

Policy and Legal Analysis on Electronic Information and Transaction Laws

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ABSTRACT

After the passage of the Information and Electronic Transaction law in Indonesia, there is a policy in the form of certain restrictions on conveying rights and aspirations through social media, of course highlighting the problem of hate speech. The purpose of this research is to add insight and application of the ITE Law in solving various problems ranging from hate speech to hate speech on social media. The method used in conducting research is the research method of Inductive qualitative data analysis techniques. This technique is used because it is considered to be able to support and assist us in facilitating the search for data and facts because this method is based on the data obtained and the ITE Law also requires many respondents so that the results of the research do not favor one party. The results of this study can be a reference whether the ITE Law is in line with the 1945 Constitution as a source of law in force in Indonesia. However, in practice there are still multiple interpretations of articles such as 27, 28 and 29 of the ITE Law. This article seems to be a scary thing for critics who are active on social media, or it can be misused as a tool to silence the truth and a political weapon, because there are still some powerful individuals who use this for personal gain. Our suggestion is that the government can review and revise the articles which still have multiple interpretations so that the possibility of having a negative connotation, and the community's stigma towards UU ITE itself can change.

Keywords: ITE Law, Government, Society, Law

ABSTRAK

Setelah disahkannya undang-undang Informasi dan Transaksi Elektronik di Indonesia, terdapat kebijakan berupa batasan tertentu dalam menyampaikan hak dan aspirasi melalui sosial media, tentu menyorot permasalahan ujaran kebencian. Tujuan dari penelitian ini untuk menambah wawasan dan penerapan UU ITE dalam melakukan penyelesaian terhadap berbagai masalah mulai dari hate speech hingga ujaran kebencian pada social media. Metode yang digunakan dalam melakukan penelitian yaitu metode penelitian teknik analisis data kualitatif Induktif. Teknik ini di pakai karena dinilai dapat menunjang dan membantu kami dalam memudahkan pencarian data dan fakta karena metode ini berdasar pada data yang di peroleh dan UU ITE ini pun membutuhkan banyak responden agar hasil penelitian tidak menjadi keberpihakan pada salah satu pihak. Hasil dari penelitian ini bisa jadi acuan sudahkah UU ITE ini sejalan dengan Undang Undang Dasar 1945 sebagai sumber hukum yang berlaku di Indonesia. Akan tetapi dalam penerapannya masih ada pasal multitafsir seperti 27,28, dan 29 Undang Undang ITE. Pasal ini seperti menjadi hal yang menakutkan bagi Kritikus- kritikus yang aktif di sosial media, atau bisa disalah gunakan sebagai alat untuk membungkam kebenaran dan senjata politik, dikarenakan masih ada beberapa oknum yang memiliki kuasa yang memanfaatkan hal tersebut untuk kepentingan pribadi. Saran dari kami agar pemerintah dapat mengkaji dan merevisi ulang pasal-pasal yang masih multi tafsir agar kemungkinan yang berkonotasi negative, dan stigma masyarakat terhadap UU ITE sendiri dapat berubah.

Kata Kunci: UU ITE, Pemerintah, Masyarakat, Hukum

INTRODUCTION

There are no restrictions on the use of the ITE Law on the use of social media, because it often happens that people abuse it and are not careful. So that cases are increasingly rampant in society, but

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people forget that social media is not a place to express privacy, anger, disappointment, and hate speech that can be seen by the public. Everyone does have freedom of opinion and expression, but there must be limits on its use. And this limitation, if there is a criminal threat in the event of a violation of the prohibition on defaming another person, must be dealt with strictly in law. In the Criminal Code CHAPTER XVI there are insults containing verbal and written defamation, insults to officials, slander, false suspicion, and defamation of dead people which have been regulated in Article 27 paragraph 3 with criminal threats regulated in Article 45 paragraph 3 Post Amendments to the ITE Law. So that various opinions arise regarding each element of the prohibited act in that article. Meanwhile, referring to Article 310 paragraph (3) of the Criminal Code which stipulates that defamation is not punishable if it is done in the public interest or because one is forced to defend oneself. The emergence of various controversies, at first the defamation regulated in the ITE Law raised problems. Recorded by Safenet Voice (Southeast Asia Freedom of Expression Network), as a movement promoting freedom of speech in Southeast Asia, from 2008 to 2016 there were 179 cases related to the ITE Law. The articles that are often used, especially articles 27 and 28. Quoted by CNN Indonesia, as many as 79.3 percent of ITE cases use article 27 paragraph 3 regarding defamation (Wibowo, 2018). Because in this law there is no explanation regarding propositions, insults/defamation in Article 27 paragraph 3. It is explained that the scope of these propositions is counter-productive in determining the scope of norms (Samudra, 2020).

