

# The Impact of Hate Speech Regulations on Freedom of Expression an Indonesian Legal Perspective

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## ABSTRACT

This paper explores the impact of hate speech regulation on freedom of expression in Indonesia from a juridical perspective. The study focuses on the legal framework, including the Electronic Information and Transactions Law (UU ITE) and the Indonesian Penal Code (KUHP), both of which are central to the regulation of hate speech. Through an analysis of key statutes, court rulings, and case studies, this paper highlights the tension between protecting public order and safeguarding free speech. The findings reveal that vague legal definitions and broad enforcement of hate speech laws have led to selective prosecution, often targeting political dissent and criticism. These issues raise concerns about the erosion of democratic rights and the potential misuse of hate speech laws for political purposes. Recommendations are provided to clarify legal definitions, ensure proportionality in enforcement, and prevent the misuse of these laws in a manner that balances the protection of social harmony with the preservation of freedom of expression.

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## 1. INTRODUCTION

Freedom of expression is a globally recognised human right enshrined in the Indonesian Constitution, but balancing this right with public order and the protection of other rights remains a challenge [1]. Legal frameworks such as Indonesia's Electronic Information and Transaction Law attempt to regulate freedom of expression in the digital age, but often create tensions between free speech and legal restrictions [2]. In addition, the lack of clear guidelines for certain forms of expression, such as online humour, leads to legal ambiguity [3]. Courts often have discretion that leads to inconsistent

judgements [4]. Although freedom of expression is internationally recognized, there are restrictions to maintain public order and protect the rights of others [1]. This freedom is important for democracy and government accountability and can empower citizens to influence policy in the digital age [5]. One of the most contentious aspects of this balance is the regulation of hate speech.

Hate speech in Indonesia is a significant threat to social harmony, especially in the context of the country's multiculturalism and diversity. The Indonesian government has implemented laws such as the UU ITE and the Kitab Undang-Undang Hukum Pidana (KUPP) to

curb hate speech, especially online, although challenges remain as online hate speech cases increase and there is a lack of comprehensive datasets for effective detection. The IndoToxic2024 dataset, which includes 43,692 entries, comes to address this gap by focusing on hate speech against vulnerable groups during political events [6]. The ITE Law and KUPP are the main legal basis for law enforcement related to hate speech, supported by specialised units such as the Indonesian Virtual Police that monitor such incidents [7]. Advances in AI technologies, such as BERT models and CNN, have been used to detect hate speech, although challenges in multilingual contexts remain, while the recognition of the Indonesian abusive word lexicon improves detection accuracy [8], [9]. In addition, community engagement and education programs play an important role in promoting dialogue, tolerance and digital literacy to empower communities to identify and respond effectively to hate speech [7].

However, the enforcement of these regulations has sparked considerable debate regarding their potential to infringe on freedom of expression. Indonesia's hate speech laws, particularly the ITE Law, have been criticised for their potential misuse to silence political dissent and restrict freedom of expression. The broad and vague definition of hate speech in these laws allows for selective law enforcement and disproportionate punishment, fuelling concerns of eroding democratic rights [10]. The political landscape on platforms such as Twitter is often filled with hate speech, such as the 'Cebong' and 'Kadrun' phenomena, where political camps put each other down [11]. The lack of comprehensive datasets to detect hate speech also exacerbates the situation, making effective monitoring and enforcement difficult [6]. Although the development of a lexicon of abusive words has shown promising results, further refinement is still needed [8]. In addition, social media platforms are becoming important arenas for political expression and message manipulation, emphasising the need for better detection tools and community

intervention to tackle the rise of online hate speech [7].

This research seeks to explore the impact of hate speech regulation on freedom of expression in Indonesia, focusing on a juridical analysis of the existing legal framework. It aims to analyse how hate speech laws are interpreted and applied by courts and authorities, assess their compatibility with international human rights standards, and examine their implications for democratic discourse.

