



Legal Certainty In Applying Article 27(3) ITE Law On Defamation Cases

Kepastian Hukum Dalam Penerapan Pasal 27(3) UU ITE Tentang Kasus Pencemaran Nama Baik

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ABSTRAK

Penelitian ini mengkaji penerapan Pasal 27 ayat (3) Undang-Undang ITE di Indonesia, dengan fokus pada kesesuaiannya dengan prinsip kepastian hukum serta implikasinya terhadap kebebasan berekspresi. Pesatnya perkembangan komunikasi digital telah memperkuat wacana publik, namun juga meningkatkan risiko kriminalisasi terhadap ekspresi daring. Penelitian ini membahas tiga isu utama: sejauh mana Pasal 27 ayat (3) mencerminkan kepastian hukum, bagaimana praktik penafsiran dan penegakan hukum memengaruhi hak-hak konstitusional, serta reformasi apa yang diperlukan untuk menyelaraskan ketentuan tersebut dengan prinsip-prinsip demokrasi. Penelitian ini mengadopsi pendekatan hukum normatif dengan analisis kualitatif, menggunakan metode yuridis, konseptual, dan komparatif berdasarkan undang-undang, doktrin hukum, dan putusan pengadilan. Temuan menunjukkan bahwa ketentuan tersebut tidak memiliki definisi yang jelas mengenai unsur-unsur pencemaran nama baik, yang mengakibatkan interpretasi yang luas, penegakan hukum yang tidak konsisten, dan pergeseran ke arah penggunaan represif terhadap kritik publik. Kondisi ini menimbulkan ketidakpastian hukum dan efek mendinginkan terhadap kebebasan berekspresi. Studi ini menyimpulkan bahwa Pasal 27 ayat (3) gagal memenuhi standar *lex certa* dan merusak prinsip legalitas. Studi ini merekomendasikan reformasi hukum komprehensif melalui klarifikasi normatif, standarisasi yudisial, penyaringan prosedural, dan dekriminialisasi parsial untuk memastikan proporsionalitas dan melindungi hak-hak konstitusional di era digital.

ABSTRACT

*This study examines the application of Article 27(3) of the ITE Law in Indonesia, focusing on its compatibility with the principle of legal certainty and its implications for freedom of expression. The rapid expansion of digital communication has intensified public discourse but also increased the risk of criminalizing online expression. This study addresses three main issues: the extent to which Article 27(3) reflects legal certainty, how interpretative and enforcement practices affect constitutional rights, and what reforms are required to align the provision with democratic principles. The research adopts a normative legal approach with qualitative analysis, utilizing statutory, conceptual, and comparative methods based on legislation, legal doctrine, and court decisions. The findings reveal that the provision lacks precise definitions of defamation elements, leading to broad interpretation, inconsistent enforcement, and a shift toward repressive use against public criticism. These conditions generate legal uncertainty and a chilling effect on expression. The study concludes that Article 27(3) fails to meet the standards of *lex certa* and undermines the principle of legality. It recommends comprehensive legal reform through normative clarification, judicial standardization, procedural filtering, and partial decriminalization to ensure proportionality and protect constitutional rights in the digital era.*

INTRODUCTION

The development of digital communication has significantly transformed the structure and dynamics of public discourse, particularly in the context of a democratic society such as Indonesia. Social media is a digital communication system that has fundamentally transformed the way individuals and organizations interact, build relationships, and shape public perception. In this context, social media no longer serves merely as a means of distributing information, but as an interactive and participatory platform that connects users in real time and in multiple directions (Krisprimandoyo et al., 2024).

