

APPLICATION OF ARTICLE 27 PARAGRAPH (1) OF LAW NUMBER 1 OF 2024 ON ELECTRONIC INFORMATION AND TRANSACTIONS AND COMPARATIVE STUDY WITH MALAYSIA AND TURKEY

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Abstract

Article 27 paragraph (1) of Law Number 1 of 2024 concerning Electronic Information and Transactions remains a subject of debate due to the ambiguity in defining the term “decency,” which opens room for multiple interpretations and potentially hampers digital freedom of expression guaranteed under Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This normative tension becomes more evident through cases of digital expression that are classified as violations of decency, even when they take the form of satire or political criticism. This research aims to analyze the application of Article 27 paragraph (1) in Indonesian legal practice, assess its consistency with the principle of freedom of expression, and compare it with the regulation of decency norms in digital law in Malaysia and Turkey. The research employs a normative juridical method with statutory, conceptual, case, and comparative approaches, using primary data in the form of legislation and legal cases, as well as secondary data from literature and expert opinions. The findings show that the application of Article 27 paragraph (1) tends to be subjective, creates a chilling effect, and is disproportionate to the objective of protecting public morality. A comparison with Malaysia and Turkey demonstrates that decency norms can be formulated more clearly with strict limitations on obscene content without criminalizing political expression. These findings indicate the need for a reformulation of decency norms in the Electronic Information and Transactions Law to align with the principles of proportionality and the protection of digital freedom of expression.

Keywords: *Digital Democracy, Digital Expression, Freedom of Expression, Norms of Decency.*

INTRODUCTION

The development of information and communication technology has transformed the patterns of social, political, and cultural interaction in modern society. The digital sphere has become a primary medium for conveying expressions, including criticism, opinions, and political ideas. However, this development also presents serious legal challenges, particularly concerning the regulation of freedom of expression. In Indonesia, Article 27 paragraph (1) of Law Number 1 of 2024 on Electronic Information and Transactions regulates the prohibition of distributing or granting access to content deemed to violate decency. The formulation of this norm creates fundamental problems due to the absence of a clear legal definition of the term “decency.” As a result, its application often leads to multiple interpretations, the potential criminalization of legitimate expression, and a chilling effect on freedom of expression in the digital space. The urgency of this research lies in the need to critically assess the compatibility of Article 27 paragraph (1) with constitutional principles guaranteeing freedom of expression as enshrined in Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The normative tension between the protection of decency and the protection of human rights must be placed proportionally within the framework of a democratic rule of law. Several legal cases in Indonesia demonstrate that the decency clause in the Electronic Information and Transactions Law has been used to prosecute content that is, in fact, a form of social criticism or satire, thereby creating serious problems in law enforcement practice. This study aims to analyze the application of Article 27 paragraph (1) of Law Number 1 of 2024 on Electronic Information and Transactions in judicial practice, to examine its consistency with the principle of freedom of expression, and to compare it with the regulation of decency norms in digital law in Malaysia and Turkey. This comparative perspective is important because both countries have legal

traditions relatively similar to Indonesia, yet demonstrate a clearer approach in limiting the scope of decency norms so as not to constrain political expression. To address these issues, this article employs a normative juridical method with legislative, conceptual, case, and comparative approaches. Accordingly, the findings are expected not only to provide a comprehensive understanding of the normative weaknesses of Article 27 paragraph (1) of the Electronic Information and Transactions Law but also to offer academic recommendations on the need for reformulating decency norms to ensure alignment with the principles of proportionality and the protection of digital freedom of expression in Indonesia.

