must not only be based on the legislature's intent but must also examine the legal elements that constitute the criminal offense. Doctrinally, Article 27A contains four main elements: the legal subject ("any person"), the act ("distributing," "transmitting," or "making accessible"), the object ("Electronic Information or Electronic Documents"), and the content consisting of "an attack on honor or reputation." All four elements must be cumulatively satisfied; thus, not every statement that causes discomfort or criticizes someone can be classified as a criminal offense. Consequently, the focus of protection under Article 27A does not lie in restricting freedom of expression, but rather in protecting the legal interest of personal reputation, which is guaranteed under the Indonesian criminal law system.

The nature of Article 27A as a complaint-based offense also has significant implications for the protection of freedom of expression. Unlike ordinary offenses, law enforcement proceedings can only be initiated if a complaint is filed by a party who feels directly wronged. This characteristic indicates that the legislature has sought to limit the use of criminal law so that it is not excessively applied to expressions that do not tangibly harm a person's reputation. However, this study finds that the change, like the offense, has not fully resolved the main issue, namely the absence of normative parameters defining the boundary between constitutionally protected criticism and attacks on a person's reputation.

This issue becomes even more critical when Article 27A is applied to expressions related to the public interest. In practice, criticism of government policies, evaluations of public officials, the expression of academic opinions, and political satire often employ harsh or sharp language. However, the legal nature of such expressions differs from personal defamation. Criticism is an assessment of actions or policies related to the public interest, whereas defamation is oriented toward an attack on an individual's personal dignity. Similarly, satire is a form of expression that uses irony or sarcasm as part of artistic and political freedom. In contrast, factual allegations are statements regarding a fact whose truth can be

objectively proven. Therefore, these four forms of expression cannot be treated identically in the application of Article 27A. An analysis of Article 28(2) reveals distinct legal characteristics. This provision is not intended to protect an individual's honor, but rather to protect broader legal interests, namely public order, social harmony, and the protection of community groups from hate speech based on ethnicity, religion, race, and intergroup relations (SARA). Thus, the object of protection under Article 28(2) is the stability of community life, not an individual's reputation. This difference in the object of protection necessitates an interpretive approach that differs from that of Article 27A; consequently, the two articles cannot be applied interchangeably.

Based on the research findings, the main weakness of the regulatory framework following the enactment of Law No. 1 of 2024 no longer lies in the structure of the legal norms, but rather in the absence of interpretive guidelines that explicitly distinguish between criticism, opinion, satire, factual allegations, defamation, and hate speech. Consequently, law enforcement can still result in differing rulings in cases under different circumstances. Therefore, the application of Article 27A and Article 28(2) must be carried out through a systematic interpretation, referencing the 1945 Constitution of the Republic of Indonesia, the Criminal Code, international human rights instruments, and the jurisprudence of the Constitutional Court, so that the objectives of protecting individual dignity and public order do not undermine the essence of freedom of expression as a constitutional right.

#### **4.2.3** *The Application of Constitutional Balancing to Article 27A and Article 28, Paragraph (2) of Law No. 1 of 2024*

The research findings indicate that the main issue in implementing Law No. 1 of 2024 does not lie in the recognition of freedom of expression or the legitimacy of its restrictions, but rather in the lack of consistent parameters for determining when such restrictions are constitutionally justified. Therefore, resolving the conflict between freedom of expression and the protection of individual dignity and public order requires a constitutional balancing approach—a method of balancing constitutional rights that places all rights on an equal footing without treating any one of them as absolute. This approach requires that any restriction on freedom of expression be tested against three main parameters: legality, necessity, and proportionality. The first parameter is legality, meaning that a restriction may only be imposed if it has a clear, predictable legal basis and is explicitly formulated in legislation. In the context of Law No. 1 of 2024, the requirement of legality has, in principle, been met because Article 27A and Article 28(2) provide a legal basis for the state to impose restrictions on certain forms of expression. However, this study found that meeting the legality requirement has not fully resolved the issue of legal certainty, as phrases such as “an attack on honor or reputation” still require further interpretation to satisfy the principles of *lex certa* and *lex stricta*. Thus, legality cannot be understood merely as the existence of a norm but must also encompass the clarity of the norm's formulation so that citizens can reasonably discern the boundaries of permitted and prohibited conduct.

