

The Alleged Rubber Article of the Electronic Information and Transaction Law (UU ITE) Reviewed From the Perspective of Constitutional Law

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Abstract

The implementation of the ITE Law has been adapted to the purpose of the 1945 Law, which is to guarantee freedom of expression without compromising legal protection for those who hold opinions or accept those opinions. However, there are still problems related to the revision of the ITE Law. The relationship between the public in criticizing the government and the ITE Law, namely the ITE Law is one of the regulations governing freedom of expression through social media. That is what causes people to feel afraid that if they criticize the government through social media, they will be subject to criminal sanctions if they are deemed to have violated the ITE Law. Because some people think that the articles in the ITE Law are still multi-interpreted, causing people to be afraid if they want to criticize the government through social media. Based on the data above, the public considers the ITE Law to be very restrictive when people want to criticize the government through social media. People think that in the ITE Law there are still rubber articles that can ensnare the public at any time.

It is undeniable that social media has become the lifeblood of society. All complaints, stories, and even fights can now be done through social media. However, since the enactment of the ITE Law number 11 of 2008 in Indonesia, there have been certain limitations in terms of conveying something through social media. What is rife are cases containing hate speech.

*There are often misunderstandings in the application of the ITE Law among law enforcers. They assume that criminal acts in the ITE Law are included in the *lex specialis*, which is special and can override general laws. In other words, this means that criminal acts within the scope of the ITE Law are included in special crimes, while all crimes outside the Criminal Code are not special crimes.*

Keywords: *rubber article, electronics, viewpoint, law, state administration*

INTRODUCTION

Advances in information and communication technology have permeated many fields, so the Electronic Information and Transaction Law (UU ITE) was created with the goal of establishing regulations in the field of information and communication technology in Indonesia. Until 2003, a draft law known as the Draft Law on Information and Electronic Transactions existed (RUU ITE). The Indonesian Ministry of Communication and Information began finalizing the draft in 2005, and it was completed in March 2008. (Atmaja, A. E. 2014)

The Electronic Information and Transaction Law (UU ITE) was established on the principles of prudence, legal certainty, good faith, benefits, and freedom in the use of information and communication technology. While the goal is to improve the effectiveness and efficiency of public services, to educate the nation's life, to provide a sense of security, to develop trade and the national economy, and to provide the broadest possible opportunities for everyone to advance their thinking and abilities in the fields of information and communication technology, justice, and legal certainty for all.

Globally, the advancement of information and communication technology has altered people's attitudes toward human culture. This is stated in the Law of the Republic of Indonesia No. 11 of 2008 on Information and Electronic Transactions, which has been revised in the Law of the Republic of Indonesia No. 19 of 2016 on Amendments to Law No. 11 of 2008 on Information and Electronic Transactions (Permatasari, Faith Amanda. 2019). World relations have become limitless as information and communication technology has advanced, resulting in a culture of economic, social, and information culture change.

The term "rubber article" refers to an article or law that is thought to lack clear benchmarks. In Indonesia, the applicable Rubber Articles include Defamation, Religious Blasphemy, Traffic Law, and the ITE Law. Since its ratification on April 21, 2008, under the leadership of President Susilo Bambang Yudhoyono (SBY), Law Number 19 of 2016 concerning Electronic Information and Transactions (ITE) has become the primary weapon for criminalizing someone. (Aditya, Rifan. 2021)

Indonesians now consume social media on a daily basis. Social media has evolved into society's lifeblood. All daily activities, such as stories, gossip, complaints, and even fights, can now be done via social media. However, since the enactment of the ITE Law, Law number 11 of 2008 in Indonesia, there are restrictions when communicating via social media. Hate speech is a common occurrence. Social media is a type of online media in which users can easily share anything. Social media can also be used to connect with other users in order to share information and communicate.