LITERATURE REVIEW

Studies on digital freedom of expression demonstrate that Article 27 paragraph (1) of Law Number 1 of 2024 on Electronic Information and Transactions presents a serious problem because it does not provide a clear legal definition of the term “decency.” This vague formulation creates multiple interpretations, opens room for the criminalization of legitimate expressions such as social criticism or satire, and produces a disproportionate chilling effect. Such conditions reveal a normative tension between the protection of public morality and the constitutional guarantee of freedom of expression. Meanwhile, comparative studies show that other countries with relatively similar legal systems have formulated decency norms in a clearer and narrower manner, limited primarily to obscene or pornographic content, thereby avoiding restrictions on political expression or criticism of the government. This divergence in approaches underscores a gap in Indonesian scholarship, which rarely examines the comparative dimension with other jurisdictions. This article seeks to fill that gap by providing a critical analysis of the application of Article 27 paragraph (1) and offering academic recommendations on the need to reformulate decency norms so that they become clearer, more proportional, and consistent with the protection of digital freedom of expression.

METHOD

This research employs a normative juridical method with statutory, conceptual, case, and comparative approaches. The focus of the study is directed at the application of Article 27 paragraph (1) of Law Number 1 of 2024 on Electronic Information and Transactions in relation to digital freedom of expression, as well as its comparison with decency norms in Malaysia and Turkey. The primary targets of the research include legislation, relevant court decisions, and legal instruments and policies governing digital content in the three countries. The data used consist of primary legal materials in the form of statutes, judicial decisions, and international instruments, as well as secondary legal materials such as academic literature, expert opinions, and previous research findings. Data collection was conducted through a literature study with qualitative analysis, emphasizing the integration between normative aspects and legal practice. Comparative analysis with Malaysia and Turkey was utilized to assess the extent to which decency norms can be formulated more clearly and proportionally without undermining freedom of expression, thereby generating academic recommendations on the need for reformulating norms within the Electronic Information and Transactions Law.

RESULTS AND DISCUSSION

Application of Article 27 Paragraph (1) of Law Number 1 of 2024 in Digital Expression in Indonesia

The application of Article 27 paragraph (1) of Law Number 1 of 2024 on Electronic Information and Transactions reveals fundamental problems within the Indonesian criminal law system. The provision prohibits any person from distributing or granting access to electronic information containing content deemed to violate decency, yet it fails to provide a clear legal definition of the term *decency*. Consequently, law enforcement authorities are afforded broad interpretive discretion in assessing digital content. This situation creates legal uncertainty and opens the door to the criminalization of expressions that are in fact constitutionally legitimate. In practice, expressions in the form of social criticism, satire, or academic debate have been categorized as violations of decency. This indicates a dysfunction of the norm, as its application has extended beyond the protection of public morality into the restriction of freedom of expression. One of the most serious issues in its implementation lies in the disparity of judicial decisions. Some courts interpret *decency* narrowly as pornographic content, while others expand it to encompass political expression or criticism of public policies. Such disparity reflects the absence of a clear normative standard in interpreting *decency*. From the perspective of the principle of legality, this condition contradicts the doctrine of *lex certa*, which requires criminal provisions to be formulated clearly, free from multiple interpretations, and capable of ensuring legal certainty. Ultimately, this practice produces injustice because legal subjects cannot predict with certainty whether an action will be classified as a violation of decency. Hence, this provision has the potential to infringe upon the constitutional right to legal certainty.

The deterrent effect resulting from the application of this article is often disproportionate. Individuals who express criticism through social media are frequently charged with severe criminal sanctions, as if their actions were equivalent to disseminating obscene or pornographic material. The imposition of excessive penalties on legitimate expressions creates a *chilling effect*, where individuals refrain from exercising their right to free expression due to fear of prosecution. In the framework of democracy, this phenomenon is dangerous because it restricts digital public space as a forum for the exchange of ideas. Research demonstrates that excessive restrictions on freedom of expression hinder democratic development and weaken the public's oversight of government. Thus, the application of Article 27 paragraph (1) should be viewed as a form of over-criminalization that violates the principle of proportionality.

