



# Implications of Changes in the Criminal Procedure Law of the ITE Law on Individual Rights in the Indonesian Legal System

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## Abstract

The revision of the Electronic Information and Transactions Law (UU ITE) in Indonesia has become a hot topic of debate. Institutions and activists such as the Institute for Criminal Justice Reform (ICJR) and the Press Legal Aid Institute (LBH Pers) have presented various arguments regarding the impact of these changes. This article outlines the five main arguments advanced by the ICJR and LBH Pers. First, there is an objection to Article 27 paragraph (3) which regulates insults and defamation. Second, changes in criminal procedural law raise concerns about the discretionary authority of law enforcement officials without involving the courts. Third, the addition of cyberbullying-related crimes raises concerns about the potential for over-criminalization. Fourth, governments are given additional powers to filter and block content, which can result in potential abuse. Finally, the fifth argument relates to the "right to be forgotten" clause which can be used as a tool of censorship against news publications and journalists about one's past. This article also examines the impact of information technology developments on computer crime and underscores the importance of protecting individual rights and free speech in the digital age.

**Keywords:** ITE Law, Law Revision, Freedom of Expression, Law Enforcement Officials' Discretion, Cyberbullying

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## 1. Introduction

The development of globalization that is happening today has brought significant impacts in almost all areas of life. One of the main drivers of this change is the rapid advancement of information technology. Information technology has changed the way people live their daily lives by providing sophistication and efficiency in various aspects. Initially, information technology may only be used by certain groups, but now almost all levels of society in Indonesia have felt the benefits, both in government and private institutions.

The development and advancement of information technology felt by the world as a whole is also felt in Indonesia. Therefore, the government is required to regulate the management of electronic information and transactions through relevant laws and regulations (Alpar & Olbrich, 2005). One example is the Electronic Information and Transaction Law, which was formed with the principles of legal certainty, benefits, prudence, good faith, and freedom of owning technology (Basu, 2004).

The purpose of the Electronic Information and Transaction Law is to educate the nation's life, develop trade and the national economy, improve the efficiency of public services, provide opportunities for everyone to advance thinking and abilities in the development and utilization of information technology, and provide a sense of security, justice, and legal certainty for users and operators of information technology.

The use of information and communication technology has changed the behavior of society and even human civilization globally. This is reflected in Law No. 11 of 2008 concerning Electronic Information and Transactions which has undergone revisions in Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions (Saragih, et al., 2016). The development of information and communication technology has made the world more connected, resulting in social, economic, and cultural changes through faster and wider flow of information. Therefore, the birth of cyber law or cyber law becomes very important.

It is undeniable that social media has become an integral part of people's lives. Through social media, all sorts of information, stories, and even debates can be easily conveyed. However, since the enactment of Law Number 11 of 2008 concerning Electronic Information and Transactions in Indonesia, there are certain restrictions governing how

something can be conveyed through social media. One of the problems that often arises is the case of hate speech (Tampi, 2017).

Social media encompasses a variety of online platforms that allow users to participate, share, and create content, including blogs, social networks, wikis, forums, and virtual worlds. Some of the most popular social media today include Instagram, Twitter, Facebook, and blogs.

In the point of view of social integration, the comparison between social media and television provides an understanding of how humans adopt and ritualize media use. Both have not only served as sources of information, but have also become part of daily habits. This pattern of media use reflects the habits and frequency of use by individuals who have a strong relationship with the media.

Law No. 19 of 2016 which amends Law No. 11 of 2008 concerning Electronic Information and Transactions aims to advance general welfare and improve the level of education in society, as well as provide a sense of security, justice, and legal certainty in the use and utilization of information and communication technology (Siregar, et al., 2011). In the context of public and state life, the rights and freedoms in the use of information technology must be carried out by considering the limits set in the law to protect the rights and freedoms of others.

The Law on Information and Electronic Transactions (UU ITE) introduced several new legal concepts that have caused controversy in the use of electronic transactions through telecommunication media and information technology, especially the internet and computers. The ITE Law is considered a legal breakthrough that can encourage the development of information and technology and maintain the public interest, thus carrying out legal functions as a social engineering tool.

However, the ITE Law also has controversies related to certain provisions, such as Article 27 paragraph 3 which prohibits slander and defamation, and Article 28 paragraph 2 which prohibits hatred (Aryansyah, et al., 2022). Information technology activities through electronic media, often referred to as "cyberspace," although virtual, can be considered tangible legal actions. However, in the legal context, the regulation of activities in cyberspace cannot be fully approached with the size and quality of conventional law alone, as many challenges and aspects cannot be addressed in traditional ways.

Thus, the ITE Law is an important step in regulating the use of information and communication technology in Indonesia, but it also raises a number of issues and debates that need to be continuously considered and evaluated to ensure that the law achieves the objectives of protecting individual rights and freedoms without sacrificing technological innovation and development.

