



Balancing Freedom of Expression and Hate Speech Regulation in Indonesia's Digital Environment

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Abstract

Article history:

Received: September 04, 2022

Revised: October 14, 2022

Accepted: November 07, 2022

Published: December 30, 2022

Keywords:

Constitutional Rights, Digital Environment, Freedom of Expression, Hate Speech, Legal Certainty.

Identifier:

Zera Open

Page: 157-175

<https://zeraopen.com/journal/jclis>

This article examines the regulation of hate speech in Indonesia's digital environment by focusing on the tension between freedom of expression and the need to prevent identity-based hostility online. The study addresses two main questions: the extent to which Indonesia's existing legal framework effectively regulates hate speech without disproportionately restricting freedom of expression, and why this regulation is urgent to examine from the perspective of constitutional rights, legal certainty, and democratic communication. Using a normative legal approach, this article analyzes the 1945 Constitution, the Electronic Information and Transactions Law, related criminal provisions, scholarly literature, and selected enforcement cases reported by reputable news sources. The discussion shows that Indonesia has a legitimate legal basis for regulating online hate speech, but its effectiveness remains limited by broad legal norms, inconsistent enforcement, overlap with defamation provisions, and unclear boundaries between unlawful hate speech and legitimate criticism. The article finds that hate speech regulation must adopt clearer definitions, stronger harm thresholds, proportional enforcement, and better protection for democratic expression.

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1. Introduction

The rapid expansion of Indonesia's digital environment has transformed the meaning and practice of freedom of expression. Social media, messaging platforms, and online forums have enabled citizens to participate in public debate, criticize government policy, mobilize social movements, and exchange political opinions beyond the limits of conventional media. In a democratic constitutional state, this development is closely linked to Article 28E paragraph (3) of the 1945 Constitution, which guarantees the right to express opinions, and Article 28F, which protects the right to communicate and obtain information. However, the same digital openness has also produced new legal and social risks, particularly the spread of hate speech, discriminatory narratives, and hostile expressions based on ethnicity, religion, race, and intergroup identity. Lim (2017) shows that Indonesian social media can intensify polarization through algorithmic enclaves, where users are repeatedly exposed to identity-based narratives that reinforce hostility toward opposing groups.

This tension creates a difficult regulatory problem. On one hand, the state has a legitimate obligation to prevent hate speech because it may threaten equality, public order, social harmony, and the dignity of vulnerable groups. Amin et al. (2018) argue that cyber hate and racism in Indonesia are not merely individual expressions, but are connected to broader patterns of identity politics and social prejudice. Mawarti (2018) similarly explains that hate speech can produce social fragmentation because hostile language may normalize intolerance and encourage collective suspicion. In this sense, hate speech regulation is important because digital speech can move

quickly from personal opinion into mass hostility, especially when it circulates through highly interactive platforms.

On the other hand, legal control over online expression may also threaten democratic participation when regulatory boundaries are unclear. The main legal instrument in this field is Law Number 11 of 2008 concerning Electronic Information and Transactions, as amended by Law Number 19 of 2016, particularly provisions concerning electronic defamation and the dissemination of information intended to create hatred or hostility based on SARA. Although these provisions aim to protect citizens from harmful online content, several studies identify problems of vague formulation, inconsistent enforcement, and excessive criminalization. Prahassacitta and Hasibuan (2019) highlight disparities in the protection of freedom of expression in the application of insult-related provisions under the ITE Law. Raskasih (2020) also emphasizes that restrictions on electronic expression must remain consistent with human rights principles, meaning that criminal law should not be applied in a way that suppresses legitimate criticism.

The problem becomes more complex because online speech often combines criticism, satire, emotional expression, political disagreement, and harmful attacks in the same communicative space. Permatasari and Wijaya (2019) note that the implementation of the ITE Law in hate speech cases requires careful interpretation because social media communication is contextual, rapid, and often ambiguous. Samudra (2020) further explains that post-amendment ITE provisions still require careful analysis of the boundary between unlawful insult and protected expression. This issue is not only theoretical. Reuters reported that Indonesia's police chief urged

more discretionary enforcement of the ITE Law because its application was considered capable of contradicting the public's freedom of expression in digital space (Lamb & Widiyanto, 2021). Another reported case involved Saiful Mahdi, a university lecturer imprisoned after comments in a WhatsApp group, which triggered wider concern that digital communication could be criminalized even when the expression involved institutional criticism (Widiyanto, 2021).

