

Reformulating Defamation Offenses: Implications for Freedom of Expression in Indonesia's Digital Space

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ABSTRACT

Freedom of expression in the digital space constitutes a fundamental democratic right; however, its exercise in Indonesia has increasingly been constrained by the criminalization of online speech through defamation provisions. This article examines the reformulation of defamation and libel offenses under Indonesia's New National Criminal Code (KUHP) and assesses its implications for freedom of expression and digital democracy. Employing a normative legal research method, the study analyzes the normative shift from the Information and Electronic Transactions Law (ITE Law) to the KUHP, with particular attention to the recalibration of criminal boundaries and the classification of defamation as a complaint-based offense. The findings indicate that the reform represents an attempt to reduce over-criminalization and mitigate the "chilling effect" on public discourse by strengthening procedural safeguards and limiting state intervention. Nevertheless, ambiguities in interpretation and the absence of detailed enforcement guidelines may still expose individuals to legal uncertainty, particularly in cases involving criticism of public officials and governmental institutions. This article argues that, despite progressive intent, the reconfiguration of defamation offenses requires careful judicial interpretation and proportional enforcement to prevent the persistence of restrictive practices in digital communication. The study contributes to ongoing debates on the balance between protecting reputation and safeguarding freedom of expression in the context of Indonesia's evolving criminal law framework.

KEYWORDS *Freedom of Expression, Defamation, National Criminal Code (KUHP), Digital Democracy, Chilling Effect*

TABLE OF CONTENTS

I. INTRODUCTION	106
II. CONSTRUCTION OF THE REFORMULATION OF INSULT AND DEFAMATION DELIK IN THE INDONESIAN CRIMINAL CODE	114
III. IMPLICATIONS FOR GUARANTEEING THE PROTECTION OF FREEDOM OF EXPRESSION IN THE DIGITAL SPACE	116
IV. FORMULATION OF LAW ENFORCEMENT POLICIES TO PREVENT THE CHILLING EFFECT	120
V. CONCLUSION	122

I. INTRODUCTION

Freedom of expression constitutes one of the most fundamental pillars of democratic governance and the rule of law. As recognized in Article 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), every individual has the right to seek, receive, and impart information and ideas through any media regardless of frontiers. Nevertheless, international human rights law also acknowledges that this freedom is not absolute and may be subject to restrictions necessary to protect national security, public order, public health, morals, or the rights and reputations of others. Consequently, democratic legal systems continuously seek an appropriate balance between safeguarding freedom of expression and protecting individual reputation, particularly in the rapidly evolving digital environment.¹

The emergence of digital technologies has fundamentally transformed the nature of public communication. Social media platforms such as X (formerly Twitter), Facebook, Instagram, TikTok, and YouTube have significantly expanded opportunities for citizens to participate in political debates, monitor governmental performance, expose corruption, and disseminate information without relying on conventional media institutions. Digital communication has therefore become an essential component of contemporary democratic participation because it reduces barriers to public engagement while facilitating broader access to information. However, the same technological developments have simultaneously increased the potential for misinformation, hate speech, cyber harassment, and defamatory communication, thereby creating new regulatory challenges for governments worldwide.²

The regulation of online expression has consequently become one of the most contested issues in constitutional and criminal law. Many democratic jurisdictions

¹ See United Nations. *Universal Declaration of Human Rights*. (New York: United Nations, 1948); United Nations. *International Covenant on Civil and Political Rights*. (New York: United Nations, 1966); United Nations Human Rights Committee. *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*. CCPR/C/GC/34. (Geneva: United Nations, 2011).

² Eric Barendt, *Freedom of Speech*. 2nd ed. (Oxford: Oxford University Press, 2005); Jack M. Balkin, "Free Speech in the Algorithmic Society: Big Data, Private Governance, and New School Speech Regulation." *UC Davis Law Review* 51, no. 3 (2018): 1149–1210; Daphne Keller, "Internet Platforms: Observations on Speech, Danger, and Money." *Hoover Institution Aegis Series* No. 1811, 2018.

have gradually shifted away from criminal defamation toward civil remedies because imprisonment for speech-related offences is increasingly viewed as incompatible with democratic values and international human rights standards. Comparative jurisprudence developed by the European Court of Human Rights consistently emphasizes that criminal sanctions against expression should remain exceptional because excessive criminalization discourages public participation and weakens democratic accountability. Likewise, the United Nations Human Rights Committee has repeatedly recommended that States decriminalize defamation or ensure that criminal provisions are interpreted narrowly and applied only in exceptional circumstances.³

Academic scholarship similarly demonstrates that criminal defamation laws often produce a chilling effect whereby individuals avoid expressing legitimate opinions due to fear of criminal prosecution. Barendt⁴ argues that freedom of expression performs an indispensable democratic function by enabling citizens to scrutinize governmental authority and participate meaningfully in public affairs. Post⁵ further contends that constitutional protection of speech is inseparable from democratic self-government because public criticism constitutes an essential mechanism of political accountability. More recently, Balkin⁶ explains that digital platforms have altered the structure of public discourse by decentralizing communication while simultaneously increasing governmental incentives to regulate online speech. These theoretical perspectives suggest that criminal regulation of online expression requires careful calibration to avoid undermining democratic participation.

Indonesia represents one of the most important jurisdictions in Southeast Asia for examining these tensions. During the past decade, Indonesia has experienced remarkable growth in internet penetration and social media usage, making digital platforms central to political participation, commercial interaction, and civic engagement. Citizens increasingly rely upon digital communication to criticize public officials, expose maladministration, advocate for social reform, and organize collective action. Nevertheless, the rapid expansion of digital communication has also generated increasing disputes concerning online insults, misinformation, hate speech, and reputational harm. Rather than relying predominantly upon civil law remedies, Indonesian law has historically addressed many of these disputes through criminal sanctions, particularly under the Information and Electronic Transactions Law (ITE Law).⁷

Since its enactment in 2008, the ITE Law has become one of Indonesia's most controversial legal instruments. While originally intended to facilitate electronic commerce and regulate cyber activities, its provisions concerning online

³ See European Court of Human Rights. 1986. *Lingens v. Austria*, Application No. 9815/82, Judgment of 8 July 1986. See also United Nations Human Rights Committee. *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*. CCPR/C/GC/34. (Geneva: United Nations, 2011).

⁴ Barendt, *Freedom of Speech*.

⁵ See Robert C. Post, *Constitutional Domains: Democracy, Community, Management*. (Cambridge, MA: Harvard University Press, 2009).

⁶ Balkin, "Free Speech in the Algorithmic Society: Big Data, Private Governance, and New School Speech Regulation."