The second parameter is necessity. Based on this principle, restrictions may only be imposed if they are truly necessary to protect a legitimate aim, such as the rights of others, public order, national security, or the prevention of discrimination and violence. This study found that Article 27A aims to protect individual dignity. At the same time, Article 28(2) is intended to protect public order by preventing the spread of hate speech based on ethnicity, religion, race, or intergroup relations (SARA). Therefore, these two articles protect different interests, and their application cannot be uniform. Criticism of government policies, academic evaluations, and the expression of opinions related to the

public interest generally do not meet the criteria for restriction and do not cause actual harm to protected legal interests. Conversely, speech that directly incites hostility, discrimination, or attacks a person's dignity without a valid basis may meet the criteria for restriction.

The third parameter is proportionality. This principle requires that restrictions not exceed the intended purpose and that the substance of constitutional rights be preserved. This study found that proportionality is the most decisive factor because most issues regarding the application of the ITE Law arise not from a lack of legal basis, but because the use of criminal law is not always proportionate to the level of harm caused by a particular expression. Therefore, the application of Article 27A must take into account the context of the expression, the status of the criticized party, the protected public interest, the form of expression used, and the presence of intent to attack a person's honor. Similarly, the application of Article 28(2) must be limited to expressions that genuinely have a real potential to incite hatred or hostility toward groups protected by law, not toward differences of opinion that remain within the realm of democracy.

Based on the application of these three parameters, this study proposes a constitutional balancing model as a guideline for interpretation in enforcing Law No. 1 of 2024. This model is carried out through four stages, namely: (1) identifying the constitutional rights that may be restricted; (2) determining the legitimate purpose of the restriction based on the 1945 Constitution of the Republic of Indonesia and international human rights instruments; (3) testing whether the restriction meets the principles of legality, necessity, and proportionality; and (4) assessing whether there are less restrictive alternatives that can still protect the same legal interests. Through these stages, restrictions on freedom of expression no longer depend on the subjective interpretation of law enforcement officials, but rather on constitutional parameters that can be applied consistently and are legally justifiable. Thus, the primary contribution of this research lies not only in the analysis of the amendments to Law No. 1 of 2024, but also in the development of a constitutional balancing framework that integrates provisions of the 1945 Constitution of the Republic of Indonesia, the ITE Law, the Criminal Code, the ICCPR, and the jurisprudence of the Constitutional Court as guidelines for distinguishing between constitutionally protected criticism, opinions, satire, factual allegations, defamation, and hate speech. This framework is expected to strengthen legal certainty, prevent excessive criminalization, and maintain a balance between the protection of citizens' constitutional rights and the interests of public order in the digital space.

## 5. Concluding Remarks and Recommendation

This study aims to analyze the forms of legal protection for freedom of expression as a constitutional right of citizens in the digital space, examine the implementation of restrictions based on Law No. 1 of 2024 concerning the Second Amendment to the Law on Information and Electronic Transactions (ITE Law), and to formulate a model for balancing freedom of expression and public order from the perspective of a democratic state governed by the rule of law. Using normative legal research through legislative, conceptual, and case-based approaches, this study finds that freedom of expression is constitutionally guaranteed under Article 28E, paragraph (3). Article 28F of the 1945 Constitution of the Republic of Indonesia, but its exercise may be restricted under Article 28J provided that such restrictions comply with the principles of legality, necessity, and proportionality. This study also demonstrates that Article 27A and Article 28(2) of Law No. 1 of 2024 have distinct objects of legal protection—namely, the

protection of an individual's honor and the protection of public order—and thus their application must be carried out through an interpretation that distinguishes between criticism, opinion, satire, factual allegations, defamation, and hate speech to prevent the criminalization of expressions protected by the Constitution.

The main contribution of this study lies in developing a constitutional balancing framework as an interpretive parameter in applying Law No. 1 of 2024. Unlike previous studies, which generally focus only on freedom of expression or the general implementation of the ITE Law, this study offers a balancing model that integrates the 1945 Constitution of the Republic of Indonesia, the ICCPR, the Criminal Code, amendments to the ITE Law, and the jurisprudence of the Constitutional Court through the application of the principles of legality, necessity, and proportionality. Theoretically, this model clarifies the constitutional boundaries between freedom of expression and permissible restrictions in a democratic state. Practically, the findings of this study can serve as a guideline for law enforcement officials in interpreting Article 27A and Article 28(2) more consistently. At the same time, from a policy perspective, they provide a basis for developing interpretive guidelines and regulatory improvements to enhance legal certainty and the protection of human rights in the digital space.