Concrete cases in Indonesia demonstrate that this provision is frequently used to prosecute expressions unrelated to decency in the sense of obscenity. For example, posts containing criticism of public officials or state institutions have been legally processed under the pretext of violating decency. Yet, criticism constitutes a form of citizen participation guaranteed by the Constitution. This pattern indicates a tendency to use criminal law as a political tool to silence opposition or critical groups. In other words, the application of this article is problematic not only from a normative standpoint but also from a political dimension that threatens the principles of democracy and the rule of law. From the perspective of criminal law theory, criminal provisions should be formulated under the principle of *ultimum remedium*, whereby criminal sanctions are applied only as a last resort when other legal mechanisms are insufficient. However, the enforcement of Article 27 paragraph (1) demonstrates the opposite tendency, namely the immediate criminalization of expression without prior recourse to administrative or ethical remedies. This creates an imbalance between the objective of protecting public morality and the respect for human rights. The *ultimum remedium* principle is thus neglected, as criminal law is employed repressively at the outset. This condition confirms that the provision is overbroad and inconsistent with the principle of caution in the use of penal sanctions.

From a sociological perspective, Indonesian digital society embodies diverse cultures, values, and norms. The absence of a clear definition of decency in the law encourages law enforcement to rely on the moral standards of the majority in assessing digital expression. Yet, in a pluralistic society, moral standards are relative and may vary across communities. As such, the enforcement of this provision risks marginalizing minority groups or alternative viewpoints that are otherwise legitimate. This contradicts the principle of pluralism, which is fundamental to a democratic society. Therefore, the regulation of decency in the digital sphere must take into account societal diversity without sacrificing freedom of expression. Conceptually, the enforcement of this article also conflicts with the principle of proportionality, which requires a balance between restrictions on freedom and the objectives pursued. While the protection of public morality is indeed important, it cannot serve as justification for disproportionately restricting constitutional rights. The principle of proportionality requires that restrictions be necessary, clearly regulated, and not exceed legitimate objectives. In the case of Article 27 paragraph (1), the restriction fails to meet these requirements, as its formulation is vague, its application arbitrary, and its impact more harmful than beneficial. Accordingly, this provision warrants critique as a form of disproportionate regulation.

The findings of this study indicate that the enforcement of Article 27 paragraph (1) of Law Number 1 of 2024 is not in harmony with the principles of a rule of law that upholds legal certainty, justice, and utility. The ambiguous decency clause has produced repressive and discriminatory legal practices that risk curtailing digital democracy in Indonesia. Therefore, a reformulation of the decency norm is required to ensure clarity, precision, and conformity with human rights principles. Such reformulation should guarantee that criminal law is applied only to obscene or pornographic content that genuinely threatens public morality, while political expression, criticism, and satire remain protected as part of freedom of expression. In this way, law will no longer function as a tool of repression but rather as a fair instrument to balance public morality with individual freedoms.

The Relationship between Article 27 Paragraph (1) of Law Number 1 of 2024 and Article 28E Paragraph (3) of the 1945 Constitution of the Republic of Indonesia

The relationship between Article 27 paragraph (1) of Law Number 1 of 2024 on Electronic Information and Transactions and Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia gives rise to a significant normative tension. Article 28E paragraph (3) explicitly guarantees the freedom of every individual to hold opinions, express thoughts, and convey expression. Meanwhile, Article 27 paragraph (1) restricts this freedom through a prohibition on the distribution of content deemed to violate decency. This contradiction reflects a classical dilemma in constitutional law: balancing the protection of public morality with the protection of human rights. Without clear regulation, such tension may result in legal uncertainty and weaken the Constitution's function as a

safeguard against state power. In theory, constitutional rights may be restricted insofar as the requirements under Article 28J paragraph (2) of the 1945 Constitution are fulfilled. Restrictions must be imposed by law, pursue a legitimate aim, and remain proportionate. However, the enforcement of Article 27 paragraph (1) has not fully met these conditions. While the objective of protecting decency is legitimate, the vague formulation and repressive enforcement practices cause the restriction to exceed necessary limits. Thus, this provision fails to comply with constitutional standards of restriction, as it excessively curtails freedom of expression without clear benchmarks. This creates the risk of legitimizing human rights violations through legal instruments. The proportionality test serves as a crucial instrument to assess the compatibility of Article 27 paragraph (1) with constitutional guarantees of free expression. Legal doctrine outlines three stages of proportionality: legitimate aim, necessity, and balancing. First, protecting decency can be categorized as a legitimate aim. Second, in terms of necessity, the provision does not meet the requirement, as it employs repressive criminal sanctions despite the availability of alternatives such as digital literacy programs and administrative regulation. Third, in terms of balancing, its enforcement produces greater harm, namely the restriction of free expression essential for democracy. Accordingly, the provision fails to meet the proportionality test as a whole.

