

A COMPARATIVE STUDY ON UNDERSTANDING LEGAL LOOPHOLES IN LAW NUMBER 1 OF 2024 CONCERNING ELECTRONIC INFORMATION AND TRANSACTIONS RELATED TO DEFAMATION

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Abstract

This study aims to comparatively examine legal regulations related to criminal defamation occurring through social media during the regional head election (Pilkada) campaign period in Lamongan Regency. This study refers to the provisions of Law Number 7 of 2023 concerning Elections, which explicitly prohibits acts of insult or defamation during the election process. On the other hand, there are also regulations governing similar crimes in the electronic domain, as stipulated in Law Number 1 of 2024 concerning Electronic Information and Transactions (UU ITE). This study employs a qualitative approach with a comparative method to analyze the changes, advantages, and weaknesses in the provisions of the latest ITE Law, particularly in the context of political dynamics during the Pilkada campaign period in Lamongan Regency. The analysis shows that Law Number 1 of 2024 provides a more detailed and firm definition and limitations for the crime of defamation on social media. This regulation more clearly establishes the threshold for legal violations and the applicable sanctions, thereby creating greater legal certainty. These findings are expected to serve as a reference for law enforcement in strengthening legal protection for victims of defamation against individuals in the digital era.

Keywords: *Defamation, Legal Certainty, Regional Election Campaign.*

INTRODUCTION

In the modern era, rapid advances in mass media technology have given rise to a new phenomenon known as the social media revolution. The development of information and communication technology has pushed society towards an era of globalization in the fields of telecommunications and informatics. This progress is reflected in the widespread adoption of electronic devices as the primary means of accessing information and establishing communication. Currently, digital transformation has developed very rapidly, enabling social media to become a versatile tool that can be utilized according to the needs of its users. Information, now an essential need, can be easily accessed by individuals from various parts of the world, making social media one of the primary necessities in everyday life. To meet this need, social media platforms have become a tool widely used by the wider community. The various services offered by social media continue to evolve over time, with new and increasingly innovative features. Some of the currently popular social media platforms include TikTok, Facebook, Twitter (now known as X), Instagram, WhatsApp, and various other platforms that continue to emerge.

Social media has a very big role in influencing the dynamics of thinking and the transformation of the lifestyle of Indonesian society (Willya et al., 2018). Social media has a variety of effects that can drive positive change in society. These platforms contribute to increased information transparency, serve as learning platforms, and serve as promotional tools that can enhance prosperity, progress, and civilization. However, on the other hand, social media can also have negative impacts, such as its misuse as a means to spread insults, hate speech, and unverified information. The dissemination of this type of content often aims to incite hostility or hatred between individuals and groups based on ethnicity, religion, race, or intergroup relations (Suprawoto, 2020). In a political context, particularly during regional election campaigns, social media is a highly effective tool for disseminating information and shaping public perception. If used wisely, these platforms can be a communication tool that supports positive interactions between individuals. However, if used for unethical purposes, social media can transform into a trigger for social conflict. The misuse of social media has given rise to various problems,

including criminal acts such as fraud, stalking, kidnapping, and defamation. Social media also facilitates dynamic social interactions, allowing users to easily adapt, share content, and create narratives. This ease of access allows for two-way communication, both private and public, often without awareness of the norms governing such interactions. It is not uncommon for individuals to use social media as a platform to express opinions, disseminate information, or express themselves. In a political context, these platforms are often used to shape public opinion and gain public sympathy. However, the use of social media requires caution and prudence, given that information disseminated through these platforms can potentially violate individual honor or even trigger criminal defamation against others. According to records from the Lamongan Police, in 2024, coinciding with the euphoria of the democratic party, the local police processed 670 cases related to defamation (Reggie, 2025), a significant portion of which involved dissemination through electronic channels. Based on this phenomenon, freedom of expression in the information technology era tends to be manifested freely without considering legal restrictions. One such restriction refers to the legal provision stating that anyone who intentionally attacks someone's honor or reputation through accusations made publicly, with the intention of making the accusations public, can be subject to criminal sanctions for defamation, with the threat of imprisonment of up to nine months or a fine of four thousand five hundred rupiah (AKSET, 2024).