In another article, we identified an act of contempt for body shaming on social media which is widely discussed. Whether it's intentional or not, some people openly body shame as a joke or body shaming someone. This activity can have detrimental consequences, especially by abusing, commenting on other people's actual appearance, either directly or indirectly and can interfere with a person's psychological health. This can be accounted for and currently exists in the laws and guidelines described in Article 310 of the Criminal Code against perpetrators of body shaming verbally with a prison sentence of 2 years, whereas if the perpetrators of body shaming are shown directly to the defendant by expressing it in the media, can be threatened with Article 311 of the Criminal Code with a sentence of 4 years in prison. For example, criminological activities originating from one's own family which are carried out from a young age or children and grandchildren who develop bad character. Furthermore, when viewed from the research of psychologists who are formed from the life of the environment, so that this turns into something normal, even though it can be disturbing, bring down a person's mentality, and cause embarrassment for oneself (Gunawan et al., n.d.). Another example, as in game media that is loved by young people, especially women, is online games which usually broadcast the game in live streaming on platforms that support such as YouTube and Facebook. However, on the other hand, live streaming has a negative impact, one of which is bullying behavior in the comments column aimed at these gamers. Verbal bullying is a way for someone to intimidate with words, both written and spoken, aimed at the victim. There are 4 categories of bullying behavior: verbal, namely spreading negative names, spreading photos, threatening physical safety, demeaning opinions (Hariyadi et al., 2020).

RESEARCH METHOD

Digital politics that is currently being faced has a lot of problems that occur, the decline in the level of public participation in politics greatly affects the democratic process itself. One of the contributing factors is freedom of opinion on social media which is restricted by the ITE Law. Using qualitative research with a legal analysis approach. This research seeks to understand the ITE Law and how it is implemented in Indonesia. This study uses a questionnaire to look at public perceptions of the ITE Law policy and how far the public understands the ITE Law. the distribution of sources can be seen from table 1.

Tabel 1. Koresponden Berdasarkan Asal Daerah

Data Responden Berdasarkan Asal Daerah		
Daerah	Jumlah	Presentase
Bandung	9	15,2%
Bekasi	2	2,2%
Bogor	7	4,3%
Cilacap	4	8,7%
Cinunuk	1	2,1%
Depok	1	2,1%
Garut	1	2,2%
Jakarta	4	4,3%
Jampangkulon	2	4,3%
Sukabumi	9	15,2%
Majalengka	1	2,1%
Pangandaran	1	2,1%
Rancaekek	1	2,1%
Sumedang	1	2,1%
Surabaya	1	2,1%
Tangerang	1	2,2%
Tasikmalaya	1	2,1%
Ciamis	1	2,1%
Puttusibau	1	2,1%
Cibinong	1	2,2%
Total	50	79,7%

RESULTS AND DISCUSSION

The Impact of the ITE Law on Society, and Views on How Understanding the Community is on the Substance of the ITE Law

The presence of the ITE Law puts stress on the public in providing analysis and contributions to the government because there is no guaranteed opportunity for articulation in researching the government through social media. From one side, the presence of this social media can benefit from local government assistance. All levels of society can access online media to communicate their thoughts, one of which is by stating a point of view as government analysis. Every individual has the opportunity to make an assessment, which is a basic freedom that is inherent in every person as mandated in Article 23 paragraph (2) of Law Number 39 of 1999 concerning Human Rights. With a valid premise in terms of opportunities for articulation, the community thinks that they can express their opinions on their reflections and thoughts to the government, one of which is by reprimanding the government. However, in practical terms, many problems arise related to the transmission of analysis by the general public to the government through the media. In this situation by implication it offers an opportunity for the general public to have an assessment, but again it is not at all harmful to the public on the grounds that there are rules in The ITE Law is seen as following and limiting opportunities for articulation on social media. Not a few people were charged because they were deemed to have stigmatized and compromised the ITE Law. This community group considers that the ITE Law is very prohibitive when the public needs the government through the media by reaping criticism. The community feels that the ITE Law still contains elastic articles that can ensnare the regions at any time. (Rahmawati, N., Muslichatun, M., & Marizal, M).