Because social media has become a part of society's social life, it is impossible to deny that hate speech can occur among social media users. Hate speech is defined as an act of individual or group communication aimed at other individuals or groups in the form of provocation, incitement, or insult. Currently, there are numerous instances of hate speech on various social media platforms, including insults, defamation, blasphemy, provoking, and even spreading hoaxes (Ningrum, Dian Junita, Suryadi, and Dian Eka Chandra Wardhana. 2018)

LITERATURE REVIEW

Rubber Article Definition

The term "rubber article" refers to an article or law that is thought to lack clear benchmarks. In Indonesia, applicable rubber articles include defamation, blasphemy, traffic laws, and the ITE Law, while draft rubber articles include articles on witchcraft, insults to the president, Government Regulations in Lieu of the Law on Community Organizations, and the Music Bill. The rubber article itself has existed since the Dutch East Indies era and contains Book II Crimes Chapter II on Crimes against the Dignity of the President and Vice President and is an adaptation of a Dutch government regulation prohibiting its citizens from mocking the Queen of the Netherlands. (Voice of hatred) The article, however, has been repealed by the Constitutional Court since December 4, 2006.

There are several articles in the ITE Law that give rise to multiple interpretations and are known in the community as the rubber article. The rubber article is an article whose interpretation is highly subjective from law enforcement or other parties (Mainake, Yosephus, and Luthvi Febryka Nola, 2020), which can lead to multiple interpretations. The ITE Law also poses a potential threat to free expression, one of which is related to defamation.

The existence of the ITE Law has generated both benefits and drawbacks among the general public. This is because several provisions of the law are thought to restrict people's freedom of expression and voice in cyberspace. One of the problematic articles mentioned is still related to article 27 paragraph 3 on defamation. This article is said to be used to limit citizens', activists', and journalists' freedom of expression. Furthermore, it discourages citizens from criticizing the police and the government. The article discusses defamation and insults in the media. This argument is frequently used to prosecute netizens who criticize in cyberspace. 2021 (Riyanto, Galuh Putri)

Aside from article 27 paragraph 3, there are many other problematic articles because the formulation of the article is not strict (rubber) and has multiple interpretations, such as:

- 1) Article 26 paragraph 3 deals with the removal of irrelevant information. There are issues with information censorship in this article.
- 2) In the first paragraph of Article 27, there is a discussion of immorality. This article is troubling because it has the potential to be used to punish victims of online gender-based violence.
- 3) Article 27 paragraph 3 on defamation, which states that anyone who intentionally and without rights distributes, transmits, or makes accessible electronic documents containing insults and/or defamation is violating the law. It can also be considered or used to repress citizens who criticize the government, police, or other state institutions.

- 4) In terms of hate speech, see Article 28 paragraph 2. This article has the potential to repress religious minorities as well as citizens who criticize the police and government. Furthermore, according to this article, every person intentionally and without rights disseminates information to incite hatred or hostility toward individuals or groups based on SARA.
- 5) The same is true for Article 29 regarding the threat of violence. This article is problematic because it has the potential to be used to punish people who want to report crimes to the police.
- 6) Then there's article 36 on losses. This article has the potential to increase the criminal penalty for defamation.
- 7) It is also mentioned in Article 40, paragraph 2a, concerning prohibited cargo. This article is problematic because it can be used to justify shutting down the internet in order to prevent the spread and use of hoaxes.
- 8) There's article 40, paragraph 2b, about access termination. This article is problematic because it may be interpreted as affirming the government's role as taking precedence over court decisions.
- 9) Similarly, Article 45 paragraph 3 refers to the threat of imprisonment for defamation. This article is problematic because it has the potential to detain the accused during the investigation process.

The ITE Law's Implementation

Information technology has numerous advantages, including the ability to disseminate information, communicate with others, retrieve data, and support online teaching and learning activities. The advancement of information technology simplifies human life. As a result, the world becomes borderless or without borders, resulting in changes in many aspects of life. People's behavior and lifestyles are changing as a result of advances in information and communication technology. Information technology can also be used to conduct illegal activities. As a result, the ITE Law was enacted to provide guidelines for the utilization and application of information technology.

Law No. 11 of 2008 was then amended with Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 Concerning Information and Electronic Transactions (UU ITE) to better ensure the recognition and respect for the rights and freedoms of others in accordance with the existing legal corridor in terms of Constitutional Law (Mainake, Yosephus and Luthvi Febryka Nola. 2020). The existence of the Law on Information and Electronic Transactions (UU ITE) is the most significant impediment to public expression. The rubber article in the law is a terrifying specter for citizens who wish to express their views. A number of parties believe that the presence of a buzzer, in addition to the ITE Law, will be the next challenge for the public in giving their opinions in cyberspace. The essence of democracy has been shattered.