Referring to the Constitutional Court Decision Number 78/PUU-XXI/2023, Article 310 paragraph (1) of the Criminal Code (KUHP) stipulates the elements of the crime of defamation as follows :

- a. Any Person;
- b. Intentionally;
- c. Making an attack on someone's honor or reputation;
- d. By making an accusation;
- e. verbally;
- f. with the aim of making accusation known to the public.

Although Law Number 7 of 2017, as amended by Law Number 7 of 2023 concerning Elections, expressly prohibits acts of insult, defamation, and the spread of slander by implementers, participants, and official campaign teams, this provision does not specifically regulate the practice of black campaigns carried out by other parties through electronic media. The absence of the term "black campaign" in positive legal regulations creates ambiguity in interpretation. On the other hand, Law Number 11 of 2008, as amended by Law Number 1 of 2024 concerning Electronic Information and Transactions (ITE Law), regulates the dissemination of content that incites hatred and hostility in general, but is not specifically designed for the context of elections. The inconsistencies and overlaps between the Election Law and the Electronic Information and Transactions (ITE) Law have resulted in legal uncertainty. Handling of smear campaign crimes is hampered by several factors. From a substantive legal perspective, the lack of a clear definition of smear campaigning, the scope of the act, and strict sanctions are the main obstacles. From a structural perspective, coordination between institutions such as the Election Supervisory Agency (Bawaslu), the Police, and the Prosecutor's Office within the Integrated Law Enforcement Center (Gakkumdu) remains suboptimal, compounded by overlapping authority, differing legal interpretations, and limited human resources and technology to identify anonymous perpetrators on social media. From a legal culture perspective, the public's permissive attitude toward negative information, low awareness of political ethics, and the lack of firmness from law enforcement—especially when involving influential political actors—also complicate handling this problem.

This study recommends harmonization and updating of more specific and adaptive election regulations, including the development of explicit definitions of smear campaigning, the elements of the crime, the forms of the act, and the determination of legally responsible subjects, including independent individuals. Furthermore, the integration between the provisions of the Election Law and the ITE Law needs to be strengthened. Other recommendations include increasing the capacity of law enforcement institutions, raising public awareness through digital literacy and political education, and strengthening the professionalism, courage, fairness, and transparency of law enforcement officials. As quoted by Putu Eva Ditayani Antari from Veri Junaidi, elections and democracy have an interdependent relationship (*conditio sine qua non*), where both support each other and cannot stand alone. Elections are both a mechanism for realizing democracy and a procedure for transferring popular sovereignty to elected individuals who hold political office. Thus, the implementation of elections in a country serves as a means to guarantee the implementation of citizens' political rights, actualize popular sovereignty, and support the process of government succession based on law (Antari, 2018). One clear illustration of the practice of smear campaigns targeting personal aspects to undermine credibility is the case of Prof. Dr. Abdul Ghafur, a religious figure and caretaker of the Sunan Drajat Islamic Boarding School Foundation. This incident occurred concurrently with the

dynamics of the Lamongan regent election for the 2024-2028 period, where a photo of Prof. Dr. Abdul Ghafur leading a prayer at a joint prayer event with one of the regent candidates was manipulated and distributed to undermine his spiritual legitimacy. The content, as documented in a TikTok account upload, not only demeaned his dignity as a kyai, but also attacked his personal circumstances that were completely irrelevant to his qualifications or role as a religious leader in Lamongan Regency. The hate speech post was written by the account @bagonggugat820 with the sentence "Political shaman disguised as a kyai, claiming to be NU but supporting Muhammadiyah candidates" (Sudjarwo, 2024).

Black campaigns not only reflect unethical political practices in Indonesia's political landscape, but also hinder public understanding of the essence of democracy. The prevalence of black campaigns is an indication of the state's inability to improve the standards of quality election administration. In fact, one measure of democratic progress is the expansion of space for constructive discussion of ideas and concepts, not the prevalence of black campaigns that often prioritize negative and manipulative narratives. The above phenomenon shows that Article 27A of Law Number 1 of 2024 concerning Electronic Information and Transactions (ITE Law) is a flexible article that requires urgent revision. This provision contradicts Article 27 paragraph (1) of the 1945 Constitution, which guarantees the protection of citizens' human rights, so implementation by law enforcement officials must be carried out carefully to ensure compliance with legal principles. Defamation through electronic media, as regulated in the ITE Law, is a form of unlawful act that violates written regulations, is reprehensible, and contradicts the sense of justice and social norms of society.