Digitalization has not only accelerated the distribution of information but also expanded public participation in the exercise of freedom of expression. Individuals now have the capacity to produce and disseminate information directly without going through traditional control mechanisms. However, this expansion of the space for expression also gives rise to complex legal consequences, particularly regarding defamation offenses in the digital sphere. Within the national legal framework, Article 27(3) of the Electronic Information and Transactions Law serves as the primary instrument regulating this phenomenon; however, its implementation reveals serious issues, as it is often perceived as creating a space for the criminalization of expressions that should be protected within a democratic system (Butt &

Lindsey, 2023; Setiawan & Lim, 2022). For example, research by Irwansyah et al. (2023) explains that social media platforms such as Instagram allow individuals to produce and disseminate information directly without any formal verification process. This situation means that information containing accusations, negative opinions, or narratives that damage a person's reputation can easily spread widely and go viral.

Empirical findings indicate a tendency to use defamation norms to target critical speech, including criticism of public officials and state institutions. This phenomenon suggests an expansion of interpretation by law enforcement authorities regarding the elements of the offense without a consistent doctrinal foundation. Consequently, the public faces legal uncertainty because they cannot clearly distinguish between lawful expression and that which may lead to criminal consequences. This situation aligns with findings in international studies showing that regulations on digital expression are often used repressively when legal norms are not clearly formulated and are open to multiple interpretations (Keller, 2022a; McGonagle, 2021a).

Within a theoretical framework, this issue can be analyzed through the theory of legal certainty, which emphasizes the importance of clarity in legal norms, consistency in application, and the predictability of legal consequences. This theory, as developed within the tradition of legal positivism and enriched by contemporary approaches, demands that every norm be formulated precisely and made publicly accessible to avoid ambiguity in interpretation (Taekema, 2021; Waldron, 2022). When a legal norm, such as Article 27(3), fails to provide a clear definition of the elements of defamation, the scope for interpretation becomes too broad and risks leading to inconsistent application. This creates a tension between the need for legal certainty and flexibility in responding to social dynamics, as also seen in international judicial practice such as the European Court of Human Rights, which seeks to balance these two interests through evolutionary interpretation (Dzehtsiarou, 2022; Letsas, 2021).

From a criminal law perspective, this issue is directly related to the principle of legality, which asserts that no act may be punished without a clear legal basis established in advance. This principle serves as a safeguard against potential abuse of state power and ensures legal predictability for individuals (Dubber, 2022; Hörnle, 2023). The vagueness of the wording of the provision in Article 27(3) indicates a deviation from the principle of *lex certa*, which requires that criminal law be formulated clearly and unambiguously. Under such circumstances, the principle of *the rule of leniency* should serve as a guide in interpreting unclear provisions to protect the rights of the accused; however, in practice, it has not been consistently applied (Ashworth, 2021; Simester & Sullivan, 2022).

Furthermore, constitutional analysis indicates that freedom of expression is a fundamental right guaranteed within the Indonesian legal system through the 1945 Constitution and reinforced by international standards under the ICCPR. This freedom serves as a primary instrument in maintaining government accountability and ensuring public participation in the democratic process (Fernando, 2022; Gunatilleke, 2021). However, restrictions on freedom of expression must comply with the principles of legality, necessity, and proportionality to avoid excessive restrictions (Hammar, 2022). When legal norms are not clearly defined, such restrictions risk exceeding lawful limits and leading to repressive practices.

Thus, the issues that arise are not only related to the phenomenon of over-criminalization but also reflect a mismatch between the normative structure of regulations and the foundational principles of the rule of law, particularly the principles of legal certainty and legality. This mismatch has implications for the weakening of constitutional rights protection and a decline in public trust in legal institutions. Therefore, this study focuses on a principle-based doctrinal analysis to evaluate whether Article 27(3) of the Electronic Information and Transactions Law meets the standards of legal certainty within the framework of modern criminal and constitutional law, while also examining its implications for the protection of freedom of expression in the digital age.

The application of Article 27(3) reveals ambiguity at three levels. First, the formulation of the provision does not provide a clear legal definition of key elements such as "defamation" and "insult" in a digital context. Second, interpretive practices vary across cases, resulting in inconsistent rulings. Third, law enforcement mechanisms tend to prioritize criminal sanctions without proportionally considering civil alternatives or the protection of freedom of expression.