## 2. LITERATURE REVIEW

### 2.1 *The Concept of Hate Speech*

Hate speech is a broad and often controversial term, lacking a universally accepted definition. Generally, it refers to any form of communication that denigrates, threatens, or incites violence against individuals or groups based on attributes such as race, ethnicity, religion, gender, or sexual orientation. [12], [13] suggests that hate speech not only harms individuals but also threatens societal cohesion by fostering discrimination and violence. In Indonesia, hate speech is regulated under several legal frameworks, including the Electronic Information and Transactions Law (UU ITE) and the Penal Code (KUHP), which broadly define it as any act of disseminating information that incites hatred or hostility based on ethnicity, religion, race, or intergroup (SARA) distinctions. However, scholars like [14], [15] argue that this broad definition can lead to subjective interpretation, increasing the risk of misuse by law enforcement and the judiciary.

### 2.2 *Freedom of Expression: Legal and Theoretical Foundations*

Freedom of expression is a fundamental right in a democratic society, protected by international frameworks such as the UDHR and ICCPR, as well as national constitutions such as the 1945 Constitution, but it is not absolute and can be restricted to prevent harm in accordance with Mill's harm principle. In Indonesia, the balance

between freedom of expression and protection of society is important, particularly in relation to hate speech laws, where critics fear that overly broad restrictions could stifle political discourse and dissent [5]. The ECHR, through Article 10, provides a structured approach by emphasising legitimate, necessary and proportionate restrictions [16]. In Indonesia, Articles 28E(2) and 28F of the 1945 Constitution guarantee freedom of expression, but also allow restrictions to maintain public order [5]. Courts often face challenges in the consistent application of restriction criteria, leading to a variety of interpretations [17]. Careless restrictions can weaken democracy and cause social vulnerability [18].

### 2.3 Hate Speech Regulation in Indonesia

Indonesia's legal framework for regulating hate speech, particularly through the ITE Law and the Criminal Code, has been the subject of criticism due to the broad and vague language of the laws, which has the potential to lead to selective enforcement and limit freedom of speech. The ITE Law, particularly Article 28(2), prohibits the dissemination of information that incites hatred based on ethnic, religious, racial, or intergroup differences, but critics argue that this article lacks clear benchmarks, allowing for the suppression of political activists and journalists [19]. In addition, Articles 156 and 157 of the Criminal Code that regulate hate speech have also faced similar criticism due to legal uncertainty and potential for abuse [10]. Amendments to the ITE Law in 2016 did not resolve the underlying issues, and provisions on cyberbullying and defamation raised concerns of over-criminalization [20], [21]. Scholars advocate for clearer law reform and comparative studies with other countries to ensure legal certainty and address the challenges of hate speech in the digital age [22]. A holistic approach through education and awareness is also recommended to address this issue [20].

### 2.4 International Perspectives on Hate Speech Regulation

Hate speech regulation varies significantly across jurisdictions, shaped by differing legal traditions and societal contexts. In Europe, regulation is relatively strict, with the European Court of Human Rights (ECHR) upholding restrictions on hate speech, particularly in cases such as Holocaust denial or incitement to racial violence [23], [24]. This strict approach is rooted in Europe's history of ethnic and religious conflict, and the Council of Europe emphasizes protection against homophobic and transphobic hate speech [23]. In contrast, the United States adopts a more permissive stance, with the First Amendment offering broad protections for hate speech unless it directly incites violence [25]. This reflects the U.S. prioritization of negative liberty, allowing the expression of controversial opinions [24]. Indonesia's approach aligns more closely with the European model, focusing on preventing social conflict and maintaining public order, but lacks the institutional checks and balances found in more mature democracies, leaving it vulnerable to potential abuse [15].

## 3. RESEARCH METHODS

### 3.1 Research Approach

The study uses a juridical normative (doctrinal) approach, focusing on analyzing legal norms, principles, and legislation related to hate speech in Indonesia. It examines legal frameworks, interprets key statutes, and reviews judicial decisions shaping the enforcement of hate speech regulations. Additionally, qualitative content analysis of legal texts, court rulings, and academic literature is conducted to explore the legal reasoning behind these laws and their application in practice.