⁷ See Republic of Indonesia. *Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik (ITE Law)*. Available online at https://jdih.komdigi.go.id/produk_hukum/view/id/167/t/undangundang+nomor+11+tahun+2008

defamation have frequently been criticized for their broad and ambiguous wording. Numerous journalists, academics, activists, environmental defenders, and ordinary citizens have been prosecuted after expressing criticism through digital platforms. International human rights organizations argue that the vague formulation of defamation offences enables selective enforcement and creates legal uncertainty regarding the permissible limits of public criticism. Consequently, the ITE Law has frequently been characterized as a legal instrument capable of suppressing democratic participation rather than protecting legitimate reputational interests. Recent assessments continue to conclude that revisions to the ITE Law have not fully resolved these structural concerns because several broadly drafted offences remain susceptible to arbitrary interpretation.⁸

The practical implications of these legal provisions are reflected in the increasing number of prosecutions involving online expression. According to Amnesty International Indonesia, dozens of individuals—including journalists, academics, human rights defenders, and activists—have faced criminal proceedings under the ITE Law for allegedly defamatory online statements. These cases illustrate how criminal sanctions may discourage public participation in democratic discourse and create uncertainty regarding the permissible boundaries of criticism directed toward governmental institutions and public officials. The persistence of these prosecutions has reinforced concerns that criminal defamation may function not merely as a mechanism for protecting reputation but also as an instrument capable of restricting legitimate political expression.⁹

These developments have generated extensive scholarly debate. Butt¹⁰ argues that Indonesia's constitutional democracy continues to face challenges in reconciling freedom of expression with expanding criminal regulation. Lindsey and Butt similarly observe that Indonesia's criminal justice system has historically exhibited a tendency toward broad interpretation of speech-related offences, creating uncertainty for democratic participation.¹¹ Barendt further explains that excessive criminal sanctions against speech frequently undermine democratic accountability because citizens become reluctant to criticize public authorities.¹² Meanwhile, Keller emphasizes that digital communication requires regulatory approaches that recognize both the importance of protecting reputation and the necessity of preserving open public discourse.¹³

Recent Indonesian scholarship has also examined the implications of amendments to the ITE Law and the enactment of the New Criminal Code (KUHP).¹⁴ Hartanto¹⁵, for example, argue that the revised ITE Law represents an attempt to redefine criminal liability for online defamation while maintaining state

⁸ International Commission of Jurists. *Indonesia: Newly Revised ITE Law Threatens Freedom of Expression and Must Be Amended*. (Geneva: International Commission of Jurists, 2024).

⁹ Amnesty International. *Indonesia: Landmark Court Decision Nullifies Defamation Articles*. (London: Amnesty International, 2024).

¹⁰ Simon Butt, *The Constitutional Court and Democracy in Indonesia*. (Leiden: Brill, 2014).

¹¹ Tim Lindsey, and Simon Butt. *Indonesian Law*. (Oxford: Oxford University Press, 2018).

¹² Barendt, *Freedom of Speech*.

¹³ Keller, "Internet Platforms: Observations on Speech, Danger, and Money."

¹⁴ See Republic of Indonesia. *Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana*. Available online at <https://peraturan.bpk.go.id/details/234935/uu-no-1-tahun-2023>

¹⁵ Hartanto Hartanto. "Public Officials, Social Media, and Criminal Defamation: Rethinking Responsibility under Indonesia's ITE Law." *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 14, no. 2 (2025): 133-150.

authority to regulate harmful digital content. However, the authors conclude that several provisions continue to employ broad legal concepts that may generate inconsistent interpretation during enforcement. Likewise, comparative studies examining the relationship between the KUHP and the ITE Law suggest that although the New Criminal Code introduces procedural improvements—particularly through complaint-based prosecution (*delik aduan*)—substantive ambiguities concerning the definition of attacks on honour and reputation remain unresolved.¹⁶

International organizations have expressed similar concerns. The International Commission of Jurists maintains that the revised ITE Law retains several provisions that remain incompatible with international human rights standards because they continue to criminalize protected forms of online expression through vague and overbroad language.¹⁷ Freedom House likewise concludes that although recent legislative reforms narrowed certain elements of criminal defamation and reduced maximum penalties, substantial risks of arbitrary enforcement persist, particularly regarding criticism directed at powerful institutions and public officials.¹⁸

Furthermore, the increasing criminalization of online expression has generated extensive scholarly debate in constitutional law, criminal law, and digital governance. The literature generally agrees that states possess a legitimate interest in protecting individual reputation; however, significant disagreement remains regarding the appropriateness of criminal sanctions as the primary regulatory mechanism. International scholarship increasingly advocates a proportional approach in which criminal defamation is reserved for exceptional circumstances, while civil remedies and non-penal mechanisms constitute the principal means of protecting reputation.¹⁹ This shift reflects a broader recognition that democratic societies depend upon robust public debate and that criminal sanctions may unduly discourage political participation, investigative journalism, and public oversight of governmental institutions.

One influential strand of scholarship examines freedom of expression through the lens of democratic constitutionalism. Barendt argues that freedom of expression serves not only individual autonomy but also collective democratic interests by enabling citizens to scrutinize public officials and participate in political decision-making.²⁰ Similarly, Post conceptualizes freedom of expression as an institutional prerequisite for democratic self-government, emphasizing that public criticism of state actors should receive the highest level of constitutional protection.²¹ Balkin extends this argument to the digital environment by demonstrating how digital platforms have fundamentally transformed the architecture of public discourse.

¹⁶ Mikhael Feka, Pujiyono Pujiyono, R.B. Sularto, and JT. Pareke. “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, no. 1 (2025): 265-304. <https://doi.org/10.15294/jllr.v6i1.19116>

¹⁷ International Commission of Jurists. *Indonesia: Newly Revised ITE Law Threatens Freedom of Expression and Must Be Amended*. (Geneva: International Commission of Jurists, 2024).

¹⁸ Freedom House. *Freedom on the Net 2024: Indonesia*. (Washington, DC: Freedom House, 2024).

¹⁹ See Barendt, *Freedom of Speech*; Post, *Constitutional Domains: Democracy, Community, Management*; Keller, “Internet Platforms: Observations on Speech, Danger, and Money.”

²⁰ Barendt, *Freedom of Speech*.

²¹ Post, *Constitutional Domains: Democracy, Community, Management*.

According to Balkin, while digital technologies democratize communication, they also create new opportunities for both governmental regulation and private platform governance, thereby complicating traditional understandings of free speech.²²

A second body of literature focuses specifically on criminal defamation. Comparative legal studies demonstrate that many democratic jurisdictions have narrowed or abolished criminal defamation offences because imprisonment for speech-related conduct is increasingly regarded as disproportionate to the objective of protecting reputation. The jurisprudence of the European Court of Human Rights consistently holds that politicians and public officials must tolerate a greater degree of criticism than ordinary citizens because public accountability constitutes an essential feature of democratic governance. Accordingly, restrictions on political speech require particularly convincing justification, and criminal sanctions should be imposed only in exceptional cases involving serious harm or incitement to violence.²³

These normative developments are reflected in international human rights standards. In General Comment No. 34, the United Nations Human Rights Committee emphasizes that criminal defamation laws should never suppress criticism of public institutions or public officials and encourages states to consider decriminalization where possible. The Committee further stresses that restrictions on expression must satisfy the cumulative requirements of legality, legitimacy, necessity, and proportionality. Consequently, vague statutory formulations that permit arbitrary interpretation are considered inconsistent with Article 19 of the ICCPR.²⁴

The Indonesian experience presents a markedly different trajectory. Since the enactment of Law No. 11 of 2008 on Electronic Information and Transactions (ITE Law), criminal sanctions have become a central instrument for regulating digital expression. Although the legislation was initially intended to facilitate electronic commerce and address cybercrime, Article 27 paragraph (3), concerning electronic defamation, rapidly evolved into one of the most frequently invoked provisions against journalists, academics, activists, and ordinary citizens expressing opinions through digital media. Legal scholars argue that the broad wording of the provision enabled expansive interpretation by law enforcement agencies and produced substantial legal uncertainty.²⁵

Several Indonesian studies have documented the implications of this legal framework. Suhariyanto, et.al²⁶ argue that the formulation of online defamation under the ITE Law blurred the distinction between legitimate criticism and unlawful attacks on reputation because statutory terminology lacked precise legal

²² Balkin, "Free Speech in the Algorithmic Society: Big Data, Private Governance, and New School Speech Regulation."