Social media has become an indispensable part of modern social life, and hate speech spread on those platforms can have a huge impact in real life. Hate speech is not just words or speech; They can cause emotional, social, and even physical damage to certain individuals or groups. Hate speech spread through social media can easily spread widely, creating polarization, conflict, and even violence in society.

What's more, hate speech shared on social media can have a further impact if not addressed appropriately. This can include social isolation, decreased quality of life, and even damaging the reputation of the targeted individual or group. Related to the Electronic Information and Transaction Law (ITE Law), there are indeed a number of problems and challenges in its implementation. One of the obstacles is the lack of socialization to the public about the content and purpose of the Law (Umboh & Yusuf, 2023). In addition, keep in mind that the ITE Law is a legal tool that must be implemented properly, and law enforcement agencies need to understand well how to apply it without exploiting or misinterpreting its provisions.

Unclear implementation of the ITE Law can create doubts and uncertainties in society, and this needs to be corrected. It can also create the perception that these laws are not working as they should or are simply perceived as legal threats with no real effect.

In addition, there needs to be awareness in the community about the importance of maintaining good ethics and attitudes in communicating on social media. Education about the dangers of hate speech and its effects must continue to be improved. With the concerted efforts of governments, law enforcement agencies, and communities, we can work toward safer, ethical, and responsible use of information technology and social media in everyday life.

## 2. Method of Implementation

PKM activities Socialization of Information Law and Electronic Transactions takes place in four interrelated stages.

The first stage is Coordination and Planning. The PKM team conducted a site review and coordinated with the Head of Jagabaya Village to discuss the implementation of PKM. The second stage is the Implementation of Activities. The activity was carried out at the Jagabaya Village Hall with participation from the Village Head, Village Officials, RT and RW Leaders, and PKK mobilizers. The main focus of activities is legal counseling, including dissemination of legal information, understanding of legal norms, applicable laws and regulations, and developing the quality of legal counseling.

One of the important materials in counseling is the Law on Information and Electronic Transactions (ITE Law) Number 19 of 2016. In this counseling, issues related to the prohibition of slander and defamation (Article 27 paragraph 3), as well as the prohibition of hatred (Article 28 paragraph 2) were explained. Emphasis is placed on the

importance of complying with legal provisions related to the use of information technology and electronic transactions.

The third stage is Monitoring and Evaluation. Conducted to monitor and evaluate the implementation of PKM. The results of monitoring and evaluation show that PKM participants have been helped and understand the material presented. The last stage is PKM Report Making. Carried out after completion of the implementation of activities. The PKM report is then included in the national journal as an output of this PKM activity.

The activity time is from June 15, 2021 to June 17, 2021. Through this method, PKM is expected to provide useful benefits and knowledge for participants related to the use of information technology and electronic transactions, as well as promote legal culture in the community.

### 3. Results and Discussion

Community Service Activities (PKM) which were carried out from June 15, 2021 to June 17, 2021 in Cibalong Village, Cibalong District, Tasikmalaya Regency, went well and smoothly. This activity was attended by various parties, including Village Heads, Village Officials, Heads of RT and RW, and PKK mobilizers.

In this activity, participants gain a better understanding of the role of information technology in daily life and the risks if misused. The speaker explained that the greater the influence of information technology in human life, the greater the risk of information technology to be misused. Therefore, the government feels the need to regulate information technology in law.

One of the legal instruments governing information technology in Indonesia is Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law). The ITE Law was drafted by the Ministry of Communication and Information Technology (Kemenkominfo) since 2003 and finally passed during the administration of President Susilo Bambang Yudhoyono. The ITE Law has jurisdiction that applies to citizens who commit legal acts, both inside and outside the territory of Indonesia.

Some of the materials regulated in the ITE Law include:

- a) Recognition of electronic information or documents as valid legal evidence.
- b) Electronic signature.
- c) Implementation of electronic certification.
- d) Maintenance of electronic systems.
- e) Prohibited acts in using information technology, such as illegal content, illegal access, illegal interception, interference with data, interference with systems, and misuse of tools and devices.

Through this counseling, participants are expected to understand the importance of complying with legal provisions related to the use of information technology. The purpose of the ITE Law is to create a safe and orderly environment in the use of information technology, as well as protect the public from potential risks arising from misuse of information technology.

With a better understanding of the ITE Law, it is hoped that people can use information technology responsibly and comply with applicable laws, so as to create a good legal culture in the community.

The journey of the ITE Law (Law on Information and Electronic Transactions) in Indonesia is well. The ITE Law was originally formulated with the aim of protecting the rights of internet users and maintaining the stability of internet flows from potential damage. However, in practice, the ITE Law has been the subject of significant controversy and criticism.