The Southeast Asian Freedom of Expression Network (SAFEnet), a non-profit organization dedicated to free expression, reported that from the enactment of the ITE Law in 2008 to the 31st of October 2018, there were approximately 381 victims of the ITE Law. Approximately 90% were charged with defamation, with the remainder charged with hate speech. Meanwhile, there were 84 cases of criminal prosecution of netizens in 2020, with the ITE Law ensnaring 64 of them. SAFEnet's Freedom of Expression Division Director. In practice, many whistleblowers are officials, officials, or investors. The most serious case occurred in 2016, in conjunction with the revision of the ITE Law. There are a total of 83 cases. While there were 53 cases in 2017, there were 25 cases in 2018, and 24 cases in 2019. (CNN Indonesia, 2021)

Due to the existence of multiple interpretations of the ITE Law, an increasing number of people are reporting to one another. As a result, the legal system is regarded as lacking in a sense of justice. The legal apparatus was also asked to be more selective and cautious in following up on complaints of ITE Law violations. Articles that can have multiple interpretations must be translated with care. Law enforcement officials must increase supervision to ensure that the ITE Law is implemented in a more accountable, consistent, and fair manner, and that the rubber articles in the ITE Law are not used to criminalize.

The existence of articles that provide multiple interpretations, also known as the rubber article, has provided a discourse to revise Law No. 19 of 2016 concerning Electronic Information and Transactions (UU ITE), which was conveyed by President Joko Widodo on Monday. Last February 15, 2021, at the State Palace in Jakarta, was strengthened and received public support and appreciation (Yusuf, 2021). The ITE Law revision not only emphasizes the rubber article, which frequently leads to multiple interpretations, but

also provides clear rules to keep the information technology and technology sector cleaner, not misused, and more productive. The revised Law is used by law enforcement officers to anticipate commotion in the community as a result of reporting to each other.

The creation of the ITE Law aims to keep the field of information and communication technology in the community cleaner, healthier, more ethical, and more productive. As a result, law enforcers such as the Supreme Court and the Prosecutor's Police must be more selective, particularly in their interpretation of the ITE Law's Articles.

RESEARCH METHOD

This study employs a qualitative method with a literature research approach, which entails collecting data or scientific writings related to the research topic or collecting library data. The purpose of this research is to investigate the policies of the Indonesian government as expressed in the articles of the ITE Law. The primary goal is to create an in-depth analysis that focuses on a specific phenomenon (Creswell & Creswell, 2017).

According to the explanation above, qualitative research is a research process that investigates social or human problems using specific research methodological traditions. The author employs some of the most recent materials, such as the most recent manuscripts on ITE Law in Indonesia, the most recent data on ITE case analysis, websites of both private and government organizations, and formal news (online). In addition to performing analytical interpretation with strict verification, the goal is to determine the suitability of the manuscript to the context of the current case (Gentles et al., 2016; Schyren, 2015).

RESULTS AND DISCUSSION

The relationship between individuals in society and the state cannot be separated when living the life of a state under the concept of democratic rule of law. Along with the advancement of information and communication technology in the life of society, nation, and state in a democratic order, the law is used as an instrument to ensure legal certainty regarding the limitations of the freedom of constitutional rights of every citizen.

Every citizen has the right to express his or her opinions freely. However, there are some restrictions imposed by general moral principles. Freedom of expression must not be incompatible with Indonesian society's moral values. The rule of law that governs it determines whether or not an act of freedom of expression or opinion violates general moral values in society. In fact, this general moral principle is difficult to apply because, in some societies, freedom of expression may not violate this general moral rule, but in others, it does, or vice versa. This is determined by a society's moral values. In this context, it means that determining whether or not an opinion has fulfilled the moral element is highly subjective, and it is up to law enforcers to decide.

When a subjective assessment is used, it can lead to law enforcement acting arbitrarily. As a result, articles on insults and defamation are commonly referred to as "rubber" articles because they have highly subjective interpretations from other parties and law enforcement. To evaluate the rubber article objectively, the appropriate middle ground must be found. As a result, the moral principles enshrined in these articles must be supported not only by clear legal rules, but also by other principles to ensure a balance that ensures freedom of expression and avoids multiple interpretations.