These conditions create systemic legal uncertainty. Individuals face uncertainty regarding legal consequences. Law enforcement officials possess broad discretion without adequate doctrinal constraints. Legal reasoning in court rulings often lacks coherence across cases.

Based on these conditions, this study formulates the following questions: To what extent does Article 27(3) reflect the principle of legal certainty within the Indonesian legal system? How do practices of legal interpretation and enforcement affect the protection of freedom of expression guaranteed by the constitution? What normative reforms are needed to align regulations on defamation in the digital space with the principles of legal certainty and democratic rights?



This study aims to produce a systematic doctrinal evaluation of Article 27(3) within the framework of legal certainty. The objectives of this study include assessing the compatibility of Article 27(3) with the principle of legal certainty, particularly regarding the clarity and predictability of legal norms. Critically analyzing the formulation and interpretation of defamation provisions in the context of digital communication. Examining the consistency of court rulings and law enforcement practices in the application of Article 27(3). Formulating normative and legislative recommendations to enhance legal certainty and the protection of constitutional rights.

This study employs a doctrinal approach in legal analysis. This approach integrates several key concepts and principles.

Legal certainty serves as the primary analytical framework. This principle requires that laws be formulated clearly, remain stable, and be applied consistently. It is closely linked to the *lex certa* doctrine, which mandates that criminal norms must be formulated unequivocally and without ambiguity.

The concept of defamation is analyzed within the framework of criminal law and civil liability. In the digital context, defamation has specific characteristics, such as the speed of information dissemination, a wide audience reach, and the permanent nature of digital content.

Freedom of expression serves as a constitutional check. The state is obligated to restrict this freedom only under necessary and proportionate conditions. The interaction between defamation laws and freedom of expression creates a normative tension that must be resolved through coherent legal standards.

Principles of criminal law, including the principles of legality, proportionality, and *ultimum remedium*, are used as additional evaluation tools. Criminal sanctions should be used as a last resort. The application of Article 27(3) indicates a tendency to deviate from this principle.

This framework enables a systematic evaluation of whether the structure and application of Article 27(3) meet the standards of a rational and predictable legal system.

This research fills a gap in the existing literature. Previous studies have largely highlighted issues of over-criminalization and human rights violations. These studies have not yet deeply analyzed the issue through a doctrinal approach based on the principle of legal certainty. This research shifts the focus from policy criticism to a structural evaluation of legal norms.

The contributions of this study encompass three main aspects. First, this study offers a detailed normative critique of Article 27(3), highlighting ambiguities in the formulation and interpretation of the provision. This analysis specifically identifies the parts that do not meet the principle of *lex certa*.

Second, this study explains how the lack of clarity in legal norms leads to inconsistencies in law enforcement and the potential for judicial overreach. This explanation links abstract legal principles with empirical practice. Third, this study offers a model for doctrinal reform. This model clarifies the distinction between criminal defamation and lawful expression. Additionally, this study proposes legislative alternatives, including revisions to legal definitions and the possibility of decriminalization.

This study contributes to the discourse on criminal law reform and the protection of digital rights in Indonesia. The principle-based approach used can serve as a foundation for future legislative development and judicial interpretation.

THEORETICAL BASIS

Theory of Legal Certainty (Hans Kelsen, Gustav Radbruch)

The theory of legal certainty is positioned as a fundamental principle in the philosophy of law that emphasizes the clarity, predictability, and stability of norms, so that individuals are able to plan their actions rationally without the risk of arbitrary intervention. Contemporary methodological approaches assert that legal certainty requires precise formulation of norms, adequate public accessibility, and consistent application to avoid ambiguity in the interpretation and enforcement of the law (Taekema, 2021; Waldron, 2022). Within this framework, legal certainty serves as a cornerstone of both national and international legal systems, aligning with Gustav Radbruch's conception of it as an essential value alongside justice and utility.

Legal certainty encompasses the dimensions of clarity of norms, stability through limitations on retroactive application, and the predictability of rulings that allow legal actors to anticipate the consequences of their actions. Contemporary studies indicate that supranational courts play a significant role in maintaining a balance between certainty and adaptability through dynamic interpretation, as seen in the practice of the European Court of Human Rights (Dzehtsiarou, 2022; Letsas, 2021).