### 3.2 Data Sources

The research relies on secondary data from various legal and academic sources, including primary legal materials such as Indonesia's 1945 Constitution, the Electronic Information and Transactions Law (UU ITE), the Penal Code (KUHP), and relevant international documents like the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). It also analyzes case law, focusing on judicial decisions related to hate speech and freedom of expression, with notable cases such as the trial of former Jakarta governor Basuki Tjahaja Purnama (Ahok). Additionally, secondary legal materials, including scholarly articles, legal commentaries, and reports from human rights organizations like Amnesty International, are reviewed to contextualize the application of hate speech laws. Reports from civil society organizations and NGOs are also incorporated to provide real-world insights into how these laws affect public discourse and political expression in Indonesia.

### 3.3 Legal Analysis Framework

The research employs a legal hermeneutic method to interpret and analyze the meaning of legal texts related to hate speech in the Indonesian legal system. This approach includes examining the language and structure of hate speech provisions in laws such as the UU ITE and the Penal Code to interpret their scope and limitations regarding freedom of expression. It also analyzes judicial decisions, focusing on how courts have applied hate speech laws, especially in high-profile cases, assessing legal reasoning, consistency with constitutional protections, and compliance with international human rights standards. A comparative legal analysis is conducted to draw insights from other jurisdictions, offering best practices for potential legal reforms in Indonesia. Additionally, the research critically evaluates law enforcement practices, investigating case

studies where hate speech laws may have been misused to suppress dissent or target specific groups.

### 3.4 Data Collection Techniques

Data collection for this research involved several techniques. First, documentary research was conducted, gathering and analyzing legal documents, statutes, court cases, and academic literature related to hate speech and freedom of expression in Indonesia. Legal databases like Indonesian Supreme Court rulings, LexisNexis, and Google Scholar were utilized to access relevant legal texts and case law. Additionally, case study analysis was employed, focusing on key cases such as the blasphemy case against Basuki Tjahaja Purnama (Ahok) and other significant rulings under the UU ITE, chosen for their legal significance and public impact. Finally, a qualitative content analysis of legal texts was performed to examine how terms like "hate speech," "public order," and "freedom of expression" are defined and applied, identifying ambiguities and potential conflicts with constitutional guarantees of free expression.

### 3.5 Data Analysis

The data was analyzed using a combination of thematic and legal reasoning analysis. Thematic analysis identified recurring themes in legal texts, judicial decisions, and academic literature, highlighting issues such as the tension between public order and freedom of expression, the vagueness of hate speech laws, and the potential for misuse of the UU ITE. Legal reasoning analysis focused on examining how judges in hate speech cases applied legal principles, constitutional protections, and international human rights norms, weighing these against public order considerations in their rulings.

## 4. RESULTS AND DISCUSSION

### 4.1 Results

#### 1. Legal Framework Analysis

Indonesia's legal system includes several provisions aimed at

regulating hate speech, primarily through the Law on Electronic Information and Transactions (UU ITE) and the Indonesian Penal Code (KUHP). The UU ITE, specifically Article 28(2), criminalizes the dissemination of information that incites hatred or hostility based on ethnicity, religion, race, or intergroup (SARA) distinctions. The Penal Code also addresses hate speech through Articles 156 and 157, which prohibit expressions that incite hatred or enmity towards particular groups.

The UU ITE was originally enacted in 2008 to address issues related to cybercrime. However, it has been widely used to prosecute individuals accused of hate speech, particularly in online platforms such as social media. The amendment of UU ITE in 2016 did not significantly alter the provisions related to hate speech but did introduce more severe penalties for violations.

The Penal Code (KUHP) provisions on hate speech are more specific in nature, focusing on acts that incite public hostility, particularly in the context of religion. These provisions are often invoked in cases of blasphemy or incitement to religious violence, and they form the basis of many high-profile cases involving hate speech.

## 2. Key Judicial Cases on Hate Speech

The analysis of key judicial cases reveals a complex and often inconsistent application of hate speech laws in Indonesia. Some of the most notable cases include:

### *Basuki Tjahaja Purnama (Ahok) Case (2017)*

The conviction of Basuki Tjahaja Purnama (Ahok) for blasphemy highlights the complex relationship between religious sensitivities and political dynamics in Indonesia, where blasphemy laws are often used to suppress political dissent and freedom of expression.