According to Sari (2020), the elements of an unlawful act in the realm of criminal law include: (1) an act that explicitly violates the law, (2) is carried out without legitimate authority or power, and (3) is contrary to general principles in the legal field. To be classified as a criminal act of defamation, the formulation of the offense must be clear and unambiguous. The ambiguity or inaccuracy of the formulation in Article 27A of Law No. 1 of 2024 gives rise to different interpretations among law enforcement, thus creating problems in the application of criminal sanctions. Therefore, expanding the definition of defamation in this article poses significant challenges in fair and consistent law enforcement. In Indonesia, legal provisions regarding defamation of reputation through online platforms are regulated by the Law on Electronic Information and Transactions (UU ITE). This regulation was first enacted through Law Number 11 of 2008, then modified through Law Number 19 of 2016, and most recently updated as Law Number 1 of 2024, with the aim of adapting to the development of online communities and the ever-emerging legal issues. This latest update is anticipated to respond to various protests over articles prone to multiple interpretations, which were previously considered to risk stifling the right to express opinions and triggering criminal proceedings.

Defamation crimes on social media platforms stand out for their rapid spread and ability to reach a wide audience within minutes. This situation urgently requires a judicial framework that provides robust protection for injured parties while respecting human rights, particularly the right to express opinions, as protected by the 1945 Constitution. Therefore, a comparative study of the management of defamation crimes before and after the ITE Law reform is crucial. This study focuses on a thorough examination of the impact of the amendments to Law No. 1 of 2024 on the process of resolving defamation cases through online platforms. Furthermore, the study compares the components of legal standards and enforcement strategies between the old provisions and the latest updated edition. It is hoped that the findings of this research will contribute to advances in the field of information technology criminal law, while also providing constructive advice for decision-makers and law enforcement officials in establishing a balanced, rational, and flexible judicial framework for facing the digital era.

METHOD

This research relies on a qualitative approach in a descriptive study format, primarily employing analytical techniques, further strengthened through normative legal analysis and literature exploration.

- a. The juridical-normative approach is implemented by relying on primary legal sources through an in-depth examination of principles, ideas, legal theories, and legislative regulations relevant to the research topic.
- b. Literature research is conducted by utilizing library collections through in-depth observation of legal references and information sources related to the discussion topic, by examining reading materials in the form of primary, secondary, and tertiary data.

Furthermore, the research currently being discussed comprehensively connects various ideas contained in the national legal framework, including the Criminal Code (KUHP) and the Criminal Procedure Code (KUHP).

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NO	Author Name	Book title	Formulation of the problem	Conclusion
1.	Drs. Adami Chazawi, SH & Ardi Ferdian, SH, M.Kn.	Information Crimes & Electronic Transactions (Second Revised Edition) Attacks on the Legal Interests of the Utilization of Information Technology and Electronic Transactions	How can Information and Electronic Transaction Crimes be carried out according to the author of the book?	In the formation of the ITE Law, it is required that insults according to the ITE Law are <i>lex specialis</i> insults, while the types of insults in Chapter XVI Book II of the Criminal Code are <i>lex specialis</i> insults. In the application of Article 45 paragraph (3) in conjunction with 27 paragraph (3) of the ITE Law, one type of insult in Chapter XVI Book II of the Criminal Code must be applied as <i>lex generalis</i> . So that criminal acts can be committed due to the preparation of an indictment and evidence, by including the criminal act of Article 45 paragraph (3) in conjunction with 27 paragraph (3), including (juncto) the relevant articles of the Criminal Code, in the case of evidence there is an appropriate <i>lex generalis</i> element and evidence that the perpetrator uses ITE technology, namely electronic media (<i>lex specialis</i>). Then the perpetrator can be threatened in accordance with Article 27 paragraph (4) with a maximum imprisonment of 6