The advancement of online media innovation has mushroomed and developed in regular daily life and has adapted the way of life and even attitudes. Crimes in cyberspace that have so far been committed

because people are not able to use social media wisely, both by children, as well as parents including defamation, hate speech, spreading fake news. Deviant behavior using information technology is also widely practiced by the community and even leads to criminal acts which causes unwise social media users to be dragged into criminal sanctions. The negative impact of using the internet is enough to grab the attention of the public, both domestically and abroad. This indicates that this kind of behavior is quite dangerous for the wider community. (Pujilestari, Y., Santoso, B., Haryanti, A., Setiawati, S., & Khoiri, M.)

Occasional socialization of the Electronic Information and Transactions Law to the general public is carried out. Whereas the existence of the law can restrain someone who ignores it. Even the threat of detention can be for six years, or a fine of 1 billion. Based on the results of a survey of online media users, most are the age of students and university students who use them, so it is necessary to approach young people who are more familiar with the internet. This requires an understanding of the applicable ITE law so that in using online media in accordance with the instrument positive law. In social networking can be seen in three forms of effects, namely cognitive, affective, and behavioral effects. It has been explained previously that cognitive effects are effects that create or eliminate ambiguity, attitude formation, agenda setting, expansion of people's belief systems, and affirmation/explanation of values. Several aspects of cognitive effects seen from social network users, include sources of information, responses to levels of understanding on the ITE Law, responses to the level of understanding of the forms of violations of the ITE Law, responses to the level of understanding of language forms containing content violations of the ITE Law, responses to the level of understanding of sanctions for violations of the ITE Law. On average, the level of student understanding of the ITE Law is 3.14 with good category. Therefore, to increase students' understanding of the contents of the ITE Law, there is a need for more intensive efforts to socialize the ITE Law to the public through various other media, such as print media, radio broadcasting, counseling and so on (Sugiarto, S., & Suhendra, R.).

Cases Ensnared by the ITE Law, as well as Views on Article 27 paragraph 3 of the ITE Law

Several examples of criminal acts of hate speech committed by children on social media according to the types mentioned above are included in the category of community deliberations, because remembering hate speech on social media can be entangled in "article 28 of the Informatics and Electronic Transactions Law Number 19 of 2016 amendments to Law Number 11 of 2008 concerning Information & Electronic Transactions with a maximum penalty of 6 (six) years. Everyone who deliberately and without rights disseminates information aimed at causing hatred or hostility towards certain individuals and/or community groups based on ethnicity, religion, race and inter-group (SARA) as referred to in Article 28 paragraph (2) shall be punished with criminal maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah)." In cases of humiliation by the child himself, the investigator also understands that the child is still weak and does not understand the results of his actions. It's extraordinary if the person who hates the insult is an adult or student who already understands and understands what he means. Then, at that time the meeting also expressed their opinion so that they could hear the wishes of the victims for an agreement to be reached. Cybercrime crimes that have been rife lately in Indonesia, most of the perpetrators have not been revealed. This is because investigators have difficulty in uncovering cyber crime cases. In the Criminal Code CHAPTER XVI there are insults containing verbal and written defamation, insults to officials, slander, false suspicion, and defamation of dead people which have been regulated in Article 27 paragraph 3 with criminal threats regulated in Article 45 paragraph 3 Post Amendments to the ITE Law. So that various opinions arise regarding each element of

the prohibited act in that article. Meanwhile, referring to Article 310 paragraph (3) of the Criminal Code which stipulates that defamation is not punishable if it is done in the public interest or because one is forced to defend oneself. The emergence of various controversies, at first the defamation regulated in the ITE Law raised problems. It is explained in Article 310 of the Criminal Code against verbal body shaming perpetrators with a prison sentence of 2 years, whereas if the perpetrators of body shaming are shown directly to victims in a narrative manner on social media they are subject to Article 311 of the Criminal Code with a sentence of 4 years in prison. For example, such as criminological acts originating from one's own family that are carried out since childhood or heredity that forms a bad personality. And when viewed from a psychologist who is formed from the environment, until this humiliation becomes commonplace even though it can interfere, bring down a person's mentality, and cause embarrassment for oneself. (Gunawan et al., n.d.).