²³ See European Court of Human Rights. 1986. *Lingens v. Austria*, Application No. 9815/82, Judgment of 8 July 1986.

²⁴ See United Nations Human Rights Committee. *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*. CCPR/C/GC/34. (Geneva: United Nations, 2011).

²⁵ Butt, *The Constitutional Court and Democracy in Indonesia*. See also Lindsey, and Butt. *Indonesian Law*.

²⁶ Budi Suhariyanto, Agus Suntoro, and Aghia Khumaesi Su'ud. "Criminalisation Due to Ambiguities in Defamation and Insult Regulations via Electronic Means in Indonesia: A Threat to Civil Liberties." *The Palgrave Handbook of Criminology and the Global South*. (Cham: Springer Nature Switzerland, 2025), pp. 1-17.

boundaries. Likewise, Arifin et.al²⁷ demonstrate that inconsistent judicial interpretation contributed to divergent outcomes across similar cases, thereby reducing predictability and undermining legal certainty. These findings suggest that substantive ambiguity, rather than merely prosecutorial discretion, constitutes one of the principal sources of over-criminalization.

Recent empirical reports reinforce these concerns. Freedom House continues to classify Indonesia as experiencing significant constraints on digital freedom due partly to criminal defamation provisions that remain applicable under both the revised ITE Law and the new Criminal Code. The report notes that although legislative amendments introduced several procedural safeguards, the continued existence of broadly formulated offences permits legal action against online criticism and investigative reporting.²⁸

Human rights organizations similarly argue that revisions to the ITE Law have not fundamentally altered the legal risks associated with digital expression. The International Commission of Jurists contends that several amended provisions continue to employ vague concepts that fail to satisfy the principle of legal certainty, while Amnesty International Indonesia has repeatedly documented prosecutions against journalists, environmental activists, and civil society organizations for online criticism of public officials. These organizations therefore conclude that legislative amendment alone is insufficient unless accompanied by restrictive judicial interpretation and comprehensive implementation guidelines.

The enactment of Law No. 1 of 2023 concerning the National Criminal Code (KUHP) has generated a new wave of scholarship examining Indonesia's criminal law reform. Existing studies generally recognize that the KUHP represents the most comprehensive restructuring of Indonesian criminal law since independence.²⁹ Nevertheless, scholarly opinions diverge regarding whether the reform genuinely strengthens freedom of expression. Some researchers argue that complaint-based prosecution (*delik aduan*) significantly reduces opportunities for arbitrary state intervention because criminal proceedings may only commence following a complaint from the directly injured party.³⁰ Others maintain that procedural reform

²⁷ Zainal Arifin, Zico Junius Fernando, and Emi Puasa Handayani. "Implikasi Hukum Perubahan Kedua Undang-Undang Informasi dan Transaksi Elektronik: Menyeimbangkan Kebebasan Berpendapat dan Partisipasi Publik dalam Demokrasi Digital." *Jurnal Litigasi* 26, no. 1 (2025): 192-227.

²⁸ Freedom House. *Freedom on the Net 2024: Indonesia*. (Washington, DC: Freedom House, 2024).

²⁹ Faisal Faisal, et al. "Genuine paradigm of criminal justice: rethinking penal reform within Indonesia New Criminal Code." *Cogent Social Sciences* 10, no. 1 (2024): 2301634; Abdul Wahid, "Measuring the Effectiveness of the New Criminal Code in Answering Contemporary Criminal Law Challenges." *Lex Journal: Kajian Hukum dan Keadilan* 9, no. 1 (2025): 47-57; Marnija Marnija, and Zainal Arifin Hoesein. "The Dynamics of Criminal Law Reform in Indonesia: A Historical and Prospective Review From the Colonial Penal Code to the 2023 National Criminal Code." *Fox Justi: Jurnal Ilmu Hukum* 15, no. 3 (2025): 671-678.

³⁰ See Muhamamd Kandriana, Muhammad Rifaid, and Muhammad Wildan. "The Expansion of the Concept of Complaint-Based Offenses in Indonesia's New Criminal Code (Law No. 1 of 2023): A Normative Study on the Effectiveness of Victim Protection." *Widya Pranata Hukum: Jurnal Kajian dan Penelitian Hukum* 7, no. 2 (2025): 216-235; Adi Darmawansyah, Andry Dwiarnanto, and Irwan Putra Satriyawan. "A Juridical Review of Cybercrime and Defamation under Indonesia's Law No. 1 of 2024 on Electronic Information and Transactions." *Journal of Law and Humanity Studies* 2, no. 2 (2025): 55-61; Emeraldia Janessa Josephine, and Rugun Romaida Hutabarat. "Determining Relative Competence in Resolving Criminal Defamation Cases Under Indonesian Positive Law." *Jurnal Ilmu Hukum Kyadiren* 6, no. 2 (2025): 53-71.

cannot fully resolve the broader problem of substantive ambiguity if statutory definitions of honour, dignity, insult, and defamation remain open to expansive interpretation.³¹

For example, recent comparative analyses of the KUHP and the revised ITE Law conclude that although the reform narrows prosecutorial authority, it simultaneously creates potential overlap between criminal provisions governing defamation, insult, hate speech, and attacks against state institutions. Such overlap may complicate legal interpretation and increase uncertainty regarding the applicable legal regime in digital communication.³²

More recent studies have also begun examining specific forms of digital expression, including political memes and satire directed at public officials. These studies suggest that courts continue to face considerable difficulty distinguishing constitutionally protected political criticism from unlawful attacks on personal reputation.³³ As digital communication increasingly relies on visual expression, humour, irony, and symbolic representation, traditional legal concepts of insult and defamation may become progressively less capable of accommodating contemporary forms of democratic participation.³⁴

Despite this expanding body of literature, several important gaps remain. *First*, most previous studies examine either the ITE Law or the KUHP independently, with relatively little attention devoted to the normative transition between these legal regimes. Consequently, insufficient scholarship explains how criminal law reform restructures the relationship between general criminal law and sectoral legislation governing electronic information. *Second*, existing research predominantly concentrates on doctrinal interpretation of individual statutory provisions without integrating broader constitutional principles of proportionality, legal certainty, and democratic participation. As a result, the relationship between criminal law reform and Indonesia's constitutional commitment to freedom of expression remains underdeveloped.