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				years and/or a maximum fine of Rp. 1,000,000,000.00 (1 billion rupiah).
2.	Dr. Gomgom TP Siregar, SE, S. Sos., SH, M.Sc., MH	An Analysis of the Criminal Act of Defamation Through Electronic Media.	What conclusion does the author reach?	The ITE Law is a Lex Specialis of the Criminal Code which is regulated in Article 27 paragraph (3). Even the offense of Article 27 paragraph (3) of the ITE Law has become a "rubber article". Article 27 paragraph (3) of the Republic of Indonesia Law has a subjective element, namely intentionally, and the objective element is distributing and/or transmitting and/or making accessible electronic documents or information containing insults and/or defamation. The ordinary offense in this article has been changed to a complaint offense. Meanwhile, Article 28E can be concluded that the right to freedom of expression is based on two things: first, human rights and second, fulfilling the needs of life as a civilized nation and a modern country.
3.	Dr. H. Imam Makhali, SH, MH	Criminal Law Restorative Justice Approach in Criminal Acts of Defamation Through Social Media	What is the author's understanding of criminal acts of defamation after reading the book?	According to the author of the ITE Law, understanding of the crime itself cannot provide a sense of justice

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				because it still contains rubber articles. Regarding defamation, the ITE Law is still based on Article 310 of the Criminal Code which is a complaint offense. In the ITE Law itself, insults, defamation and hate speech based on SARA are regulated in Article 27 paragraph (3) so that they are complaint crimes so that law enforcement officers are not allowed to arrest them carelessly, must have evidence based on investigations and perpetrators of criminal acts can be threatened with 12 years in prison and/or a fine of IDR 12 billion.

RESULTS AND DISCUSSION

Advances in information and communication technology have significantly impacted social interaction patterns and the legal landscape in Indonesia. Social media, a key product of digital innovation, has now become the primary channel for citizens to voice ideas, connect with one another, and distribute news. However, amidst these conveniences, serious threats arise from the misuse of these facilities, including the crime of defamation. Defamation via cyberspace typically occurs through the dissemination of digital data that denigrates or destroys the image of a particular individual. Such acts not only harm individuals but also have the potential to disrupt societal balance and erode public confidence in judicial institutions. Therefore, it is crucial to examine how national legal regulations control defamation crimes on social media.

Law Number 1 of 2024 concerning Electronic Information and Transactions (ITE Law) is an update to Law Number 11 of 2008, which was revised through Law Number 19 of 2016. This change is designed to align regulations with technological advances and shifting societal patterns that are never static. One crucial modification is Article 27A, which regulates acts of defamation through electronic channels. This article stipulates that anyone who knowingly tarnishes the dignity or image of another individual by making certain accusations via digital media can be sentenced to a maximum of two years' imprisonment and/or a financial penalty of up to IDR 400 million.

However, the implementation of Article 27A remains controversial. The Constitutional Court, through a decision dated April 29, 2025, partially granted the petition for judicial review of the ITE Law, particularly regarding Article 27A and Article 45A paragraph (3). The constitutional court emphasized that the provisions in question only apply to individual citizens and do not include government bodies, official organizations, companies, or groups of individuals with certain special characteristics. This step aims to prevent abuses of regulations that could potentially restrict the right to express opinions and criticize institutions. In addition, the Constitutional

Court also highlighted the need for transparent and consistent legal action in handling cases of defamation of reputation through social networking platforms. In its legal reasoning, the Constitutional Court explained that the limitations in these verses are crucial so that the implementation of Article 28 paragraph (3) of Law Number 1 of 2024—which is classified as a material crime with a focus on the real impact or damage resulting from the perpetrator's actions—complies with the principles of *lex scripta*, *lex certa*, and *lex stricta*. A comparative study of the control of the crime of defamation of reputation on social networks within the framework of the ITE Law is essential to capture the differences between the old provisions and the latest updated version. In addition, this analysis is useful for measuring the level of success of these modifications in providing a strong legal barrier for individual citizens without having to sacrifice the space for freedom of expression.