Several other cases, such as in game media that are much loved by young people, especially women, namely online games which usually broadcast the game in live streaming on supporting platforms such as YouTube and Facebook. However, on the other hand, live streaming has a negative impact, one of which is bullying behavior in the comments column aimed at these gamers. Verbal bullying is a way for someone to intimidate with words, both written and spoken, aimed at the victim. There are 4 categories of bullying behavior: verbal, namely spreading negative names, spreading photos, threatening physical safety, demeaning opinions. The perpetrators of bullying themselves can be charged by law based on the 2008 ITE Law which is listed in CHAPTER VII acts that are prohibited Article 27 paragraphs 1-4. From the results of the discussion in CHAPTER IV it can be concluded that the 2008 ITE Law Article 27 paragraph 3 discusses insult and defamation with a percentage of 80%, Article 27 paragraph 1 of the ITE Law with a percentage of 20%, Article 27 of the ITE Law Article 27 paragraphs 2 and 4 found no connection with the words found. There are major issues which is very important in online media, especially insulting SARA, namely between people or groups that depend on nationality, religion, race, and customs. This led to a local debate. In this article, we distinguish that unrestricted articulation opportunity and decide that having a barrier effect makes online media extremely defenseless against indirect correspondence, so that it can provide criminal harm to individuals who knowingly carry out movements through web-based media that can't go without serious consequences. Limitations on opportunities for articulation through online media are contained in Article 28 paragraph (2) of the ITE Law which is one of the guidelines for limiting follow-up against the law through web-based media which is identified with the discourse of insulting components of nationality, race, religion, customs. Examples of insults, in the event that someone creates data through online media that contains incitement to a particular nationality/religion that aims to encourage individuals to hate or rebel at certain gatherings. The hypotheses that are identified with the issue of inter-terms in the ITE Law are the criminal law investigation hypothesis, the cybercrime hypothesis, the criminal discourse hypothesis on insulting SARA, and the Constitutional Court's choice hypothesis. (Hariyadi et al., 2020)

Society's View of the ITE Law on Its Implementation by the Government

The ITE Law has been properly enforced by the government (Rahmawati et al., 2021). Many say that it has not been fully maximized because there are still gaps that can be exploited by unscrupulous individuals to mislead the policy so that there are still things that need to be clarified so that multiple interpretations do not occur and implementation is still not felt among the public and some say yes, because of course the government always tries its best to citizens so that the security and peace of a

country can be achieved, implementing this regulation is correct, it's just that it is often misdirected and there are still many people who abuse the ITE Law. People believe that in the ITE Law there are still elastic articles that can trap regions at all times. There are still many who are stressed about reprimanding the government through online media considering they feel disadvantaged by the ITE Law. This concern raises the advantages and disadvantages of various meetings when the government requires a more dynamic public in providing information and analysis to the public. The articles in the ITE Law are considered not satisfactory enough to guarantee the opportunity for public articulation in criticizing the government through online media. Analysis of the government through web-based media, and there is a lot of recent information about the government that needs to be reprimanded by the public. The community requests that the regions are more dynamic in offering analysis to the government to improve implementation and improve public administration to the regions. However, this statement caused debate among the different meetings. This is because there are several guidelines that are considered to limit the wider community in providing information and analysis, especially Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Data and Electronic Exchange (UU ITE). The ITE Law makes people feel stressed if they need to provide information and analysis to the government. Furthermore, the ITE Law is considered to have not guaranteed opportunities for public articulation in admonishing the government through web-based media. Because in the ITE Law there are still elastic articles that give rise to different understandings from different associations. That is the relationship between the regions in observing government policies and the ITE Law. (Rahmawati, N., Muslichatun, M., & Marizal, M)

The ones with the most potential to become rubber articles are Article 27 paragraph 1 concerning immorality, Article 27 paragraph 3 concerning pollution, and Article 28 paragraph 2 concerning insults. These articles are considered to limit the general public in providing information and analysis to public authorities (Rahmawati & Taduri, 2021). The ITE Law is considered by some to be used to ensnare individuals who have criticized the government. Community groups asked the government to amend the ITE Law. Thus, it is important to review the ITE Law. The aim is for the general public to get insurance guarantees and be freed from criminal authorization when providing information and analysis to the government so that it is nothing but a popularity-based country.