Theoretically, the concept of legal certainty is deeply rooted in legal positivism, which emphasizes the supremacy of written norms and hierarchical structures, particularly in the thought of Hans Kelsen through his theory of pure law. However, recent literature indicates a shift toward a post-positivist approach that integrates moral and ethical dimensions into legal analysis, thereby yielding a more

contextual understanding of legal certainty (Dyzenhaus, 2022b; Priel, 2023). In practice, the tension between certainty and flexibility often arises, particularly in complex situations where general principles are more adaptive than rigid rules.

At the implementation level, legal certainty contributes to increased public trust, reduced disputes, and the strengthening of the rule of law through individuals' ability to anticipate legal consequences more accurately. However, recent research indicates that social dynamics, technological advancements, and regulatory complexity cause the concept of legal certainty to continuously evolve, making its application dynamic rather than entirely static (Cane, 2022; Krygier, 2021).

Criminal Law Theory

The principle of legality, known by the adage "*nullum crimen, nulla poena sine lege*," is a fundamental principle in criminal law that asserts that punishment may only be imposed if an act has been clearly defined as a criminal offense in the applicable law prior to the commission of the act. Recent literature emphasizes that this principle serves as a cornerstone in ensuring legal certainty, predictability, and the protection of individuals from arbitrary state repression (Dubber, 2022; Hörnle, 2023).

Historically, the principle of legality emerged in the 18th century through the writings of Cesare Beccaria in **On Crimes and Punishments**, which criticized arbitrary judicial practices and absolute power. Contemporary studies indicate that this concept drove a fundamental shift from judicial dominance in defining crimes toward the supremacy of the law as the primary source of criminal law, and it became the foundation for modern constitutionalism in various countries (Binder, 2021; Fletcher, 2022).

In its normative structure, the principle of legality encompasses the prohibition of criminalization without a prior legal basis (*nullum crimen sine lege*), the prohibition of punishment without a legal basis (*nulla poena sine lege*), the rejection of retroactive application of the law, and the requirement for clear and unambiguous formulation of legal norms. Recent studies emphasize the importance of *the rule of lenity* in common law systems as a protective mechanism for defendants in cases of legal ambiguity, thereby preventing excessive interpretive expansion by law enforcement officials (Ashworth, 2021; Simester & Sullivan, 2022).

From a theoretical perspective, the principle of legality serves to strengthen the supremacy of law by prioritizing predictability and limiting the potential for abuse of state power. This principle is closely linked to the fundamental elements of criminal liability, such as *actus reus* and *mens rea*, and restricts judicial discretion in shaping criminal norms. Recent literature highlights a tension between the rigidity of the principle of legality and the need for adaptation to social change, particularly in addressing modern crimes such as cybercrime and transnational crime (Duff, 2022; Husak, 2023).

In global practice, the principle of legality has been institutionalized in various national legal systems, including Indonesia through Article 1(1) of the Criminal Code, as well as in various international instruments and tribunals. Recent research indicates that this principle continues to play a crucial role in maintaining a balance between substantive justice and legal certainty, despite facing challenges from increasingly complex legal formulations that are open to multiple interpretations. Therefore, the principle of legality remains the primary foundation for ensuring *due process of law* and strengthening the legitimacy of the legal system in the eyes of the public (Ambos, 2022; Roach, 2021).

Constitutional Theory on Freedom of Expression

Constitutional theory positions freedom of expression as a fundamental element in a democratic system because it enables the formation of an open public discourse space, while simultaneously requiring a balance with broader social interests. Recent literature emphasizes that freedom of expression is an essential human right in maintaining government accountability and public participation, and serves as an instrument of control over state power (Fernando, 2022; Gunatilleke, 2021). In the Indonesian context, this principle is rooted in the post-amendment revisions to the 1945 Constitution and aligns with international standards under the ICCPR, which has been ratified through Law No. 12 of 2005.