Third, many previous analyses evaluate legislative reform immediately following enactment but pay limited attention to emerging constitutional

³¹ Arif Purnama Hasyim, "Reformulasi Kebijakan Hukum Pidana Terhadap Ujaran Kebencian di Media Sosial: Studi Komparatif Antara KUHP dan UU ITE." *LEX LAGUENS: Jurnal Kajian Hukum dan Keadilan* 3, no. 2 (2025): 158-175; Jerico Mathias, "Hate Speech and Its Threat to Law Enforcement." *The Indonesian Journal of International Clinical Legal Education* 3, no. 1 (2021): 15-26; Emi Puasa Handayani, Zainal Arifin, and Zico Junius Fernando. "Criminal Penalties in Cyberspace: Between the Development of Digital Democracy and Authoritarianism." *Indonesian Journal of Criminal Law Studies* 10, no. 1 (2025): 45-82.

³² Pipit Somefotorono Majid, and Besse Sari Angraeni. "Constitutional Implications of Constitutional Court Decision No. 105/PUU-XXII/2024 on Freedom of Expression and Defamation in Indonesia." *Constitutional Law Review* 4, no. 2 (2025): 117-131.

³³ See Andreka Septiawan, et al. "The Pragmatic Strategies of Impoliteness Within Instagram Comment Sections (On the Discourse Surrounding Prabowo Subianto's Speeches During the 2024 Political Cycle)." *Jurnal Ilmu Sosial dan Humaniora* 1, no. 4 (2025): 1796-1805; Elizabeth McMullen, "A How-To Guide for When Your Favorite Meme Account Is Defamed: Involuntary Public Figures in Defamation, Privacy, and Intentional Infliction of Emotional Distress Law." *Catholic University Journal of Law and Technology* 32, no. 2 (2024): 159-188.

³⁴ Hamielly Cortez Lim, and Hery Firmansyah. "Legal Protection for Victims of Defamation in the Digital Era: Study Based on Law No. 11 of 2008 Concerning ITE and Its Changes." *Tennessee Research International of Social Sciences* 6, no. 2 (2024): 274-284; Anis Mashdurohatun, et al. "Combating Digital Defamation: Regulations, Challenges and Protecting Reputation." *Journal of Sustainable Development and Regulatory Issues (JSDERI)* 3, no. 3 (2025): 486-514.

developments. Notably, the Constitutional Court's decisions limiting the scope of defamation complaints and clarifying that governmental institutions cannot invoke certain defamation provisions demonstrate an evolving judicial approach that substantially affects interpretation of the KUHP and the ITE Law. These developments indicate that Indonesia's legal framework is increasingly shaped through the interaction between legislation and constitutional adjudication rather than statutory reform alone.³⁵

Fourth, comparative scholarship has rarely examined Indonesian criminal defamation within broader debates concerning digital constitutionalism, platform governance, and democratic resilience. Contemporary digital communication differs fundamentally from conventional mass media because citizens simultaneously function as information producers, distributors, and consumers. Consequently, criminal regulation of online speech raises constitutional questions extending beyond individual reputation to encompass civic participation, algorithmic amplification, digital public spheres, and democratic accountability.

Accordingly, this article seeks to address these shortcomings by examining the reformulation of defamation offences under Indonesia's New National Criminal Code through a normative legal analysis grounded in constitutional principles and international human rights standards. Unlike previous studies that primarily evaluate statutory amendments in isolation, this research analyses the interaction between the KUHP, the revised ITE Law, Constitutional Court jurisprudence, and Article 19 of the ICCPR. It argues that although the KUHP introduces meaningful procedural safeguards—notably the expansion of complaint-based prosecution and limitations on state-initiated complaints—its effectiveness in protecting freedom of expression ultimately depends upon consistent judicial interpretation, coherent enforcement guidelines, and a proportional understanding of reputation that distinguishes genuine defamation from legitimate criticism in democratic discourse.

The findings of this study are expected to contribute to three areas of scholarship. First, they enrich comparative discussions concerning the future of criminal defamation in democratic societies undergoing digital transformation. Second, they provide a comprehensive normative assessment of Indonesia's criminal law reform within the framework of international human rights law. Third, they offer practical recommendations for legislators, judges, prosecutors, and law enforcement authorities in implementing the KUHP in a manner that reconciles reputation protection with constitutional guarantees of freedom of expression and democratic participation.

³⁵ See Barbara Lewis, and Kate Mayberry (eds). "Indonesian court bans government, company from defamation complaints." *Reuters*, April 30, 2025. Retrieved from <https://www.reuters.com/world/asia-pacific/indonesian-court-bans-government-company-defamation-complaints-2025-04-29/>

II. CONSTRUCTION OF THE REFORMULATION OF INSULT AND DEFAMATION DELIK IN THE INDONESIAN CRIMINAL CODE

The construction of insults and defamation in the history of legislation in Indonesia has deep roots in the Dutch colonial legacy through *Criminal Code* (WvS). In the WvS, the formulation of articles related to insults is very broad and multi-interpreted, so it is often positioned as an instrument of protection for the ruler.³⁶ Over time, the flexibility of this article has invited a lot of criticism from academics because it is considered no longer relevant to the principles of a democratic state of law that places human rights as the main pillar. The lack of clarity on the limits on what is called an ‘*attack on honour*’ makes this article vulnerable to arbitrary use.³⁷

Responding to this urgency, lawmakers made major changes through the ratification of Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code). The National Criminal Code does not simply move the old text, but does a conceptual reformulation based on the philosophy of restorative justice and a balance between individual protection and civil liberties.³⁸ This update aims to rationalize the criminal law to be in line with the development of social values in modern society, especially in the midst of the rapid flow of information traffic in the digital era.

The most fundamental change of this reformulation is the affirmation of the qualification of the offense of insult and defamation as an absolute complaint offense (*crime complaint*). This is a very crucial paradigm shift in material criminal law. With the status of an absolute complaint, law enforcement officials lose their authority to process a case of alleged insult if there is no official complaint from the victim. This provision closes a gap for the authorities to act proactively which risks grazing oppressive actions against the community.³⁹

Furthermore, the construction of this absolute complaint delict requires that the party entitled to report is only an individual who is directly a victim (direct victim). This construction automatically aborts the legitimacy of reporting that has

³⁶ Riezky Aprilia, et al. “Insult Law and Freedom of Expression-as Indonesia Understands It: A ‘Vernacular Domestication’?.” *The Indonesian Journal of International & Comparative Law* 9, no. 4 (2022): 553-573. See also Surian Surian, Maya Jannah, and Abdul Hakim. “Defamation and Insult Through Information and Communication Technology Media According to Law No. 19 of 2016 Concerning Amendments to Law No. 11 of 2008 Concerning Electronic Transaction Information.” *Journal of Social Research* 2, no. 4 (2023): 1468-1476.