One of the main problems faced by the ITE Law is the provision regarding illegal content that is considered multiinterpretation. This has led to excessive criminalization, where individuals are often charged with actions that should not violate the law. To overcome this problem, the government and the House of Representatives (DPR) revised the ITE Law in 2016, which resulted in Law Number 19 of 2016.

Although the ITE Law underwent revisions, there are still criticisms and concerns about the substance added in the law. Several groups, such as the Institute for Criminal Justice Reform (ICJR) and the Press Legal Aid Institute (LBH Pers), have criticized the revision of the ITE Law. They may have various reasons and arguments for their criticism, including a feeling that the revision is not enough to address the problems arising from the implementation of the ITE Law.

In the debate on the ITE Law, it is important to find a balance between the protection of individual and community rights, as well as the security and stability of the digital space. Regulations such as the ITE Law must consider the right to freedom of expression while still pursuing the goal of protection against cybercrime and misuse of information technology. Open debate and dialogue can help improve these regulations to suit the needs and developments of technology and society.

First Argument: Revocation of the provisions of Article 27 paragraph (3) of the ITE Law

The first argument raised by the Institute for Criminal Justice Reform (ICJR) and the Press Legal Aid Institute (LBH Pers) is the need to repeal the provisions of Article 27 paragraph (3) of the ITE Law, not just reduce the threat of punishment. This provision deals with insults and/or defamation in the context of the internet.

After the revision of the ITE Law, there are four significant changes to Article 27 paragraph (3). First, the addition of an explanation of the term "distribute, transmit, and make accessible Electronic Information and/or Electronic Documents." Second, the affirmation that the ITE Law is based on complaint offenses (not general offenses), which

means legal action can only be taken if there is a formal complaint. Third, affirmation that the provision refers to the provisions of defamation and slander stipulated in the Criminal Code (KUHP). Lastly, the lower criminal threat.

However, this argument states that even though it has been revised, the ITE Law still has the potential to threaten freedom of expression. The revision only lowers the criminal threat but does not abolish it completely. In addition, there is the problem of duplication of criminal acts because some provisions in the ITE Law overlap with the same provisions in the Criminal Code. More importantly, these provisions have multiple interpretations that make them easily abused by law enforcement officials.

The second argument raised by the Institute for Criminal Justice Reform (ICJR) and the Press Legal Aid Institute (LBH Pers) is related to changes in the criminal procedure law related to the ITE Law. Previously, the ITE Law required permission from the chief justice [Article 43 paragraph (6)] to make arrests and detentions. This is considered a positive step that shows Indonesia's progress in aligning national legal provisions with international obligations.

However, after the revision of the ITE Law, the permission of the chief justice for arrest and detention was eliminated. This means that coercive efforts against individuals suspected of violating the ITE Law will be the discretionary authority of law enforcement officials without involving the courts. The argument is that this overly broad discretionary authority could open the door to abuse of power by law enforcement officials. Without oversight from the courts, arrests and detentions can be carried out without careful consideration, potentially violating individual human rights.

Thus, ICJR and LBH Pers argue that this change in the criminal procedure law related to the ITE Law could jeopardize individual rights and allow abuse of power by law enforcement officials. This argument highlights the importance of maintaining a balance between law enforcement and human rights protection in the context of the revised ITE Law.

The third argument proposed by the Institute for Criminal Justice Reform (ICJR) and the Press Legal Aid Institute (LBH Pers) regarding the revision of the ITE Law is regarding the crime against cyberbullying stipulated in Article 29. The addition of cyberbullying as a criminal offense in the ITE Law is considered to have a worse impact than the previous provisions governing insults and defamation in Article 27 paragraph (3).

They state that cyberbullying criminalization policies have the potential to lead to excessive criminalization. This is because the definition of bullying or bullying is still very broad, especially because there is no standard definition that regulates traditional bullying. Because this provision is flexible and multiinterpretive, it can have great potential to be misused in its enforcement.

Thus, ICJR and LBH Pers argue that the addition of cyberbullying in the ITE Law, without a clear and limited definition, can open up opportunities for abuse of power in law enforcement against this crime. This argument emphasizes the importance of a firmer and clearer definition related to cyberbullying so that unfair or excessive criminalization does not occur.

The fourth argument raised by the Institute for Criminal Justice Reform (ICJR) and the Press Legal Aid Institute (LBH Pers) regarding the revision of the ITE Law is about increasing the government's authority in filtering and blocking content regulated in Article 40.

Article 40 of the revised ITE Law gives additional authority to the government to prevent the dissemination and use of Electronic Information and/or Electronic Documents that have prohibited content, in accordance with the provisions of the Laws and Regulations. The government is also authorized to terminate access and/or order electronic system operators to terminate access to electronic information and/or electronic documents that violate the law.