Views on the Presence of the ITE Law, and its Impact on Digital Democracy

The positive impact of the ITE Law is that we can know the limits on the use of language when commenting, know the limits of privacy in social media, and anticipate misuse of social media circulating in society so it doesn't cause hoaxes (Hadi, 2022). The negative impact is that most issues are of low quality, making it difficult for us to filter which ones are good and which ones are bad, which mostly makes it difficult for us to innovate and argue or provide criticism on social media (Sinaga et al., 2019). However, with the existence of the ITE Law, sometimes the law that applies is not inhabited by some persons who should be applied as they should (Lubis & Maulana, 2010). Many individuals violate this rule but the law that is enforced is not appropriate so that many parties feel disadvantaged. The presence of the ITE Law is a kind of guideline created to protect us from the dangers of mistakes in digital use. In the classification of digital crimes, there are articles related to illicit drug trafficking which are used to control the spread of content in digital public spaces. For example articles about blasphemy, online dangers and criticism (slander). Through the ITE Law, the government seeks to control the substance that appears in the public space when political decisions appear where public political investment increases. Therefore, find out more about the types of legal approval that are identified with criminal demonstrations of the ITE Law (Lubis & Maulana, 2010) . The use of the web has brought about other types of majority rule, particularly

advanced vote-based systems. Majority rule systems are various attempts to exercise people's rule without time, space and conditions, utilizing data innovation as an extension, not a substitute for customary political practices. This type of advanced training utilizes computerized media to deliver on the web and disconnected (Sinaga et al., 2019). The qualifier between disconnected online should be added for the reason that political action does not only happen on the web but must also have an impact on reality. Along with the advancement of innovation, other media called online media have emerged, such as Facebook, Twitter, YouTube and websites. The simplicity of communicating through intelligent web-based media spotlights is utilized by citizens to take part in governance issues such as shared reflections, offering thoughts and analysis as a form of observing sustainable systems and using them as anything but mission tools. in 2017. The use of online media is enormous. Starting from the development of Ahok's volunteers until this development found a way to collect 1,000,000 KTPs for Ahok through the development of his web-based media (Irsyad, 2022).

The use of social media as a tool for political missions is directed by Law no. 8 of 2015 concerning the election of governors, deputy governors, regents and deputy regents, as well as mayors (UU Pilkada), where regulation of the use of online media must be a type of qualified public political training (Article 63 article 1). Using online media as a da'wah tool In this law, it is prohibited, among other things, to insult individuals, religions, identities, races, soliciting candidates for deputy chairmen, possible officials, candidates for city hall chairpersons, as well as ideological groups, cajoling, harassing, defaming, pitting potentially local ideological groups, persons or gatherings, etc. The guide alludes to the Data and Electronic Exchange Act (UU ITE) 2008. The presence of the ITE Law is a type of guideline created to protect web practices from the dangers of digital errors. In the classification of digital crimes, there are prohibited articles that are used to direct the spread of issues in digital public spaces. For example, news about impoliteness, online dangers, and slander (criticism). Through the ITE Law, the government seeks to control prohibited cases that arise in virtual public spaces when political decisions emerge where public political interests increase. Then, does state control in the momentum of a computerized popular government environment affect individual government in a majority rule system, especially in expressing opinions? during the election/political competition season. So this research intends to find out how the types of state control and their influence on self-government, become an advanced Indonesian government society. (Ikramina, T.Z)

CONCLUSION

Clearly, the ITE Law has the intention to properly regulate transactions in the world of electronic information. From the point of view of the law itself, this rule is repressive or can be called *dwingen recht*. However, the facts say that 50 percent of the ITE Law regulations are coercive in regulating several things. And it becomes an anomaly because of what the law wants to aspire to but there is no consistency, because as stated in article 27, article 28 of the ITE Law. And several articles that we think should be criticized because there are allegedly many loopholes for individuals to take advantage of, as article 310 of the Criminal Code in practice is often used by several persons who have power and make other parties who want to reveal a truth but are hampered by defamation rules. And this enters into the realm of human rights where in this democratic country upholds the principle of freedom of opinion and the obligation for citizens to protect rights including the right to opinion for every citizen *Woerjaningsih, 'Problematic Implementation of Human Rights Before the Criminal Law' (1996) XI Yuridika. then the provisions and limitations in this UU ite need to be clarified. Remembering the colonialism which had something to do with *haatzaai artien* or enmity in the criminal law at that time, the Indonesian people opposed the articles

of hatred. In particular, Articles 27,28,29 of the ITE Law are considered to have multiple interpretations and need to be corrected and revised because they do not meet the requirements for the legality principle, namely *nullum crimen*.

Several points, that social media activists feel that their freedom of opinion is limited or even silenced as it is not a democratic country where the highest power is in the hands of the people. Most people already know the substance of the ITE Law and the impact of the ITE Law is very influential on people's behavior patterns. Several articles of the ITE Law have claimed many victims, judging by the many cases that have been caught since the ITE Law came into force. According to the respondents, the ITE Law had more negative impacts than positive impacts.

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