³⁷ See Fuadi Isnawan, “Police and Social Media: Law Enforcement Against Defamation and Libel in Social Media Comment Sections.” *Journal Equity of Law and Governance* 4, no. 1 (2024): 173-189; Abdul Kadir Jaelani, and Resti Dian Luthviati. “The Crime of Damage After the Constitutional Court’s Decision Number 76/PUU-XV/2017.” *Journal of Human Rights, Culture and Legal System* 1, no. 1 (2021): 31-42.

³⁸ See Nur Ansar, and Johanna G.S.D Poerba. *Modul Memahami Kerangka Hukum Kebebasan Berekspresi yang Peka Gender bagi Pembela HAM*. (Jakarta: Institute for Criminal Justice Reform, 2024). Available online at <https://icjr.or.id/wp-content/uploads/2024/12/Modul.pdf>

³⁹ Tryan Zaki Aulia Yanis, Ahmad Saleh, and Adam M. Yanis. “The Unconstitutionality of the Offense of Insulting the Government in the 2023 Criminal Code: A Critical Review of Freedom of Expression.” *As-Siyasi: Journal of Constitutional Law* 5, no. 1 (2025): 111-119; Moh. Fadhil, “Criminal Law Reform in Indonesia: The Perspective on Freedom of Expression and Opinion.” *Al-Jinayah: Jurnal Hukum Pidana Islam* 9, no. 2 (2023): 128-146.

often been carried out by third parties, such as political sympathizers, mass organizations, or subordinates who report cases on behalf of their superiors.⁴⁰ This provides legal certainty and prevents the spread of criminalization driven by pseudo-solidarity motives or the political interests of certain groups in the public sphere.

In addition, the National Criminal Code also seeks to end the dualism of cyber criminal regulation by withdrawing the provisions on electronic defamation that was previously the *prima donna* in the ITE Law into the codification of the Criminal Code. This codification step places the National Criminal Code as a parent guideline (*lex generalis*) and at the same time eliminate disparities in law enforcement.⁴¹ The absorption of this provision is a logical step so that there are no double standards in assessing an act, both in physical space and in cyberspace.

This reformulation construction also reinforces the limitation of exceptions or grounds for criminal abolition (*ground for exemption from punishment*). The National Criminal Code expressly states that an act is not punishable if it is done in the “public interest”. In the context of constitutional law, this public interest clause is the foundation for the protection of public participation in supervising the running of state administration.⁴² This exception ensures that public discourse concerning the lives of the people, evaluation of bureaucratic services, and criticism of policies cannot be criminalized.

In addition to the public interest, another reason for the criminal expungement that is accommodated is self-defense. This self-defense clause is relevant when a citizen seeks to defend his rights in a public space, for example a consumer who complains about the poor service of an agency. This normative construction provides space for the public to voice injustice without having to be haunted by the threat of bars due to backlash from service providers.⁴³

Theoretically, the National Criminal Code has also drawn a clearer line between objective criticism of the performance of state administration and subjective-personal insults. Criticism of a policy or the performance of a government agency is a tangible manifestation of the constitutionally protected freedom of expression, while contempt is an attack on a person’s personal dignity.⁴⁴ This separation is very important for the function of public communication so that not every citizen complaint is considered a personal attack on the officeholder.

The revised framework signifies a fundamental shift from the colonial legal paradigm, under which public officials and state institutions enjoyed special protection and extensive legal privileges. Within a democratic rule-of-law framework, state institutions, as juridical entities, do not possess personal dignity

⁴⁰ Ernest Sengi, *Kebijakan Formulasi Tindak Pidana Pencemaran Nama Baik Melalui Media Sosial*. (Semarang: CV Pilar Nusantara, 2018).

⁴¹ E. Asmadi, “Rumusan Delik dan Pemidanaan Bagi Tindak Pidana Pencemaran Nama Baik di Media Sosial.” *DE LEGA LATA: Jurnal Ilmu Hukum* 6, no. 1 (2021): 16–32.

⁴² Almira Lufti Mega Ecti, Eko Soponyono, and Umi Rozah. “Kebijakan Reformulasi Pengaturan Tindak Pidana Pencemaran Nama Baik Melalui Media Sosial.” *Diponegoro Law Journal* 10, no. 1 (2021): 1–20.

⁴³ Faisal Faisal, and Muhammad Rustamaji. “Pembaruan Pilar Hukum Pidana dalam RUU KUHP.” *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 10, no. 2 (2021): 291–308.

⁴⁴ Alvina Khusnul Khotimah, Winarno Budyatmojo, and Diana Lukitasari. “Penerapan Tindak Pidana Pencemaran Nama Baik Melalui Media Sosial.” *RECIDIVE: Jurnal Hukum Pidana dan Penanggulangan Kejahatan* 11, no. 3 (2022): 285–295.

or emotions and therefore cannot be regarded as victims of criminal defamation.⁴⁵ Moreover, public officials, by virtue of their public office and accountability to citizens, are expected to tolerate a broader scope of public criticism than private individuals. Consequently, the application of criminal sanctions for insults directed at public officials should be narrowly circumscribed to prevent undue restrictions on freedom of expression.

From a normative perspective, the formulation of contempt-related offenses in the National Criminal Code represents a more coherent and legally certain framework than its predecessors.⁴⁶ The relevant provisions have been carefully structured to reduce legal ambiguity and address the longstanding problem of overly broad or “rubber” provisions that permit arbitrary interpretation and enforcement. Nevertheless, the effectiveness of this normative reform cannot be assessed solely through doctrinal analysis. Its practical implications require empirical evaluation, particularly in the context of contemporary digital communication, where the boundaries between legitimate criticism, offensive expression, and criminal conduct are increasingly contested.

III. IMPLICATIONS FOR GUARANTEEING THE PROTECTION OF FREEDOM OF EXPRESSION IN THE DIGITAL SPACE

The normative reformulation of insult offenses under Law No. 1 of 2023 concerning the National Criminal Code (KUHP Nasional) has significant implications for reducing arbitrary criminalization and strengthening the protection of freedom of expression. A fundamental reform lies in the reclassification of defamation and insult offenses as absolute complaint offenses (*delik aduan absolut*). In particular, Article 433 of the National Criminal Code provides that prosecution for defamation may only be initiated upon a complaint by the person whose honour or reputation has allegedly been harmed. This provision represents a clear departure from the previous enforcement paradigm, under which criminal proceedings could more readily be initiated by law enforcement authorities. By limiting prosecutorial authority to cases involving a formal complaint from the injured party, the legislature seeks to prevent excessive state intervention in disputes concerning reputation and to reinforce legal certainty. From a doctrinal perspective, this reform restores the state’s constitutional role as the guarantor of citizens’ rights rather than merely functioning as an instrument of criminal repression.⁴⁷

⁴⁵ Gilang Rizky Ramadhan, Yosaphat Diaz, and Asmak UI Hosnah. “Penanganan Tindak Pidana Pencemaran Nama Baik yang Dihubungkan dengan KUHP.” *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 2, no. 1 (2024): 51-64.