Indonesia's constitutional provisions provide comprehensive protection for freedom of expression through Articles 28E and 28F of the 1945 Constitution, which guarantee the right to hold opinions, communicate, and obtain and disseminate information. Recent studies indicate that these guarantees reflect the recognition that freedom of expression is a fundamental right that protects not only the content of ideas but also the medium and means of their expression (Fernando, 2022). However, Article 28J(2) still permits lawful restrictions provided they are prescribed by law and aim to protect interests such as morality, security, and public order.

In the international framework, ICCPR Article 19 guarantees the freedom to hold opinions without interference, as well as the freedom to seek, receive, and impart information through various media and across borders. Recent studies confirm that this right is not absolute, as its restrictions must comply with the principles of legality, necessity, and proportionality to protect the rights of others and safeguard



national security and public order (Gunatilleke, 2021; Hammar, 2022). These principles of restriction also align with Indonesia's constitutional framework.

In jurisprudential practice, courts play a crucial role in maintaining a balance between freedom of expression and state interests. Modern interpretive approaches emphasize the importance of the principle of proportionality to prevent excessive restrictions, while ensuring that regulations are not used as repressive tools against civil liberties. However, contemporary research also highlights challenges in implementation, particularly regarding the tendency of states to use security or public order justifications to broadly restrict expression (Gunatilleke, 2021).

Overall, freedom of expression remains a cornerstone of democratic systems and human rights law, as it supports transparency, public participation, and the accountability of state institutions. Nevertheless, social dynamics and technological advancements demand an adaptive approach to balancing the protection of individual rights with collective interests, ensuring that this principle continues to evolve within contemporary legal practice.

RESEARCH METHODS

This study employs a qualitative approach within a normative legal research framework focused on the analysis of legal norms, principles, and doctrines related to the application of Article 27(3) of the Electronic Information and Transactions Law. The study does not use empirical data or quantitative techniques but examines the relationship between the formulation of legal norms, the principle of legal certainty, and judicial interpretation practices. This approach is relevant because the primary issue lies in the inconsistency between the normative structure of the law and the demands of legal certainty as a fundamental principle in a rule-of-law state. Therefore, this study views law as a normative system that must meet standards of clarity, consistency, and predictability in practice (Smits, 2022; Taekema, 2021).

This study combines several legal approaches to deepen the analysis. The statutory approach is used to examine regulations governing defamation in the digital space, focusing on the ITE Law and its amendments, as well as its relationship with the Criminal Code and constitutional norms regarding freedom of expression. A conceptual approach is used to examine key concepts such as defamation, electronic information, and legal certainty, as well as to assess their alignment with the principle of *lex certa* and the rule of law in criminal law. A comparative approach is used as an additional analytical tool to assess practices in other jurisdictions and international standards in the regulation of digital defamation, particularly regarding proportionality and the clarity of norms (Barak, 2021; McCrudden, 2022).

This study utilizes legal materials structured into three categories. Primary legal materials include authoritative legislation and court decisions, such as the ITE Law, the Criminal Code, as well as decisions of the Constitutional Court and the Supreme Court. Secondary legal materials encompass academic literature, legal doctrine, and scholarly articles that provide a theoretical and analytical framework. Meanwhile, tertiary legal materials include legal dictionaries and encyclopedias to ensure terminological consistency. The selection of legal materials was conducted selectively based on substantive relevance and academic authority, as recommended in the methodology of contemporary normative legal research (Hutchinson, 2022; van Hoecke, 2021).

Data collection was conducted through purposive selection of legal documents without using empirical sampling techniques. This study examines Constitutional Court decisions related to the review of defamation norms as a source of constitutional interpretation, and analyzes district court and Supreme Court decisions to identify patterns of interpretation and inconsistencies in the application of the law. Additionally, the study utilizes policy documents and official statements from state institutions and non-governmental organizations to understand legal enforcement practices in a contextual manner. This approach aligns with the practice of doctrinal legal research, which emphasizes case analysis as the primary source for understanding the dynamics of legal norm application (Dyzenhaus, 2022a; Leiter, 2021).