The amendment to Article 28 letter J paragraph (2) of the 1945 Constitution states that "every citizen is obliged to comply with the restrictions stipulated by law in exercising their rights and freedoms." Law enforcement carried out by the police, prosecutors, judges, and the Ministry of Communication and Information in accordance with the legal system aims to secure a conducive and healthy field of information and communication technology for the benefit of the community and nation.

The preamble to the 1945 Constitution is a fundamental concept in the context of achieving sovereignty and becoming a democratic country in Indonesia. A democratic country's development always coexists with legal principles. A sovereign and independent state has the authority to limit every citizen's rights and freedoms as stipulated by law, including the ITE Law. The regulation of every citizen's rights and

freedoms in using and utilizing information technology as stated in the ITE Law, which has become a legal guideline that has become the foundation for maintaining, safeguarding, and strengthening the nation's unity and integrity.

In essence, it is one of the fundamentals of fulfilling the values and legal principles pertaining to the principle of people's sovereignty, which is implemented in the form of full authority of a sovereign democratic state. The law in the ITE Law is implemented by law enforcement officials in a sovereign and democratic state of law. Various parties and elements of society can also monitor the course of the democratic process as stated in the ITE Law, namely the limitation of every citizen's constitutional rights and freedoms, as well as all forms of legal responsibility stipulated by the ITE Law, solely by considering religious, moral, state security, and social values. the maintenance of public order.

The process of running the ITE Law, which includes maintaining public security and order, law enforcement, protection, service, and community protection, is carried out by the Indonesian National Police as a state instrument against various types of illegal activities and actions in the context of ITE Law law enforcement. These task functions must coexist with a measurable set of authorities in order to be carried out.

Article 27 paragraph (1) relating to content that violates decency, Article 27 paragraph (3) relating to content of insults and/or defamation, and Article 28 paragraph (1) and paragraph (2) relating to the content of false news and hate speech are frequently cited as alleged rubber articles of the ITE Law. In essence, the existence of the article is intended to preserve the role of the state as legislator.

There are several approaches to ensuring cyberspace security, including legal, technological, social, cultural, and ethical considerations. Religion, state security, and public order are all important considerations.

Every citizen is obligated by the state to uphold the ideology and the foundation of a democratic state, namely Pancasila, Bhinneka Tunggal Ika, and the 1945 Constitution. This has implications for the existence of the alleged rubber article as referred to in the ITE Law, which is not in conflict with fundamental principles and values. in the central concept of the 1945 Constitution. In the dynamic atmosphere of democratic life today, the substance has also been proportional, so that the provisions of Article 27 paragraph (1) relating to content that violates morality, Article 27 paragraph (3) as long as it relates to the content of insults and or defamation well, and Article 28 paragraph (1) and paragraph (2) as long as they relate to the content of false news and hate speech

Related to hate speech, which occurs in cyberspace and is mostly perpetrated by social media users. Hate speech on social media can have far-reaching consequences in real life. Hate speech, also known as slander, is an action in the form of words or words that are carried out through media in order to insult, mock, or even discredit others. Hate speech is extremely dangerous because it is a form of intimidation and a restriction on a person's or group's freedom of expression.

The danger of restricting free speech is that it will make a person or group feel limited in their ability to express their aspirations. This can occur when a minority group does not appear to have the same rights to express themselves. Hate speech can also cause divisions within groups. This group's division can jeopardize the nation's and state's unity and integrity. Hate speech can incite violence and discriminatory behavior. For example, disputes between children and adolescents are sparked by hate speech on social media, or when someone expresses his or her opinion regardless of the circumstances. Such incidents have occurred frequently, and casualties have resulted.

As a result, the existence of the ITE Law is expected to improve the pattern of wrong and deviant activities or behaviors. However, there is a rubber article that frequently causes problems in its implementation, necessitating the use of guidelines as legal support. A review of the existence of the Law on Information and Electronic Transactions is required in order to see the existence of the ITE Law, which has previously been considered rubber articles.

CONCLUSION

The ITE Law's implementation has been tailored to the goals of the 1945 Constitution, which guarantees freedom of expression and legal protection for those who express or accept those opinions.

However, there are numerous issues with the rubber article. It is always tied to the rubber articles, articles 27, 28, and 29 of the ITE Law, in the settlement of hate speech cases. This article appears to be a terrible scourge, even being used to silence critics, exact revenge, win a case, or even be used as a political weapon.

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