⁴⁶ Hamielly Cortez Lim, and Hery Firmansyah. “Penjatuhan Sanksi Pidana Bagi Pelaku Pencemaran Nama Baik di Era Digital Berdasarkan Undang-Undang No. 11 Tahun 2008 Tentang ITE dan Perubahannya.” *Audi Et AP: Jurnal Penelitian Hukum* 4, no. 1 (2025): 47-54.

⁴⁷ A. S. Pasaribu, et al. “Analisis Yuridis Perbedaan Kritik dengan Pencemaran Nama Baik dalam KUHP dan Undang-Undang Nomor 1 Tahun 2024 Tentang Informasi dan Transaksi Elektronik (ITE).” *Jurnal Riset Rumpun Ilmu Sosial, Politik dan Humaniora* 4, no. 2 (2025): 220-232; Cecep Sujapar. “Pengaruh Politik Hukum Terhadap Penghinaan dan atau Pencemaran Nama Baik Berdasarkan Undang-Undang Informasi dan Transaksi Elektronik.” *Collegium Studiosum Journal* 5, no. 2 (2022): 122-132.

The reform is further reinforced through amendments to the Electronic Information and Transactions (ITE) Law. Article 27A of Law No. 1 of 2024, which replaced the previous formulation of online defamation, provides that “Every person who intentionally attacks the honour or reputation of another person by accusing that person of a particular matter through an electronic system with the intention that such accusation becomes known to the public” commits a criminal offense. Compared with the previous provision, this formulation introduces more specific constituent elements that must be established cumulatively, namely: (1) intentional conduct (*dolus*); (2) an attack on another person's honour or reputation; (3) an accusation concerning a specific fact; (4) dissemination through an electronic system; and (5) the intention that the accusation becomes publicly known. Consequently, criminal liability cannot arise merely because an individual expresses criticism, disagreement, or dissatisfaction through digital platforms. Law enforcement authorities must demonstrate each statutory element before criminal responsibility can be imposed. This legislative refinement substantially narrows the scope for arbitrary interpretation that previously characterized the application of the so-called “rubber provisions” under the earlier ITE Law.⁴⁸

From the perspective of criminal law doctrine, these reforms reflect several fundamental principles of modern criminal justice. First, the complaint requirement reinforces the principle of legal certainty (*lex certa*) by clearly defining the procedural conditions under which prosecution may proceed. Second, the more precise formulation of the offense strengthens the principle of strict legality (*lex stricta*) by reducing interpretive ambiguity regarding the constituent elements of criminal liability. Third, the reform is consistent with the doctrine of *ultima ratio*, whereby criminal sanctions should function only as a measure of last resort rather than as the primary instrument for resolving disputes concerning personal reputation. Collectively, these reforms demonstrate the legislature's intention to balance the constitutional protection of personal honour with the equally fundamental protection of freedom of expression guaranteed within a democratic rule-of-law state.

Nevertheless, evaluating the effectiveness of these reforms requires more than doctrinal analysis. The existence of well-formulated statutory provisions does not necessarily guarantee effective protection of freedom of expression in practice. Empirical legal studies demonstrate that structural inequalities in political, economic, and institutional power continue to shape the enforcement of insult offenses in Indonesia.⁴⁹ Although prosecution now depends upon an absolute complaint from the injured party, public officials, government institutions, and economically powerful actors possess substantially greater institutional capacity to initiate criminal complaints and sustain legal proceedings than ordinary citizens. Consequently, the procedural transformation from an ordinary offense to a complaint offense does not entirely eliminate unequal access to criminal justice mechanisms.

⁴⁸ Dicky Andika Rauf, and Moh Rivaldi Moha. “Ekuivalensi Kebebasan Berekspresi dan Perlindungan Nama Baik Pasca Perubahan Undang-Undang Informasi dan Transaksi Elektronik.” *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 2 (2025): 601-621.

⁴⁹ Rusni Mayang Sari, Zulkarnain Ridlwan, and Rudi Natamiharja. “Pelembagaan Delik Penghinaan terhadap Pemerintah dalam KUHP Baru antara Perlindungan Simbol Negara dan Kebebasan Ekspresi.” *Indonesian Journal of Law and Justice* 2, no. 3 (2025): 1-9.

Empirical evidence illustrates the persistence of this imbalance. Throughout 2023, at least 126 individuals were reportedly subjected to criminal proceedings because of their online expression. The majority of complainants consisted of government officials, public authorities, and corporate actors, whereas those prosecuted were predominantly ordinary citizens, activists, journalists, and civil society actors.⁵⁰ These findings indicate that statutory reform alone has not prevented criminal law from being strategically employed to suppress public criticism. Rather, the continued use of criminal complaints by politically influential actors closely resembles the characteristics of *Strategic Lawsuits Against Public Participation* (SLAPP), in which legal proceedings function less as mechanisms for protecting legitimate reputational interests than as instruments for discouraging civic participation and silencing criticism on matters of public concern.

One of the most significant consequences of this practice is the emergence of a chilling effect on democratic participation.⁵¹ Even where criminal proceedings do not ultimately result in conviction, prolonged police investigations, repeated summonses, and the uncertainty associated with criminal prosecution may discourage citizens from expressing opinions regarding government performance or public policy. Consequently, digital public spaces gradually lose their function as forums for deliberative democracy and become environments characterized by fear, caution, and self-restraint.

This deterioration has broader implications for democratic governance. Effective public administration depends upon continuous public scrutiny and constructive criticism as mechanisms of accountability and transparency. When citizens become reluctant to express criticism because of potential criminal liability, governments lose an essential source of policy evaluation and social oversight. As a result, public institutions become less responsive to societal concerns, while opportunities to identify administrative failures and policy shortcomings diminish considerably. In this respect, the chilling effect generated by criminal defamation prosecutions ultimately undermines the realization of good governance, which requires openness, accountability, transparency, and meaningful public participation in governmental decision-making.⁵²

The implications are equally significant in the context of government communication. Ideally, public relations within democratic institutions should perform facilitative, educational, and persuasive functions by fostering dialogue between government and citizens. However, when criminal law becomes the preferred institutional response to public criticism, these communicative functions risk being displaced by coercive legal strategies. Instead of responding to criticism

⁵⁰ See Abdurrahman Alhakim, "Urgensi Perlindungan Hukum Terhadap Jurnalis dari Risiko Kriminalisasi UU Informasi dan Transaksi Elektronik di Indonesia." *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (2022): 89-106.

⁵¹ See Defbry Margiansyah, "Digitalizing Authoritarianism in Indonesia: Exploring the Intersection of Civic Activism, Digital Repression, and Democratic Erosion." In *Indonesian Perspectives on Democracy*. (Singapore: Springer Nature Singapore, 2025), pp. 183-209; Zainal Arifin, Zico Junius Fernando, and Emi Puasa Handayani. "Legal Implications of The Second Amendment to The Electronic Information and Transactions Law: Balancing Freedom of Expression and Public Participation in Digital Democracy: Implikasi Hukum Perubahan Kedua Undang-Undang Informasi dan Transaksi Elektronik: Menyeimbangkan Kebebasan Berpendapat dan Partisipasi Publik dalam Demokrasi Digital." *LITIGASI* 26, no. 1 (2025): 192-227.