Data analysis was conducted qualitatively through various methods of legal interpretation. Grammatical interpretation was used to identify textual meanings and potential ambiguities within legal norms. Systematic interpretation was used to assess the consistency of norms within the overall national legal system. Teleological interpretation was used to understand the purpose of the norm's creation and to evaluate the alignment between that purpose and its practical application. Comparative interpretation was used to compare similar norms in other jurisdictions to establish benchmarks for assessing clarity and proportionality. The integration of these methods yields a comprehensive analysis for identifying inconsistencies, evaluating compliance with the principle of legal certainty, and formulating doctrine-based legal reform recommendations (Siems, 2022; Zweigert & Kötz, 2021).

RESULT AND DISCUSSION

Normative Structure of Article 27(3) and Legal Certainty

The results of the analysis indicate that the normative structure of Article 27(3) of the ITE Law does not yet fully meet the standards of legal certainty, particularly in the dimension of *lex certa*. The provision does not provide a clear definition of the elements of “defamatory content” or “defamation”, thereby leaving considerable scope for interpretation. This lack of clarity conflicts with the principle of legal certainty, which demands clarity, predictability, and stability of the norm so that individuals can anticipate the legal consequences of their actions (Taekema, 2021; Waldron, 2022).

From the perspective of criminal law theory, this lack of clarity in the provision also indicates a deviation from the principle of legality, particularly the principle of *nullum crimen sine lege certa*, which requires that the formulation of an offence must be clear and unambiguous (Dubber, 2022; Hörnle, 2023). Thus, normatively, Article 27(3) tends to create legal uncertainty as it does not provide objective parameters for determining the boundary between lawful expression and that which may be criminalised.



Figure 1. Normative and Institutional Strategies to Enhance Legal Certainty in Article 27(3) of the ITE Law

Normative reform must address the ambiguity surrounding the definitions of “defamatory content” and “defamation,” which constitutes the core deficiency of the current provision. Legislators should revise the article by incorporating precise and operational definitions grounded in established legal frameworks. They should draw conceptual guidance from the Criminal Code, particularly Articles 310 and 311, and align the formulation with international standards such as the actual harm test and the requirement of intent. The revised provision must clearly delineate objective elements, including the form of expression, the medium used, and the existence of measurable reputational harm, as well as subjective elements, particularly the presence of *mens rea* in the form of deliberate intent to damage reputation. Such reform would reduce overcriminalization, enhance legal predictability, and ensure consistency with the principle of *nullum crimen sine lege certa*.

Interpretative inconsistency among law enforcement authorities represents a further systemic concern that necessitates institutional intervention. The Supreme Court should issue binding interpretative guidelines through instruments such as a Supreme Court Circular or a Supreme Court Regulation. These guidelines must define clear boundaries between legitimate criticism, opinion, and defamatory conduct, establish criteria for determining actual harm beyond subjective offense, and impose more rigorous evidentiary standards in digital contexts. The Court should also integrate principles derived from Constitutional Court jurisprudence on freedom of expression to ensure constitutional alignment. This approach would reduce disparities in judicial decisions, strengthen the coherence of legal interpretation, and provide greater certainty for judges and law enforcement officials.

The continued reliance on criminal law to resolve reputational disputes reflects a structural misalignment, given that such matters often belong to the private law domain. A policy of limited decriminalization should therefore be implemented by reallocating minor cases to civil litigation mechanisms, particularly tort-based claims, while retaining criminal sanctions for severe cases involving systematic defamation or large-scale disinformation. The legal framework should further reinforce corrective mechanisms such as the right of reply and correction, alongside compensation schemes based



on demonstrable reputational harm. This approach corresponds with global legal trends that discourage the criminalization of expression and mitigates the chilling effect on freedom of speech. As a result, the legal system would operate more proportionally, reduce the burden on criminal justice institutions, and achieve a more balanced protection of constitutional rights.