The case demonstrates the challenges of balancing freedom of expression with the protection of religious beliefs, while the existing legal framework has been criticised for its vague definitions and potential for abuse, particularly in politically charged cases such as Ahok [26], [27]. The law has often become a tool for political manoeuvring, influenced by religious groups and political interests, demonstrating how political pressure can lead to selective law enforcement and undermine the impartiality of the law [27], [28]. Critics of the law's vagueness point to the need for reforms to prevent abuse and ensure fairness in its enforcement [26]. The Ahok case also demonstrated the negative impact of blasphemy laws on freedom of expression, making it important to reform these laws to protect fundamental rights and create a more inclusive political environment [28].

The Muhammad Arsyad case highlighted the potential misuse of Indonesia's Electronic Information and Transaction Law (ITE Law) as a tool to muzzle criticism of public officials, underscoring the tension between freedom of expression and protection of individual reputations. While the ITE Law provides a framework for addressing defamation, its enforcement and interpretation challenges could make it a tool of political repression rather than maintaining social harmony. Enforcement of the ITE Law is also hampered by difficulties in identifying perpetrators and lengthy legal processes, which reduces public confidence in its effectiveness [29]. In this context, balancing freedom of expression and protection of individual honour requires careful interpretation of the law to prevent abuse [30]. The application of ITE laws often clashes with the right to freedom of expression, especially

when used to silence criticism of public figures [31]. In some countries, defamation laws are used to protect officials, potentially contradicting the principle of free speech [32]. While the regulation of defamation under the ITE Law is based on human rights principles, its application in a democracy may deviate from these principles [33].

The conviction of Mulyadi under the ITE Law for his critical comments about the government highlights the broad interpretation of Indonesia's hate speech laws, which often include political criticism. The ITE Law, particularly Articles 27 and 28, has been criticised for its vague definitions, leading to the criminalisation of legitimate expressions of dissent and criticism [19]. This broad interpretation is seen as a restriction on democratic discourse, as it limits the freedom of expression guaranteed by Article 28E of the 1945 Constitution [34]. The vague legal definitions in the ITE Law lead to inconsistent application, with no benchmarks distinguishing between hate speech and legitimate criticism, often influenced by political pressure [35]. The implementation of these laws has created a chilling effect, discouraging individuals from engaging in political discourse on social media [36]. Hence, there have been calls for legal reforms to provide clearer guidelines and ensure these laws do not infringe on democratic rights [19], [37].

### 3. Vague Legal Definitions and Broad Enforcement

A significant finding from the analysis of Indonesia's hate speech regulations is the vagueness of legal definitions surrounding hate speech, particularly in the UU ITE. Terms such as "hostility," "hatred," and "enmity" are not clearly defined, leaving them open to interpretation by law enforcement and the judiciary.

This has led to inconsistent application of the law, where similar cases may result in different legal outcomes depending on how the courts interpret the language of the law.

Moreover, the broad scope of the UU ITE has enabled the selective enforcement of hate speech laws. Many human rights organizations have reported that hate speech provisions have been disproportionately used to target government critics, political activists, and journalists. This selective enforcement undermines the legal principle of equal protection under the law and raises concerns about the potential for abuse of power.

### 4.2 Discussion

The balance between the regulation of hate speech and freedom of expression in Indonesia is a complex issue, particularly due to the broad and vague language of the ITE Law, which has a chilling effect on public discourse. While the law is intended to curb hate speech, its application is often excessive and restricts freedom of speech, contradicting the protections guaranteed by the Indonesian Constitution as well as international standards such as the ICCPR. The ITE Law has been criticised for the vagueness of its language, which allows for broad interpretation and excessive restrictions on free speech [34], despite the Indonesian Constitution (Articles 28E and 28F) guaranteeing this right [38], [39]. International standards such as Article 19 of the ICCPR only allow restrictions when necessary and proportionate, a standard that Indonesian law has difficulty meeting [40]. In addition, these laws have been used to silence political opponents, such as in the Ahok case, where the law was used for political gain [31]. Selective enforcement also

disproportionately affects minority and opposition groups, undermining the rule of law and public trust [38]. Compared to international practice, Indonesia's approach is considered too strict, with penalties that are disproportionate and go beyond the goal of protecting public order [40], so clearer definitions and proportionate penalties are needed to be in line with international human rights standards [38].