This study has limitations because it employs a normative legal approach focused on the analysis of legislation, legal doctrine, and case law, without being supported by empirical data regarding the implementation of the ITE Law or the perceptions of law enforcement officials and the public. Furthermore, the case law analysis remains limited to rulings directly related to freedom of expression and amendments to Law No. 1 of 2024. Therefore, future research is recommended to use an empirical approach or socio-legal research to evaluate the application of Article 27A and Article 28(2) in judicial practice, measure their impact on freedom of expression in the digital sphere, and test the effectiveness of the constitutional balancing model proposed in this study as a basis for the development of digital legal policy in Indonesia.

## Statement of Use of Generative AI

During the preparation of this work, the author used generative artificial intelligence tools to support the scientific writing process. Grammarly was used to check grammar, refine writing style, and improve clarity in scientific writing. All interpretations, analyses, and conclusions presented in this study are the sole responsibility of the author.

## References

- Alvina, H., Julianti, L., Sugiantari, A. A. P. W., & Udytama, I. W. W. W. (2022). The State of Digital Freedom in Indonesia: An Assessment of Online Censorship, Privacy, and Free Expression. *Journal of Digital Law and Policy*, 1(3), 141–152. <https://doi.org/10.58982/jdlp.v1i3.301>
- Apandi, M., Rahayu, K., Prayugo, W. A., & Ariany, L. (2024). Kekaburan Norma dalam Kebebasan Berekspresi di Era Digital: Analisis Undang-Undang Nomor 1 Tahun 2024 tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik. *Jurnal Hukum Lex Generalis*, 5(12). <https://doi.org/10.56370/jhlg.v5i12.1007>
- Butt, S., & Murharjanti, P. (2022). What constitutes compliance? Legislative responses to Constitutional Court decisions in Indonesia. *International Journal of Constitutional Law*, 20(1), 428–453. <https://doi.org/10.1093/icon/moac014>
- Fauzi, M., & Info, A. (2025). Penerapan Pasal Pencemaran Nama Baik Dalam Uu Ite Terhadap Unggahan Media Sosial: Antara Perlindungan Reputasi Dan Kebebasan Berekspresi. *Jurnal Normatif Fakultas Hukum Universitas Al Azhar*, 545–554. <https://doi.org/10.54123/jn.v5i2.490>