Empirical Patterns of Law Enforcement

Empirical analysis shows that law enforcement practices regarding Article 27(3) tend to employ a broad interpretive approach. Law enforcement officials often classify various forms of digital expression as defamation without consistent standards. This reinforces the finding that ambiguous norms foster inconsistent and potentially repressive law enforcement practices (Keller, 2022b; McGonagle, 2021b).

Furthermore, there are indications that this provision is used to respond to criticism of public officials or institutions, which should receive greater protection within a democratic system. This suggests a shift in the law's function from an instrument for protecting reputation to a tool for controlling public expression. Consequently, individuals tend to experience a *chilling effect*, self-restraint in expression due to fear of legal consequences.

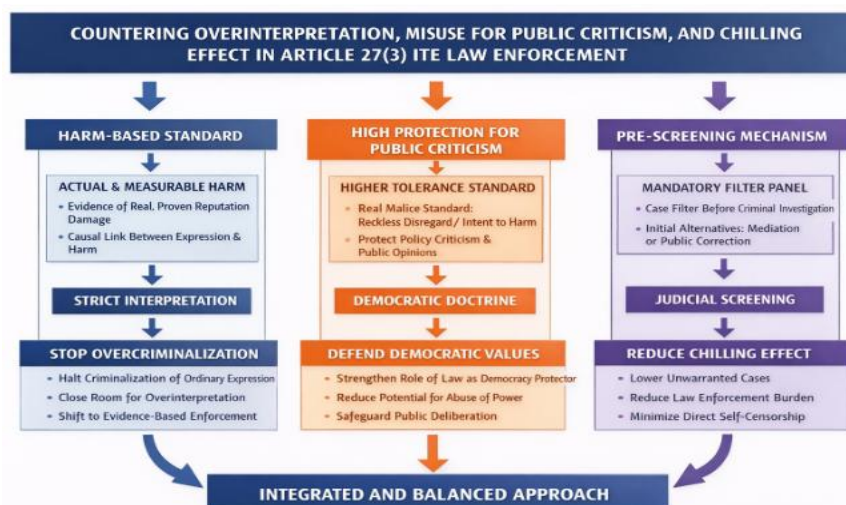


Figure 2. Integrated Legal Strategies to Prevent Overcriminalization and Protect Freedom of Expression under Article 27(3) ITE Law

The primary concern extends beyond normative ambiguity to the expansive manner in which authorities interpret the provision. Law enforcement should adopt a strict harm-based standard that requires the existence of actual and measurable harm as a precondition for criminalization. Authorities should only classify expression as criminal when it produces demonstrable reputational damage and establishes a clear causal relationship between the expression and the harm. This approach should exclude reliance on subjective feelings of offense or the personal perceptions of the alleged victim. The adoption of this standard would prevent the criminalization of ordinary speech, restrict excessive interpretative discretion, and shift enforcement practices toward an evidence-based framework.

The application of the provision to address criticism of public officials reflects a deeper structural issue that undermines democratic principles. Legal doctrine should recognize that public officials must tolerate a higher degree of scrutiny and criticism. Authorities should incorporate the actual malice standard, which requires proof of malicious intent or reckless disregard for the truth, in assessing liability. The legal framework should distinguish between protected forms of expression, such as policy criticism and public opinion, and actionable conduct involving intentional dissemination of false information. Comparative practice across democratic jurisdictions supports enhanced protection for political speech. This doctrinal shift would restore the role of law as a safeguard of democratic values, reduce the risk of power abuse, and preserve an open space for public deliberation.

Procedural deficiencies also arise from the absence of effective filtering mechanisms, as authorities often advance all complaints directly into criminal proceedings. The system should introduce a mandatory pre-screening process through a legal review panel or prosecutorial filter before initiating investigations. This mechanism should require the presence of actual harm, exclude cases involving legitimate public criticism, and confirm the fulfillment of mens rea elements. Authorities should prioritize alternative remedies at the initial stage, including mediation, the right of reply, and public correction. Such procedural reform would reduce the number of cases that lack criminal merit, alleviate the burden on law enforcement institutions, and directly mitigate the chilling effect on freedom of expression.