In judicial practice, judges often face dilemmas when interpreting the relationship between this provision and the Constitution. Some rulings emphasize the importance of safeguarding public morality, while others highlight the protection of freedom of expression. These inconsistencies reflect the absence of a uniform standard for harmonizing both norms. Ultimately, this legal uncertainty results in disparities of judicial decisions and undermines the principle of legal certainty. Judges should play an active role in constitutional balancing, yet without clear guidelines, it is difficult to exercise this role consistently. Another concern arises when the decency clause is used to restrict political expression. In fact, the Constitutional Court has repeatedly emphasized in its decisions that freedom of expression is a fundamental right that cannot be arbitrarily limited. When political criticism or satire is classified as a violation of decency, the provision deviates from its intended purpose. This indicates a misuse of criminal law for non-legal objectives, thereby threatening the principle of constitutional democracy. Hence, the relationship between this provision and the Constitution is problematic not only normatively but also in its implementation.

From a human rights perspective, freedom of expression is considered a cornerstone right for the realization of a democratic society. International standards, such as those enshrined in the International Covenant on Civil and Political Rights, permit restrictions on freedom of expression only for legitimate purposes and under strict conditions. Accordingly, the vague and repressive enforcement of Article 27 paragraph (1) contradicts the state's obligations to respect, protect, and fulfill human rights. Such inconsistency places Indonesia in a vulnerable position to international criticism regarding its practice of restricting free expression. Harmonization between the protection of public morality and freedom of expression must be achieved through a proportional approach. While safeguarding public morality remains important, it should not be used as a justification to restrict free expression disproportionately. Within the framework of a democratic rule of law, a fair balance must be maintained between collective interests and individual rights. Without such balance, law loses its legitimacy as an instrument of justice. Therefore, the relationship between this provision and the Constitution must be directed toward a clearer, firmer, and more balanced legal formulation. Based on this analysis, it can be concluded that the relationship between Article 27 paragraph (1) and Article 28E paragraph (3) of the 1945 Constitution remains problematic. The vague decency norm carries the risk of infringing upon the constitutional guarantee of freedom of expression. Its inconsistency with the principle of proportionality further strengthens the argument for reformulating the provision. Such reformulation must adhere to constitutional standards and human rights principles, ensuring that public morality is protected without sacrificing freedom of expression. In this way, law may function as a fair, consistent, and democratic instrument aligned with the spirit of constitutional democracy.

Comparison of Decency Norms in Digital Law in Indonesia, Malaysia, and Turkey

A comparative study of decency norms in digital law across Indonesia, Malaysia, and Turkey reveals fundamental differences in how the three countries regulate the boundaries of freedom of expression. Indonesia, through Article 27 paragraph (1) of Law Number 1 of 2024 on Electronic Information and Transactions, prohibits the distribution of content deemed to contain elements of decency, yet without providing a clear legal definition. In contrast, Malaysia regulates similar provisions under the *Communications and Multimedia Act 1998*, emphasizing explicit prohibitions on obscene, pornographic, and hate speech content. Turkey adopts an even stricter stance through the *Law on the Regulation of Publications on the Internet and Suppression of Crimes Committed by Means of Such Publication*, focusing on child pornography and sexual offenses. These differences highlight Indonesia's deficiency in clarity of legal formulation, which opens space for multiple interpretations and risks restricting freedom

of expression. In practice, Malaysia tends to limit the application of criminal law to cases directly related to obscene or pornographic content. Although controversial cases exist, most Malaysian court rulings interpret decency norms narrowly, excluding political criticism from the scope of violations. This approach contrasts with Indonesia, where the decency provision has often been used to prosecute political expression, social criticism, and satire. Malaysia's approach is more consistent with the principle of proportionality, as criminal law is not employed as a repressive instrument against legitimate free expression. Thus, Malaysia's system can serve as a reference point for restricting decency norms solely to the realm of obscenity, without extending them into political discourse.