⁵² Bagaz Zubaba, and Rusmilawati Windari. "Ketidaktepatan Frasa Alasan Pemaaf Pada Ketentuan Pencemaran Nama Baik dalam KUHP Nasional." *Jurnal Rechtens* 14, no. 2 (2025): 281-308.

through evidence-based clarification, transparent communication, or policy justification, public institutions may resort to criminal complaints initiated by government officials, thereby transforming public relations from an instrument of democratic engagement into one of legal intimidation.

Such conditions inevitably encourage widespread self-censorship among journalists, academics, researchers, civil society organizations, and digital content creators.⁵³ Individuals become increasingly reluctant to publish critical analyses of governmental performance or bureaucratic misconduct because of concerns that their statements may be interpreted as criminal insults rather than legitimate public criticism. Consequently, democratic discourse becomes progressively constrained, with public expression increasingly limited to viewpoints perceived as politically safe or supportive of those in positions of authority. This situation fundamentally contradicts the democratic objective of protecting open debate concerning matters of public interest.

Furthermore, from a socio-legal perspective, the criminal justice process itself may operate as a form of punishment irrespective of the eventual judicial outcome. Although investigations may ultimately be terminated or defendants acquitted because their statements are recognized as criticism made in the public interest, individuals frequently experience significant psychological distress, reputational damage, financial burdens, and social stigmatization throughout the investigative process. This phenomenon, commonly described as “the process is the punishment,” disproportionately affects ordinary citizens who lack the financial, political, or institutional resources necessary to withstand prolonged criminal proceedings.⁵⁴ Accordingly, procedural safeguards introduced through statutory reform cannot be regarded as fully effective if the investigative process itself continues to generate substantial coercive effects.

Overall, the reformulation of insult offenses under the National Criminal Code presents an inherently ambivalent outcome. At the normative level, the reforms represent a substantial improvement in legal certainty through the introduction of clearer offense formulations, stricter constituent elements, and the requirement that prosecution proceed only upon a formal complaint by the injured party. These reforms are broadly consistent with constitutional principles protecting freedom of expression and with contemporary criminal law doctrines emphasizing proportionality, legality, and *ultima ratio*. However, empirical evidence demonstrates that the effectiveness of these legal safeguards remains constrained by persistent inequalities in political and institutional power. Consequently, legislative reform alone cannot guarantee meaningful protection of digital freedom of expression unless accompanied by impartial law enforcement, institutional accountability, judicial independence, and a broader democratic

⁵³ Wilma Silalahi, and Adelia Nelma Mutiara. “Judicial Review Mahkamah Konstitusi Terhadap Pasal Pencemaran Nama Baik dalam UU ITE: Antara Perlindungan Reputasi dan Kebebasan Berekspresi di Era Digital.” *Jurnal Pustaka Cendekia Hukum dan Ilmu Sosial* 3, no. 3 (2025): 827-839.

⁵⁴ Fifink Praiseda Alviolita, and Barda Nawawi Arief. “Kebijakan Formulasi Tentang Perumusan Tindak Pidana Pencemaran Nama Baik dalam Pembaharuan Hukum Pidana di Indonesia.” *Law Reform* 15, no. 1 (2019): 130-148.

culture that recognizes criticism as an indispensable element of accountable governance rather than a threat to political authority.⁵⁵

IV. FORMULATION OF LAW ENFORCEMENT POLICIES TO PREVENT THE *CHILLING EFFECT*

The disparity between the normative framework established by the National Criminal Code and its empirical implementation demonstrates that legislative reform alone is insufficient to ensure effective protection of freedom of expression. Accordingly, complementary law enforcement policies are required to translate statutory reform into consistent institutional practice. The first and most immediate policy priority is the development of comprehensive implementing guidelines for law enforcement authorities, particularly police investigators.⁵⁶ Such guidelines, whether issued through a Regulation of the Chief of the Indonesian National Police (*Peraturan Kapolri*) or a Supreme Court Circular (*Surat Edaran Mahkamah Agung*), should provide objective interpretative standards for key legal concepts, including “public interest,” “good-faith criticism,” and “evaluation of public officials’ performance.” The absence of uniform interpretative criteria creates substantial discretion during the investigative process, thereby increasing the risk that criminal complaints submitted by politically or economically influential actors will receive preferential treatment. Standardized guidelines would therefore strengthen legal certainty while promoting consistency and proportionality in the enforcement of insult offenses.

A second policy priority concerns the rigorous implementation of the *ultima ratio* principle, whereby criminal law functions solely as the final mechanism for resolving legal disputes. This principle is reflected in the National Criminal Code’s broader orientation toward limiting the overuse of penal sanctions. Accordingly, the receipt of a criminal complaint alleging defamation should not automatically trigger a full criminal investigation or the application of coercive measures such as arrest or detention. Instead, law enforcement authorities should initially undertake a preliminary legal assessment to determine whether the disputed expression satisfies the constituent elements of the offense and whether it constitutes constitutionally protected criticism made in the public interest. Such an approach would better align criminal procedure with the principles of proportionality, necessity, and protection of fundamental rights.

Closely related to the *ultima ratio* principle is the institutionalization of restorative justice as a mandatory procedural stage in appropriate defamation cases. Rather than treating restorative justice merely as a discretionary alternative, investigators should be required to facilitate mediation before a case proceeds to formal prosecution. In many disputes arising from digital communication, the underlying objective is not punitive retribution but restoration of reputation through clarification, correction of inaccurate information, or public apology. Restorative mechanisms are therefore capable of achieving substantive justice while avoiding

⁵⁵ Rahmat Fadli, Mohd Din, and Mujibussalim Mujibussalim. “Reformulasi Sanksi Pidana Pencemaran Nama Baik Melalui Media Online.” *Kanun Jurnal Ilmu Hukum* 21, no. 2 (2019): 327-338.

⁵⁶ See Asmadi, “Rumusan Delik dan Pemidanaan Bagi Tindak Pidana Pencemaran Nama Baik di Media Sosial.”

the disproportionate consequences associated with criminal punishment, particularly where no significant public harm has resulted.

Additional procedural safeguards are particularly necessary where criminal complaints are submitted by public officials or state administrators. Given the inherent imbalance of power between government officials and ordinary citizens, complaints originating from criticism of governmental policies, public services, budget management, or other matters of public concern should be subjected to enhanced preliminary review before criminal proceedings commence.⁵⁷ Such a screening mechanism should involve multidisciplinary assessment by linguists, criminal law scholars, constitutional law experts, and, where appropriate, digital communication specialists. This process would assist investigators in distinguishing genuine attacks upon personal reputation from criticism that constitutes protected political expression within a democratic society.

Institutional capacity building also constitutes an indispensable component of effective reform. Continuous professional education for police officers, prosecutors, and judges should incorporate contemporary principles of digital rights, constitutional freedoms, and international human rights standards governing freedom of expression.⁵⁸ Rather than approaching cyber-related offenses exclusively through a formalistic or positivist interpretation of criminal statutes, law enforcement officials should evaluate digital expression within its broader constitutional and democratic context. Such training would enhance the ability of legal practitioners to distinguish defamatory conduct from legitimate criticism and reduce the likelihood that criminal law will be employed as an instrument for suppressing dissent.