Normative Reformulation of Article 27(3)

Based on the research findings, a normative reformulation of Article 27(3) is necessary to ensure its consistency with the principle of legal certainty. This reformulation must include a clear definition of the elements of defamation, a distinction between criticism and insult, and objective criteria for assessing reputational harm. Furthermore, harmonization with general principles of criminal law, particularly the principle of legality and the principle of *lex certa* is a crucial step toward reducing the ambiguity of the provision. This reformulation must also account for technological advancements and the characteristics of digital communication to remain relevant within a dynamic social context.

Reform is needed not only at the normative level but also in the interpretive aspect. Courts need to develop interpretive guidelines based on the principles of proportionality and the protection of human rights. These standards must include an evaluation of the context of the expression, the position of the subject being criticized, and the actual impact of the statement in question.

The application of the *rule of lenity* must also be strengthened as a protective mechanism for defendants in cases involving ambiguous norms. In this way, the judicial system can play an active role in reducing legal uncertainty and ensuring a fairer and more consistent application of the law.

An integrative approach is needed to harmonize criminal law, the protection of constitutional rights, and the governance of the digital space. Defamation regulations must be designed not only as repressive instruments but also as mechanisms that support freedom of expression and the quality of democracy. This approach includes strengthening digital literacy, establishing non-criminal dispute resolution mechanisms, and developing regulations that are adaptive to technological dynamics. Thus, legal reform focuses not only on changing norms but also on transforming the legal system as a whole to make it more responsive, fair, and democratic.

CONCLUSION AND SUGGESTION

Conclusion

The analysis confirms that the application of Article 27(3) of the ITE Law fails to meet the fundamental requirements of legal certainty, both at the normative and empirical levels. The provision lacks precise definitions of key elements such as defamation and insult, which creates excessive interpretative space and undermines the principle of *lex certa*. This ambiguity has led to inconsistent law enforcement practices, where authorities frequently adopt broad interpretations that classify diverse forms of digital expression as criminal conduct. Empirical findings further demonstrate that the provision has, in several instances, been used to respond to criticism of public officials, indicating a functional shift from protecting reputation to controlling public expression. This condition generates a chilling effect that discourages individuals from exercising their constitutional right to freedom of expression.

From a doctrinal perspective, these issues reflect a deviation from the principle of legality and weaken the role of criminal law as a predictable and rational system. The absence of clear normative boundaries, consistent interpretative standards, and proportional enforcement mechanisms creates systemic legal uncertainty and risks undermining democratic values and public trust in legal institutions.

Suggestion

Legal reform must prioritize a comprehensive restructuring of Article 27(3) by introducing precise and operational definitions that align with the principle of *lex certa* and established criminal law doctrines. Legislators should incorporate objective and subjective elements of defamation, including measurable reputational harm and demonstrable intent, to ensure clarity and prevent overcriminalization.

Judicial institutions should develop binding interpretative guidelines that standardize the application of the provision. These guidelines must clearly distinguish between protected expression and punishable conduct, apply stricter evidentiary standards, and integrate constitutional principles, particularly the protection of freedom of expression and proportionality.

Law enforcement mechanisms should also be reformed through the implementation of a mandatory pre-screening process before initiating criminal proceedings. This mechanism should filter cases based on the existence of actual harm, the presence of *mens rea*, and the exclusion of legitimate public criticism. Authorities should prioritize alternative dispute resolution methods, such as mediation, the right of reply, and public correction, especially in cases involving minor reputational disputes.

In addition, the legal system should adopt a more balanced regulatory approach by partially shifting defamation disputes toward civil law mechanisms while reserving criminal sanctions for severe and systematic offenses. Complementary measures, including the promotion of digital literacy and the development of adaptive regulatory frameworks, are necessary to ensure that legal reform remains responsive to technological advancements and supports a democratic digital environment.



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