1. *The Balance Between Hate Speech Regulation and Freedom of Expression*

The core challenge in Indonesia's legal framework on hate speech lies in balancing the prevention of hate speech with the protection of freedom of expression. While hate speech laws are crucial to prevent incitement to violence and discrimination, they must also uphold the right to free speech, as guaranteed by the Indonesian Constitution (Articles 28E and 28F) and international human rights standards (Article 19 of the ICCPR). This study shows that Indonesia's hate speech laws, particularly the UU ITE, have shifted the balance too far toward limiting speech. The vague language and broad application of these laws have created a chilling effect on public discourse, leading to increased self-censorship by individuals and media outlets to avoid prosecution. This is especially concerning in the context of Indonesia's growing democracy, where open debate and political criticism are vital for government accountability and social progress.

2. *The Risk of Misuse and Political Instrumentalization*

One of the most troubling aspects of hate speech regulation in Indonesia is the risk of misuse and political instrumentalization. The cases analyzed in this study reveal a pattern of using hate speech laws to

silence political opponents and suppress dissenting voices, as seen in the Ahok case, where blasphemy and hate speech laws were leveraged for political ends. Moreover, the selective enforcement of these laws disproportionately affects minority groups and opposition voices, creating a significant power imbalance. While public figures and political allies may avoid prosecution for inflammatory remarks, critics of the government often face severe legal consequences for less incendiary statements. This selective application undermines the rule of law and erodes public trust in the judicial system.

3. *International Legal Standards and Indonesian Practice*

When compared to international standards on freedom of expression, Indonesia's approach to hate speech regulation appears overly restrictive. International human rights law acknowledges that freedom of expression can be limited to protect public order and prevent incitement to violence, but such limitations must be clearly defined, necessary, and proportionate. The vagueness of Indonesia's hate speech laws and the disproportionate penalties applied in some cases suggest that these laws do not fully align with international human rights standards. For instance, Article 19 of the ICCPR permits restrictions on free speech only when necessary to protect the rights or reputations of others, national security, or public order. However, the broad interpretation of Indonesia's hate speech laws has led to restrictions that exceed what is necessary to achieve these goals.

4. *Recommendations for Reform*

Based on the findings of this research, several recommendations for reforming Indonesia's hate speech laws can be made:

- a. The government should amend the UU ITE and Penal Code to provide clearer definitions of hate speech, particularly in terms of what constitutes incitement to hatred or violence. This would reduce the risk of arbitrary interpretation and ensure that hate speech laws are applied consistently and fairly.
- b. The judiciary should adopt a more rights-based approach to interpreting hate speech laws, ensuring that restrictions on freedom of expression are proportional and necessary. Courts should prioritize protecting free speech in cases where the speech in question does not directly incite violence or discrimination.
- c. The government should implement safeguards to prevent the misuse of hate speech laws for political purposes. This could include creating independent oversight bodies to monitor the application of hate speech laws and provide recourse for individuals who believe they have been unfairly prosecuted.
- d. The government, in collaboration with civil

society, should launch public awareness campaigns to educate the public about the boundaries of free speech and the legal implications of hate speech. This would help prevent unintentional violations of hate speech laws while promoting responsible expression.

## 5. CONCLUSION

The regulation of hate speech in Indonesia poses a significant legal and social challenge, as the nation strives to balance public order with the constitutional right to freedom of expression. This study has revealed that Indonesia's legal framework, particularly the UU ITE and Penal Code, suffers from vague definitions and overly broad application, leading to inconsistent judicial rulings and selective enforcement. The misuse of hate speech laws to silence political dissent and criticism has undermined democratic principles and eroded public trust in the legal system. To resolve these issues, reforms are needed to clarify legal terms, strengthen judicial oversight, and prevent political misuse. Such reforms would ensure fair and consistent application of hate speech laws in line with international human rights standards, promoting a more open and democratic society that respects free speech while addressing harmful incitement appropriately.

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