The effectiveness of hate speech regulation in Indonesia therefore cannot be measured only by the existence of criminal provisions. It must also be assessed through legal certainty, proportionality, consistency of enforcement, and compatibility with constitutional guarantees. Marwandianto and Nasution (2020) argue that freedom of opinion and expression must be understood within lawful limits, but those limits must not eliminate the essence of the right itself. Prahassacitta and Harkrisnowo (2021) similarly stress that criminal restrictions on harmful information should be evaluated through the harm principle so that criminalization is not detached from actual or serious social danger.

Despite the existence of the ITE Law and related criminal provisions, Indonesia's regulation of online hate speech continues to face significant weaknesses. The applicable legal norms remain broad and open to multiple interpretations, enforcement practices are often inconsistent, and the distinction between legitimate criticism and unlawful hate speech is frequently unclear. As a result, regulations intended to preserve public order and protect vulnerable groups may simultaneously generate risks to freedom of expression and legal certainty. These unresolved weaknesses indicate the need for a deeper legal examination of

how hate speech regulation is designed and applied in Indonesia's digital environment.

Based on this background, this article applies a normative legal approach to examine the balance between freedom of expression and hate speech regulation in Indonesia's digital environment. The discussion is directed by two research questions: first, to what extent is Indonesia's existing legal framework effective in regulating hate speech without disproportionately restricting freedom of expression? Second, why is the regulation of hate speech in Indonesia's digital environment urgent to examine from the perspective of constitutional rights, legal certainty, and democratic communication?

2. Research Methods

This study applies a normative legal research method to examine the regulation of hate speech in Indonesia's digital environment and its relationship with the constitutional protection of freedom of expression. A normative approach is appropriate because the article focuses on legal norms, principles, and doctrines contained in statutory regulations rather than measuring social behavior empirically. The analysis is directed toward understanding whether the existing legal framework provides an effective and proportionate basis for regulating online hate speech without creating excessive restrictions on legitimate expression. Therefore, the study examines the coherence between hate speech regulation, constitutional rights, legal certainty, and the principle of proportionality in limiting rights within a democratic legal system.

The legal materials used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 11 of 2008 concerning Electronic Information and Transactions, Law Number 19 of 2016 as its amendment, the Indonesian Criminal Code provisions relevant to insult, defamation, and public hostility, and other related regulations or official guidelines concerning hate speech and electronic information. Secondary legal materials include peer-reviewed journal articles, academic books, legal commentaries, and scholarly discussions on freedom of expression, hate speech, cyber law, and the enforcement of the ITE Law. Reputable news reports are used only as supporting materials to illustrate concrete cases and enforcement controversies, not as the main basis for normative conclusions. Tertiary legal materials, such as legal dictionaries and official legal databases, are used where necessary to clarify legal concepts and terminology.

The analysis is conducted through statutory, conceptual, and case-based approaches. The statutory approach is used to examine the wording, scope, and legal consequences of provisions regulating online expression and hate speech. The conceptual approach is used to interpret freedom of expression, hate speech, legal certainty, proportionality, and the harm principle as legal concepts relevant to the research questions. Meanwhile, the case-based approach is used to understand how legal norms are reflected in selected enforcement examples involving online speech. The collected legal materials are analyzed qualitatively through legal interpretation and doctrinal reasoning. This allows the study to identify gaps between the intended purpose of hate speech regulation and its practical implications for constitutional

freedom, democratic participation, and legal certainty in Indonesia's digital environment.

3. Results and Discussion

3.1. To what extent is Indonesia's existing legal framework effective in regulating hate speech without disproportionately restricting freedom of expression?

Indonesia's legal framework has provided an important formal basis for regulating online hate speech, particularly through the 1945 Constitution, the ITE Law, and related criminal provisions. The constitutional framework recognizes freedom of expression as a fundamental right, especially under Article 28E paragraph (3) and Article 28F of the 1945 Constitution. However, this freedom is not absolute because Article 28J allows limitations through law for the purpose of respecting the rights of others, morality, public order, and democratic values. In this sense, the regulation of hate speech is constitutionally legitimate when it is directed at preventing discrimination, hostility, or violence against protected groups. Anindyajati (2021) explains that restrictions on freedom of speech may be justified when the expression harms public order, but such restrictions must remain consistent with human rights standards and must not be applied arbitrarily.