Turkey adopts a similar approach to Malaysia, though within a more complex political context. The regulation of decency in Turkey is formulated explicitly, focusing primarily on pornographic content, especially involving children. However, issues surrounding freedom of expression in Turkey are more heavily influenced by other regulations, particularly those relating to national security and offenses against public officials. In other words, restrictions on free expression in Turkey do not generally stem from decency norms, but from other legal instruments. This indicates that, unlike Indonesia, Turkey does not use decency provisions as a political tool to silence dissent. This comparison underscores Indonesia's main problem: the absence of a clear normative definition of decency. While Malaysia and Turkey limit decency norms to obscene or pornographic content, Indonesia allows the term to remain vague, thereby granting broad interpretive authority to law enforcement. Consequently, Indonesian authorities may employ the provision for purposes inconsistent with the principle of free expression. This explains why the decency clause in the Electronic Information and Transactions Law frequently sparks controversy in law enforcement practice. Hence, the comparison demonstrates the urgent need for Indonesia to reformulate its decency provision.

The academic implication of this comparison is the necessity of further study on proportionate models for formulating decency norms. Clear definitions, strict limitations, and consistent application are essential to ensure that decency norms do not contradict freedom of expression. Indonesia may learn from Malaysia and Turkey by clarifying the scope of decency provisions so that criminal law is not used to suppress political criticism. Reformulating the decency provision will also enhance legal certainty for the digital society. Therefore, this comparative analysis provides a strong academic basis for promoting clearer and fairer legislation. From a practical perspective, the reformulation of Article 27 paragraph (1) of the Electronic Information and Transactions Law is an urgent necessity. Indonesia must confine decency norms to obscene or pornographic content, as practiced in Malaysia and Turkey, while also strengthening enforcement mechanisms to prevent repressive use. Such measures would allow law to serve a dual function: safeguarding public morality while protecting freedom of expression. Reformulation will strengthen Indonesia's digital democracy, prevent excessive criminalization, and ensure that criminal law truly functions as *ultimum remedium*. Thus, the comparison with Malaysia and Turkey not only provides conceptual lessons but also offers concrete direction for meaningful legal reform in Indonesia.

CONCLUSION

This study demonstrates that the application of Article 27 paragraph (1) of Law Number 1 of 2024 on Electronic Information and Transactions continues to pose serious challenges in the context of digital freedom of expression. The absence of a clear legal definition of "decency" renders the provision open to multiple interpretations, creating opportunities for the criminalization of legitimate expression and resulting in disparities in law enforcement that undermine the principle of legal certainty. Consequently, the provision has often been applied repressively to target social criticism, satire, and political expression, thereby generating a chilling effect that weakens the function of digital democracy in Indonesia. The comparison with Malaysia and Turkey reveals that decency norms can be formulated with greater precision by restricting them strictly to obscene or pornographic content, without extending to political expression. Malaysia emphasizes proportional restrictions aimed at protecting public morality, while Turkey focuses primarily on child pornography. These approaches show that Indonesia lags behind in establishing strict normative boundaries, leaving criminal law frequently employed as a repressive instrument rather than as *ultimum remedium*.

The findings underscore the urgent need to reformulate Article 27 paragraph (1) in line with the principles of proportionality, legal certainty, and respect for human rights. Reformulation must confine the definition of decency to obscene or pornographic content while excluding political expression, criticism, and satire from the threat of criminalization. In doing so, criminal law can return to its proper role as a fair instrument for safeguarding public morality without undermining freedom of expression. As a follow-up, legislative action is required to place this provision within a clearer and more proportionate legal framework, accompanied by consistent interpretive guidelines for law enforcement authorities. Furthermore, non-criminal instruments such as administrative regulation

and digital literacy initiatives should be developed to protect public morality without sacrificing citizens' constitutional rights. A properly reformulated provision will strengthen Indonesia's digital democracy while preventing the misuse of law as a tool of political repression.

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