However, the ICJR and LBH Pers expressed concern that minimal termination procedures, coupled with inadequate indicators of "prohibited content" content, could result in excessive authority and easily abused by governments. This argument highlights the potential for abuse of authority by governments to filter and block content, which can harm freedom of expression and access to information.

They argue that there needs to be a more transparent and accountable mechanism for using this authority to ensure that content filtering and blocking is only carried out in situations that are completely unlawful and do not threaten freedom of expression and individual human rights. This argument emphasizes the need to supervise the implementation of Article 40 so as not to harm freedom of speech and opinion in cyberspace.

Fifth Argument: Article "Right to be Forgotten" in the Revision of the ITE Law", One of the important points highlighted in the revision of the ITE Law is the Article that regulates the "right to be forgotten" (Frantziou, 2014). Article 26 of the revised ITE Law confirms that every Electronic System Operator must delete irrelevant Electronic Information and/or Electronic Documents under its control at the request of the Person concerned based on a court determination.

However, the Press Legal Aid Institute (LBH Pers) views that this provision has the potential to be misused by the government. They argue that the "right to be forgotten" clause can be a dual tool of the government apart from the authority to censor content. This has negative potential because it can be used as a tool to censor news from media publications and journalists about one's past.

Since the enactment of the ITE Law until June 2021, there have been many cases involving digital service users in Indonesia. Data from Southeast Asia Freedom of Expression Network (SAFEnet) Indonesia shows that victims entangled in the ITE Law case come from various professions, including citizens, lecturers, entrepreneurs, civil

servants, students, students, activists, DPR members, journalists, and artists. Many of them have been found guilty, are in the process of mediation, or even still in court proceedings.

Although the original purpose of the ITE Law was to protect the rights of internet users and maintain the stability of internet flows from things that could be damaging, arguments from critical parties show that if explored more deeply, the ITE Law can be used as a double tool by the government to oppress people's freedom of expression and give the government excessive power to control the digital space.

With the development of information technology, there has also been an increase in cases of computer crimes directed at computer systems or networks. These crimes cover many forms and use the electronic media of the internet as a means. Cyber Crime, in this context, is considered a crime in cyberspace that violates applicable law. In handling, the investigation process involves a computer forensic laboratory and is often non-physical.

Types of crimes in the realm of cybercrime include cyberterrorism, cyberpornography (including child pornography), cyber harassment (sexual harassment through email, websites or chat programs), cyber-stalking (badmouthing someone using a stolen identity), hacking (use of programming skills against the law), carding (unlawful use of credit cards), and phishing (fraud to obtain sensitive information such as passwords and credit cards by posing as trusted parties in official electronic communications such as email or instant messages).

Cyber bullying is considered a valid crime if it involves both the perpetrator and the victim who are under the age of 18 and are not legally considered adults. However, if one of the parties involved or both are over 18 years old, it will be categorized as cybercrime or cyber stalking/harassment. Forms of cyber bullying include flaming, harassment, denigration, impersonation, outing and trickery, exclusion, and cyber-stalking. These practices are often carried out and result in serious impacts on victims.

With various types of cybercrime and the potential risks faced by users of digital services, the protection of individual rights, freedom of speech, and access to information is crucial. Therefore, criticism of the ITE Law and demands for further improvements in this regard become very relevant in ensuring that existing legal policies can protect people's rights in a fair and balanced manner in the era of information technology.

#### 4. Conclusion

The revision of the ITE Law has led to various arguments from parties such as the ICJR and LBH Pers which highlight several important aspects of the law. First, there is an objection to the provisions of Article 27 paragraph (3) which regulates insults and defamation. Although criminal threats have been lowered, arguments suggest that these revisions have not completely eliminated potential threats to freedom of expression, mainly due to the multiinterpretation of the provision.

The second argument focuses on changes in criminal procedural law related to the ITE Law which gives law enforcement officials discretionary authority without going through court proceedings. The removal of the presiding court's permission requirement for arrest and detention raises concerns about potential abuse of authority by law enforcement officials.

Furthermore, the third argument highlights the addition of cyberbullying-related crimes in Article 29. Concerns arise because the definition of bullying is still very broad and there is no standard definition that results in the potential for excessive criminalization and abuse in law enforcement.

The fourth argument highlights the government's filtering and blocking of content provided for in Article 40. This additional authority raises concerns about the potential for government abuse in censoring electronic information that is considered unlawful.

Finally, the fifth argument relates to the "right to be forgotten" article, where LBH Pers considers that this can be used as a new tool to censor media publications and journalists about one's past.

In the context of the proliferation of computer crime and cybercrime, the protection of individual rights and freedom of speech in cyberspace is becoming increasingly important. Therefore, criticism of the ITE Law and demands for further improvements in this regard become very relevant in ensuring that existing legal policies can protect people's rights in a fair and balanced manner in the era of information technology.

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