The central provision for online hate speech is Article 28 paragraph (2) of Law Number 11 of 2008 concerning Electronic Information and Transactions, as amended by Law Number 19 of 2016. This provision criminalizes the intentional and unlawful dissemination of information intended to create hatred or hostility

toward individuals or groups based on ethnicity, religion, race, and intergroup identity. From a regulatory perspective, this provision is relevant because hate speech in digital spaces often spreads rapidly, reaches large audiences, and may intensify social polarization. Lim (2017) argues that Indonesian social media can create algorithmic enclaves that reinforce identity-based hostility, meaning that digital hate speech does not operate only as isolated communication but may become part of wider political and social mobilization. Therefore, the existence of a legal basis to regulate hate speech is necessary.

However, the effectiveness of this framework is limited by the broad wording of Article 28 paragraph (2). The phrase “hatred or hostility” may be interpreted differently by law enforcement officers, prosecutors, judges, complainants, and the public. Gunawan (2020) notes that hate speech regulation in social media must be connected carefully to freedom of opinion because not all offensive or emotional statements should automatically become criminal acts. The difficulty lies in distinguishing expressions that are merely harsh, unpopular, or critical from expressions that intentionally incite hatred toward protected groups. Without clear interpretive boundaries, the law may be used not only to prevent hate speech but also to silence political criticism, institutional complaints, or public dissatisfaction.

This issue is closely related to legal certainty. A criminal provision should be formulated clearly enough so that citizens can reasonably understand what conduct is prohibited. Raskasih (2020) emphasizes that limitations on electronic expression must remain compatible with human rights principles, especially because unclear restrictions may produce fear among citizens who wish to express criticism online.

In practice, the ITE Law has often been criticized because its speech-related provisions are seen as “rubber articles” that can be stretched to cover different types of online expression. Although the state has a legitimate interest in preventing harmful speech, broad criminalization creates a chilling effect, where individuals avoid lawful criticism because they fear criminal reports.

The problem is intensified by the overlap between hate speech, defamation, insult, and political criticism. Article 27 paragraph (3) of the ITE Law concerns electronic defamation, while Article 28 paragraph (2) concerns hatred or hostility based on SARA. In public discourse, however, these categories are often mixed. Prahassacitta and Hasibuan (2019) highlight disparities in the protection of freedom of expression when insult-related provisions are applied under the ITE Law. This shows that the problem is not only the text of the law, but also the way legal actors interpret and enforce it. A statement that should be assessed as criticism may be reported as defamation, while hostile identity-based speech may be treated inconsistently depending on political or social context.

From the perspective of proportionality, Indonesia’s hate speech regulation is only partially effective. It is effective in the formal sense because it provides law enforcement with a legal instrument to respond to harmful online content. However, it is less effective in the substantive sense because it does not always ensure a fair balance between protection from hate speech and protection of legitimate expression. Marwandianto and Nasution (2020) argue that freedom of opinion and expression must be exercised within legal limits, but those limits must not eliminate the essence of the right itself. This means that criminal law should be used as a last

resort, especially when non-criminal responses such as clarification, counter-speech, platform moderation, digital literacy, or civil remedies may be more proportionate.

The use of criminal sanctions also raises concerns because hate speech regulation should focus on serious harm. Prahassacitta and Harkrisnowo (2021) argue that criminal disinformation and harmful information should be assessed through the harm principle. This reasoning is also relevant to hate speech because the state should distinguish between speech that merely offends and speech that creates real risk of discrimination, hostility, violence, or public disorder. If the harm threshold is unclear, then enforcement may become subjective. Permana et al. (2021) similarly argue that criminal responsibility for hate speech in social media requires careful assessment of the act, intent, and impact of the expression, not merely the presence of controversial words.

The effectiveness of the legal framework is also affected by evidentiary challenges. Online hate speech cases often rely on screenshots, digital traces, reposts, comments, or forwarded messages. Krisnanda et al. (2021) explain that digital evidence plays an important role in proving hate speech cases, but it must be handled carefully to ensure authenticity, relevance, and procedural reliability. This is important because digital communication can be edited, taken out of context, or circulated by actors other than the original speaker. A statement may also change meaning depending on conversation history, satire, local language, or political context. Therefore, effective enforcement requires not only legal provisions but also technical competence and contextual interpretation.