Below, the author provides a simple description of the differences between the old ITE Law and the new ITE Law:

- A. Article 17 of the Electronic Transactions Law of 2008: Regulates electronic transactions. 2016: Adds provisions regarding electronic transactions. 2024: Adds provisions regarding high-risk electronic transactions and the use of electronic signatures secured by electronic certificates.
- B. Article 27 – Prohibited Acts Law of 2008: Regulates acts prohibited under the ITE Law. 2016: Adds provisions regarding prohibited acts. 2024: Article 27 is divided into:
 - 1) Article 27A: Regulates insults and defamation.
 - 2) Article 27B: Regulates extortion and threats.
 - 3) Article 28 – Hate Speech 2008: Regulates hate speech based on ethnicity, religion, race, and intergroup relations (SARA).
 - 4) 2016: Added provisions regarding hate speech.
 - 5) 2024: Added a paragraph prohibiting the dissemination of false information that causes unrest.
- C. Article 29 – Threats of Violence 2008: Regulates threats of violence through electronic media. 2016: Adds provisions regarding threats of violence. 2024: Removes the word "personal" from this article, so that threats of violence are not limited to private communications.
- D. PArticle 36 – Enhanced Penalties 2008: Regulates enhanced penalties for violators of the ITE Law. 2016: Adds provisions regarding enhanced penalties. 2024: This article is removed.
- E. Article 40 – Role of Government 2008: Regulates the government's role in the implementation of electronic systems. 2016: Adds provisions regarding the role of government. 2024: Adds a new article (Article 40A) that authorizes the government to intervene in electronic systems to create a safe, fair, accountable, and innovative digital ecosystem.
- F. Article 43 – Authority of Investigators 2008: Regulates the authority of investigators in the ITE Law. 2016: Adds provisions regarding the authority of investigators. 2024: Strengthening the authority of civil servant investigators (PPNS) in conducting investigations into crimes in the information technology sector.
- G. New articles are also included in the 2024 ITE Law. In addition to changes to existing articles, the 2024 ITE Law also adds several new articles, including:
 - 1) Article 13A: Regulates the types of services that can be provided by Electronic Certification Providers.
 - 2) Articles 16A and 16B: Regulate the obligations of Electronic System Providers to provide protection for children who use or access electronic systems.
 - 3) Article 18A: Regulates international electronic contracts.
 - 4) Article 40A: Grants the government the authority to intervene in electronic systems to create a safe, fair, accountable, and innovative digital ecosystem.

CONCLUSION

1. The speed, reach, and ease of dissemination of content on online platforms create new obstacles for law enforcement officials. Therefore, the 2024 edition of the ITE Law tightens several articles to ensure that online defamation can be processed firmly and efficiently, while still protecting the right to express legitimate opinions.
2. Through specific articles and paragraphs governing defamation of an individual, the 2024 Law explicitly separates the offense of defamation of reputation from other crimes such as hate speech or false accusations, which are regulated in separate provisions.

3. The 2024 ITE Law separates and differentiates the articles concerning defamation of image from the general provisions on digital data violations that previously applied. Defamation of reputation is now regulated exclusively through Article 27A, which provides sharper and more organized definitions, scope, and penalties.
4. The updated regulations emphasize criminal penalties and more transparent investigative steps for offenses involving defamation of reputation through online platforms. Judicial procedures are designed to be fair while adhering to human rights values and the presumption of innocence.

Suggestions

1. Law Number 1 of 2024 concerning the Electronic Information and Transactions (ITE) must be continually reviewed to ensure it aligns with human rights values as enshrined in the 1945 Constitution and international treaties. Criminal sanctions for defamation must be balanced and must not conflict with the right to freely express opinions.
2. Based on research findings, it is important to clarify the distinction between legitimate criticism, opinion expression, and acts of defamation to avoid diverse interpretations. Authorities, through derivative regulations or judicial guidelines, can establish more concrete criteria so that the enforcement process does not suppress and maintains freedom of expression.
3. Executives and universities have the opportunity to conduct comparative analyses with developed countries that implement innovative strategies to address defamation through online networks, for example by prioritizing civil litigation over criminal sanctions, in order to develop more equitable and proportional regulations.

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