Within the sphere of public administration, legal reform should be accompanied by institutional transformation in governmental communication practices. Public relations units within government agencies should function primarily as mechanisms for facilitating dialogue, promoting transparency, and responding constructively to public criticism. Accordingly, government institutions should establish Standard Operating Procedures (SOPs) for Communication Crisis Management that prioritize clarification, evidence-based responses, public engagement, and fact-checking before any consideration is given to criminal legal action. The authority of public officials to initiate criminal complaints concerning criticism arising from the performance of public duties should therefore be subject to stricter institutional oversight.

Where disputes concerning reputation cannot be resolved through dialogue or mediation, public policy should increasingly favor civil remedies over criminal sanctions.⁵⁹ Defamation involving reputational harm may often be addressed more proportionately through civil litigation, including claims for damages or correction of false statements, rather than through imprisonment. Such an approach is consistent with comparative developments in many democratic jurisdictions, where reputational interests are protected through civil liability while criminal sanctions are reserved for exceptional circumstances involving substantial public harm.

⁵⁷ See Edward Aspinall, *The State and Illegality in Indonesia*. (Leiden: Brill, 2011).

⁵⁸ Budiman, Adhigama A. *Mengatur Ulang Kebijakan Pidana di Ruang Siber: Studi Tentang Penerapan UU ITE di Indonesia*. (Jakarta: Institute for Criminal Justice Reform, 2021).

⁵⁹ Silalahi, and Mutiara. "Judicial Review Mahkamah Konstitusi Terhadap Pasal Pencemaran Nama Baik dalam UU ITE: Antara Perlindungan Reputasi dan Kebebasan Berekspresi di Era Digital."

Partial decriminalization of defamation would therefore represent a more balanced reconciliation between the protection of personal reputation and the constitutional guarantee of freedom of expression.

The effectiveness of these reforms further depends upon strengthening independent oversight institutions. The National Commission on Human Rights (Komnas HAM) and the Ombudsman of the Republic of Indonesia should play a more active role in monitoring criminal proceedings involving online expression, particularly where there are indications that criminal complaints have been used to suppress public participation or resemble Strategic Lawsuits Against Public Participation (SLAPP).⁶⁰ Their findings and recommendations should be accorded greater institutional authority within the criminal justice process to ensure that investigations inconsistent with constitutional protections of civil liberties can be reviewed promptly and objectively.

Finally, policy reform must also address the societal dimension through the enhancement of legal literacy and digital ethics.⁶¹ Public education initiatives should emphasize that freedom of expression constitutes a constitutional right that carries corresponding legal and ethical responsibilities. Citizens should therefore be encouraged to engage in evidence-based criticism directed toward governmental policies, institutional performance, and matters of public interest while avoiding personal attacks, discriminatory speech, or unfounded factual allegations that unjustifiably damage individual reputation. Strengthening digital legal literacy is essential for fostering a democratic culture in which vigorous public debate coexists with respect for the rights and dignity of others.

In conclusion, the successful implementation of the National Criminal Code's reformulation of insult offenses requires an integrated policy framework extending beyond legislative amendment. Effective protection against the chilling effect of criminal defamation laws depends upon the simultaneous development of clear law enforcement guidelines, mandatory procedural safeguards grounded in the principles of *ultima ratio* and restorative justice, institutional reform of governmental communication practices, strengthened independent oversight, and enhanced public legal literacy. Only through the coordinated implementation of these complementary measures can the reform achieve its intended objective of protecting constitutional freedoms while ensuring that criminal law functions as a mechanism of justice rather than an instrument for suppressing democratic participation in the digital sphere.

V. CONCLUSION

This study finally concluded that the reformulation of insult and defamation offenses under Law No. 1 of 2023 concerning the National Criminal Code represents a significant normative advancement in Indonesia's criminal law framework. By reclassifying these offenses as absolute complaint offenses and

⁶⁰ Zubaba, and Windari. "Ketidaktepatan Frasa Alasan Pemaaf Pada Ketentuan Pencemaran Nama Baik dalam KUHP Nasional."

⁶¹ Setiyo Utomo, "The Digital Age and Human Rights Protection in Indonesia: Legal Framework, Challenges, and Reform Directions." *Yustisia* 14, no. 2 (2023): 225-241; Annisa Hafizhah, "Navigating Legal Awareness in the Digital Era: Cultivating a Digital Culture in Indonesia." *Mahadi: Indonesia Journal of Law* 3, no1 (2024): 36-41.

strengthening legal safeguards for expressions made in the public interest, the legislature has narrowed the scope for arbitrary criminalization and improved legal certainty. The revised framework also addresses longstanding criticisms of the previous regulatory regime under the Electronic Information and Transactions (ITE) Law by formulating clearer constituent elements of criminal liability and reinforcing the principles of legality, proportionality, and ultima ratio. From a doctrinal perspective, these reforms reposition criminal law as a mechanism for protecting legitimate reputational interests without unduly restricting constitutionally protected freedom of expression.

However, the findings also indicate that the effectiveness of these reforms remains constrained by institutional and structural factors beyond the statutory text. Although the National Criminal Code provides stronger normative safeguards, empirical evidence suggests that asymmetries in political, economic, and institutional power continue to influence the enforcement of insult and defamation provisions. The continued use of criminal complaints by public officials and other influential actors against citizens, journalists, and activists demonstrates that procedural reforms alone cannot eliminate the strategic use of criminal law to suppress criticism of matters of public interest. Consequently, the principal challenge has shifted from deficiencies in legislative drafting to deficiencies in legal implementation and institutional practice.

Accordingly, the study concludes that the reformulation of insult offenses has improved the normative protection of freedom of expression but has not yet ensured its effective realization in the digital sphere. Achieving that objective requires complementary institutional reforms, including clear enforcement guidelines, consistent application of the ultima ratio principle, broader use of restorative justice, strengthened oversight of law enforcement, and the development of a democratic administrative culture that recognizes public criticism as an essential component of accountable governance rather than a threat to state authority. Only through the integration of these legal and institutional measures can the National Criminal Code fulfil its intended function of safeguarding both individual reputation and democratic freedom of expression in Indonesia's digital public sphere.

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The authors declare that generative artificial intelligence (AI) tools were used solely to assist in improving the clarity of language, grammar, and the organization of the manuscript during the writing process. The AI tools also supported preliminary drafting and language refinement under the direct supervision of the authors. All substantive intellectual contributions, including the conceptualization of the research, legal analysis, interpretation of data, critical evaluation of the literature, and formulation of arguments and conclusions, were undertaken exclusively by the authors. Every AI-assisted output was carefully reviewed, verified, and substantially revised to ensure its accuracy, originality, and compliance with academic and ethical standards. The authors accept full responsibility for the content of this manuscript, including the accuracy of all citations, interpretations, and conclusions presented.

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