In addition, hate speech enforcement must be consistent. Permatasari and Wijaya (2019) note that the implementation of the ITE Law in hate speech cases requires careful interpretation because online communication is fast, contextual, and often ambiguous. Inconsistent enforcement weakens public trust and creates the perception that the law is selectively applied. When similar expressions are treated differently, citizens may view the law as a political instrument rather than a neutral mechanism for protecting public order and social harmony. Sepima et al. (2020) also emphasize that hate speech law enforcement in Indonesia requires coordination among legal substance, law enforcement institutions, and public legal awareness. This indicates that regulation cannot be effective if it only depends on statutory text without institutional consistency.

Therefore, Indonesia's existing legal framework is effective only to a limited extent. It recognizes the importance of preventing online hate speech and provides a legal basis for enforcement. However, its effectiveness is reduced by broad legal wording, uncertain interpretation, overlap with defamation rules, inconsistent enforcement, and the risk of excessive criminalization. A more effective framework would require clearer definitions, a stronger harm threshold, consistent judicial interpretation, careful evidentiary standards, and proportional enforcement. Hate speech regulation should protect vulnerable groups and public order, but it should not become a tool that discourages democratic criticism or ordinary public participation in digital spaces.

3.2. Why is the regulation of hate speech in Indonesia's digital environment urgent to examine from the perspective of constitutional rights, legal certainty, and democratic communication?

The regulation of hate speech in Indonesia's digital environment is urgent to examine because it stands at the intersection of two important constitutional interests. The first is the protection of freedom of expression as a foundation of democratic participation. The second is the protection of citizens from discriminatory, hostile, or identity-based attacks that may undermine equality and public order. In a plural society such as Indonesia, digital hate speech may intensify social divisions because it often targets sensitive identity categories such as religion, ethnicity, race, and political affiliation. Amin et al. (2018) show that cyber hate and racism in Indonesia are connected to broader patterns of prejudice and identity politics. This means that hate speech is not merely a matter of individual offense, but may reflect and reinforce structural intolerance.

The urgency is also linked to the scale and speed of digital communication. Social media platforms allow harmful messages to circulate instantly across networks, often without editorial filters. Mawarti (2018) explains that hate speech may normalize intolerance because repeated hostile language can shape public attitudes and collective suspicion. When hate speech becomes viral, its impact is no longer limited to the original speaker and target. It can influence wider audiences, mobilize group resentment, and deepen polarization. This is why the state has a legitimate reason to regulate hate speech in digital spaces. However, the challenge is ensuring that the regulatory response does not sacrifice constitutional freedom.

From the perspective of constitutional rights, the problem is not whether freedom of expression may be limited, but how it should be limited. Article 28J of the 1945 Constitution allows rights limitations, yet such limitations must be based on law, pursue a legitimate aim, and remain proportionate. Anindyajati (2021) argues that the paradox of hate speech regulation lies in the fact that it is needed to protect public order, but it may also be perceived as criminalization of speech when applied too broadly. This paradox makes legal examination urgent because the legitimacy of hate speech regulation depends on whether it can maintain a reasonable balance between preventing harm and preserving democratic expression.

Legal certainty is another reason why this issue must be examined. The broad formulation of hate speech provisions creates uncertainty about what kinds of expression are prohibited. For ordinary citizens, this uncertainty may create fear in using digital platforms for criticism, debate, or institutional complaint. Raskasih (2020) stresses that restrictions on electronic expression must not contradict human rights principles. If legal norms are unclear, citizens cannot predict the legal consequences of their speech. This weakens the rule of law because criminal liability becomes dependent on subjective interpretation rather than clear legal standards.

This uncertainty is especially problematic in digital communication, where context is often unstable. A social media post may be sarcastic, emotional, fragmentary, or part of a longer debate. Samudra (2020) explains that post-amendment ITE provisions still require careful analysis in distinguishing unlawful insult from protected expression. The same problem applies to hate speech. A statement may criticize a religious institution, political group, public policy, or social

behavior without necessarily inciting hatred against a protected community. If law enforcement fails to separate criticism from hate speech, the result may be excessive restriction of lawful expression.

The urgency of this topic is also strengthened by enforcement controversies. Reuters reported that Indonesia's police chief encouraged more careful and discretionary enforcement of the ITE Law because its application had raised concerns regarding freedom of expression (Lamb & Widiyanto, 2021). The Saiful Mahdi case, also reported by Reuters, illustrates public concern that electronic communication can be criminalized even when the speech involves institutional criticism rather than clear incitement to hatred (Widiyanto, 2021). Although such news reports are not the main legal basis of this study, they show that the issue has practical consequences for citizens, academics, and public debate.