- Feka, M., Sularto, R. B., & Pareke, J. T. (2025). Navigating the Legal Minefield: The Impact of Articles 27A and 27B of Indonesia's EIT Law on Freedom of Expression and the Path to Legal Reform. *Journal of Law and Legal Reform*, 6(1), 265–304. <https://doi.org/10.15294/jllr.v6i1.19116>
- Fernando, Z. J., Zico, P., Rozah, U., & Rochaeti, N. (2022). The freedom of expression in Indonesia. *Cogent Social Sciences*, 8(1), 2103944. <https://doi.org/10.1080/23311886.2022.2103944>
- Haritjahjono, B., & Sodikin, S. (2025). Implementation of the Lex Certa Principle towards the Ambiguity of Digital Law's in Indonesia. *Amnesti: Jurnal Hukum*, 7(1 SE-Articles), 1–14. <https://doi.org/10.37729/amnesti.v7i1.5873>
- Haryanto, E. (2025). Implikasi Hukum Pasca Putusan MK Nomor 105/PUU-XXII/2024 tentang Perubahan Sejumlah Pasal dalam Undang-Undang ITE. *Jurnal Ilmiah Hukum Dirgantara*, 15(2). <https://doi.org/10.35968/jihd.v15i2.1528>
- Hasani, I. (2022). *Human Rights and Constitutionality Issues of Blasphemy Law in Indonesia*.
- Hermanto, Rhogust, M., Endah Lestari, M., & Bahri, S. (2022). The Constitutionality of Restrictions on Freedom of Expression in the Digital Era: An Analysis of Constitutional Court Decisions. *Journal of Management*, 1(2), 161–170. <https://myjournal.or.id/index.php/JOM/article/view/477>
- Kurnia, T. S., & Melatyugra, N. (2024). Universality of rights as an interpretive principle for the Indonesian Constitutional Court. *Const. Rev.*, 10, 474. <https://doi.org/10.31078/consrev1027>
- Kusdarini, E. (2025). Konstitusionalisasi Hak atas Kebebasan Berekspresi di Era Digital Pasca-Amandemen UUD 1945. *JURNAL USM LAW REVIEW*, 8(3), 2387–2402. <https://doi.org/10.26623/julr.v8i3.13025>
- Lailam, T., & Anggia, P. (2023). The Indonesian Constitutional Court Approaches the Proportionality Principle to the Cases Involving Competing Rights. *LAW REFORM; Vol 19, No 1 (2023)DO - 10.14710/Lr.V19i1.54087*. <https://doi.org/10.14710/Lr.v19i1.54087>
- Majid, P. S., & Angraeni, B. S. (2025). Constitutional Implications of Constitutional Court Decision No. 105/PUU-XXII/2024 on Freedom of Expression and Defamation in Indonesia. *Constitutional Law Review*, 117–131. <https://doi.org/10.30863/clr.v4i2.5951>
- Marwandianto, M., & Nasution, H. A. (2020). Hak atas kebebasan berpendapat dan berekspresi dalam koridor penerapan pasal 310 dan 311 KUHP. *Jurnal Ham*, 11(1), 1–25.
- Natamiharja, R. (2025). Peran negara dalam menjamin kebebasan berekspresi menurut konstitusi dan hukum HAM. *Kajian Ilmiah Hukum Dan Kenegaraan*, 4(1), 1–10. <https://doi.org/10.35912/kihan.v4i1.4574>
- Pratiwi, C. S. (2021). Rethinking the Constitutionality of Indonesia's Flawed Anti-Blasphemy Law. *Const. Rev.*, 7, 273.
- Roisah, K., Wardana, K. A., & Erlangga, V. L. S. (2024). Human rights defenders in Indonesia's digital age: navigating limited spaces in the quest for digital democracy. *Sriwijaya Law Review*, 8(2), 358–375. <https://doi.org/10.28946/slrev.Vol8.Iss2.3860.pp358-375>
- Sofwan, E. (2026). Restrictions on the Right to Freedom of Expression in Public from the Perspective of the Rule of Law. *International Journal of Community Service (IJCS)*, 5(1), 109. <https://doi.org/10.55299/ijcs.v5i1.1809>
- Susianto, Nahuddin, Y. E., & Nurita, R. F. (2025). Freedom of Speech in the Context of Constitutional Law: Maintaining the Balance Between Freedom and Public Order. *International Journal of Sustainable Law*, 2(1), 7–11. <https://doi.org/10.71131/jjbx9540>
- Taqwa, M. D. (2026). Improving Judicial Reasoning in Constitutional Rights Cases: The Case for a Structured Proportionality Test in the Indonesian Constitutional Court. *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)*, 13(1), 1.
- Udjari, H., Suwito, Pakpahan, N. H., Hardyansah, R., & Wibowo, A. S. (2022). Reframing Freedom of Speech and Hate Speech Prohibition in a Democratic Indonesian Legal System. *Journal of Social Science Studies*, 2(1), 179–182. <https://jos3journals.id/index.php/jos3/article/view/139>
- Villiers, B. de. (2022). Freedom of Expression and Hate Speech: When Values Collide in Divided Societies. *Constitutional Review*, 8(2 SE-Articles), 184–214. <https://doi.org/10.31078/consrev821>
- Wiranata, Moh.Khamim, & Imam Asmarudin. (2023). Kebebasan Berekspresi Melalui Media Digital dan Penerapannya Di Indonesia. *Pancasakti Law Journal (PLJ)*, 1(2), 205–218. <https://doi.org/10.24905/plj.v1i2.21>
- Yandy, E. T., Fathoni, M. Al, Sayuti, & Lestiyani, T. E. K. (2026). Freedom of Expression and Its Implications for Citizens'

- Constitutional Rights Following Constitutional Court Decision No. 36/PUU-XX/2022. *Journal of Legal Contemplation*, 2(1 SE-Articles), 22–35. <https://doi.org/10.63288/jlc.v2i1.17>
- Yanis, T. Z. A., Saleh, A., & Yanis, A. M. (2025). The Unconstitutionality of the Offence of Insulting the Government in the 2023 Criminal Code: A Critical Review of Freedom of Expression. *As-Siyasi: Journal of Constitutional Law*, 5(1), 111–119. <https://doi.org/10.24042/as-siyasi.v5i1.24739>
- Zahrah, F., & Habibah, S. M. (2022). Freedom Of Speech and Human Rights: What Can Civic Education Do? *Jurnal HAM*, 13, 495. <https://doi.org/10.30641/ham.20222.13.495-508>

## Corresponding author

Michelle Nabila Andaista Bangsu can be contacted at: [bangsumichelle@gmail.com](mailto:bangsumichelle@gmail.com)