The regulation of hate speech also needs to be examined because democratic communication depends on both protection and openness. A democratic digital environment should not allow identity-based hatred to spread without accountability. At the same time, it should not make citizens afraid to criticize public officials, institutions, or dominant social groups. Lim (2017) demonstrates that online polarization in Indonesia is shaped by algorithmic and political dynamics, suggesting that legal regulation alone cannot solve the problem. Hate speech is partly a legal issue, but it is also connected to digital literacy, political mobilization, platform governance, and public culture.

Therefore, legal reform and interpretation should move toward clearer and narrower standards. Permana et al. (2021) suggest that Article 28 paragraph (2) of

the ITE Law requires restrictive interpretation because unclear elements may limit constitutional expression. This approach is important because hate speech regulation should focus on expressions that intentionally and seriously incite hatred, discrimination, or hostility against protected groups. It should not be used against criticism, satire, academic opinion, consumer complaints, or political disagreement. Such a distinction is necessary to preserve the democratic function of speech.

The urgency of examination also relates to institutional accountability. Law enforcement officers, prosecutors, and judges play a major role in determining whether a speech act becomes a criminal case. If they do not apply consistent standards, hate speech regulation may become unpredictable. Sepima et al. (2020) argue that enforcement of hate speech law requires not only legal rules but also institutional capacity and public awareness. This means that the effectiveness of regulation depends on legal culture, interpretive discipline, and the ability of institutions to apply the law proportionately.

In sum, the regulation of hate speech in Indonesia's digital environment is urgent to examine because it directly affects constitutional rights, legal certainty, public order, and democratic communication. The state must protect citizens from identity-based hostility, but it must also ensure that legal restrictions do not suppress legitimate criticism. A normative legal examination is therefore necessary to clarify the proper limits of hate speech regulation, evaluate the effectiveness of the existing framework, and propose a more balanced approach. The ideal legal framework should protect vulnerable groups from genuine harm while preserving the open, critical, and participatory nature of digital democracy.

4. Conclusion

This study concludes that Indonesia's existing legal framework has provided a formal basis for regulating hate speech in the digital environment, particularly through the 1945 Constitution, the ITE Law, and related criminal provisions. The state has a legitimate responsibility to prevent online expressions that incite hatred, hostility, discrimination, or violence against individuals and groups based on sensitive identity categories. In this regard, hate speech regulation is important for protecting public order, equality, social harmony, and the dignity of vulnerable groups. However, the effectiveness of this framework remains limited because the legal norms governing online hate speech are still broad and open to multiple interpretations. The phrase "hatred or hostility" in Article 28 paragraph (2) of the ITE Law provides a legal basis for enforcement, but it does not always offer a clear boundary between unlawful hate speech and legitimate criticism, satire, political disagreement, or emotional public expression.

The analysis also shows that the main challenge is not only the existence of regulation, but also how the regulation is interpreted and applied. Inconsistent enforcement, overlap between hate speech and defamation provisions, evidentiary difficulties in digital communication, and the possibility of excessive criminalization create risks to legal certainty and freedom of expression. Criminal law may be necessary in serious cases where online speech creates real harm or incites identity-based hostility, but it should not be used as the primary response to every controversial or offensive statement. Therefore, proportionality is essential. Hate speech regulation should be directed toward expressions that produce serious risks

of discrimination, hostility, or public disorder, while lawful criticism, academic opinion, institutional complaints, consumer dissatisfaction, and political participation must remain protected within a democratic legal system.

For this reason, the regulation of hate speech in Indonesia's digital environment remains urgent to examine. Digital platforms can amplify harmful narratives quickly and intensify social polarization, making legal protection against hate speech necessary. At the same time, unclear and overbroad regulation may weaken democratic communication by making citizens afraid to express opinions online. A more balanced legal framework requires clearer definitions, a stronger harm threshold, consistent interpretation by law enforcement institutions, careful treatment of digital evidence, and greater emphasis on non-criminal responses such as digital literacy, counter-speech, platform accountability, and restorative or administrative mechanisms where appropriate. Ultimately, Indonesia's hate speech regulation should protect society from genuine identity-based harm while preserving freedom of expression as a constitutional right and an essential foundation of democratic participation.

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